

PART 186

CHILD PERFORMERS

(Statutory authority: Labor Law §154-a)

Note to Users: In reviewing and understanding the following rule, it is helpful to understand as a preliminary matter that the law regulating child performers in New York State is found in the Labor Law, Arts and Cultural Affairs Law, Estates, Powers, and Trusts Law, and Education Law. For its part in enforcing the provisions of these laws entrusted to its jurisdiction, the Department of Labor requires the following:

- (a) A *Child Performer Permit* which must be obtained by a parent or legal guardian of a child performer before such child performer may engage in artistic or creative services for an employer.
- (b) A *Child Performer Trust Account* which must be established by the parent(s) or guardian(s) of the child performer for the benefit of a child performer.
- (c) An *Employer Certificate of Eligibility* which must be obtained by an employer before such employer may use the services of child performers.
- (d) A *Notice of Use of Child Performer* which must be provided to the Department of Labor prior to each production event that gives rise to employer's use of one or more child performers.
- (e) *Educational, safety, and health requirements* that attach to the employment of child performers.

Further details relating to all of these requirements are found in the rules that follow.

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SUBPART 186-1

PURPOSE AND SCOPE

Sec.

186-1.1 Purpose of Part.

186-1.2 Scope.

§ 186-1.1 Purpose of Part.

The purpose of this Part is to protect the safety, health, and well being of child performers, to ensure that child performers who work or reside in the state of New York are provided with adequate education, and to ensure that a portion of the child performer's earnings are kept in trust for the benefit of the child performer until such child reaches the age of majority¹.

§ 186-1.2 Scope.

This regulation shall apply to all child performers who either reside or work in New York State and to the entities employing them.

SUBPART 186-2

DEFINITIONS

Sec.

186-2.1 Definitions.

¹ The age of majority in New York State is eighteen.

§ 186-2.1 Definitions.

As used in this Part:

(a) “Artistic or creative services” shall mean those services in connection with a performance including, but not limited to, services as an actor, actress, dancer, musician, comedian, singer, stunt-person, voice-over artist, or other performer or entertainer, or as a songwriter, musical producer or arranger, writer, director, producer, production executive, choreographer, composer, conductor, or designer;

(1) “Services as an actor or actress” shall include an appearance in a reality show;

(2) Whenever the term “performance” is used in this regulation, it shall mean providing “artistic or creative services.”

(3) Except where such services are provided in connection with a reality show, “artistic or creative services” shall not include the performance, appearance, participation, use, or exhibition of any child:

(i) in a church, synagogue, mosque, or other house of worship, or academy or school, including a dancing or dramatic school, as part of the regular services, curriculum, or activities thereof; or

(ii) in a private home when a child’s performance, appearance, participation, use or exhibition is not recorded for commercial purposes; or

(iii) in any place where such performance is under the direction, control, or supervision of a department or board of education; or

(iv) in the performance of video, radio, or television programs broadcasted from a school or academy, church, synagogue, mosque or other house of worship, museum, library, or other religious, civic, or educational institution, or for not more than two

hours a week from the studios of a regularly licensed broadcasting company, provided the performance of the child or children from any of these venues is of a nonprofessional character and occurs during hours when attendance upon instruction is not required in accordance with applicable law; or

(v) in productions made by students to meet academic requirements in a recognized course of study.

(b) “Child performer” shall mean any child under the age of 18 who:

(1) Resides in the state of New York and who agrees to or is employed to render artistic or creative services either within or outside the state of New York; or

(2) Does not reside within the state of New York but agrees to or is employed to render artistic or creative services within the State of New York.

(c) “Child performer’s employer” shall mean a person or entity that employs a child performer to furnish artistic or creative services either directly or through a third-party provider (loan-out company) or an agency or service that provides artistic or creative services (casting agency). The use of the term “employer” in this regulation shall be deemed to mean “child performer’s employer.”

(d) “Child performer’s holding fund” shall mean the special fund in the joint custody of the state comptroller and the commissioner of taxation and finance consisting of revenues received and interest accrued from transfers of a portion of a child performer’s gross earnings by employers on behalf of child performers who do not have a child performer trust account pursuant to Part 7 of Article 7 of the New York Estates, Powers, and Trusts Law, and all other monies deposited into the fund pursuant to law.

(e) “Child Performer Permit” shall mean the document issued by the Department to a parent or guardian of a child performer that authorizes the child performer to render artistic or creative services pursuant to Article 4-A of the New York Labor Law.

(f) “Child performer trust account” shall mean an account established for the benefit of a child performer which, at a minimum, meets the requirements of Part 6 of Article 7 of the Estates, Powers and Trusts Law.

(g) “Commissioner” shall mean the Commissioner of Labor of the State of New York.

(h) “Comptroller” shall mean the Comptroller of the State of New York.

(i) “Department” shall mean the New York Department of Labor.

(j) “Employ” shall mean permitting or suffering a child performer to engage in artistic or creative services, whether or not the child performer or any other person is paid for those services and whether or not any person pays a fee or other charge to view such services.

(k) “Employer Certificate of Eligibility” shall mean the document issued by the Commissioner to a child performer’s employer that demonstrates proof of authorization to employ a child performer pursuant to Article 4-A of the Labor Law.

(l) “Employer Certificate of Group Eligibility” shall mean the document issued by the Commissioner to an employer of a group of twenty (20) or more children that demonstrates authorization to employ such children in a production, not as individuals but as a group to establish a background scene, such as a crowd in the street, on mass transit or bus, classroom or auditorium, or as in a choir, provided by a school, church or other entity. Such entity shall provide an onsite liaison or supervisor to act as the responsible person(s).

(m) “Employment schedule” shall mean the time that a child performer is required to be present at his or her place of employment designated by the employer, excluding time spent traveling between the child’s school or residence and the place of employment, but including time spent traveling from one place of employment to another place of employment.

(n) “Gross earnings” shall mean the total compensation prior to taxes, allowable deductions, or commissions payable to a child performer pursuant to a contract or, in the case where the services of the child performer have been obtained through a third party individual or a personal services corporation (loan-out company), the total compensation paid to the third party or the loan-out company for the services of the child performer. However, where the child performer is a musician, singer, songwriter, musical producer or arranger, “gross earnings” means the total compensation under the contract including royalties and advances but excluding allowable deductions to offset those advances or other expenses incurred by the employer pursuant to the contract.

(o) A payroll service company is a person, independent contractor, or organization, engaged by employers for the purpose of paying employees, withholding taxes and other payroll deductions, and making trust account transfers as provided in § 186-4.5 of these regulations.

(p) “Reality show” shall mean the visual and/or audio recording or live transmission, by any means or process now known or hereafter devised, of a child appearing as himself or herself, intended for entertainment and commercial purposes, in motion pictures, television, visual, digital, and/or sound recordings, on the internet, or otherwise.

(1) “Reality show” shall not include:

(i) recorded or live transmissions of non-fictional athletic events or academic competitions, such as spelling bees, geography bees, and the like, that are intended for educational or informational use; or

(ii) the use of a child's image, likeness, or voice recording in any newscast or interview.

(q) "Responsible Person" shall mean a person over eighteen years of age designated by the parent or guardian of a child performer or by the employer to supervise the child performer and safeguard the child performer's best interests while the child performer is employed by the employer.

(r) "Serious Injury" shall mean death, disfigurement, or an injury resulting in the loss of consciousness or requiring medical treatment beyond first aid.

(s) "School day" shall mean any day in which a minor is required to attend school upon instruction pursuant to state or local law.

(t) "Temporary Child Performer Permit" shall mean the document issued by the Commissioner to a parent or guardian of a child performer that authorizes the child performer to render artistic or creative services pursuant to Article 4-A of the New York Labor Law for no longer than fifteen days from its date of issuance during which time the parent(s) or guardian(s) of the child performer may establish a child performer trust account or provide the Commissioner with other documentation needed to obtain a Child Performer Permit.

SUBPART 186-3

RESPONSIBILITIES OF PARENTS AND GUARDIANS

Sec.
186-3.1 Child performer permit.

- 186-3.2 Application for child performer permit.
- 186-3.3 Renewal of child performer permit.
- 186-3.4 Temporary child performer permits.
- 186-3.5 Child performer trust account.

§ 186-3.1 Child performer permit.

(a) No parent or guardian of a child shall permit such child to be employed as a child performer unless the parent or guardian has a current and valid Temporary Child Performer Permit or a Child Performer Permit issued by the Commissioner on behalf of such child performer in accordance with this Part.

(b) Notwithstanding the above, no parent or guardian shall be required to obtain a Temporary Child Performer Permit or Child Performer Permit on behalf of any child who is employed in a production or performance under an Employer Certificate of Group Eligibility issued by the Commissioner under this Part.

§ 186-3.2 Application for child performer permit.

(a) A parent or guardian of a child performer shall apply for a Child Performer Permit on a form and in a manner provided by the Commissioner. The application shall contain such information as the Commissioner may require including, but not limited to:

- (1) the given name and the professional name of the child, if different from the given name;
- (2) the child's social security number;
- (3) a physical description of the child;
- (4) a copy of the child's birth certificate, baptismal certificate, naturalization papers, or passport showing the child's date of birth;
- (5) a picture identification of the parent or guardian issued by a government agency;

(6) the name and address of the child's parent(s) or guardian(s) and their home and business phone numbers;

(7) where the applicant is a guardian, a notarized statement from the parent naming such person as guardian or a certified and numbered court document appointing such person as guardian;

(8) evidence that the child performer is maintaining satisfactory academic performance or is no longer required by law to attend school;

(9) proof that a child performer trust account has been established on behalf of such child performer. Satisfactory proof within the meaning of this subparagraph shall be either:

(i) a statement from the trustee of the child performer's trust account attesting to the fact that the account has been established and is currently open; or

(ii) a document from the financial institution in which the trust account has been established verifying the existence of the child performer's trust account;

(10) A certificate signed by a physician licensed to practice medicine within the state in which the child performer resides or is employed, stating that the minor was examined within six months prior to the date of application and has been found to be physically capable of engaging in employment without endangering the child's health.

In reaching such conclusion, the physician shall:

(i) Assess the overall health and fitness of the child, keeping in mind the types of artistic services in which the child will typically engage;

(ii) Where the child will be performing in a role or long-term performance, determine whether the child's overall health indicates that he or she would have the physical stamina to allow the child to perform without endangering his or her health;

(iii) Assess whether the child appears to exhibit symptoms of ongoing physical or mental health related issues such as eating disorders, substance abuse, or emotional problems that may interfere with the child's ability to undertake employment without endangering his or her health; and

(iv) Address any other issues that the physician believes are relevant to the child's ability to undertake employment without endangering his or her health.

(11) an acknowledgement by the child performer's parent or guardian that he or she has reviewed any and all guidelines on the prevention of eating disorders among child performers issued on the Department's website pursuant to Section 154 of the Labor Law; and

(12) a declaration by the child's parent or guardian that he or she agrees to be bound by all laws, rules and regulations covering the employment of child performers and consents to the employment of the child as indicated on the application.

(b) A parent or guardian of a child performer shall apply for the Child Performer Permit prior to the commencement of employment of the child performer.

(c) A Child Performer Permit shall be valid for six calendar months from the date of issuance by the Department.

(d) A parent or guardian of a child performer shall provide the child performer's employer with a copy of a valid Child Performer Permit or a valid Temporary Child Performer Permit to work prior to the commencement of employment of the child

performer and shall provide such employer with a copy of either a Child Performer Permit or a copy of a valid renewal of the Child Performer Permit should the child performer's employment extend beyond the expiration date of the permit originally provided to the employer.

§ 186-3.3 Renewal of child performer permit.

(a) A parent or guardian of a child performer shall renew the Child Performer Permit to work as a child performer no later than thirty (30) days prior to expiration of the Child Performer Permit.

(b) An application for a renewal of a child performer permit shall be made on a form and in a manner established by the Commissioner and shall include, but not be limited to the following:

(1) declarations regarding any changes or updates relative to information provided in the initial permit application, accompanied by necessary documentation to establish such change or update, as required by the Commissioner;

(2) updated evidence that the child performer's trust account is being maintained;

(3) a current certificate of satisfactory academic performance furnished for the most recently completed semester if the child is still required to obtain instructions under state law; and

(4) A certificate signed by a physician licensed to practice medicine within the state in which the child performer resides or is employed, stating that the child performer has been examined within six months prior to the date of renewal application that such examination addressed the factors and assessments established in this part for the physical examination required for issuance of the original permit.

(c) The Commissioner may decline to issue a renewal permit to any parent(s) or guardian(s) of a child performer who has not complied with the provisions of this Part or any other laws or regulations relating to the employment of child performers, or for other good cause shown.

(d) A renewal of a Child Performer Permit shall be valid for a period of six months following its date of issuance.

§ 186-3.4 Temporary child performer permits.

(a) Prior to the first employment of a child performer covered by this Part, the Commissioner may issue a Temporary Child Performer Permit authorizing the employment of a child performer to enable the parent or guardian of the child performer to establish a child performer trust account or to produce all documentation required by the Department for the issuance of a Child Performer Permit.

(b) A Temporary Child Performer Permit shall be valid for a period not to exceed fifteen days from the date of issuance.

(c) A parent(s) or guardian(s) of a child performer may not apply for nor be issued a Temporary Child Performer Permit if a parent(s) or guardian(s) of a child performer has previously applied for or has been issued a Child Performer Permit or a Temporary Child Performer Permit by the Commissioner for such child performer.

§ 186-3.5 Child performer trust account.

(a) A child performer's parent or guardian shall establish a child performer trust account for the benefit of the child performer prior to the child performer's first instance of employment as a child performer and shall maintain such account until the custodian

of such account transfers the contents thereof to the child performer or the child performer's estate pursuant to section 7-6.20 of the Estates, Powers and Trusts Law.

(b) The parent(s) or guardian(s) of a child performer may serve as the custodian(s) of the child performer trust fund subject to the limitation set forth in subdivision (f) of this section.

(c) The amount of the transfers made by the employer into the child performer trust account shall be established by the custodian(s) of the account, provided that they may not be less than the minimum transfer amounts set forth in section 186-4.5 of this Part. Where the custodian of the account is other than the parent(s) or guardian(s) of the child performer, the parent(s) or guardian(s) of a child performer may ask the custodian of the trust fund to require the child performer's employer to transfer more than fifteen percent of the gross earnings to the child performer trust account, in which case the custodian shall notify the employer of the requirement.

(d) The child performer's parent or guardian shall, within fifteen days of commencement of the child performer's employment, provide the employer with all information necessary to make transfers to such account on behalf of the child performer.

(e) A parent or guardian of a child performer shall ensure that the custodian of the trust account promptly notifies the child performer's employer of any change in facts which affect the employer's obligation to set aside funds under Article 7 of the Estates, Powers, and Trust Law.

(f) Once the child performer's trust fund balance is equal to or exceeds two hundred fifty thousand dollars (\$250,000.00), the custodian, parent or guardian shall ensure that a trust company is appointed as custodian of the account. The appointment of a trust

company as custodian of the account shall be disclosed to the Department upon the next application for the renewal of a Child Performer Permit following such appointment.

(g) Notwithstanding any other provision of this section, no parent or guardian shall be required to establish a child performer trust account for the benefit of a child who is employed in a production or performance under an Employer Certificate of Group Eligibility issued by the Commissioner under this Part.

SUBPART 186-4

RESPONSIBILITIES OF EMPLOYERS

Sec.

- 186-4.1 Employer certificates of eligibility to employ child performers.
- 186-4.2 Application and renewal of an employer certificate of eligibility.
- 186-4.3 Notice of use of child performers.
- 186-4.4 Proof of child performer permit.
- 186-4.5 Trust account transfers by the employer.
- 186-4.6 Provision for a responsible person.

§ 186-4.1 Employer certificates of eligibility to employ child performers.

(a) Except as otherwise provided in this section, no person or entity may employ one or more child performers unless the person or entity possesses an Employer Certificate of Eligibility to employ child performers issued by the Commissioner.

(b) An employer may employ a group of twenty or more children for a group appearance in a production or other performance without complying with the requirements set forth in subdivision (a) of this section provided such employer has obtained an Employer Certificate of Group Eligibility issued by the Commissioner under section 186-4.2 covering such employment.

(c) An Employer Certificate of Eligibility or Employer Certificate of Group Eligibility shall not be issued if the Commissioner determines that the employment or activity

contemplated by the employer may be hazardous or detrimental to the physical or mental health, education, or general welfare of the child performer(s).

§ 186-4.2 Application and renewal of an employer certificate of eligibility.

(a) All applications for an Employer Certificate of Eligibility or Employer Certificate of Group Eligibility and all applications for renewal of Employer Certificate of Eligibility shall be made to the Department prior to employing one or more child performers.

(b) The applicant for either an initial or a renewal Employer Certificate of Eligibility or an Employer Certificate of Group Eligibility shall submit such application on a form and in a manner required by the Department and shall provide such information as the Commissioner shall require including, but not limited to:

(1) The applicant's name, federal tax identification number, business and email addresses, telephone number, names of corporate officers, if any, and type (e.g. movie, play, commercial etc.) and location of employment of child performers for which the certificate is requested;

(2) Proof that the applicant has current and valid New York State Workers' Compensation and Disability Benefits Insurance coverage;

(3) Completion of the due diligence questionnaire required by the Department including, but not limited to, disclosure of any prior violations of this Part, of federal or state labor laws, or of other state or federal laws governing the employment of child performers and disposition thereof;

(4) A signed acknowledgement that the applicant has read, understands and agrees to abide by the laws, rules, and regulations applicable to the employment of child

performers and understands that the failure to do so may result in the suspension or revocation of the certificate or a denial of a renewal of such certificate; and

(5) Any additional information deemed relevant by the Commissioner.

(c) In addition to the information required under subdivision (b) of this section, an applicant for an Employer Certificate of Group Eligibility shall also provide to the Commissioner a description of the manner or role in which the group of children will be employed, the date(s) on which the use will take place, and a good-faith estimate of the number of children to be employed under the authority of such certificate.

(d) An application for an initial or renewal Employer Certificate of Eligibility or an Employer Certificate of Group Eligibility shall be accompanied by a fee in an amount established by the Commissioner. Such fee amounts are:

(1) three hundred fifty dollars (\$350.00) for an initial Employer Certificate of Eligibility and two hundred dollars (\$200.00) for a renewal thereof; or

(2) two hundred dollars (\$200.00) for an initial Employer Certificate of Eligibility or renewal thereof for employers operating theaters containing fewer than five hundred seats; or

(3) two hundred dollars (\$200.00) for an Employer Certificate of Group Eligibility.

(e) An Employer Certificate of Eligibility shall be valid for a period of three years from the date of issuance unless suspended or revoked pursuant to Subpart 186-7 of this Part. An application for renewal of an Employer Certificate of Eligibility shall be submitted to the Department no later than thirty days prior to the expiration of such certificate.

(f) An Employer Certificate of Group Eligibility shall be valid only for the duration of the performance or appearance for which such certificate was granted, and in no case for more than two days.

(g) An Employer Certificate of Eligibility or Employer Certificate of Group Eligibility shall not be issued, or an Employer Certificate of Eligibility shall not be renewed if:

(1) All requirements set forth in subdivisions (a) through (d) of this section have not been met;

(2) A civil penalty previously imposed on the employer for a violation of laws or regulations governing the employment of child performers has not been paid as of the date of application;

(3) The commissioner finds that the employer has violated any provision of Article 4-A of the Labor Law of the State of New York, Section 7-7.1 of the Estates, Powers and Trusts Law of the State of New York, Section 35.01 of the Arts and Cultural Affairs Law of the State of New York and/or any provision of this Part within three years of the last assessment of a civil penalty against the employer under this Part, or has been found to have committed serious violations of other state, federal or local laws with regard to the employer's employment of child performers or has otherwise demonstrated a lack of responsibility in the employment of child performers of such seriousness as to warrant the refusal to issue or renew an Employer Certificate of Eligibility; or

(4) The Commissioner has reasonable cause to believe that the employer has employed or will employ any child performer in any manner that may be hazardous or detrimental to the physical or mental health, education, or general welfare of the child performer(s).

§ 186-4.3 Notice of use of child performers.

(a) No employer shall employ child performers without having first notified the Commissioner of its intent to employ child performers.

(b) Such notice shall be provided in writing at least five business days prior to the commencement of such production event in which the employer intends to use child performers in a form required by the Commissioner and shall include:

(1) The name, address, and last four digits of the social security number of each child performer being employed, if such information is available at the time notice is given. If such information is not available at the time notice is given, it shall be provided to the Commissioner when available but not later than the day preceding the employment;

(2) A description of each child performer's intended performance;

(3) The dates, location(s) and duration of such intended performance;

(4) The name and contact information of the employer's on site representative;

(5) Any other information deemed necessary by the Commissioner.

(c) The employer shall notify the Commissioner of any additions, deletions, or other modifications to the information provided in such notice within twenty-four hours of such addition, deletion, or modification.

(d) No such notice shall be required for the performance, appearance, participation, use or exhibition of any child:

(1) in a church, synagogue, mosque, or other house of worship, or academy or school, including a dancing or dramatic school, as part of the regular services, curriculum, or activities thereof; or

(2) in a private home when a child's performance, appearance, participation, use or exhibition is not recorded for commercial purposes; or

(3) in any place where such performance is under the direction, control, or supervision of a department of education; or

(4) in the performance of video, radio, or television programs broadcasted from a school or academy, church, synagogue, mosque or other house of worship, museum, library, or other religious, civic, or educational institution, or for not more than two hours a week from the studios of a regularly licensed broadcasting company, where the performance of the child or children is of a nonprofessional character and occurs during hours when attendance upon instruction is not required in accordance with the education law; or

(5) in productions made by students to meet academic requirements in a recognized course of study.

(e) Notwithstanding the foregoing, the use of a child performer in a reality show filmed within or in connection with the venues referenced in subdivision (d) shall not be subject to the exemption referenced in such subdivision of this section.

(f) Notices under this section as well as any additions, deletions, or other modifications thereto shall be sent to the Department at the following address:

New York State Department of Labor

Division of Labor Standards

Building 12, Governor Averell Harriman State Office Campus

Albany, New York 12240,

or to a web address established by the Commissioner for electronic transmission of such notice.

§ 186-4.4 Proof of child performer permit.

(a) Except as otherwise provided in this section, no employer shall employ a child performer unless:

(1) the parent or guardian of the child performer has provided to the employer a copy of either a valid Temporary Child Performer Permit or a Child Performer Permit issued by the Commissioner for that child prior to the child engaging in such employment.

Where the parent or guardian of the child performer has provided the employer with a Temporary Child Performer Permit, the employer shall be entitled to employ the child performer for a period not to exceed fifteen days from the date of issuance of the Temporary Child Performer Permit unless, prior to the expiration of such fifteen days, the employer has obtained a Child Performer Permit from the parent or guardian of the child performer.

(2) the parent(s) or guardian(s) of the child performer has provided the employer with current emergency contact information for the parent(s) or guardian(s) and instructions from the parent(s) or guardian(s) with regard to the provision of emergency medical treatment for the child performer.

(3) the parent(s) or guardian(s) of the child performer has provided the employer with the child performer's equivalent educational requirements as provided to the parent or guardian by the child performer's teacher and principal. The requirements of this subparagraph shall apply only when the child performer is to be employed for more than two days during the school year.

(b) In addition to the information set forth in paragraph (a), the parent(s) or guardian(s) of the child performer shall provide information to the employer that they deem necessary in order to assure the safety and health of the child performer throughout the course of employment including, for example, food or other allergies, or medical or other conditions affecting health and safety.

(c) An employer may employ a child performer pursuant to an Employer Certificate of Group Eligibility without having been provided the information set forth in subdivision (a)(1) of this section.

(d) Information required pursuant to subdivision (a) 2 and 3 of this section need not be provided to the employers of child performers who will be providing artistic or creative services through an Employer Certificate of Group Eligibility provided the employer has access to information regarding emergency contacts and emergency medical treatment through the entity providing the employer with access to such children's services such as a school, camp, club, or church.

§ 186-4.5 Trust account transfers by the employer.

(a) Each employer of a child performer shall obtain from the parent(s) or guardian(s) of a child performer, no later than fifteen days after the commencement of such employment of a child performer, information regarding the Child Performer Trust Account for such child performer needed to enable the employer to make transfers into such account in accordance with Article 7, Section 7-7.1 of the Estates, Powers, and Trusts Act.

(b) Each employer, or payroll service company, of a child performer shall transfer fifteen percent or more of the child performer's gross earnings from such employer into

the child performer's Child Performer Trust Account established by the parent or guardian.

(1) If the performance contract is for a period of thirty days or less, the employer, or payroll service company, is required to transfer not less than fifteen percent of the child performer's gross earnings to the custodian of the child performer's child performer trust account within thirty days following the final day of employment. Such transfer shall be made in accordance with Article 7 Part 6 of the Estates, Powers and Trusts Law, the Uniform Transfers to Minors Act.

(2) If the performance contract is for a period longer than thirty days, the child performer's employer, or payroll service company, shall transfer (by check or electronic means) not less than fifteen percent of the child performer's gross earnings to the custodian of the child performer's child performer trust account every payroll period in accordance with Article 7 Part 6 of the Estates, Powers and Trusts Law, the Uniform Transfers to Minors Act.

(c) The child performer's employer, or payroll service company, shall be required to provide the child performer's parent or guardian with a written record of deductions from gross wages and proof of transfer to existing child performer trust accounts within five business days of such transfer, provided the child performer's parent (s) or guardian(s) has provided the employer with the information required to be provided by section 186-3.5 of this Part.

(d) If the child performer's parent(s) or guardian(s) has not provided the employer with the information required by section 186-3.5 of this Part, the employer shall transfer 15 percent of the child performer's gross earnings to the Comptroller for deposit only into

the Child Performer Holding Fund for the benefit of the identified child performer. Such transfers shall be made with the same frequency and timeliness as required for transfers to an existing child performer trust account. When making required transfers, the employer, or payroll service company, shall provide the Comptroller with the child performer's given name and the professional name of the child, if different from the given name; last known mailing address, permanent address, date of birth, social security number; the name and address of the child's parent(s) or guardian(s) and their home and business phone numbers; and such other identifying information as the Comptroller may require.

(e) Notwithstanding the above, an employer, or payroll service company, shall not be required to make any contributions on behalf of any child who is employed in a production or performance under an Employer Certificate of Group Eligibility issued by the Commissioner under this Part.

§ 186-4.6 Provision for a responsible person.

(a) No employer shall employ a child performer unless such employer has designated one or more individuals to serve as a responsible person to supervise the child performer and ensure that the employer acts in the child performer's interests in accordance with this Part, while such child performer is employed by such employer.

(b) Upon mutual agreement between the employer and the parent(s) or guardian(s) of the child performer, the parent(s) or guardian(s) of such child performer may act as the responsible person for his or her own child under this Part.

(c) Such responsible person shall not be assigned any other duty by the employer that interferes with the responsible person's duties to the child performers under this Part.

(d) The designation of a responsible person shall be made upon written agreement between the parent or guardian of a child performer and the employer and shall be effective as of the commencement of the child performer's employment. Such designation will terminate only upon the conclusion of the child performer's employment except that the person designated as the responsible person may be changed at any time upon execution of a written agreement between the parent or guardian of a child performer and the employer.

(e) Notwithstanding the foregoing, where a child performer is less than six years old, the employer shall allow a parent or guardian to accompany the child performer at all times at the workplace. The employer may permit the parent, guardian or responsible person of a child performer to be within sight or sound of the child performer at any set or other place of employment at all times during the child performer's employment, including but not limited to, providing the parent or guardian the opportunity, either in person or through electronic means, to observe and hear the child performer at any stage, set, wardrobe, makeup, hairdressing and/or dressing room facilities.

(f) An employer who employs children under an Employer Certificate of Group Eligibility shall designate at least one responsible person for every twenty children or fraction thereof employed under such Certificate.

SUBPART 186-5

EDUCATIONAL REQUIREMENTS

Sec.

186-5.1 Educational requirements.

§ 186-5.1 Educational requirements

(a) No child performer under the age of eighteen who is required by law to be enrolled in and attend school shall be without educational instruction and unemployed for a period longer than ten consecutive days while the school of enrollment is in session.

(b) A child performer employed in the state of New York shall fulfill the educational requirements applicable to the school district in which he/she resides or the private school that the child performer attends, including those relating to minimum attendance and academic requirements.

(c) If a child performer is unable to fulfill his or her educational requirements due to his or her employment schedule, the employer shall be required to comply with the alternative educational requirements of paragraph (d) of this section.

(d) Alternative educational requirements:

(1) If a child performer is guaranteed three or more consecutive days of employment, the child performer's employer shall employ a teacher from the first day of such employment, whenever the minor is employed on any day during which the primary or secondary school regularly attended by the child performer is in session. When the child performer is employed for performances planned on the production schedule for only two consecutive days and it is subsequently determined that additional calls will be necessary, the child performer's employer shall provide a teacher on the third day of such employment and on each day thereafter during which the primary or secondary school regularly attended by the child performer is in session.

(2) On any day a child performer is employed but is not otherwise entitled to have a teacher, the child performer's employer shall provide a teacher if the primary or

secondary school such minor regularly attends is in session and the employer has employed a teacher to instruct another child performer engaged on the same production.

(3) The employer shall provide a ratio of not more than ten child performers per teacher, except that up to twenty child performers may be taught per teacher if the child performers are not in more than two different grade levels.

(4) The employer shall set aside a location where educational instruction will be provided to child performers. Such location shall be clean, well lit, have sufficient work surfaces, chairs and necessary supplies for instruction.

(5) During periods of instruction, no one shall be allowed in the location designated by the employer for instruction except the teacher and those child performers being taught.

(6) The teacher shall determine the required number of hours to be devoted to instruction during a day, provided however, that the child performer must, over the course of each calendar week, be taught an average of at least three hours per day, and no time increments of which may be less than twenty minutes in duration.

(7) Child performers in grades 1-6 shall be instructed between 7:00 a.m. and 4:00 p.m. Child performers in grades 7-12 shall be instructed between 7:00 a.m. and 7:00 p.m.

(8) The employer shall require the teacher to prepare a written report for each child performer covering attendance, lesson plans performed, and grades. These reports shall be delivered by the teacher to the school district in which the child performer resides or the private school that the child performer attends, to the child performer's parent or guardian, and to the child performer's employer at the end of each employment or at intervals as required by such school.

(9) The employer shall provide a teacher who is certified by or has credentials recognized by the state, nation, or political entity in which such child performer resides.

(10) A child performer receiving instruction from a teacher provided pursuant to this section shall not be declared absent from school while working pursuant to the permit requirements in accordance with this Part as a child performer provided that all work, grades, and credit that the child performer completes with a teacher provided under this Subpart are accepted by the child performer's school district.

(11) A child performer receiving educational instruction pursuant to this section, and such child performer's parents or guardians, shall work with the teacher provided to the child performer and the child's school of enrollment to fulfill such educational requirements.

(12) If there is a hiatus in a production that uses a child performer pursuant to this Part, a teacher shall be provided to the child performer during the hiatus for periods when a school day is in session, pursuant to the requirements described in the section, unless the child performer is able to attend the school that he or she usually attends.

(e) If the school that the child performer usually attends starts less than twelve hours after his or her dismissal time from work, the child performer shall be schooled the following day at the employer's place of business pursuant to the provisions of paragraph (d) of this section, provided however, that with the employer's consent, the parent shall have the option of having the child performer attend instruction at the school that he or she usually attends on such day.

(f) Nothing in this Subpart shall limit a school district's authority, in cooperation with the Department of Education and the parent or guardian of the child performer, to

develop alternative methods by which child performers may satisfy their educational requirements at times outside of the normal school day.

(g) The requirements of this section shall only be applicable when the child performer is not receiving educational instruction on a school day due to his or her employment schedule.

(h) The requirements of this section shall not apply to any employer in connection with the employment of child performers pursuant to an Employer Certificate of Group Eligibility.

SUBPART 186-6

HOURS AND CONDITIONS OF WORK

Sec.

- 186-6.1 General conditions.
- 186-6.2 Hours and days of work.
- 186-6.3 Meal periods.
- 186-6.4 Rest and recreation.
- 186-6.5 Safety and health of child performers.
- 186-6.6 Contracts with more stringent requirements.
- 186-6.7 Maintenance and production of records.

§ 186-6.1 General conditions.

No employer shall employ a child performer in any activity that may be hazardous or detrimental to the physical or mental health, education, or general welfare of the child performer(s). In order to help ensure against such hazard or detriment, no employer shall employ a child performer for hours of work, or under conditions of work, except in accordance with the provisions of this Part.

§ 186-6.2 Hours and days of work.

(a) No employer shall employ a child performer except during the work day designated under this Part. For purposes of this Subpart, the term “work day” shall mean the period beginning no earlier than 5:00 a.m. and ending no later than 10:00 p.m. on evenings preceding school days. Where the child performer’s work day has begun on a day preceding a non-school day, the child performer’s work day shall end no later than 12:30 a.m. on the morning of the non-school day. Notwithstanding the above, upon the Commissioner’s approval following a written request for a variance submitted to the Department in accordance with section 186-8.1 of this Part, the work day of a child performer may continue past 10 p.m. and up to midnight on days preceding a school day in a performance which begins before 10 p.m., provided that the child performer shall not be at the place of employment more than the maximum number of hours in a work day permitted by this Part.

(b) For purposes of this Subpart, the term “week” shall mean the period beginning no earlier than 5:00 a.m. on Sunday and ending no later than 12 a.m. on the following Sunday.

(c) The employer shall not employ a child performer unless the child performer receives at least twelve hours rest between the time that the child performer is dismissed on one work day and the time that the child performer is required to be at the place of employment the following day.

(d) In addition to the general provisions set forth above, employers shall also comply with the specific limitations set forth below:

(1) Infant child performers who have reached the age of fifteen (15) days but have not reached the age of six (6) months may be permitted to remain at the place of

employment for a maximum of two hours per work day. The day's work shall not exceed twenty (20) minutes.

(i) When child performers between the age of fifteen (15) days and six (6) weeks of age are employed, a nurse and a responsible person must be provided for each three (3) or fewer babies. When infants from age six (6) weeks to six (6) months are employed, one (1) nurse and one (1) responsible person must be provided for each ten (10) or fewer infants.

(2) Child performers who have reached the age of six (6) months but who have not attained the age of two (2) years may be permitted at the place of employment for a maximum of four (4) hours per work day. Such four (4)-hour period shall not consist of more than two (2) hours of work; the balance of the four (4)-hour period shall be rest and recreation.

(3) Child performers who have reached the age of two (2) years but who have not attained the age of six (6) years may be permitted at the place of employment for a maximum of six (6) hours per work day. Such six (6)-hour period shall not consist of more than three (3) hours of work; the balance of the six (6)-hour period shall be rest and recreation and/or education.

(4) Child performers who have reached the age of six (6) years but who have not attained the age of nine (9) years may be permitted at the place of employment for a maximum of eight (8) hours per work day. Such eight (8)-hour period shall not consist of more than four (4) hours of work and at least three (3) hours of schooling when the child performer's school is in session. The responsible person shall assure that the child performer receives up to one (1) hour of rest and recreation. On work days when the

child performer's school is not in session, working hours may be increased to six (6) hours, with two (2) hours of rest and recreation.

(5) Child performers who have reached the age of nine (9) years but who have not attained the age of sixteen (16) years may be permitted at the place of employment for a maximum of nine (9) hours per work day. Such nine (9)-hour period shall not consist of more than five (5) hours of work and at least an average, over the course of each calendar week, of three (3) hours of schooling when the child performer's school is in session.

The responsible person shall assure that the child performer receives up to one (1) hour of rest and recreation. On days when the child performer's school is not in session, working hours may be increased to seven (7) hours, with two (2) hours of rest and recreation.

(6) Child performers who have reached the age of sixteen (16) years but who have not attained the age of eighteen (18) years may be permitted at the place of employment for a maximum of ten (10) hours per work day. Such ten (10)-hour period shall not consist of more than six (6) hours of work and at least three (3) hours of schooling when the child performer's school is in session. The responsible person shall assure that the child performer receives up to one (1) hour of rest and recreation. On days when the child performer's school is not in session, working hours may be increased to not more than nine (9) hours, with one (1) hour of rest and recreation.

(7) When any child performer between ages fourteen (14) and eighteen (18) obtains permission from school authorities to work during school hours for a period not to exceed two (2) consecutive days, the working hours for such child performer during either or both of such days may be extended to but shall not exceed eight (8) hours in twenty-four hours.

(e) The employment time limits specified in this Subpart shall apply to the child performer and not to any one employer. Thus, a child performer whose employment is limited to 12 hours per week may only work 12 hours per week for all employers combined. The child performer's parents or guardians bear the responsibility for ensuring that a child performer does not exceed his or her weekly limit.

§ 186-6.3 Meal periods.

(a) The hours of work at the place of employment are exclusive of meal periods.

(b) The time when the meal period occurs may not be more than 6 hours from the time the child performer is required to arrive at the place of employment or more than 6 hours from the end of the preceding meal period.

(c) Any amount of meal time exceeding one-half hour is considered rest and recreation time but shall not be used to extend the work day.

(d) If a child performer is required to eat on the premises, a suitable place for that purpose shall be provided by the employer.

§ 186-6.4 Rest and recreation.

(a) The employer shall permit all child performers to take rest periods consisting of ten minutes per four hours of work time or fraction thereof.

(b) Rest and recreation shall be provided in the middle of the work period to the extent practicable.

(c) The employer shall provide a safe, secure, and age-appropriate place for the child performer to play, rest, or study at or adjacent to the workplace.

(d) Where age appropriate, the employer shall provide a crib or playpen at the workplace and shall ensure that the child has access to sufficient nutritious food and

diapers. The child's established feeding and sleeping routines shall be maintained, including adequate opportunity and appropriate space for breastfeeding when it falls within the child's routine.

(e) The employer may not hold child performers when work is finished in order to ensure the full rest and recreation time required by this section is provided to the child performer.

§ 186-6.5 Safety and health of child performers.

(a) The employer shall provide the child performer and his or her parent(s) or guardian(s) with information and instruction to protect the health or safety of the child performer including any potential hazards associated with the specific activities that he or she will be expected to perform. In addition, a child performer must be given adequate instruction and rehearsal time for the specific activities he or she is to perform in order to protect his or her health or safety.

(b) A child performer shall be given orientation training to the workplace that is adequate and appropriate to their age. Orientation training should include:

- (1) Health and safety precautions for the venue or location;
- (2) Traffic patterns backstage or on location;
- (3) Safe waiting areas for child performers backstage or on location;
- (4) Restricted areas;
- (5) Location of rest areas/rooms, toilets, makeup areas, and other relevant rooms;
- (6) Emergency procedures; and,

(7) Employer designated persons to inform of hazardous conditions and what actions to take.

(c) The information provided to the child performer pursuant to paragraph (b) of this section shall also be provided to the Responsible Person charged with the care of a child performer and to the parents of child performers who are six years of age or younger.

(d) In addition to the safety and health provisions that would otherwise apply to child performers, a child performer younger than six months of age shall not be exposed to light of greater than one hundred (100) foot candlelight intensity for more than thirty (30) seconds at a time and shall not be exposed to sound of greater than eighty (80) decibels at any time, and not be exposed to sound of greater than seventy (70) decibels for more than 30 minutes;

(e) The requirements of subdivisions (b) (2), and (c) of this section shall not apply to any employer in connection with the employment of child performers pursuant to an Employer Certificate of Group Eligibility.

§ 186-6.6 Contracts with more stringent requirements.

Nothing in this Part shall prevent the employer of a child performer from complying with a collective bargaining agreement or other contract that establishes more stringent standards than those contained in this Part.

186-6.7 Maintenance and production of records.

(a) Every employer shall, for not less than six years after the termination of a child performer's employment, maintain and preserve all records required by this Part, including but not limited to the Employer's Certificate of Eligibility, all written reports prepared and delivered to the school district in which the child performer resides or the

private school that the child performer attends pursuant to Section 186-5.1(d)(8) of this Part, and all child performer permits. Every employer, including those who maintain their records at a place outside of New York State, shall make such records or sworn certified copies thereof available upon request of the Commissioner at the place of employment or at such other place within New York State as directed by the Commissioner.

(b) All information and documents related to this Part shall be open to inspection by the Department, school attendance and probation officers, the State Education Department or local school district, and the State Comptroller.

(c) The failure to produce copies of any Employer Certificate of Eligibility and child performer permits or any information or documents related to this Part upon demand of a representative of the Commissioner, school attendance and probation officers, or representatives of the State Education Department or local school district, or the Comptroller shall be deemed to be prima facie evidence of the illegal employment of a child performer.

SUBPART 186-7

VARIANCES

Sec.
186-7.1 Variances.

§ 186-7.1 Variances.

(a) Where the employer would incur significant hardship in complying with one or more provisions of this Part he or she may apply to the Department for a variance from such provisions.

(b) The request for a variance shall be in writing and shall spell out the specific reasons for the variance requested, the period of time the variance will be in effect, the performers affected by the variance and any additional or alternative provisions the employer will make to protect the [the] child performers in conformity with this Part.

(1) A request for variance shall be submitted no later than two business days before the requested modifications shall take effect.

(2) If the Commissioner approves, the Department shall issue a written notice to the employer of such approval. Such notice shall be kept at the place of employment and made available for representatives of the Department upon request.

SUBPART 186-8

SUSPENSION OR REVOCATION OF PERMITS AND CERTIFICATES

Sec.

- 186-8.1 Suspension or revocation of employer certificates of eligibility and Employer certificates of group eligibility.
- 186-8.2 Suspension or revocation of child performer permits.
- 186-8.3 Notice and hearing.

§ 186-8.1 Suspension or revocation of employer certificates of eligibility and employer certificates of group eligibility.

The Commissioner may suspend or revoke an Employer Certificate of Eligibility or Employer Certificate of Group Eligibility for good cause shown, or where it is shown that the employer:

- (a) Provided inaccurate or false information on an application;
- (b) Has committed a violation of this Part that may be hazardous or detrimental to the physical or mental health, education, or general welfare of a child performer.
- (c) Has not transferred the required earnings to the child performer's trust account or to the State Comptroller;

(d) Has caused the child performer to engage in or be scheduled to engage in an activity that may be hazardous or detrimental to the physical or mental health, education, , or general welfare of a child performer.

(e) Being the holder of an Employer Certificate of Group Eligibility, employed a child without the written consent of that child's parent or guardian.

§ 186-8.2 Suspension or revocation of child performer permits.

The Commissioner may suspend or revoke a Child Performer Permit for good cause shown or where it is shown that the parent or guardian of a child performer:

(a) provided inaccurate or false information on an application; or

(b) has committed a violation of this Part that may be hazardous or detrimental to the physical or mental health, education, or general welfare of a child performer.

(c) has not provided the required documentation of the establishment of a child performer's trust account to the employer, within fifteen days of the commencement of the child performer's employment;

(d) has caused the child performer to engage in or be scheduled to engage in an activity that may be hazardous or detrimental to the physical or mental health, education, , or general welfare of a child performer.

§ 186-8.3 Notice and hearing.

(a) Where the Commissioner intends to suspend or revoke a Child Performer Permit notice shall be given to the parent or guardian of the child performer, and the parent or guardian shall be given an opportunity to be heard.

(b) Where the Commissioner intends to suspend or revoke an Employer Certificate of

Eligibility or Employer Certificate of Group Eligibility, notice shall be given to the employer, and the employer shall be given an opportunity to be heard.

(c) Notice shall be given in writing and shall be mailed to the address specified on the application for the Child Performer Permit or Employer Certificate of Eligibility or Employer Certificate of Group Eligibility, or by personal service to a person of suitable age and discretion at that address or the place of employment.

(d) The Commissioner shall schedule a hearing as soon as practicable for the employer, parent or guardian to be heard.

(e) Notwithstanding the above, the Commissioner may summarily suspend a Child Performer Permit, or Employer Certificate of Eligibility, or Employer Certificate of Group Eligibility prior to a hearing when he or she has cause to believe that such summary suspension is in the best interests of the child performer, including but not limited to, the belief that the child performer has been or will be exposed to circumstances or events hazardous or detrimental to the physical or mental health, education, or general welfare of the child performer. , When the Commissioner takes such action, a hearing shall be scheduled within five business days to determine whether the summary suspension shall remain in effect, and, if so, under what terms and conditions and for what period of time.

SUBPART 186-9

PENALTIES AND APPEALS

Sec.
186-10 Penalties and Appeals.

§ 186-10 Penalties and Appeals.

(a) Where the Commissioner finds that a child performer's employer has violated any provision of Article 4-A of the Labor Law or of these regulations, the Commissioner may, in addition to revocation or suspension of the Employer Certificate of Eligibility pursuant to section 186-4.2 of this Part, issue an order describing the nature of the violation and assess a civil penalty therefor. Each violation shall constitute a separate offense.

(b) The civil penalty shall not exceed \$1,000 for the first violation, \$2,000 for the second violation and \$3,000 for the third or subsequent violation.

(c) In determining the penalty to be assessed against an employer, the Commissioner shall give due consideration to the size of the employer's business, the good faith of the employer, the gravity of the violation, the history of previous violations, and the failure to comply with other provisions of the Labor Law.

(d) Any final order issued by the Commissioner under this Part shall be subject to review by the Industrial Board of Appeals pursuant to Labor Law, section 101 prior to any appeal to a court of competent jurisdiction.