

# 56 N.J.R. 1802(a)

VOLUME 56, ISSUE 17, SEPTEMBER 3, 2024

## RULE ADOPTIONS

### Reporter

56 N.J.R. 1802(a)

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## Agency

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LABOR AND WORKFORCE DEVELOPMENT > CENTER FOR OCCUPATIONAL EMPLOYMENT INFORMATION

## Administrative Code Citation

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**Adopted Amendments: N.J.A.C. 12:41-1.1, 1.2, 2.2, 2.4, 2.6, 3.2, 4.5, 5.1, and 5.2**

**Adopted New Rules: N.J.A.C. 12:41-4.8 and 12:43**

## Text

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### **Private Career Schools; Minimum Acceptable Level of Performance**

Proposed: August 7, 2023, at 55 N.J.R. 1615(a).

Adopted: August 5, 2024, by Robert Asaro-Angelo, Commissioner, Department of Labor and Workforce Development.

Filed: August 5, 2024, as R.2024 d.081, **with a non-substantial change** not requiring additional public notice or comment (see N.J.A.C. 1:30-6.3).

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

Effective Date: September 3, 2024.

Expiration Dates: November 17, 2030, N.J.A.C. 12:41;

September 3, 2031, N.J.A.C. 12:43.

### **Summary of Hearing Officer's Recommendation and Agency's Response:**

After reviewing the written comments submitted directly to the Department of Labor and Workforce Development's (Department) Office of Legal and Regulatory Services, the hearing officer, David Fish, Executive Director, Legal and Regulatory Services, recommended that the Department proceed with adoption of the amendments and new

rules with a single non-substantial change not requiring additional public notice or comment. The change upon adoption is discussed in detail below.

**Summary** of Public Comments and Agency Responses:

Written comments were submitted by the following individuals:

1. The Board of the Private College and School Association of New Jersey, 14 Sylvan Way, Parsippany, New Jersey.
2. Shawn Alexander, Campus President, Universal Technical Institute, 4225 East Windrose Drive, Suite 200, Phoenix, Arizona.
3. Althea D. Ford, Vice President of Government Affairs, New Jersey Business and Industry Association, 10 West Lafayette Street, Trenton, New Jersey.
4. Carolyn Fast, Senior Fellow and Director of Higher Education Policy, Tiara Moultrie, Fellow, and Amber Villalobos, Fellow, The Century Foundation, One Whitehall Street, 15th Floor, New York, New York.
5. Amy Laitinen, Senior Director, Higher Education, and Rachel Fishman, Director, Higher Education, New America, 740 15th Street NW, Suite 900, Washington, D.C.
6. The Trustees of the Association of Cosmetology & Hairstyling Schools of New Jersey, Inc., 21 Passaic Street, Hackensack, New Jersey.
7. Colleen M. Hogan, Director, PB Cosmetology Education Centre, 110 Monmouth Street, Gloucester City, New Jersey.
8. Harry Comp Jr., President/Co-Owner, Parisian Beauty Academy, 21 Passaic Street, Hackensack, New Jersey.
- [page=1803] 9. Michael Hechme, Director/President, Total Image Beauty Academy, 3900 Bergenline Avenue. 2nd Floor, Union City, New Jersey.
10. Kameron K. Rabenou, President/Director, Shore Beauty School, 3003 English Creek Avenue, Egg Harbor Township, New Jersey.
11. Donna Hernandez, Sean Sickles, Yenny Johnson, and Susan Guido, Innovate Salon Academy (No address provided).
12. Habiba Chaudhry, Christine Valmy International School of Esthetic & Cosmetology, 285 Changebridge Rd., Pine Brook, New Jersey.
13. Paul Ferrara, Jr. Robert Fiance Beauty Schools (No address provided).
14. Sujal Wadhia, The Salon Professional Academy (No address provided).
15. Paula Brown, Rizzeiri Aveda School (No address provided).

1. COMMENT: Some commenters object to proposed new N.J.A.C. 12:41-4.8 and the proposed amendments at N.J.A.C. 12:41-5.1, which would add failure of a private career school to meet the "minimum acceptable level of performance" for each instructional program offered by the private career school to the existing list of causes for suspension, revocation, or placement of conditions upon the continued possession by a private career school of a Certificate of Approval. Specifically, the commenters maintain that "these actions, which include the requirement for the Department to revoke, suspend, or make conditional the Certificate of Approval, can only be described as punitive," adding, "based on this law and the Department's proposal, a private career school with minimal students in a program that does not meet the performance quality standards can have the entire school's Certificate of Approval revoked without the opportunity to rectify this scenario." The commenters suggest that the proposed new

rules and amendments for implementation of N.J.S.A. 34:15C-10.1a should be "modified to include a cure period to allow private career schools to meet the performance quality standard during a requisite time." During such a "cure period," the commenters suggest that a failing private career school, "would be able to acknowledge its decision to either meet the performance quality standard by amending its tuition and fees or teach out," adding, "[i]f the private career school does not respond to the Department, then it would be appropriate for the Department to revoke, suspend, or put conditions on the Certificate of Approval for the entire private career school."

RESPONSE: Within the enabling statute; specifically, at N.J.S.A. 34:15C-10.1a.b(1), it expressly states the following:

"In the event that the Commissioner of Labor and Workforce Development determines that a program offered by a private career school does not meet the minimum acceptable level of performance, the Commissioner of Labor and Workforce Development and the Commissioner of Education shall, pursuant to section 13 of P.L. 2005, c. 354 (C.34:15C-10.1), revoke, suspend, or make conditional the certificate of approval issued under that law." (emphasis added)

The Department has no discretion to deviate from this statutory mandate. That is, the Department is not empowered to insert a cure period as a condition precedent to the imposition of sanctions that are expressly required by law. With specific regard to the commenters' assertion that "based on this law and the Department's proposal, a private career school with minimal students in a program that does not meet the performance quality standards can have the entire school's Certificate of Approval revoked without the opportunity to rectify this scenario," it is important to note that pursuant to existing N.J.A.C. 12:41-5.1(b), when the Commissioners of the Department of Labor and Workforce Development and the Department of Education are determining whether to impose a suspension, revocation, or placement of conditions upon the continued possession of a Certificate of Approval, they are required to consider the following factors: (1) the seriousness of the violation, (2) the past history of previous violations by the private career school or by the owner of the private career school, (3) the good faith of the private career school, and (4) any other factors which the Commissioners deem appropriate pursuant to the circumstances. With such a standard already in place, private career schools are protected against the revocation of a private career school's Certificate of Approval for a minor violation. That is, applying the standard set forth at existing N.J.A.C. 12:41-5.1(b), where there is a truly minor violation, so long as there is not a history of previous violations, and provided the private career school has acted in good faith, the Commissioners have the latitude to place conditions on the private career school's continued possession of a Certificate of Approval, rather than either suspend or revoke the school's Certificate of Approval. Under such a scenario, the school would be permitted to continue operating while the conditions set by the Commissioners are met. Of course, the standard enumerated at N.J.A.C. 12:41-5.1(b) also accounts for the scenario where the individual violation may not be "serious," but where there have been repeated "non-serious" violations by the private career school and/or where the private career school has demonstrated bad faith, in which instance, it may be appropriate for the Commissioners to impose a more serious sanction against the private career school, such as suspension or revocation of the Certificate of Approval.

2. COMMENT: Some commenters maintain that private career schools will "need to make additional hires" in their student services and career services divisions "to track data that is being required by the proposal." Specifically, they assert that certain information would be required to be included in a quarterly report from private career schools to the Department pursuant to proposed N.J.A.C. 12:41-3.2(d); specifically, "information ... related to post-graduation such as licensure application date and date of issuance of license," which would require additional staff to contact students, since, according to the commenters, "[t]his data is not readily available and can only be acquired through communication with former students."

3. COMMENT: Some commenters object to the required reporting of personally identifiable student information, such as Social Security numbers, which the commenters assert "[do] not add value to the [minimum acceptable level of performance] analysis." The commenters also object to the quarterly reporting requirement, which the commenters maintain is "administratively burdensome for schools and the Department."

RESPONSE TO COMMENTS 2 AND 3: The post-graduation information that new N.J.A.C. 12:41-3.2(d)2 would require be included in a quarterly report; the information the commenters assert would be burdensome to collect, because it is not readily available and can only be acquired through communication with former students, is: (1) date of start in a job, if applicable; (2) date of application for a license, if applicable; (3) licensing examination result, if applicable; (4) date of issuance of a license, if applicable; and (5) credential issued, if applicable. Existing N.J.A.C. 12:41-3.1(a) already requires that each private career school maintain a permanent student record for each student enrolled, which includes, among other things: (1) date of start in a job, if applicable; (2) date of application for a license/certification, if applicable; (3) date of license/certification examination, if applicable; (4) result of license/certification examination, if applicable; (5) date of issuance of license/certification, if applicable; and (6) credential issued. Moreover, existing N.J.A.C. 12:41-3.2(a)1 already requires that this information be included in an annual report to the Department.

The personally identifiable student information that would be included in the quarterly report pursuant to new N.J.A.C. 12:41-3.2(d) is simply the Social Security number, gender, and date of birth (the rest of the required information is the post-graduation information listed above). This is information that private career schools must already include in the permanent student record for each enrolled student pursuant to existing N.J.A.C. 12:41-3.1(a), and which must be submitted to the Department with the private career school's annual report in accordance with existing N.J.A.C. 12:41-3.2(a). For the purpose of monitoring a private career school's compliance with all of the requirements at N.J.S.A. 34:15C-10.1 and 34:15C-10.1a, as well as the requirements at N.J.A.C. 12:41 and 6A:19-7, it is important that, where possible, each of the records required to be kept and each data point required to be reported be identifiable to the particular student to whom the record or data relates. This gives the Commissioners of the Departments of Labor and Workforce Development and Education, the fullest possible understanding of the operations of the private career schools that they are responsible for regulating.

4. COMMENT: A commenter observes that within the Summary of the notice of proposal, it states that the Department is proposing amendments at N.J.A.C. 12:41-2.1, which would add new definitions, including a new definition for the term "average institutional grant aid." The commenters assert that, "there is no further mention of this term throughout the remainder of the proposal;" that, "[t]his definition is critical to the formula [page=1804] developed by the Department;" and that, "without clarity, [this] would lead to significant confusion on the part of private career schools."

RESPONSE: Inclusion of the word "average" in the Department's reference within the Summary of the notice of proposal to a new definition for the term "average institutional grant aid," was inadvertent. That is, the Department meant to indicate within the Summary of the notice of proposal that it was proposing a definition for the term "institutional grant aid." The latter term--"institutional grant aid"--is what is defined within the proposed rule text of the notice of proposal at N.J.A.C. 12:41-2.1, and importantly, "institutional grant aid," not "average institutional grant aid," is what N.J.S.A. 34:15C-10.1a.b requires be considered by the Department in its establishment of performance quality standards for private career schools. That is, N.J.S.A. 34:15C-10.1a.(b) states that "[i]n establishing the performance quality standards, the Commissioner of Labor and Workforce Development **shall** consider the ratio of the tuition and fees charged to students in the program net of **any institutional grant aid** to the average earnings of New Jersey workers employed in the specific occupation for which the program prepares students" (emphasis added). Also, in every other instance throughout the Summary when grant aid is mentioned, the term "institutional grant aid" (without the word "average") is used. It is clear from the context, as described above, that the single instance within the entire notice of proposal where the term "average institutional grant aid" is used was simply an error; akin to a typographical error. The Department thanks the commenter for noticing the error and welcomes the opportunity to acknowledge it here. No change to the proposed rule text is necessary.

5. COMMENT: A commenter takes issue with the link to occupational employment and wage data provided by the Department within the proposed definition of the term, "average annual earnings," at N.J.A.C. 12:41-1.2. That is, the commenter acknowledges that they were able to access the necessary data using the link provided, but, according to the commenter, once the website was accessed using the link, some additional website navigation was necessary. The commenter suggests replacing that link with a more precise link; a link that requires no additional website navigation; a link that the commenter includes in the comment.

RESPONSE: The Department will substitute the suggested link upon adoption.

6. COMMENT: A commenter asks whether the "minimum acceptable level of performance" established through the amendments and new rules will be applied by the Department to private career schools with Certificate of Approval renewal applications that are pending, where the applications were submitted prior to the effective date of the amendments and new rules. The commenter also asks whether the Certificate of Approval of such a private career school could be revoked, suspended, or have conditions placed on it if, on the date that the amendments and new rules become effective, the private career school has an instructional program(s) that do not meet the minimum level of performance.

RESPONSE: The "minimum acceptable level of performance" will be applied by the Department to all Certificate of Approval holders and applicants immediately upon the effective date of the amendments and new rules. That includes the possible denial of pending Certificate of Approval renewal (and initial) applications, and the possible revocation, suspension, or placement of conditions upon continued possession of a Certificate of Approval by a licensed private career school. It is important to note, however, regarding the denial of a renewal application for failure to meet the "minimum acceptable level of performance," that proposed N.J.A.C. 12:41-2.4(h) requires a private career school be given the opportunity within 15 days of receipt of the application denial to submit (with no additional fee) a written request for reconsideration. The basis for reconsideration could either be an error made by the Department in its measurement of the performance of the private career school's instructional program(s) against the "minimum acceptable level of performance" or a change in circumstances (for example, a reduction in tuition and/or fees) that would alter the Department's measurement of the performance of the private career school's instructional program(s) against the "minimum acceptable level of performance." It is also worth noting, as mentioned above, that pursuant to existing N.J.A.C. 12:41-5.1(b), when the Commissioners of the Department of Labor and Workforce Development and the Department of Education are determining whether to impose a suspension or revocation, or in the alternative, to place conditions upon the continued possession of a Certificate of Approval, they are required to consider the following factors: (1) the seriousness of the violation; (2) the past history of previous violations by the private career school or by the owner of the private career school; (3) the good faith of the private career school; and (4) any other factors which the Commissioners deem appropriate pursuant to the circumstances.

7. COMMENT: A commenter expresses concern that United States Department of Education (USDOE) regulations regarding "Financial Value Transparency and Gainful Employment" will "overlap with certain proposals outlined in the draft [New Jersey Department of Labor and Workforce Development amendments and new rule] and conflict with others." The commenter "recommend[s] that the Department review the final Gainful Employment [regulations], and revise or eliminate aspects of the proposed rule that contradict or are redundant with such Federal standards."

RESPONSE: The commenter fails to identify any specific provisions of the Federal regulations that either overlap or conflict with the Department's proposed amendments and new rules. The USDOE regulations on Financial Transparency and Gainful Employment establish a condition for eligibility to participate in the student assistance programs authorized pursuant to Title IV of the Federal Higher Education Act of 1965, whereas the Department's proposed amendments and new rules establish a condition for licensure (through the issuance of a Certificate of Approval by the New Jersey Commissioners of Labor and Workforce Development and Education) to operate a private career school in New Jersey. The State has the authority to establish its own licensure criteria for private career schools and is in no way bound in this regard by any standard governing eligibility for those schools to receive money from the Federal government.

8. COMMENT: A commenter objects to the Department's proposed definition for the term "minimum acceptable level of performance" at N.J.A.C. 12:41-1.2 because, according to the commenter, it "only accounts for institutional grant aid as part of its calculation." The commenter adds, "[b]y ignoring other major grant aid programs that dramatically reduce the cost of an education for students in New Jersey, the proposed rules do not reflect the true out-of-pocket cost of an educational program to students and their families." In conclusion, the commenter recommends that the definition of "minimum acceptable level of performance" be amended "to account for all grant aid provided to students, not only institutional grant aid."

RESPONSE: The enabling statute--N.J.S.A. 34:15C-10.1a--states that the performance quality standard established by the Commissioner "shall consider the ratio of the tuition and fees charged to students in the program net of any **institutional grant aid** to the average earnings of New Jersey workers employed in the specific occupation for which the program prepares students" (emphasis added). Consequently, the Legislature has expressly dictated that for the purpose of evaluating a private career school's compliance with the performance quality standard established by the Commissioner, and for that purpose, comparing the cost of training with the average earnings in the occupation for which the students are being trained, the only grant aid the Department is permitted to deduct from the tuition and fees charged to students is "institutional" grant aid. The Department has no discretion to deviate from this legislative mandate.

9. COMMENT: Some commenters object to the Department's proposed definition for the term "average annual earnings" at N.J.A.C. 12:41-1.2; which is, "the amount indicated for the 25th percentile of the annual salaries in New Jersey for an occupation according to the most recent Department of Labor and Workforce Development Occupational Employment and Wage Estimates for All Industries Combined." The commenters assert that using the 50th percentile of annual salaries in New Jersey for an occupation, rather than the 25th percentile, "is most consistent with the statutory intent," explaining, "it is most appropriate to use the 50th percentile (median) of annual salaries...we do not think there is a reason for the Department to deviate from the generally accepted 'average' (50th percentile) figure." Finally, the commenters take issue with the Department's explanation for use of the 25th percentile set forth in the notice of proposal, namely, that "the 25th percentile of the annual salaries in New Jersey across an entire occupation, including not only those who are in the first 10 years of their career, but also those who have, [page=1805] for example, worked in the occupation for 20 years or 30 years, is more representative of the 'average annual earnings' of a recent program graduate, than would be the 50th percentile of the annual salaries in New Jersey for the entire occupation." The commenters question the Department's belief that what is material for the purpose of calculating the "minimum acceptable level of performance" is the average amount that might be earned by a recent program graduate; that is, during the 10 years immediately following completion of the training program. Specifically, the commenters state:

"[W]hile [we] appreciate the Department's rationale for proposing the 25th percentile figure, we respectfully note that the reasoning cited that 'minimum acceptable level of performance' should be judged based on salary information 'during the ten years immediately following completion of the training program'-is nowhere in the statutory language."

RESPONSE: It is the Department's understanding that the purpose of N.J.S.A. 34:15C-10.1a is to hold accountable private career schools that do not provide program graduates with an adequate return on investment; that is, to require, as a condition to continued licensure, that private career schools meet a standard that measures the ability of program graduates to repay the cost of their training over a reasonable period of time using a reasonable portion of anticipated earnings in the occupation for which they have been trained. As explained in the notice of proposal, an integral part of establishing a meaningful performance quality standard is that the Department uses earnings data that most closely approximates what would be the average annual earnings of a recent program graduate; which the Department has determined means the average earnings of a program graduate during the 10 years immediately following completion of the training program. In the Department's view, if the tuition and fees being charged by a private career school for an occupational training program are so high that program graduates cannot repay the cost of the training within 10 years of program completion using anticipated earnings in the occupation for which they have been trained, then the private career school is charging too much for that training program. Therefore, what is material for the purpose of calculating the "minimum acceptable level of performance" is the amount that might be earned by a program graduate during that 10-year period, not what might be earned by a program graduate over the course of the individual's entire career. The available occupational earnings data does not include the 50th percentile (median) of annual salaries in occupations during the first 10 years of a career; only the 25th percentile, 50th percentile, and 75th percentile of earnings over an entire career. Consequently, for the purpose of establishing a "minimum acceptable level of performance" the Department must select from among those available annual salary percentiles (25th, 50th, or 75th) the one that most closely approximates the average annual earnings of a recent program graduate. As explained in the notice of proposal, the Department has

determined that to be the 25th percentile. No change will be made to the proposed definition of the term, "average annual earnings."

10. COMMENT: Some commenters maintain that the earnings of those who graduate from cosmetology and hairstyling schools, as that data is reported to and collected by the United States Department of Labor's Bureau of Labor Statistics (BLS), are "profoundly understated owing to the cash-based nature of cosmetology earnings." The commenters characterize as "industry standard practice" the substantial underreporting of income to the Internal Revenue Service (IRS) by salon and shop owners, adding, "BLS data is collected through surveys ... [and] it stands to reason that those willfully evading taxes do not report their actual earnings to a government institution [like the BLS]." The commenters, therefore, suggest that use of BLS annual salary data for the purpose of establishing the "average annual earnings" of cosmetology school graduates is unfair. Nevertheless, the commenters recommend as an alternative to using the 25th percentile of the annual salaries in New Jersey for cosmetologists, that the Department "use the top quartile [the 75th percentile] of reported BLS earnings data," to compensate for the supposed underreporting of cash earnings by cosmetologists.

RESPONSE: The Department is establishing a uniform "minimum acceptable level of performance," for all private career schools. That means the student cost component of the "minimum acceptable level of performance" calculation will for all private career schools be based on tuition, fee, and institutional grant aid information obtained by the Department from the private career schools (subject to verification by the Department through monitoring and inspection pursuant to existing N.J.A.C. 12:41-4.6) and that the average annual earnings component of that calculation will for all private career schools be based on the amount indicated for the 25th percentile of the annual salaries in New Jersey for the occupation at issue according to the most recent Department Occupational Employment and Wage Estimates for All Industries Combined. The Department will not establish a special method for calculating "minimum acceptable level of performance" for a single type of private career school or instructional program; especially not for the reason suggested by the commenter, namely, to account for supposed underreporting of taxes by certain employers and employees in one industry. That is, the Department will not create a special method to calculate "minimum acceptable level of performance" just for cosmetology schools to account for the unsupported assumption by the commenters that if some of their graduates supposedly don't report cash wages to taxing authorities, they must also be omitting that information from their responses to BLS surveys, which are the source of the data used to calculate earnings outcomes pursuant to the proposed Department rule.

Incidentally, in opposition to the earnings-based metric used in the recently published Federal "Gainful Employment" rule, cosmetology schools made virtually the identical argument -- that to evaluate the value of cosmetology programs is unfair because cosmetologists receive a significant portion of their earnings as tipped income (often in cash), and that this income is underreported to tax authorities, which are the source of the data used to calculate earnings outcomes pursuant to the Federal rule. However, a recent joint report from George Washington University, Columbia University, and Student Defense, estimates that while approximately eight percent of cosmetologists' income is not reported to tax authorities, adjusting for this underreported income would not substantially change the failure rates for cosmetology programs pursuant to the Federal government's debt-to-earnings metric of the 2014 version of the Federal "gainful employment" rule, because many cosmetology graduates' earnings are so low that even with an adjustment, the programs cannot pass the Federal debt-to-earnings test. See Stephanie Rieg Cellini and Kathryn J. Blanchard, "Air and Taxes: Cosmetology Programs; Accountability Policy, and the Problem of Underreported Income," Post-secondary Equity and Economics Research Project, January 2022, [https://peerresearchproject.org/peer/research/body/PEER\\_HairTaxes-Final.pdf](https://peerresearchproject.org/peer/research/body/PEER_HairTaxes-Final.pdf).

11. COMMENT: Some commenters expressed "strong support for the proposed amendments and new rules," adding "[t]he performance standards set forth in the proposed amendments and [new] rules establish a sound accountability framework that will help to protect students from investing in low-value programs that leave students with unmanageable debt."

RESPONSE: The Department thanks the commenters for their support.

### **Federal Standards Statement**

The adopted amendments and new rules do not exceed standards or requirements imposed by Federal law, as there are currently no Federal standards or requirements applicable to the subject matter of this rulemaking; that is, the licensure of private career schools. As a result, a Federal standards analysis is not required.

**Full text** of the adoption follows (addition to proposal indicated in boldface with asterisks **\*thus\***; deletion from proposal indicated in brackets with asterisks **\*[thus]\***):

## SUBCHAPTER 1. GENERAL PROVISIONS

### 12:41-1.1 Purpose and scope

(a) The purpose of this chapter is to establish rules to effectuate N.J.S.A. 34:15C-10.1 and 34:15C-10.1.a, which empowers the Commissioner of the Department of Labor and Workforce Development and the Commissioner of the Department of Education to issue certificates of approval to "qualifying schools" (referred to throughout this chapter as and defined therein as synonymous with the term, "private career schools"); to "maintain rules governing curricula, qualifications of instructors and supervisors, facilities, recordkeeping (and reporting) requirements, and any other matter essential to the maintenance of quality instruction and the business integrity" of private career schools; to [page=1806] establish and enforce a minimum acceptable level of performance for private career schools; to oversee the proper conduct of private career schools, including the monitoring and inspection of approved private career schools and the conducting of examinations of all facilities and methods of operation of private career schools; and, to revoke, suspend, or place reasonable conditions upon the continued approval of a private career school where reasonable causes exist to believe that the private career school is guilty of violating N.J.S.A. 34:15C-10.1 and 34:15C-10.1.a, and N.J.A.C. 6A:19-7, or this chapter, or is found to be "financially unsound."

(b)-(c) (No change.)

### 12:41-1.2 Definitions

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

"Average annual earnings" means the amount indicated for the 25th percentile of the annual salaries in New Jersey for an occupation according to the most recent Department of Labor and Workforce Development Occupational Employment and Wage Estimates for All Industries Combined, which is available at [\\*\[https://www.nj.gov/labor/labormarketinformation/\]\\*](https://www.nj.gov/labor/labormarketinformation/) \*  
**[https://www.nj.gov/labor/labormarketinformation/assets/PDFs/employ/oeswageweb/PDFs/nj\\_all.pdf](https://www.nj.gov/labor/labormarketinformation/assets/PDFs/employ/oeswageweb/PDFs/nj_all.pdf)**\*

...

"Fees" means the mandatory fees charged to the most recent students registered in the instructional program. Such fees may include, but are not limited to, general education fees, registration fees, facility fees, technology fees, laboratory fees, student services and activity fees, and program and course fees, including fees associated with coursework.

"Institutional grant aid" means the award of money given by the private career school to students registered in the instructional program. Such aid includes, but is not limited to, need-based or merit-based aid in the form of grants, scholarships, subsidies, endowments, and discounts.

...

"Minimum acceptable level of performance" means that tuition and fees charged for an instructional program, minus institutional grant aid awarded to students registered in that instructional program, divided by 10 times the average annual earnings of New Jersey workers employed in the specific occupation for which the instructional program prepares students, is less than or equal to 0.10 (that is, 10 percent).



...

"Tuition" means the net dollar amount most recently represented by the private career school as the price for attending class(es) in order to pay for instruction.

"Written" means handwritten or typed, hardcopy, or electronic.

## SUBCHAPTER 2. APPLICATION PROCESS

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

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

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

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

1.-16. (No change.)

17. A copy of the school advertising materials;

18. Proof of appropriate school entry standards;

19. A list of each instructional program offered by the private career school including the Classification of Instructional Programs (CIP) code and Standard Occupational Classification (SOC) code for each instructional program;

20. Identification of the specific occupation(s) for which students will be prepared upon completion of each instructional program;

21. Identification of the specific license(s), if applicable, for which students will be prepared upon completion of each instructional program;

22. The duration of each instructional program;

23. Tuition and fee information for each instructional program, including the following:

i. Tuition;

ii. Fees; and

iii. Institutional grant aid awarded to registered students; and

24. Such other information and documents as may be required by the Commissioner of the Department of Labor and Workforce Development as part of the Application for Initial Approval of a Private Career School.

(c) (No change.)

(d) The Training Evaluation Unit shall, prior to the issuance of a Certificate of Approval, assess each private career school applicant to identify whether each instructional program offered by the private career school meets the minimum acceptable level of performance.

(e) Failure of a private career school applicant to meet the minimum acceptable level of performance for each instructional program offered by the private career school shall alone constitute sufficient grounds for denial of the private career school's application for initial approval.

(f) (No change in text.)

(g) Where an initial application for approval of a private career school is denied on the basis that the applicant private career school has failed to meet the minimum acceptable level of performance for any of its instructional programs, the applicant private career school may within 15 days of receipt of the application denial, and without the payment of any additional application fee, submit to the Training Evaluation Unit a written request for reconsideration of the denial.

(h) The written request for reconsideration pursuant to (g) above shall include a detailed description of the basis for the request, including an explanation of either:

1. What the applicant believes is an error made by the Department in its measurement of the performance of the applicant private career school's instructional program(s) against the minimum acceptable level of performance; or
2. A change in circumstances (for example, a reduction in tuition and/or fees) that would alter the Department's measurement of the performance of the private career school applicant's instructional program(s) against the minimum acceptable level of performance.

(i) The option to file a written request for reconsideration pursuant to (g) above shall apply only to application denials that are based on the applicant private career school's failure to meet the minimum acceptable level of performance for any of its instructional programs.

(j) The Training Evaluation Unit shall review any request for reconsideration submitted pursuant to (g) above on the written record and shall render a decision within 20 days of receipt of the request.

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

(a)-(c) (No change.)

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

1.-7. (No change.)

8. Verification that the school complied with the annual reporting requirement, at N.J.A.C. 12:41-3.2, for the immediately preceding fiscal year;

9. Modifications to any documentation provided as part of the Application for Initial Approval of a Private Career School;

10. A list of each instructional program offered by the private career school, including the Classification of Instructional Programs (CIP) code and Standard Occupational Classification (SOC) code for each instructional program;

11. Identification of the specific occupation(s) for which students will be prepared upon completion of each instructional program;

12. Identification of the specific license(s), if applicable, for which students will be prepared upon completion of each instructional program;

13. The duration of each instructional program;

14. Tuition and fee information for each instructional program, including the following:

[page=1807] i. Tuition;

ii. Fees; and

iii. Institutional grant aid awarded to registered students; and

15. Such other information and documents as may be required by the Commissioner of the Department of Labor and Workforce Development as part of the Application for Renewal of a Private Career School Certificate of Approval.

(e) (No change.)

(f) The Training Evaluation Unit shall, prior to renewal of a Certificate of Approval, assess the private career school renewal applicant to identify whether each instructional program offered by the private career school meets the minimum acceptable level of performance.

(g) Failure of a private career school renewal applicant to meet the minimum acceptable level of performance for each instructional program offered by the private career school shall alone constitute sufficient grounds for denial of the private career school's application for renewal of its Certificate of Approval.

(h) Where an initial application for approval of a private career school is denied on the basis that the applicant private career school has failed to meet the minimum acceptable level of performance for any of its instructional programs, the applicant private career school may, within 15 days of receipt of the application denial, and without the payment of any additional application fee, submit to the Training Evaluation Unit a written request for reconsideration of the denial.

(i) The written request for reconsideration pursuant to (h) above shall include a detailed description of the basis for the request, including an explanation of either:

1. What the applicant believes is an error made by the Department in its measurement of the performance of the applicant private career school's instructional program(s) against the minimum acceptable level of performance; or

2. A change in circumstances (for example, a reduction in tuition and/or fees) that would alter the Department's measurement of the performance of the private career school applicant's instructional program(s) against the minimum acceptable level of performance.

(j) The option to file a written request for reconsideration pursuant to (h) above shall apply only to application denials that are based on the applicant private career school's failure to meet the minimum acceptable level of performance for any of its instructional programs.

(k) The Training Evaluation Unit shall review any request for reconsideration submitted pursuant to (h) above on the written record and shall render a decision within 20 days of receipt of the request.

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

(a)-(b) (No change.)

(c) The Training Evaluation Unit shall not approve any change in tuition or fee if that change would result in failure of the private career school that is seeking approval for the change to meet the minimum acceptable level of performance for each instructional program offered by the private career school.

### SUBCHAPTER 3. RECORDKEEPING AND REPORTING REQUIREMENTS

#### 12:41-3.2 Reporting requirements

(a)-(c) (No change.)

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

1. The tuition and fees charged for each instructional program;
2. A record for each student enrolled in each instructional program, which shall include the following:
  - i. Social Security number,
  - ii. Gender;
  - iii. Date of birth;
  - iv. Date of enrollment;
  - v. Date of completion, if applicable;
  - vi. Date of termination, if applicable;
  - vii. Date of start in a job, if applicable;
  - viii. Date of application for a license, if applicable;
  - ix. Licensing examination result, if applicable;
  - x. Date of issuance of a license, if applicable; and
  - xi. Credential issued, if applicable; and
3. Any additional information that may be required by the Commissioner of the Department of Labor and Workforce Development.

(e) (No change in text.)

### SUBCHAPTER 4. SCHOOL OPERATIONS REQUIREMENTS

#### 12:41-4.5 Continuing compliance obligation

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

#### 12:41-4.8 Minimum acceptable level of performance

(a) Each private career school shall meet the minimum acceptable level of performance for each instructional program that it offers to students.

(b) Failure of a private career school to meet the minimum acceptable level of performance for each instructional program offered by the private career school shall alone constitute sufficient grounds for suspension, revocation, or placement of conditions upon the continued possession of the Certificate of Approval pursuant to N.J.A.C. 12:41-5.1.

### SUBCHAPTER 5. PENALTIES AND HEARINGS

12:41-5.1 Penalties

(a)-(b) (No change.)

(c) A Certificate of Approval shall be suspended, revoked, or made conditional if it is determined that the approved private career school has violated the provisions at N.J.S.A. 34:15C-10.1.a or N.J.A.C. 12:41-4.8.

12:41-5.2 Commissioners' order to show cause

(a) Where the Commissioners of the Departments of Labor and Workforce Development and Education become aware of any violation(s) of any of the provisions at N.J.S.A. 34:15C-10.1 or 34:15C-10.1.a, this chapter, or N.J.A.C. 6A:19-7, or that the private career school is financially unsound, which, if true, would entitle the Commissioners to revoke, suspend, or place condition(s) on the continued possession of a Certificate of Approval, the Commissioners may accord the private career school an opportunity to present its views preliminary to imposing such sanction by issuing an order directing the private career school to show cause why such sanction should not be imposed. A statement of the factual details and investigative findings supporting the charge shall accompany the order. This procedure shall not be in lieu of a contested case hearing pursuant to N.J.A.C. 12:41-5.3, and the right to a contested case hearing is independent of, and in addition to, this step.

(b)-(d) (No change.)

CHAPTER 43

EDUCATIONAL PROGRAMS REGULATED BY A PROFESSIONAL OR OCCUPATIONAL BOARD  
ESTABLISHED WITHIN THE DIVISION OF CONSUMER AFFAIRS; MINIMUM ACCEPTABLE LEVEL OF  
PERFORMANCE

SUBCHAPTER 1. GENERAL PROVISIONS

12:43-1.1 Purpose and scope

(a) This chapter implements N.J.S.A. 34:15C-10.1.a which, in pertinent part, authorizes the Commissioner of the Department of Labor and Workforce Development to establish a minimum acceptable level of performance for private career schools that are authorized by a professional or occupational board established within the Division of Consumer Affairs, in the Department of Law and Public Safety, to offer an educational program required for licensure, registration, or certification in a profession or occupation regulated by a professional or occupational board established within the Division of Consumer Affairs.

(b) This chapter applies to private career schools that are authorized by a professional or occupational board established within the Division of Consumer Affairs, in the Department of Law and Public Safety, to offer an educational program required for licensure, registration, or certification in a profession or occupation regulated by a professional or occupational board established within the Division of Consumer Affairs.

[page=1808] 12:43-1.2 Definitions

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

"Average annual earnings" means the amount indicated for the 25th percentile of the annual salaries in New Jersey for an occupation according to the most recent Department of Labor and Workforce Development Occupational Employment and Wage Estimates for All Industries Combined, which is available at <https://www.nj.gov/labor/labormarketinformation/>.

"Board-authorized private career school" means a private career school authorized by a professional or occupational board established within the Division of Consumer Affairs, in the Department of Law and Public

Safety, to offer an educational program required for licensure, registration, or certification in a profession or occupation regulated by a professional or occupational board established within the Division of Consumer Affairs.

"Commissioner" means the Commissioner of the Department of Labor and Workforce Development, or their designee.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Fees" means the mandatory fees charged to the most recent students registered in the instructional program. Such fees may include, but are not limited to, general education fees, registration fees, facility fees, technology fees, laboratory fees, student services and activity fees, and program and course fees, including fees associated with coursework.

"Institutional grant aid" means the award of money given by the private career school to students registered in the instructional program. Such aid includes, but is not limited to, need-based or merit-based aid in the form of grants, scholarships, subsidies, endowments, and discounts.

"Minimum acceptable level of performance" means that tuition and fees charged for an instructional program, minus institutional grant aid awarded to students registered in that instructional program, divided by 10 times the average annual earnings of New Jersey workers employed in the specific occupation for which the instructional program prepares students, is less than or equal to 0.10 (that is, 10 percent).

"Tuition" means the net dollar amount most recently represented by the private career school as the price for attending class(es) in order to pay for instruction.

## SUBCHAPTER 2. REPORTING REQUIREMENT

### 12:43-2.1 Reporting requirement

(a) Each Board-authorized private career school shall submit a quarterly report to the Commissioner, which shall include the following:

1. The tuition and fees charged for each instructional program;
2. A record for each student enrolled in each instructional program, that shall include the following:
  - i. Social Security number,
  - ii. Gender;
  - iii. Date of birth;
  - iv. Date of enrollment;
  - v. Date of completion, if applicable;
  - vi. Date of termination, if applicable;
  - vii. Date of start in a job, if applicable;
  - viii. Date of application for a license, if applicable;
  - ix. Licensing examination result, if applicable;
  - x. Date of issuance of a license, if applicable; and
  - xi. Credential issued, if applicable; and

3. Any additional information that may be required by the Commissioner.

(b) Each Board-authorized private career school may be required by the Commissioner to submit additional reports on a more frequent basis.

#### SUBCHAPTER 3. MINIMUM ACCEPTABLE LEVEL OF PERFORMANCE

##### 12:43-3.1 Minimum acceptable level of performance

Each Board-authorized private career school shall meet the minimum acceptable level of performance for each instructional program that it offers to students.

#### SUBCHAPTER 4. SUSPENSION OR REVOCATION; ISSUANCE OF WRITTEN DETERMINATION TO APPLICABLE BOARD WITHIN THE DIVISION

##### 12:43-4.1 Suspension or revocation; issuance of written determination to applicable board within the Division

(a) In the event that the Commissioner determines that an educational program required for licensure, registration, or certification in a profession or occupation regulated by a professional or occupational board established within the Division has failed to submit any report required pursuant to N.J.A.C. 12:43-2.1, or has failed to meet the minimum acceptable level of performance pursuant to N.J.A.C. 12:43-3.1, the Commissioner shall issue a written determination directing the applicable board within the Division to suspend or revoke the Board-authorized private career school's license or accreditation to offer such a program.

(b) Upon receiving the written determination from the Commissioner directing the suspension or revocation of the Board-authorized private career school's license or accreditation to offer an instructional program, it shall be the responsibility of the applicable board within the Division to notify the Board-authorized private career school of the reason or reasons for the suspension or revocation and provide the opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Upon receiving the written determination from the Commissioner directing the suspension or revocation of the Board-authorized private career school's license or accreditation to offer an instructional program, the applicable board within the Division may delay the effective date of the suspension or revocation for a reasonable time if it determines that doing so is necessary for the applicable board, or the affected Board-authorized private career school at the direction of the applicable board, to protect the interests of the students.