

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 8513 (14 **Del.C.** §8513)  
14 **DE Admin. Code** 282

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 282 Private Business and Trade Schools

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §8513, the Secretary of Education intends to amend 14 **DE Admin. Code** 282 Private Business and Trade Schools. This regulation is being amended to clarify content, especially definitions, and to comply with the Delaware Administrative Code Style Manual.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on March 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens requesting that: (1) the Department take the necessary steps to ensure all students with disabilities have full access to private business and trade schools. The Department will continue to work in a manner that will help ensure students with disabilities are given full access to with Private business and trade schools; and (2) the Department provide clarification on accessing application forms and the timeframe for applying for Certificates of Approval. The Department agrees that the regulation should clarify where the application form can be found, which is on its website, and will incorporate the website into the proposed regulation pursuant to 29 **Del.C.** §10113(b)(4), which allows for "nonsubstantive changes in existing regulations to alter style or form or to correct technical errors." As for the timeframe for applying for Certificate of Approval, the approval process occurs year round as outlined in subsection 3.6.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 282 Private Business and Trade Schools in order to clarify content, especially definitions, and to comply with the Delaware Administrative Code Style Manual.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 282 Private Business and Trade Schools. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 282 Private Business and Trade Schools attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 282 Private Business and Trade Schools hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

#### IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 282 Private Business and Trade Schools amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 282 Private Business and Trade Schools in the *Administrative Code of Regulations* for the Department of Education.

#### V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on April 15, 2019. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

**IT IS SO ORDERED** the 15<sup>th</sup> day of April 2019.

**Department of Education**

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 15<sup>th</sup> day of April 2019

## 282 Private Business and Trade Schools

### 1.0 Definitions. ~~For purposes of this regulation~~

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

**"Agent"** ~~has the same meaning as in 14 Del.C. §8501(4)~~ means a person employed by a Private Business or Trade School, located within or outside Delaware, to act as an agent, solicitor, broker, or independent contractor to directly procure students or enrollees for such school by solicitation.

**"Agent Card"** ~~shall mean~~ means the pocket card provided for in 14 Del.C. §8510 which contains the name and address of the Agent of the employing Private Business or Trade School which signifies that this person is an authorized agent of the school.

**"Certificate of Approval"** means the document issued by the Department that permits a private school to conduct courses in business or trades.

**"Department"** means the Delaware Department of Education.

**"Private Business and or Trade School"** ~~has the same meaning as in 14 Del.C. §8501(4)~~ means an educational institution privately owned and operated for profit or nonprofit by an owner, partnership, or corporation, offering business or trade and industrial courses for which tuition may or may not be charged, and which may include those courses usually associated with business training schools, trade schools, specialized skill training schools, or institutes.

### 2.0 General Provisions

- 2.1 The distinguishing characteristic of a ~~private business or trade school~~ Private Business or Trade School shall be the potential for wage earning by its graduates.
- 2.2 ~~Private business and trade schools~~ Business or Trade Schools shall include:
  - 2.2.1 Correspondence school courses offered as post high school courses in trade or business subjects; and
  - 2.2.2 Programs that may also be available as high school introductory courses in trade or business subjects, without regard for the age or the prior educational attainment of the student.
- 2.3 A ~~private business and trade school~~ Private Business or Trade School which actively seeks enrollees from the State of Delaware, or which sends an ~~agent or agents~~ Agent into the State of Delaware to solicit enrollees, shall ensure that each of its ~~agents~~ Agent maintains a current ~~agent~~ Agent permit issued by the Department.
- 2.4 ~~The term agent~~ An Agent shall include individuals who solicit enrollees in Delaware even though the institution the ~~agent~~ Agent represents does not conduct classes within the State of Delaware.
- 2.5 All advertising by a ~~private business and trade school~~ Private Business or Trade School shall be in accordance with the statutes, rules and regulations for advertising administered and supervised by the Department of Justice Consumer Protection Division.
- 2.6 14 DE Admin. Code 225 Prohibition of Discrimination shall apply to all ~~private business and trade schools and agents~~ Private Business or Trade Schools and Agents approved by the Department.

### 3.0 Certificates of Approval

- 3.1 Applications for an initial ~~certificate of approval~~ Certificate of Approval to conduct a ~~private business and trade school~~ Private Business or Trade School, and for annual renewal of such ~~certificates~~ Certificates of Approval, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department. **[The application can be found on the Department's website at [www.doe.k12.de.us](http://www.doe.k12.de.us).]**
- 3.2 A ~~private business and trade school~~ Private Business or Trade School offering more than one program of instruction must have each program approved by the Department.
- 3.3 The Department may conduct an on site evaluation of any applicant for a ~~certificate of approval~~ Certificate of Approval or for renewal of a ~~certificate of approval~~ Certificate of Approval. The Secretary of Education may waive an on site evaluation if the applicant is accredited by a regional or national accrediting association recognized by the Department, or is certified to conduct a similar program or school by the state education agency of another state with comparable standards for such schools.
- 3.4 If a ~~private business and trade school~~ Private Business or Trade School makes any material change in its operation, such as, but not limited to, corporate structure or financial structure, the school shall notify the Department of the change within thirty days. The school shall also identify the change in its next renewal application.

- 3.5 The fees charged as filing and renewal fees are not refundable.
- 3.6 For purposes for this section, the following definitions shall apply: first calendar quarter, January 1st through March 31st; second calendar quarter, April 1st through June 30; third calendar quarter, July 1st through September 30th; and fourth calendar quarter, October 1st through December 31st.
- 3.6.1 Any current and valid Certificate of Approval with an expiration date of December 31, 2005, shall automatically be extended to the end of the calendar quarter in which the ~~private business and trade school~~ Private Business or Trade School was originally granted its Certificate of Approval, conditioned on the school providing the Department with evidence of continuation of surety bond at least through the extension period.
- 3.6.2 Beginning with the fourth quarter of 2005, a ~~private business and trade school~~ Private Business or Trade School will be required to renew its certification by the end of the calendar quarter in which the Department originally granted ~~its the~~ the Certificate of Approval.
- 3.6.3 ~~Private business and trade schools~~ Business or Trade Schools with multiple campuses may request the Department to renew all campuses on a single renewal date based on initial approval of any one of the campuses.

#### 4.0 Agent Permits

- 4.1 Applications for an initial ~~agent~~ Agent permit, and for renewal of such permits, shall be made on forms approved by the Department and include such information and fees as required by the Department. Applications are not considered complete until all required information and fees are received by the Department.
- 4.2 An ~~agent~~ Agent representing more than one ~~private business and trade school~~ Private Business or Trade School must apply for separate permits for each ~~such~~ school.
- 4.3 Agents shall apply to renew their ~~permit(s)~~ permit each year at the same time that the ~~school or schools~~ school the ~~agent~~ Agent represents ~~make~~ makes application to renew their respective ~~certificates of approval~~ Certificates of Approval. In the case of a school not conducting classes in Delaware, but sending ~~agents~~ Agents into Delaware, the application for an ~~agent~~ Agent permit must be accompanied by a notarized verification of employment from the school represented and must be received by the Department on or before the expiration of the current permit. No permit shall be issued for a period of more than twelve calendar months.
- 4.4 No ~~agent~~ Agent shall solicit Delaware enrollees on behalf of the ~~private business and trade school~~ Private Business or Trade School represented until the Department issues the appropriate ~~agent card~~ Agent Card.
- 4.5 The lapse, suspension, revocation, or non renewal of a ~~private business and trade school certificate of approval~~ Private Business or Trade School Certificate of Approval for any cause shall terminate all ~~agent~~ Agent permits for that institution.
- 4.6 A school shall report the discharge or resignation of any ~~agent~~ Agent to the Department within thirty days.
- 4.7 The fee for the ~~agent~~ Agent permit will be waived for the owner or chief executive officer of a ~~private business and trade school~~ Private Business or Trade School who also serves as its ~~agent~~ Agent. Each such individual must still apply for and obtain the ~~agent~~ Agent permit. Any additional ~~agents~~ Agents must obtain permits as otherwise described.
- 4.8 The fees charged as filing and renewal fees are not refundable.

#### 5.0 Complaints

- 5.1 Each ~~private business and trade school~~ Private Business or Trade School shall adopt a policy and procedures to address complaints by its students. The school catalogue shall contain its complaint policy and procedures or a reference to where the policy and procedures can be obtained.
- 5.2 In addition to the complaint procedures adopted by a ~~private business and trade school~~ Private Business or Trade School for its students, the Department will investigate complaints by any person alleging facts that, if true, would constitute grounds for refusing or revoking a ~~certificate of approval~~ Certificate of Approval or an ~~agent~~ Agent permit. In either event, the Department will notify the complainant of its conclusions and provide the complainant with a copy of the school or ~~agent's~~ Agent's initial response, if any.
- 5.2.1 Such complaints must be in writing and verified by the signature of the person making the complaint. Oral, anonymous or unsigned complaints will not be investigated.
- 5.2.2 A copy of the written complaint will be provided to the affected ~~private business and trade school~~ Private Business or Trade School or ~~agent~~ Agent for their written response. The Department may require that the

complainant provide written permission for the Department to forward the complaint to the school or ~~agent~~ Agent.

5.2.2.1 If, after reviewing the school or ~~agent's~~ Agent's response, the Department concludes that there is insufficient evidence to believe that the school or ~~agent~~ Agent has violated applicable law or a standard, rule or regulation of the Department, the Department may close the complaint without further investigation. In such case, the Department will notify the complainant and the school or ~~agent~~ Agent of this conclusion and provide the complainant with a copy of the school or ~~agent's~~ Agent's response.

5.2.2.2 If, after reviewing the school or ~~agent~~ Agent response, the Department concludes that there is sufficient evidence to believe that the school or ~~agent~~ Agent has violated applicable law or a standard, rule or regulation of the Department, the Department may continue its investigation or begin revocation or other action against the school or agent as the Department determines appropriate. The Department may also continue its investigation or begin revocation or other action if the school or ~~agent~~ Agent fails to respond to a complaint within the time established by the Department.

5.3 The Department may also investigate circumstances that would constitute grounds for refusing or revoking a ~~certificate of approval~~ Certificate of Approval or an ~~agent~~ Agent permit on its own initiative.

## 6.0 Denials and Revocations of Certificates and Permits

6.4 In view of an apparent conflict between the statutory statement in 14 **Del.C.** §8516 (for any combination of the following) and 14 **Del.C.** §8517 (for any cause enumerated in §8516), the Department interprets and shall administer §8516 to mean that a ~~certificate of approval~~ Certificate of Approval or an ~~agent~~ Agent permit may be denied or revoked for any one or combination of the causes identified in that ~~Section~~ section.

## 7.0 Bonds

7.1 Applications for an initial ~~certificate of approval~~ Certificate of Approval or renewal of certificates shall include evidence that the required surety bond is valid from the date of the complete application through the new ~~certificate of approval~~ Certificate of Approval expiration date.

7.2 The amount of the surety bond required of a school shall be determined as provided in 14 **Del.C.** §8505(b). In no event shall a bond be for less than \$25,000 per calendar year.

7.3 The Department interprets and shall administer the phrase ~~fail~~ "fail to provide the services called for in a contract or agreement with a ~~student, student,~~ student, student," as used in 14 **Del.C.** §8523 to mean failure to substantially provide the essential ~~services."~~ services.

7.4 Forfeiture

7.4.1 In the event a surety bond is forfeited, the Department shall notify the students identified on the last available school roster of their right to submit a claim for reimbursement. Such students shall have thirty days from the date they are notified by the Department to submit a claim for reimbursement. Claims received more than thirty days after the ~~Departments~~ Department's notification shall not be considered.

7.4.2 Other students wishing to submit a claim for reimbursement must contact the Department within thirty days of the schools closing to submit their claim for reimbursement. Claims received more than thirty days after the schools closing shall not be considered.

7.4.3 Claims for reimbursement shall be submitted and documented as directed by the Department. The Department shall consider only appropriately documented claims in distributing the proceeds of any surety bond.

**4 DE Reg. 986 (12/01/00)**

**9 DE Reg. 967 (12/01/05)**

**11 DE Reg. 737 (12/01/07)**

**22 DE Reg. 939 (05/01/19) (Final)**