

Child Performers

Part 186 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the state of New York
(Cited as 12 NYCRR 186)

WE ARE YOUR DOL



PART 186 CHILD PERFORMERS

(Statutory authority: Labor Law §154-a)

Subpart 186-1	Purposes, scope and exemptions.
Subpart 186-2	Definitions.
Subpart 186-3	Responsibilities of Parents and Guardians
Subpart 186-4	Responsibilities of employers.
Subpart 186-5	Educational requirements.
Subpart 186-6	Hours and conditions of work.
Subpart 186-7	Records; contracts.
Subpart 186-8	Variances.
Subpart 186-9	Suspension or revocation of permits and certificates.
Subpart 186-10	Penalties and appeals.

SUBPART 186-1

PURPOSES, SCOPE AND EXEMPTIONS

Sec.

186-1.1	Purposes of Part.
186-1.2	Scope.
186-1.3	Exemptions

§ 186-1.1 Purposes of Part.

The purposes of this Part are to protect the safety, morals, 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 majority.

§ 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.

§ 186-1.3 Exemptions.

- (a) Live Performances: This Part shall not apply to participation, employment, use or exhibition of any child, other than in the making of a motion picture film or radio or television program:
- (1) in a church, academy or school, including a dancing or dramatic school, as part of the regular services or activities thereof respectively; or
 - (2) in the annual graduation exercises of any such academy or school; or

- (3) in a private home; or
 - (4) in any place where such performance is under the direction, control or supervision of a department of education.
- (b) Radio and Television: This Part shall not apply to participation, employment, use or exhibition of any child in the performance of radio or television programs in cases where:
- (1) the child or children broadcasting do so from a school, church, academy, museum, library or other religious, civic or educational institution, or
 - (2) 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 for instruction is not required in accordance with the education law.
- (c) Employer Requirements: In addition to the exemptions set forth above, the requirements of this Part that are imposed on employers, see Subparts 186-4 to 186-7, shall not apply to participation, use, or exhibition of any child that:
- (1) is not compensated beyond a stipend, which may not: be tied to productivity, be a substitute for compensation, or exceed 20% of the amount that would otherwise be required to hire a performer for the same services; and
 - (2) is not of a professional character; and
 - (3) occurs during hours when attendance for instruction is not required in accordance with the education law, and
 - (4) is not employed in connection with any trade, business or service.
- (d) Penalties and Sanctions: No penalties or sanctions shall be imposed under this Part for conduct that violates this part where the employer self-identifies and ceases such conduct and abates the violation within 24 hours, either by coming into compliance with the requirement of this Part that was violated or by petitioning the Commissioner for a variance from such requirement.

**SUBPART 186-2
DEFINITIONS**

Sec.
186-2.1 Definitions

§ 186-2.1 Definitions

As used in this Part:

- (a) “Artistic or creative services” shall mean those services in connection with a performance, or an appearance in a reality show, 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) “Artistic or creative services” shall also include appearing as a model in a television broadcast or program.
 - (2) Whenever the term “performance” is used in this regulation, it shall mean providing “artistic or creative services.”
- (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 in New York State to furnish artistic or creative services either directly or through a third-party provider (loan-out company) or through an agency or service that provides artistic or creative services (casting agency). For purposes of the trust and educational provisions only, the term employment in New York State shall include work performed out-of-state when each of the following conditions exist: the child performer resides in New York State, the employer has an office for the transaction of business in New York State or otherwise does business in New York State, and the child is taken to work at a location out-of-state as part of, and pursuant to, such contractual arrangements. 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 7 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 State 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 or hear 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 a blanket permit issued by the Commissioner to an employer that permits employment of a group of children not as individuals but as a group, for no more than two days, in order to establish a background scene or to perform as a group, such as a crowd in the street, on mass transit or bus, in a classroom or auditorium, or as in a choir. Such group may be assembled by the employer or may be provided by a casting agency, school, church, camp, club, choir, team, or other similar entity.
- (m) "Employment schedule" shall mean the time that a child performer is required to be present at his or her place of employment, 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 paid to third parties by the employer pursuant to the contract.
- (o) "Live theater" shall mean performances before a live audience in a drama or musical, which constructs a representational impression utilizing speech, song, gesture, music, dance, spectacle or other performing arts, that is not produced for the principal purpose of television broadcast or motion picture distribution.

- (p) "Opening day" shall mean a live theatrical production's first day of regular performances before a live audience, following the standard rehearsal period, technical rehearsals, and preview performances.
- (q) "Payroll service company" shall mean 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.
- (r) "Preview performances" shall mean the period following the standard and technical rehearsal periods in a live theatrical production, during which time performances are presented in front of live audiences for the exclusive purpose of modifying creative, technical or other aspects of a show prior to its opening day.
- (s) "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, in motion pictures, television, visual, digital, and/or sound recordings, on the internet, or otherwise.

"Reality show" shall not include recording or live transmitting of non-fictional:

- (1) athletic events;
- (2) academic events, such as, but not limited to, spelling bees and science fairs; and
- (3) interviews in newscasts or talk shows.

- (t) "Responsible person" shall mean a person over eighteen years of age designated or employed in accordance with these regulations to supervise one or more child performers and safeguard their best interests while the child performers are employed by the employer. Every responsible person designated or employed by an employer, casting agency, talent agent or similar entity must be qualified by training and experience to care for the safety and well being of children. In determining whether the responsible person to be designated or employed by an employer, casting agent or similar entity is qualified by training and experience, the entity shall assess whether the person to be designated is familiar with the hours and working conditions requirements of Subpart 186-6, shall conduct a check of New York State and national sex offender registries, and shall consider the results in accordance with Article 23-A of the Correction Law.
- (u) "Serious injury" shall mean death, disfigurement, or an injury resulting in the loss of consciousness or requiring medical treatment beyond first aid.
- (v) "School day" shall mean any day in which a minor is required to attend school upon instruction pursuant to state or local law. School days for home-schooled or distance educated

children shall be determined by the calendar of an appropriate public school in the child's district of residence or of the distance education school in which the child is enrolled.

- (w) "Standard rehearsal period" shall mean the period prior to a live theatrical production's opening day, during which time performers are regularly engaged in practicing songs, dialogue, choreography or other elements of the production in preparation for performances before a live audience.
- (x) "Technical rehearsals" shall mean the period prior to a live theatrical production's opening day, during which time performers and production coordinators synchronize technical aspects of a production including, but not limited to, lighting, sound, wire rigging and cue controls.
- (y) "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.
- (z) "Work day" shall mean the time that a child performer is required or permitted to be present at his or her place of employment, excluding time spent traveling between the child's school or residence and the place of employment, but including rehearsal, preparation and performance time, standby time, time for meals, study, rest and recreation, and time spent traveling from one place of employment to another place of employment.

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 Permit.
- 186-3.5 Child performer trust account.
- 186-3.6 Designated responsible person.

§ 186-3.1 Child Performer Permit.

- (a) No parent or guardian of a child shall allow the 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 the child.
- (b) Notwithstanding the above, a parent or guardian shall not be required to obtain a

Temporary Child Performer Permit or Child Performer Permit in order for a child to participate in a production or performance under a blanket permit designated as an Employer Certificate of Group Eligibility issued by the Commissioner to an employer.

§ 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. If the child does not yet have a social security number, or has not yet been born at the time of application, the social security number shall be submitted as soon as it becomes available;

(3) a physical description of the child;

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

(5) any additional information deemed relevant by the Commissioner;

(6) an acknowledgement by the parent or guardian that he or she has reviewed the educational materials on eating disorders posted on the Department's website pursuant to Section 154 of the Labor Law; and

(7) a declaration by the 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 issuance of the permit.

(b) The application shall be accompanied by:

(1) a copy of the child's birth certificate, baptismal certificate, naturalization papers, passport, or their equivalents, showing the child's date of birth (required with the initial application but not subsequent applications);

(2) a copy of a picture identification of the parent or guardian issued by a government agency;

(3) if 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;

(4) evidence that the child performer, if he or she has reached the age of required schooling, is maintaining satisfactory academic performance or is no longer

required by law to attend school;

(5) documentation from a financial institution indicating that a child performer trust account has been established on behalf of the child and is currently open. The documentation must include the name of the child performer, the name of the trustee, the type of account, the number of the account, and the name and address of the local branch of the institution where the account is located; and

(6) the signed written certification of a licensed physician, physician's assistant or nurse practitioner that the minor was examined within twelve 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. If there are limitations on the types or duration of activities in which the child can safely engage, the practitioner shall state the limitations on activities.

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

(d) Prior to the start of employment, the parent or guardian shall give the employer a copy of the child performer's permit. On or before the expiration date of the permit, the parent or guardian shall give the employer a copy of a renewed permit.

(e) In order for a Child Performer Permit to be valid for paid performance work, the parent or guardian must attach, to the employer's copy of the permit, documentation of a child performer trust account and the information necessary for the employer to make the required transfers to the account, except for the Temporary Child Performer Permit, under which the parent or guardian has up to fifteen days from the date of issuance of the permit to give the employer such documentation and information. In order for a Child Performer Permit to remain valid for paid employment, the parent or guardian must give the employer all updates to the information regarding the trust account as changes occur.

§ 186-3.3 Renewal of Child Performer Permit.

(a) For a child to remain continuously eligible to work as a child performer, the parent or guardian shall renew the Child Performer Permit no later than thirty days prior to its expiration.

(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) any changes to information provided in the previous permit application, accompanied by any documentation necessary to establish such changes, as required by the Commissioner;

(2) documentation from a financial institution showing that a child performer trust

account has been established on behalf of the child and is currently open. The documentation must include the name of the child performer, the name of the trustee, the type of account, the number of the account, and the name and address of the local branch of the institution where the account is located;

(3) an original certificate of satisfactory academic performance for the most recently completed semester signed by an official of the child's school, or evidence that the child is no longer required by law to attend school; and

(4) an updated health certification based upon an examination within twelve months prior to the date of renewal application.

(c) The Commissioner may decline to issue a renewal permit to any parent or guardian 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 twelve months following its date of issuance.

§ 186-3.4 Temporary Child Performer Permit.

(a) Prior to the first employment of a child performer, the Commissioner may issue a Temporary Child Performer Permit in order to give the parent or guardian of the child performer time 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 fifteen days from the date of issuance.

(c) A Temporary Child Performer Permit may be issued only once for a given child.

§ 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 prior to the child's first instance of paid 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, except that a Temporary Child Performer Permit will allow the parent or guardian up to fifteen days to establish such a trust account.

(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 (fifteen percent of gross earnings) set forth in Part 7 of Article 7 of the Estates, Powers and Trusts Law. Where the custodian is other than the parent or guardian, the parent or guardian may ask the custodian to require the employer to transfer a specific amount or percentage more than fifteen percent of the gross earnings to the trust account, in which case the custodian shall notify the employer of the requirement. The custodian, parent or guardian shall communicate in writing to the employer the specific amount, and any change in the amount, to be transferred into the child performer trust account.
- (d) The child performer's parent or guardian shall provide the employer with all information necessary to make transfers to such account on behalf of the child performer, within fifteen days of commencement of the child performer's employment.
- (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) A child performer trust account is not required for unpaid performances under an Employer Certificate of Group Eligibility.

§ 186-3.6 Designated responsible person.

- (a) The parent or guardian of a child performer under the age of 16 shall designate a responsible person for the child, whose duties shall be to accompany the child throughout the workday and to monitor the child's safety and well being on behalf of the parent or guardian.
- (b) The parent or guardian may choose to serve as the responsible person for his or her own child performer under the age of 16 or may designate another adult at least 18 years of age, including another child performer's parent or guardian, to serve as the responsible person for the first parent's or guardian's child.
- (c) Notwithstanding sub-sections (a) and (b) of this section, in live theater or other live performance, when it is physically impracticable for the employer to permit a responsible person designated by the parent or guardian to accompany a child under the age of 16, the employer shall either:

- (1) employ a responsible person at least 18 years of age to accompany the child and monitor the safety and well being of the child. Such person may be responsible for more than one child. The parent or guardian and the employer must agree in writing on the responsible person. The parent or guardian shall not unreasonably withhold his or her agreement; or
- (2) provide facilities to observe and hear the child, through electronic or other appropriate means, to the responsible person designated by the parent or guardian;

or both.

- (d) All preceding sub-sections of this section shall not apply to children employed under an Employer Certificate of Group Eligibility. Instead, the employer and/or the entity providing the group of children shall provide at least one adult for every twenty children or fraction thereof under the age of 16 to accompany the group throughout the workday and monitor the children's safety and well being.
- (e) Nothing in this section shall diminish the employer's responsibility to ensure the safety and well being of child performers.

**SUBPART 186-4
RESPONSIBILITIES OF EMPLOYERS**

Sec.

- 186-4.1 Employer Certificate of Eligibility to employ child performers.
- 186-4.2 Application for 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.
- 186-4.7 Provision of a nurse for certain infants.

§ 186-4.1 Employer Certificate of Eligibility to employ child performers.

- (a) Employer Certificate of Eligibility: 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) Employer Certificate of Group Eligibility: An employer may employ a group of children not as individuals, but as a group, to establish a background scene or to perform as a group by obtaining an Employer Certificate of Group Eligibility. Such Employer Certificate of Group Eligibility shall permit the listed child performers to work for no more than two days, which need not be consecutive, during specified dates of use and

shall be subject to the following conditions:

(1) Any day that a child reports to work at the request of the employer shall count as one of the two permitted days of work, whether or not work is provided.

(2) The employer and/or the entity providing the group of children shall provide at least one adult for every 20 children or fraction thereof under the age of 16 to accompany the group throughout the work day and to monitor the children's safety and well-being. They may designate parents or other qualified persons as responsible persons for the group.

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

§ 186-4.2 Application for and renewal of 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 an 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 of the applicant's compliance with the mandatory coverage requirements of the workers' compensation and disability benefits laws on forms approved by the Chair of the New York State Workers' Compensation Board;

(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:
- (1) a description of the manner or role in which the group of children will be employed;
 - (2) the date(s) of such use;
 - (3) the physical address of the location of such use;
 - (4) the name and contact information of the employer's on site representative;
 - (5) the approximate number of children to be employed under such certificate; and
 - (6) the name and contact information of the employer's on site representative.
- (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 186-9 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 of work, which need not be consecutive. The Employer Certificate of Group Eligibility shall be maintained by the employer, together with a list of children to be covered by such certificate, and the written consent of the parent or guardian of each listed child and shall be available for inspection on site during the covered performance or appearance. The list of children shall identify each child by the true and stage name and the age of the child, and the name and address of the child's parent or guardian.

- (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, morals, 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. Such notice shall include:
- (1) the date(s) and expected duration of such use;
 - (2) the complete physical address of the location of such use;
 - (3) the approximate number of child performers the employer will use;
 - (4) the name and contact information of the employer's on site representative; and
 - (5) any other information deemed necessary by the Commissioner.
- (b) Such notice shall be provided in writing at least two business days prior to the commencement of the use of the child performer(s), which may be updated during production as necessary.
- (c) No notice of use shall be required to employ a group of children under an

Employer Certificate of Group Eligibility.

(d) Notices required under this section shall be submitted to:

New York State Department of Labor
Division of Labor Standards
Permits and Certificates Unit
Building 12, Governor Averell Harriman State Office Campus
Albany, New York 12240
Fax # (518) 457-2731

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) at or before the start of employment, the parent or guardian has given the employer a copy of a currently valid Temporary Child Performer Permit or Child Performer Permit, and by the expiration date of such permit, has given the employer an updated permit;
 - (2) if the employment is paid, information on the child performer trust account and funds transfer thereto is attached to the employer's copy of the Child Performer Permit or, in the case of a Temporary Child Performer Permit, provided to the employer within fifteen days from the issuance of such Temporary Child Performer Permit;
 - (3) a copy of the Temporary Child Performer Permit or Child Performer Permit is at the workplace and available for inspection; and
 - (4) the parent or guardian has provided the employer with current emergency contact information and authorization to provide emergency medical treatment for the child performer.
- (b) Children employed under an Employer Certificate of Group Eligibility shall not be covered by subdivision (a) of this section. Instead, no employer shall employ such a group of children unless at or before the start of employment:
- (1) if the employment is to be paid, the necessary information on the child performer trust account and funds transfer thereto has been collected from the parents or guardians by the employer or entity providing the group of children; and
 - (2) the employer has access to current emergency contact information and the authorizations of parents or guardians to provide emergency medical treatment for

each child either directly or from a responsible official of the entity providing the group of children.

§ 186-4.5 Trust account transfers by the employer.

- (a) An employer of a child performer shall obtain from the parent or guardian the information necessary to enable the employer to transfer funds into a child performer trust account for the child in accordance with Article 7, Section 7-7.1 of the Estates, Powers and Trusts Law. The information shall be obtained on or before the start of paid employment, except that up to fifteen days is allowed if a Temporary Child Performer Permit has been issued giving the child's parent or guardian up to fifteen days to establish the account.
- (b) Each employer, or payroll service company, of a child performer shall transfer fifteen percent or more, as specified by the parent, guardian or custodian in writing, of the child performer's gross earnings from the employer into the child performer trust account.
 - (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 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 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 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 employer or payroll service company shall provide the parent or guardian with a written record of deductions from the child performer's gross wages and notification of transfer of funds to the child performer trust account within five business days of such transfer. The notification of transfer may be incorporated into the child's pay stub.
- (d) If the parent or guardian has not provided the employer with the information necessary to transfer funds into a child performer trust account, the employer shall transfer fifteen percent of the child performer's gross earnings to the Comptroller for deposit 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 professional name if different from the given name, last known mailing address; and if known: 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.

§ 186-4.6 Provision for a responsible person.

- (a) Every child performer under the age of 16 shall be assigned a responsible person at least 18 years of age, whose duties shall be to accompany the child throughout the work day and to monitor the child's safety and well-being. The employer shall allow the responsible person to be within sight or sound of the child at all times during the workday.
- (b) Except as otherwise provided in this section, the parent or guardian shall designate the responsible person and may choose to serve as the responsible person for his or her own child under the age of 16. The parent or guardian may designate another adult at least 18 years of age, including another child performer's parent or guardian, to serve as the responsible person for the first parent's or guardian's child.
- (c) If a parent or guardian fails to designate a responsible person, or a child under 16 is without a responsible person on any day, the employer shall designate a responsible person for that child. Such responsible person may be responsible for more than one child.
- (d) Notwithstanding subsections (b) and (c) of this section, in live theater or other live performance, where it is physically impracticable for the employer to permit a responsible person designated by the parent or guardian to accompany a child under 16, the employer may either employ a responsible person for the child or provide the responsible person designated by the parent or guardian with facilities to observe and hear the child through electronic or other appropriate means, or both. Where the employer elects to employ a responsible person, the employer shall notify the parent or guardian in writing of the name of the responsible person, who may be responsible for more than one child, and shall, at the employer's election, either:
 - (1) Obtain the written agreement of the parent or guardian, which shall not be unreasonably withheld or delayed; or
 - (2) Provide the parent or guardian with an opportunity to object to the responsible person and provide a mechanism to timely address any reasonable objections in the best interest of the child.
- (e) The responsible person shall not be assigned any duty by the employer that interferes with the responsible person's duties to the child performer(s).
- (f) Notwithstanding the foregoing, when a group of children is employed under an Employer Certificate of Group Eligibility, the employer or the entity providing the group of children must provide at least one responsible person for every 20 children under the age of 16 or fraction thereof, to accompany the group throughout the work day and to monitor the children's safety and well-being. Parents or other adults over 18 years of age may serve as responsible persons for the group.
- (g) Nothing in this section shall diminish the employer's responsibility to ensure the

safety and well being of child performers.

§ 186-4.7 Provision of a nurse for certain infants.

- (a) When child performers between the age of fifteen days and six weeks of age are employed, a nurse and a responsible person must be provided for each three or fewer babies. When infants from age six weeks to six months are employed, one nurse and one responsible person must be provided for each ten or fewer infants. Such nurse shall be a Registered Nurse with significant experience in pediatric practice.

**SUBPART 186-5
EDUCATIONAL REQUIREMENTS**

186-5.1 Educational requirements.

§ 186-5.1 Educational requirements

- (a) No child performer 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 or she resides or the private school that he or she attends, including those relating to minimum attendance and academic requirements.
- (c) Nothing in this Subpart shall limit the authority of a child's school officials, in cooperation with the parent or guardian, to develop alternative methods by which a child performer may satisfy his or her educational requirements.
- (d) The requirements of this Subpart shall not apply to children employed under an Employer Certificate of Group Eligibility.
- (e) The requirements of paragraphs (e)(1) through (e)(12) below shall apply to a child performer only on school days and only when the child performer is not otherwise receiving educational instruction due to his or her employment schedule. They shall apply to home-schooled and distance education students, except as otherwise provided in (e)(4), as well as to children being instructed by a teacher provided by the employer.
- (1) The employer shall provide a child performer with time during the workday to enable the child to fulfill his or her educational requirements. The educational time shall average at least three hours per school day, on a weekly basis.

- (2) The employer shall set aside space(s) where instruction, tutoring and study can take place. Such space(s) shall be clean and well lit and shall have sufficient work surfaces, chairs, equipment and supplies necessary for instruction.
- (3) During periods of instruction, tutoring and study, the space set aside shall be used exclusively for those purposes. Persons not participating in those activities shall not be allowed in the space, except for a responsible person choosing to remain within sight or sound of a child performer, subject to the approval of the teacher in conjunction with the production company. A parent, guardian or other person tutoring a home-schooled child shall be provided appropriate space to do so.
- (4) The employer shall provide a teacher to a child performer, other than a home-schooled or distance education student who is receiving appropriate instruction during the school day through those means:
 - (i) from the third day of missed educational instruction through the remainder of the child's employment in the production; or
 - (ii) from the first day of missed educational instruction through the remainder of the child's employment in the production, if the child was guaranteed three or more consecutive days of employment.
- (5) The provided teacher must either be certified or have credentials recognized by the State of New York. A check shall be conducted of New York State and national sex offender registries, and the results shall be considered in accordance with Article 23-A of the Correction Law.
- (6) A provided teacher shall provide instruction to the child or children for an average of at least three hours per school day on a weekly basis. A minimum of one hour of instruction shall be provided on each school day. No period of less than twenty minutes duration shall count as school time. On any day that the minor attends his or her regular school, the employer shall count no more than three hours of the hours attended per day at the minor's regular school as school time.
- (7) Extra teaching time above three hours per day provided to the child performer may be "banked" and "spent" on another day in the same week or another week, subject to the following limit: no more than five hours of banked teaching time may be carried over from week to week.
- (8) The employer shall provide at least one teacher for every ten children or fraction thereof required to be taught at the workplace. For each group of up to ten students, the employer shall provide at least one teacher who is appropriately certified or otherwise competent to teach students in the applicable grade ranges and subject areas, as determined by the school district or non-public school in

which the child is enrolled.

- (9) The employer shall require the teacher to prepare written reports for each student whom the teacher has taught, covering dates and hours of attendance, lesson plans performed, grades, etc. The teacher shall give or send these reports to the minor's parent or guardian and to the school district in which the minor resides or the private school that the minor attends, at intervals required by the school and at the end of the minor's employment.
- (10) It is the responsibility of the child performer's school, the parent or guardian, and the provided teacher to work together to determine and carry out the child performer's education plan and curriculum.
- (11) The teacher shall give the employer a copy of the record of dates and hours of instruction for each child performer. The teacher shall not give the employer any other educational information regarding an individual child without first obtaining written parental consent. A parent or guardian may discuss any extra educational support or specialized teaching his or her child performer needs with the employer and/or may give written consent allowing the teacher to discuss such needs with the employer.
- (12) If the school that the child performer usually attends starts:
 - (i) less than nine hours after his or her dismissal time from work in live theater or other live performance, or
 - (ii) less than twelve hours after his or her dismissal from work outside of live theater or other live performance,

the child performer shall be instructed the following day at the employer's place of business, except that the parent or guardian shall have the option of having the child performer attend instruction at the school that he or she usually attends on such days.

- (f) During any hiatus or layoff period of six days or less occurring while school is in session, the employer shall continue to provide a teacher pursuant to the requirements of this section to a child performer who was receiving instruction from a set or location teacher and who is working more than 100 miles from his or her regular school, unless the child returns to attend his or her regular school.
- (g) A child performer receiving instruction from a teacher provided by the employer pursuant to this section shall not be declared absent from school while working pursuant to the permitting and education requirements of this Part. The school district in which the child performer resides and attends school shall determine whether it will accept the student's work, grades and/or credit that the child performer completes pursuant to this section.

**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.

§ 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, morals, education, or general welfare of the child performer.

Infants under fifteen days old may not be employed as child performers.

§ 186-6.2 Hours and days of work.

- (a) Outside of live theater and other live performance, a child performer may be employed no earlier than 5:00 a.m. on any day, no later than 10:00 p.m. on evenings preceding school days, and no later than 12:30 a.m. on the mornings of non-school days.
- (b) In live theater and other live performance, a child performer may be employed no earlier than 5:00 a.m. on any day, no later than 12:00 midnight on evenings preceding school days, and no later than 12:30 a.m. on the mornings of non-school days.
- (c) A child performer shall receive at least twelve hours rest between the time that the child performer is dismissed on one workday and the time that the child performer is required to be at the place of employment the following day. When a child performer provides services at his or her residence, the child performer shall receive a break of at least twelve hours between the time the child performer is not required to provide services on one day and the child performer resumes providing services the following day.
- (d) For the purpose of enabling a one-day assignment to be completed, for child performers from six months through seventeen years of age, the maximum daily hours of work and of presence at the workplace allowed in this section may be increased by up to two hours but the child cannot then work the following day.
- (e) On days when a child performer works after attending school, the maximum daily hours of presence at the workplace allowed in this section is reduced by three hours. When a child performer provides services at his or her residence after attending school, the maximum daily hours for providing services is reduced by three hours.
- (f) In all covered employment, a child performer under six years of age is limited

to the following hours:

- (1) Infant child performers at least fifteen days but not yet six months of age may be permitted to remain at the place of employment for a maximum of two hours per workday. The day's work shall not exceed twenty minutes.
 - (2) Child performers at least six months but not yet two years of age may be permitted at the place of employment for a maximum of four hours per workday. Such four-hour period shall not consist of more than two hours of work; the balance of the period shall be rest and recreation.
 - (3) Child performers at least two years but not yet six years of age may be permitted at the place of employment for a maximum of six hours per workday. Such six-hour period shall not consist of more than three hours of work; the balance of the period shall be rest and recreation and/or education.
- (g) In live theater and other live performance, a child performer at least six years but not yet eighteen years of age:
- (1) may be permitted at the place of employment for a maximum of ten hours per day during the production's rehearsal period, its official opening day, and throughout the duration of its run. The ten-hour period may include no more than eight hours of work when school is in session and nine hours of work when school is not in session. All of the educational requirements of Subpart 186-5.1 must nevertheless be met. The maximum hours of work set forth above assume that sufficient educational hours will be banked as provided for by section 186-5.1(e)(7); and
 - (2) may be permitted at the place of employment for a maximum of twelve hours per day during the period of technical rehearsals and preview performances. The twelve-hour period may include no more than seven hours of work when school is in session and nine hours of work when school is not in session.
- (h) Outside of live theater and other live performance, a child performer at least six years but not yet nine years of age may be permitted at the place of employment for a maximum of eight hours per workday. When school is in session, the eight-hour period shall include no more than four hours of work, at least three hours of schooling, and up to one hour of rest and recreation. When school is not in session, the eight-hour period shall include no more than six hours of work and up to two hours of rest and recreation.
- (i) Outside of live theater and other live performance, a child performer at least nine years but not yet sixteen years of age may be permitted at the place of employment for a maximum of nine hours per workday. When school is in session, the nine-hour period shall include no more than five hours of work, at least three hours of schooling, and up to one hour of rest and recreation. When school is not in session, the nine-hour period shall include no more than seven hours of work and up to two hours of rest and recreation.
- (j) Outside of live theater and other live performance, a child performer at least sixteen

years but not yet eighteen years of age may be permitted at the place of employment for a maximum of ten

hours per workday. When school is in session, the ten-hour period shall include no more than six hours of work, at least three hours of schooling, and up to one hour of rest and recreation. When school is not in session, the ten-hour period shall include no more than nine hours of work and up to one hour of rest and recreation.

- (k) In all covered employment, when any child performer at least fourteen years but not yet eighteen years of age obtains permission from school authorities to work during school hours for up to two 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 hours per day.
- (l) 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 7 hours of work and 9 hours of presence at the work place per day may not exceed these limits if working for more than one employer in the same day. The child performer's parents or guardians bear the responsibility for ensuring that a child performer does not exceed his or her daily limits when working for more than one employer in the same day.
- (m) Employers shall keep a record of each child performer's starting and ending times, the amount of time present at the workplace, and the amount of time worked on each workday.
- (n) With respect to any child performer providing artistic or creative services at the child performer's residence, this Subpart shall not apply to the number of hours the child performer may be present at the residence, but shall instead apply to the number of hours the child performer may provide such services.

§ 186-6.3 Meal periods.

- (a) The following provisions are in addition to Section 162 of the New York State Labor Law governing meal periods.
- (b) Meal periods are included in the hours of rest and recreation and the hours of presence at the workplace.
- (c) 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. When the child performer is providing artistic or creative services at the child performer's residence, the time when the meal period occurs may not be more than 6 hours from the time the child performer began providing such services.
- (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 at least ten minutes of the rest period time or down time to which they are entitled by Section 186-6.2 during every four hours of work time.
- (b) Rest and recreation time shall be provided in the middle of the work period to the extent practicable.
- (c) The employer shall provide a safe, clean, secure, and age-appropriate place for the child performer to play, rest, or study. The place shall include enough space to accommodate reasonable equipment and supplies brought by the parent or guardian, including stroller, crib, playpen, diapers, and food.
- (d) Where age appropriate, the employer shall provide a crib or playpen at the workplace, unless provided by the parent or guardian. The parent or guardian shall ensure that the child has access to sufficient nutritious food and diapers. The child's established feeding and sleeping routines shall be maintained, to the extent possible, 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 Part 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 or guardian 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 and his or her designated responsible person shall be given orientation training to the workplace, other than the child performer's own residence, that is adequate and appropriate to their ages. 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) Notwithstanding the foregoing, when a group of children is employed under an Employer Certificate of Group Eligibility, the information required in subdivisions (a) and (b) of this

section shall be provided to the children and to the designated responsible person(s) for the group.

- (d) In addition to the safety and health provisions that 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, shall not be exposed to sound of greater than eighty (80) decibels at any time, and shall not be exposed to sound of greater than seventy (70) decibels for more than 30 minutes.

SUBPART 186-7 RECORDS, CONTRACTS

- 186-7.1 Contracts with more stringent requirements.
- 186-7.2 Maintenance and production of records.

§ 186-7.1 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.

186-7.2 Maintenance and production of records.

- (a) Every employer of a child performer 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 and any other records required by Article 6, Section 195 of the New York State Labor Law.
- (b) Records required by this Part include all employer certificates, and for each child performer employed under a Temporary Child Performer Permit or Child Performer Permit:
 - (1) a copy of each Child Performer Permit;
 - (2) the child performer's given and professional names, last known mailing address, permanent address, date of birth, and social security number;
 - (3) the names and addresses of the parents or guardians and their home and business phone numbers;

- (4) the record of each child performer's starting and ending times, the amount of time present at the worksite, and the amount of time worked on each work day;
 - (5) the amounts of gross wages earned and paid in each pay period, deductions, and net wages;
 - (6) the amounts transferred into the Child Performer Trust Account, the account number, and the name and address of the financial institution holding the account;
 - (7) the amounts transferred to the New York State Comptroller for deposit into the Child Performer Holding Fund;
 - (8) the written agreements between parents or guardians and the employer on responsible persons, made in accordance with subsection 186-4.6(d)(1); and
 - (9) the record of dates and hours of instruction provided to each child performer by a set or location teacher.
- (c) For each child employed under an Employer Certificate of Group Eligibility, the employer shall keep a record of:
- (1) the name and physical and mailing addresses of any entity that has provided the group of children to the employer and the name, address, and phone number of a responsible official of the group;
 - (2) the written permission of a parent or guardian for every child participating, or the signed statement of a responsible official of the entity that has provided the group of children attesting that the entity has obtained and will keep such written permissions on file in its records; and
 - (3) if the employment is paid, the information listed in subsection (b) of this section, except items (1), (4), (8) and (9).
- (c) 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.
- (d) All information and documents related to this Part shall be open to inspection by the Department, school attendance and truancy officers, the State Education Department or local school district, and the State Comptroller.
- (e) The failure to produce copies of any Employer Certificate or Child Performer Permit

upon demand of a representative of the Commissioner, a school attendance or truancy officer, a representative 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 186-8 VARIANCES

Sec. 186-8.1 Variances.

§ 186-8.1 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 child performers in conformity with this Part.
 - (1) A request for variance shall be received in the Permits and Certificates Unit of the Division of Labor Standards of the New York State Department of Labor at the address or fax specified in section 186-4.3(f) no later than two business days before the requested modifications shall take effect. A request for expedited variance, received less than two business days before the requested modifications are to take effect, will be considered immediately by the Department to the greatest extent feasible.
 - (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 to representatives of the Department upon request.

SUBPART 186-9 SUSPENSION OR REVOCATION OF PERMITS AND CERTIFICATES

Sec.

- 186-9.1 Suspension or revocation of Employer Certificates of Eligibility.
- 186-9.2 Suspension or revocation of Child Performer Permits.
- 186-9.3 Notice and hearing.

§ 186-9.1 Suspension or revocation of Employer Certificates.

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, morals, 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, morals, or general welfare of a child performer; or
- (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.

§ 186-9.2 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) has 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, morals, 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; or
- (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, morals, or general welfare of a child performer.

§ 186-9.3 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, morals, 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 186-10
PENALTIES AND APPEALS**

Sec.	
186-10	Penalties and Appeals.
186-11	Effective Date.

§ 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.

§ 186-11 Effective Date.

No penalty or sanction shall be imposed for any violation of this Part that occurs, and is cured, prior to June 1, 2013.