

# BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

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*In exercising its powers, and performing its duties, the protection of the public shall be the bureau's highest priority. If protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

— Education Code § 94875

The Bureau for Private Postsecondary Education (BPPE) is responsible for oversight of private postsecondary educational institutions. All non-exempt private postsecondary educational institutions operating in California, regardless of the school's actual physical location, must be approved by BPPE to operate in the state. The Bureau regulates over 1,000 institutions. BPPE's enabling act, the California Private Postsecondary Education Act of 2009, is codified at Education Code section 94800 *et seq.* The powers and duties specified in the Act are vested in the Director of the Department of Consumer Affairs (DCA), who in turn delegates that responsibility to BPPE as a departmental bureau. BPPE's regulations are in Division 7.5, Title 5 of the California Code of Regulations (CCR).

Operating within, and as a part of, the larger DCA, the law establishes BPPE's purpose as (a) protecting students and consumers against fraud, misrepresentation, or other business malpractices at postsecondary institutions that may lead to loss of student tuition and related educational funds; (b) establishing and enforcing minimum standards for ethical business practices and the health, safety, and fiscal integrity of postsecondary institutions; and (c) establishing and enforcing minimum standards for instructional quality and institutional stability for all students.

As of 2015, private for-profit schools received an average of 86% of their revenue from federal grants and loans by the U.S. Department of Education (USDOE). In addition to the federal grants and loans, private for-profits received an increase in federal GI bill funding from the U.S. Department of Veterans Affairs. Title 38 of the United States Code provides veterans with public funding for tuition payments as well as some living expenses. The combined sources of federal funding going to for-profit institutions amount to around \$20 billion a year in taxpayer funds.

Further complicating California's regulation of the private for-profit industry are the remaining states' substantial delegation of their regulatory function of the private for-profit industry under the "State Authorization Reciprocity Agreements" (SARA). This system essentially allows a school to choose its state regulator and then arrange reciprocal approval by other states—thus bypassing performance requirements and other regulations at the state level. To date, California is the only state declining to join SARA. Its entry would substantially impact BPPE's regulatory powers, particularly given the growth of distance learning—where California students may be enrolled in schools with a *situs* in another state. Effective July 1, 2017, certain out-of-state private schools that enroll California residents as students must register with BPPE, pay a \$1,500 registration fee, and submit required [documentation](#).

BPPE is governed by the California Private Postsecondary Education Act of 2009. The Bureau has the authority to cite, revoke, suspend, place on probation, or bring an action for equitable relief against any approved institution if it violates applicable law. Its jurisdiction includes all private educational institutions, including private non-profits. However, most of its regulatory focus has been on the for-profit sector.

BPPE maintains and administers the [Student Tuition Recovery Fund \(STRF\)](#) to mitigate economic losses suffered by a student when institutions close, fail to pay or reimburse federal loan

proceeds, or fail to pay judgments against them. The STRF is funded through student fees. Statutes require institutions to charge fifty cents per \$1,000 of institutional charges to be paid into the STRF.

BPPE also maintains the [Office of Student Assistance and Relief](#) (OSAR), which conducts outreach and provides current and past students of private colleges information about their rights, how to file a school complaint, and resources available to them—including potential reimbursement from the STRF. OSAR helps students navigate their financial future following a school closure or unlawful activities of the private college they attend and provides free one-on-one consultations to help students of for-profit schools maximize their economic relief benefits. The chief of OSAR is statutorily required to attend, testify, and answer questions at each Advisory Committee meeting.

To implement its standards, BPPE maintains an Enforcement Section to handle complaints, investigations, and other actions. The Bureau also reviews private postsecondary institution applications for initial approval and subsequent renewals to operate within California. As a bureau within DCA, BPPE is not governed by a multimember board. BPPE operates under the oversight of a Bureau Chief appointed by the Governor and under the direct authority of the DCA Director. BPPE has a statutorily mandated Advisory Committee tasked with advising BPPE on matters related to private postsecondary education and the administration of the Bureau's governing statutes, including an annual review of the fee schedule, licensing, and enforcement.

The 12 members of the Advisory Committee must include three consumer advocates, one each appointed by the DCA Director, the Senate Rules Committee, and the Assembly Speaker; two current or past students of private postsecondary institutions, appointed by the DCA Director; three representatives of private postsecondary institutions, appointed by the DCA Director; two

public members, one each appointed by the Senate Rules Committee and the Assembly Speaker; and two non-voting *ex officio* members (the chairs of the Senate and Assembly policy committees with jurisdiction over legislation relating to BPPE). At this writing, there are two vacancies on the Advisory Committee to be appointed by the DCA Director: one for a past student of an institution, and another for a consumer advocate.

## **HIGHLIGHTS**

### **BPPE Promotes Adherence to COVID-19 State Guidelines for Higher Education**

Beginning in mid-July, the Bureau began utilizing its social media accounts to spread awareness about state COVID-19 guidelines like mask-wearing, hand-washing, and physical distancing, particularly as they relate to higher education. On August 11, BPPE posted [COVID-19 Industry Guidance: Institution of Higher Education](#) to its [Twitter](#) and [Facebook](#) pages. The guidelines were published by the Governor in conjunction with the California Department of Public Health (CDPH) and the State of California Department of Industrial Relations (DIR). At its Advisory Committee [meeting](#) on August 16, 2020, BPPE Chief, Dr. Michael Marion, discussed the importance of the guidelines in reopening BPPE-licensed schools safely. [Agenda Item 5a] The document was included in the Advisory Committee meeting materials. [[page 30](#)] Although many institutions that BPPE licenses are temporarily closed, the state guidelines promote health and safety before, during, and after an institution's re-opening.

The state guidance requires the use of face coverings by workers and members of the public in all areas where there is a higher risk of exposure, including: (1) when inside, or lined up to enter, indoor public spaces; (2) when obtaining healthcare services; (3) when waiting for, and while utilizing, public transportation or private ride-share services; (4) when working on or offsite

around members of the public, in public and common spaces, or in indoor areas; and (5) when in a public outdoor space where maintaining six feet of distance is not possible.

The state guidance also includes twelve comprehensive steps for institutions of higher education to follow when planning for campus repopulation. Step One involves establishing a written COVID-19 prevention plan to address baseline concerns. Step Two encourages communication and cooperation with local and state health officials. Steps Three and Four address hygiene, cleanliness, and ventilation, while Step Five offers ideas to implement physical distancing on campus in various settings. Step Six reminds staff and students to limit sharing of items. Step Seven recommends maintaining CDC shared or congregate housing standards, and Step Eight suggests the training of staff and students. Step Nine advises daily symptom checking. Step Ten suggests drafting a plan for potential illness among staff or students, and Step Eleven promotes healthy operations, such as continuing telework where possible. Finally, Step Twelve spells out considerations for potential future closures due to viral spread. The guidelines also include considerations specific to collegiate athletics.

## **AB 70 (Berman) Imposes New Requirements on Bureau When Exempting Nonprofit Institutions of Higher Education that Previously Operated as For-Profit from Oversight**

[AB 70 \(Berman\)](#), as amended August 20, 2020, amends section 94801.5 and adds sections 94850.2, 94858.5, and 94874.1 to the Education Code to clarify the conditions under which the Bureau of Private Postsecondary Education (BPPE) may grant oversight exemptions to institutions of higher education that previously operated as for-profit institutions but have recently converted to nonprofit status. Specifically, the bill defines “nonprofit corporation” and “public institution of

higher education” as they are used in the California Private Postsecondary Act of 2009 and specifies that only an institution of higher education meeting these definitions is exempt from BPPE oversight.

Of note, new section 94874.1 prohibits BPPE from verifying the exemption of a nonprofit institution that operated as a for-profit institution during any period on or after January 1, 2010, unless the Attorney General (AG) verifies that the following conditions are met: “(1) The nonprofit institution acquired the for-profit institution’s assets for no more than the fair value of the assets; (2) The nonprofit institution has not executed agreements for goods or services exceeding the fair value of the goods or services; (3) All core functions of the nonprofit institution are conducted by, or under the direction of, the nonprofit institution; and (4) The nonprofit institution has not entered into any contracts, loans, or leases with a term of longer than three years with the former for-profit institution’s owners and managers.” The bill exempts any nonprofit institution that previously operated as a for-profit institution that is owned by or controlled by a public institution of higher learning.

The bill also requires the AG to provide written notification to the institution and the Bureau of its verification within 90 days of receipt of all information the AG determines is necessary and permits institutions to appeal actions taken by the Bureau and the AG under this section to the superior court.

According to the bill’s author, “some for-profit colleges are using complicated financial schemes and shell corporations to covertly pose as nonprofit or public institutions, misleading students while dodging appropriate oversight. AB 70 would prevent these covert for-profit colleges from evading state oversight and deceiving students; a problem even more paramount in light of the current pandemic.” The author also cites a decline in enforcement of nonprofit statutes by the

federal Internal Revenue Service as contributing to the problem, thus necessitating stricter oversight at the state level.

The legislative analyses state that this bill is substantially similar to [AB 1341 \(Berman\)](#), which was part of a 2019 package of seven higher education bills that targeted private postsecondary institutions. That bill was held under submission in the Senate Appropriations Committee in August 2019 and did not make it to the Governor’s desk. On January 6, 2020, Assemblymember Berman amended AB 70 to include the substance of his former bill, AB 1341.

BPPE has not taken a formal position on AB 70, however, the bill is supported by sixteen advocacy groups including three University of San Diego organizations, the Center for Public Interest Law, the Children’s Advocacy Institute, and the Veterans’ Legal Clinic.

Governor Newsom signed AB 70 on September 25, 2020 (Chapter 153, Statutes of 2020). Pursuant to section 94801.5(f) and section 94874.1(e), the bill will become effective on January 1, 2022.

## **AB 376 Requires New Student Loan Ombudsman to Refer Relevant Complaints to BPPE**

[AB 376 \(Stone\)](#), as amended August 20, 2020, adds Title 1.6C.10 (commencing with section 1788.100) to the Civil Code, and amends and repeals various sections of the Financial Code to create a “Student Borrower Bill of Rights” and provide increased protection for students through increased requirements for loan servicers.

The bill includes legislative findings and declarations acknowledging that California faces a student debt crisis—citing more than 3.7 million borrowers owing nearly \$125 billion in student debt; recognizing the significant impact this debt is having on all aspects of life, as well as exacerbating economic, gender, and racial inequality; and finding that the \$1.5 trillion student loan

market is plagued with predatory practices. Citing the federal government’s failure to take necessary action to halt widespread abuses, the bill expressly states that “it is now more important than ever to ensure that California student loan borrowers will be given meaningful access to federal affordable repayment options and loan forgiveness benefits, reliable information, and quality customer service and fair treatment.”

The bill authorizes the Department of Financial Protection and Innovation (DFPI) (formerly known as the Department of Business Oversight) to administer the new requirements for loan servicers. As it relates to the Bureau of Private Postsecondary Education (BPPE), AB 376 adds section 1788.104 to the Civil Code to establish a California Student Loan Ombudsman position, responsible for receiving and reviewing complaints from student loan borrowers and directs the Ombudsman to refer all complaints regarding BPPE-licensed institutions to the BPPE Office of Student Assistance and Relief.

According to the bill’s author, AB 376 “will make California the first in the nation to offer student loan borrowers the same comprehensive protections that consumers with mortgages and credit cards take for granted.”

Governor Newsom signed AB 376 on September 25, 2020 (Chapter 154, Statutes of 2020). Pursuant to section 1788.104(j) and section 1788.105(f) of the Civil Code, the California Student Loan Ombudsman, and the DFPI Commissioner’s increased oversight over the student loan industry will become effective on July 1, 2021.

## **ADJUDICATION**

### **Assessments of Fines and/or Orders of Abatement**

BPPE filed major citations with the following institutions requiring the payment of fines of \$1,000 and over.



- Aceport College (October 15, 2020)
- Advance Bus and Truck Driving School (October 1, 2020)
- Advertising & Design Education Corp DBA Miami Ad School San Francisco (March 17, 2020)
- Aero Tech Academy, Inc. (May 27, 2020)
- American Heritage College (July 30, 2020)
- American Institute of Education (August 13, 2020)
- American Institute of Massage Therapy (May 6, 2020)
- APP Academy (April 15, 2020)
- Ayurvedic Academy Inc. (September 17, 2020)
- Bakersfield Barber College, Inc. (September 10, 2020)
- Beverly Hills Microblading (April 29, 2020)
- Breining Institute (September 3, 2020)
- Brownson Technical School (May 27, 2020)
- California Coast University (May 19, 2020)
- California Healing Arts College (September 24, 2020)
- California Southern University (July 1, 2020)
- California Sushi Academy (October 8, 2020)
- California Truck Driving Academy (August 19, 2020)
- Careerstart, LLC (April 15, 2020)
- CCAPP Academy (April 22, 2020)
- Charter College-Oxnard (June 18, 2020)
- Coast Health Educational Centers, Inc. (October 15, 2020)
- COBA Academy (June 17, 2020)
- College of Southern California (November 12, 2020)
- Columbia International College (September 17, 2020)
- Commercial Drivers Learning Center (August 27, 2020)
- Contractors Career Centers, Inc. (November 5, 2020)
- Converse International School of Languages- San Diego (September 17, 2020)
- Cornerstone International College (July 2, 2020)
- C.R. England Inc. (October 22, 2020)
- Cutting Edge Barber Academy (April 29, 2020)
- Educating Barbers, LLC (April 22, 2020)
- ELS Language Centers (October 22, 2020)
- Emerald Healthcare Careers Institute (April 22, 2020)
- Emerson College (July 1, 2020)
- Employed Security Service Center, Inc. (October 8, 2020)
- Explore Beyond ESL, Inc. (July 2, 2020)
- Flockjay (October 21, 2020)
- Fortune School of Education (September 3, 2020)
- Gendarme Institute (October 29, 2020)
- Golden State University (October 8, 2020)
- Grace University (October 21, 2020)

- Hackbright Academy (April 15, 2020)
- Hancock College of Arts and Sciences (May 19, 2020)
- Harvest English Institute (May 6, 2020)
- Healthstaff Training Institute, Inc. (May 13, 2020)
- Hi-Desert Truck Driving School (May 6, 2020)
- Human Potential Institute (October 28, 2020)
- Independent Training & Apprenticeship Program (July 30, 2020)
- International College (October 8, 2020)
- International College of Cosmetology (August 20, 2020)
- International Dance Academy of Hollywood (May 6, 2020)
- International University of California (May 6, 2020)
- Intrax English Academies, LLC (November 5, 2020)
- Kaiser Permanente School of Allied Health Services (November 4, 2020)
- Lambda, Inc. (October 30, 2020)
- L.A. Translation and Interpretation (July 9, 2020)
- Language Studies International (May 27, 2020)
- Marin Beauty Academy (October 22, 2020)
- Massage Center (September 10, 2020)
- Masters Vocational College, Inc. (June 10, 2020)
- Micro-Easy Vocational Institute (July 2, 2020)
- Mt. Sierra College (November 5, 2020)
- New School of Cooking (September 3, 2020)
- North Adrian's College of Beauty (May 19, 2020)
- Northpoint Bible College (July 2, 2020)
- Nouveau Contour (October 15, 2020)
- Panamerican Learning Center (August 20, 2020)
- San Diego Truck Driving School (November 9, 2020)
- San Francisco Film School (July 22, 2020)
- San Francisco Institute of Esthetics and Cosmetology, Inc (October 28, 2020)
- Scalp Co. Academy (September 10, 2020)
- Shin Shin Training Center (September 30, 2020)
- Southern California College of Barber and Beauty (June 3, 2020)
- Success Commercial Driving & Training (June 3, 2020)
- Swift Transportation (August 27, 2020)
- Training Institute for Addiction Counselors (October 15, 2020)
- United Medical Institute (April 30, 2020)
- University of North Los Angeles (October 1, 2020)
- Vbrows Permanent Makeup Studio & Academy (July 22, 2020)
- Washington College (November 12, 2020)
- Westcliff University (July 22, 2020)
- Western Covenant University (August 20, 2020)
- Windsor School of Nursing Assistants (August 19, 2020)
- ZOOM graphics (September 24, 2020)

## Accusations of Violations

BPPE filed accusations requesting revocation or suspension of previous approvals to operate against the following institutions:

- American Harbor College: [Accusation](#) (May 5, 2020); [Default Decision and Order](#) (July 29, 2020)
- American University of Complementary Medicine: [Accusation](#) (September 28, 2020)
- Business and Insurance School: [Accusation](#) (June 22, 2020)
- El Monte Truck Driving School: [Accusation](#) (September 28, 2020)
- Holberton School: [Accusation](#) (February 4, 2020); [First Amended Accusation](#) (June 9, 2020)
- JC Truck Driving School: [Accusation](#) (May 29, 2020); [Default Decision and Order](#) (August 14, 2020)
- Southern California International University: [Accusation](#) (June 24, 2020)
- Stockton Barber College: [Accusation](#) (August 26, 2020)

## Statements of Issues to Deny Approval

BPPE filed statements of issues against the following institutions to deny approvals to operate, alleging that the institutions failed to file the required documentation compliant with the California Private Postsecondary Education Act of 2009 and other applicable law:

- Difai City College: [Statement of Issues](#) (May 29, 2020)
- Honor Health Sciences, Inc: [Statement of Issues](#) (December 12, 2019); [First Amended Statement of Issues](#) (May 1, 2020)
- L.A. Vocational Institute: [Statement of Issues](#) (May 6, 2020)
- Saint Junipero Serra University: [Statement of Issues](#) (May 1, 2020); [Notice of Withdrawal](#) (June 10, 2020)
- Sliderule Labs, Inc., DBA Springboard: [Statement of Issues](#) (January 1, 2020); [Notice of Withdrawal](#) (June 22, 2020)
- The Academy of Radio and Television Broadcasting: [Statement of Issues](#) (July 15, 2020); [Notice of Withdrawal](#) (July 30, 2020)
- The Professional School of Psychology: [Statement of Issues](#) (April 30, 2020); [Amended Statement of Issues](#) (June 6, 2020); [Notice of Withdrawal](#) (August 21, 2020)

## LEGISLATION

- [AB 70 \(Berman\)](#), as amended August 20, 2020, amends section 94801.5 and adds sections 94850.2, 94858.5, and 94874.1 to the Education Code to clarify the conditions under

which BPPE may grant exemptions to institutions of higher education that previously operated as for-profit institutions but have recently converted to nonprofit status (see HIGHLIGHTS). Governor Newsom signed AB 70 on September 25, 2020 (Chapter 153, Statutes of 2020).

- [AB 376 \(Stone\)](#), as amended August 20, 2020, adds Title 1.6C.10 (commencing with section 1788.100) to the Civil Code, and amends and repeals various sections of the Financial Code to create a “Student Borrower Bill of Rights” and provide increased protection for students through increased requirements for loan servicers (see HIGHLIGHTS). Governor Newsom signed AB 376 on September 25, 2020 (Chapter 154, Statutes of 2020).

- [AB 3374 \(Committee on Higher Education\)](#), as introduced March 16, 2020, and as it relates to BPPE, amends section 94923 of the Education Code to clarify the definition of an economic loss for purposes of the Student Tuition Recovery Fund (STRF). The addition of a comma clarifies that nonpecuniary damages are not considered an economic loss under the section. Governor Newsom signed AB 3374 on September 24, 2020 (Chapter 129, Statutes of 2020).

- [SB 1474 \(Committee on Business, Professions and Economic Development\)](#), as amended on August 26, 2020, and as it applies to BPPE, amends section 94950 of the Education Code to extend BPPE’s sunset date for an additional year until January 1, 2022 in light of COVID-19. BPPE sunset hearings will occur in 2021. Governor Newsom signed SB 1474 on September 29, 2020 (Chapter 312, Statutes of 2020).

## LITIGATION

- *Pacific Coast Horseshoeing School, Inc. v. Kirchmeyer*, 961 F.3d 1062 (9th Cir. 2020). On June 10, 2020, the Ninth Circuit Court of Appeal [reversed](#) the district court’s dismissal of plaintiffs’ claim that the California Private Postsecondary Education Act of 2009 (PPEA)

violated their first amendment right to free speech by requiring students to either hold a high school diploma or pass a USDOE examination before enrolling in a horseshoeing class. The complaint alleges that other courses such as flight school, golf, dancing, or bridge do not face this requirement under the PPEA. The Ninth Circuit found that the complaint stated a sufficient claim that the PPEA’s “ability-to-benefit” requirement regulates what kind of educational programs different institutions can offer to different students, thus implicating the First Amendment Free Speech Clause. Moreover, the Court held that the burden on free speech was content-based, thus triggering a heightened scrutiny requirement on remand. This matter has been ongoing since 2017. [see [23:2 CRLR 202–203](#); [24:1 CRLR 188–189](#); [24:2 CRLR 156](#)]

- ***Sweet v. Devos, Case No. C 19-03674 WHA (N.D. Cal.)***. On October 19, 2020, the United States District Court for the Northern District of California [denied](#) final approval of the [proposed settlement](#) from April 2020 that would have imposed an “eighteen-month deadline for the U.S. Secretary of Education to decide claims and a twenty-one month deadline to effect relief, penalties for the Secretary’s failure, reporting requirements, and it did not prejudice the merits of borrower’s applications.” The class counsel discovered, however, that the Secretary was violating the spirit of the proposed settlement and called for enforcement and approval in an [order denying settlement and for discovery](#). The court decided expedited discovery was still needed and denied final approval. The result of this case does not apply directly to BPPE, however, borrowers who are ineligible for a full loan reimbursement may apply for STRF funds instead to recover remaining tuition costs.

- ***The People of the State of California v. PEAKS Trust 2009-1, Case No. 20STCV35275 (Cal. Super. Ct. Los Angeles County)***. On September 15, 2020, the Attorney General of California Xavier Becerra [announced](#), along with 48 states and the federal Consumer

Financial Protection Bureau, a \$330 million settlement with ITT Technical Institute (ITT Tech), the now-defunct for-profit college, and PEAKS, its holding company. The settlement resolves allegations of an illegal private student loan scheme that harmed student borrowers by misdirecting them towards expensive student loans that they struggled to repay. The settlement will automatically discharge PEAKS's entire student-loan portfolio with loan forgiveness for anyone with an outstanding PEAKS loan. This will provide relief for more than 43,000 borrowers nationwide, including 4,000 Californians. PEAKS will also be required to shut down after carrying out the settlement. With respect to the California claims, Becerra filed a [complaint](#) against PEAKS Trust, alleging Unfair Competition Law violations in Los Angeles Superior Court on September 15, 2020, as well as a [stipulated judgment](#) reflecting the terms of the settlement on October 16, 2020. At this writing, the Court has not yet approved the stipulated judgment.