

## **Chapter 807. Proprietary Schools**

**ADOPTED 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*.**

The Texas Workforce Commission (Commission) adopts amendments to Subchapter A. General Provisions, §807.2; Subchapter B. Certificates of Approval, §§807.13-807.14; Subchapter C. Financial Requirements, §807.32 and §807.35; Subchapter F. Instructors, §807.81 and §807.83; Subchapter G. Courses of Instruction, §807.92-807.93 and §807.101; Subchapter I. Advertising, §§807.122-807.123 and §807.125; Subchapter J. Admission, §807.141 and §807.146; Subchapter K. Progress Standards, §807.161; Subchapter L. Attendance Standards, §807.175; Subchapter N. Records, §807.211 and §807.213 of Chapter 807. Proprietary Schools without changes as published in the November 29, 2002 issue of the *Texas Register* (27 TexReg 11059). The text will not be republished.

Background: Effective January 1, 1972, the Texas legislature enacted the Texas Proprietary School Act to provide protection of students and to provide certification and regulation of proprietary schools. The Act was originally codified 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, re-codified Chapter 32 in Chapter 132, Texas Education Code, and required that the Texas Employment Commission assume the regulatory function of the State's system of proprietary schools. During the same legislative session, House Bill 1863 created the Texas Workforce Commission to assume the responsibilities of the Texas Employment Commission. Consequently, as of March 1, 1996, references in the law to the Texas Employment Commission mean the Texas Workforce Commission.

Through the Act and Proprietary School Rules, the Texas Workforce Commission Proprietary Schools 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 Protection Fund to pay tuition refunds to students when a school closes. In carrying out its regulatory duties, the Proprietary Schools Department seeks to provide consumer 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 proprietary school industry from the time when the rules were last revised in August 1998. 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 as well as provided new methods for advertising and the enrollment of students.

Additionally, some of the regulated proprietary schools have elected to become accredited, have signed participation agreements with U. S. Department of Education, or have made other elections that create oversight by agencies other than the Commission. As a result, there are areas of the rules that are addressed in the requirements of these other agencies. In some cases, the requirements of these other agencies unintentionally modified, made redundant or created unnecessary overlap in the Commission's regulation of proprietary schools.

The adopted amendments to the Proprietary School rules address these issues in order to remove unnecessary requirements and streamline processes in the regulation of Texas Proprietary Schools. These changes are consistent with the Governor's vision of limited and efficient State government.

Specifically, the reason and purpose of each amendment is described as follows:

In §807.2, the amendment clarifies that the rules, which address correspondence training, are intended to recognize all possible forms of distance education by adding references to, and definitions of, the two primary types of distance education: synchronous and asynchronous distance education.

In §807.13, the amendment ensures that the Commission is aware of agreements that may affect the financial stability and/or methods of operation of a school by requiring the disclosure of management agreements to the Commission.

In §807.14, the amendment allows schools more flexibility in delivering seminars to students at new or additional locations by removing restrictive wording.

In §807.32, the amendment reduces the annual reporting requirements for schools by recognizing the federal financial standard used by the U.S. Department of Education as an acceptable alternative to the current financial reporting requirements in the rule.

In §807.35, the amendment makes the requirements for a balance sheet consistent with the recently amended requirements of the Generally Accepted Accounting Principals (GAAP) by eliminating outdated language.

In §807.81, the amendment allows for the recognition of the experience of instructors in seasonal trades by accrediting experience gained on a seasonal basis as the equivalent of one year.

In §807.83, the amendment reduces paperwork and allows flexibility in evaluating the qualifications of instructors by modifying the application process for schools that are approved by an accrediting body recognized by the U.S. Secretary of Education and by allowing a variance to the general requirements, under certain conditions.

In §807.92, the amendment clarifies references to courses of instruction by removing ambiguous wording.

In §807.93, the amendment clarifies references to courses of instruction by removing ambiguous wording.

In §807.101, the amendment requires the Commission be notified if a course of instruction is not to be taught in English.

In §807.122, the amendment prevents exaggerated or misleading advertising by requiring written approval for the use of certain terms.

In §807.123, the amendment expands the current advertising limitations to cover Internet advertising, including the use of graphics.

In §807.125, the amendment ensures that students are aware of all entrance requirements by requiring the publication of the school's entrance requirements in the school catalog.

In §807.141, the amendment ensures that students are protected from changes in the academic requirements by allowing a continuously enrolled student to graduate under the academic requirements in effect when the student enrolled.

In §807.146, the amendment ensures that the students know the cost of their education by requiring a firm price be stated in the enrollment contract.

In §807.161, the amendment recognizes that court reporting students face unique challenges in speed-building classes and allows these students additional time to progress.

In §807.175, the amendment improves the provisions for student leaves of absence by allowing for two leaves of absence with the total number of days being dependent on the length of the program.

In §807.211, the amendment clarifies that the current Master Student Registration List (MSRL), if stored electronically, must be available in hard copy form for monitoring purposes.

In §807.213, the amendment removes the specific requirement to take attendance and allows for a school to use alternative means of calculating a student's last day of attendance for refund purposes.

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 36

days, a minimum of 2 days, and a median of 8 days. The Renewal Certificate of Approval processing period is a maximum of 69 days, a minimum of 2 days, and a median of 9 days. The Change of Owner processing period is a maximum of 53 days, a minimum of 3 days, and median of 13 days. The Representative processing period is a maximum of 186 days, a minimum of 2 days, and a median of 12 days. The Instructor processing period is a maximum of 321 days, a minimum of 2 days, and a median of 70 days. The Director processing period is a maximum of 78 days, a minimum of 2 days and a median of 8 days. The Director of Education processing period is a maximum of 44 days, a minimum of 2 days and a median of 18 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.

Comments were received from Universal Technical Institute, ITT Technical Institute, the Texas Higher Education Coordinating Board, Alta Colleges and the association of the Career Colleges and Schools of Texas. Some commenters agreed with the proposed changes to the rules, some disagreed with the changes, some made recommendations for changes to the adopted language, and some offered comments and new language to sections of existing rules that the Commission did not propose to alter, modify or amend. For those sections that the Commission did not propose changes in its notice of proposed rule published November 29, 2002, the Commission does not accept any alterations or changes to existing Commission rules. The comment summaries and responses are as follows by section.

Comment: One commenter expressed support of the proposed rule revisions as published, without change, and also expressed appreciation for the spirit of cooperation that exists between the Career Colleges and Schools of Texas and the Commission. A second commenter also expressed support for most of the proposed changes, except for three of the provisions below, and stated that the Commission has, for the most part, successfully removed unnecessary requirements and streamlined processes in the regulation of proprietary schools.

Response: The Commission appreciates the positive comments and agrees that the proposed rules should be adopted without change. The Commission is also grateful for the collaborative efforts of the Career Colleges and Schools of Texas to improve the education opportunities of the citizens of Texas.

Comment: Concerning §807.16, one commenter suggested revising (a) to read: "If a school desires authorization to grant associate degrees, the school shall make application to the Coordinating Board" and deleting (a)(1) through (a)(4). The commenter also suggests deleting (b).

Response: The Commission submitted no changes to Section 807.16 in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

Comment: Concerning §807.52(2), one commenter stated that the current requirement that representatives shall “refer questions about financial aid ... to the appropriate school officials” was restrictive and impacted the credibility and ability of in-home representatives to answer questions.

Response: The Commission submitted no changes to Section 807.52(2) in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

Comment: Concerning §807.65, one commenter suggested deleting all but the first sentence of (a). The commenter also suggested deleting (b).

Response: The Commission submitted no changes to Section 807.65 in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

Comment: Concerning §807.103, one commenter suggested deleting the entire section.

Response: The Commission submitted no changes to Section 807.103 in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

Comment: Concerning §807.141(e), one commenter stated that the proposed change was only appropriate for short-term, occupational skill programs, not for associate degree level programs.

Response: The Commission disagrees with this comment and declines to alter its proposed language. When a student signs an enrollment agreement, they are contracting for certain approved training as detailed in the accompanying catalog. The Commission finds that continually enrolled students should have the option of graduating under the academic requirements in effect at the time of the student’s enrollment, particularly since even associate degree programs are typically two years or less in length. While the proposed language provides the student with the right to graduate under the academic requirements stated at the time of enrollment, the proposed language does not prohibit the student from accepting changes to the program.

Comment: Concerning §807.146(a), two commenters expressed opposition to the change. One commenter felt that the proposed change was appropriate only for short-term programs and that it would unnecessarily constrain schools that offered longer programs by denying them the opportunity to adapt to inflation. The other commenter felt that the change would overextend the authority of TWC, constituted a restraint of trade, and

would be grossly unfair. This commenter suggested changing the language to require notice to the student of the school's right to increase tuition with notice of the increase and the reason given a minimum of 45 days in advance.

Response: The Commission disagrees with the comments. When a student signs an enrollment agreement, as with any contract, they are entering into an agreement to receive a certain service. In this case, it is approved training in return for payment of a fee. The Commission believes that the student must have an accurate disclosure of the cost of the education in order to be a properly informed consumer. Furthermore, the Commission needs to know the exact cost in order to calculate refunds in accordance with the requirements of Section 132.061 of the Education Code. Moreover, the Commission does not propose to restrict tuition increases for new students, the provision merely prevents tuition changes to the existing contracts of currently enrolled students.

The Commission does not agree with the comment that this rule overextends the authority of the Commission or that it constitutes a restraint of trade. Section 132.021 of the Education Code requires that the Commission exercise control of the system of proprietary schools and adopt necessary policies and rules to administer the Proprietary School Act. The Commission does not regulate the amount of the tuition charged, it only requires notice of the amount charged.

Comment: Concerning § 807.213(a), one commenter suggested that while the proposed change is welcome, the Commission should completely eliminate the section and the requirement for attendance because the provision could be applied improperly.

Response: The Commission disagrees with the comment. The Commission recognizes the importance of the comments regarding application of this section. However, subsection (a) specifically outlines that schools are not required to take attendance. Rather, if the school does not, they must develop a Commission-approved alternative method that will accurately determine a student's last day attendance. The record keeping requirement is necessary for TWC to properly calculate possible refunds under Section 132.061 of the Education Code. The Commission finds that the attendance requirements in the proposed language are an important tool to provide consumer protection. Students with extremely poor attendance or that cease to attend will not benefit from the training for which they originally enrolled. This will also make certain that the student will not incur more debt than necessary to pay for the training they receive. Furthermore, record keeping will make students aware that attendance is an important part of training. Students may in turn attend school more frequently and increase the amount of training that they will receive.

Finally, subsections (b) and (c) spell out how a school, that is voluntarily taking attendance, meets the requirements of the provision. They clearly indicate how a school may comply and provide the requisite detail to ensure fair and uniform application of the policy.

Comment: Concerning Subchapter G, one commenter suggested that the Commission consider a rule establishing a minimum and maximum program length for certificate programs.

Response: The Commission submitted no changes to Subchapter G in its Notice of Proposed Rule Amendments, published on November 29, 2002. Consequently, the Commission is unable to accept any alterations or changes to the existing section.

The amendments are adopted under Texas Labor Code, Title 4, §302.002 and §302.021, 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, Proprietary Schools and particularly §132.021, which authorizes the Commission to adopt rules necessary to carry out this chapter.

The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

## **Chapter 807. PROPRIETARY SCHOOLS**

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

#### **§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.
- (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, 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 school**--A school that offers only correspondence 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," 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 school" 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.

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The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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

### **§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.

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## **SUBCHAPTER C. FINANCIAL REQUIREMENTS**

### **§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.

**§807.35. 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;
    - (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 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.

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The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

## **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.

### **§807.83. 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.

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The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

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

### **§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.

**§807.101. 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.

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The amendments affect the Texas Labor Code, Title 4, §302.002 and §302.021, and Texas Education Code, Chapter 132, Proprietary Schools.

## **SUBCHAPTER I. ADVERTISING**

### **§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.

**§807.125. 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.

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## **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.

### **§807.146. 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.

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## **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.

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## **SUBCHAPTER L. ATTENDANCE STANDARDS**

### **§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.

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## **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.

### **§807.213. 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.

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