

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](#).

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 about 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. On March 15, 2021, Governor Gavin Newsom [appointed](#) a new Bureau Chief, Deborah Cochrane. Cochrane has served as the Executive Vice President at the Institute for College Access & Success since 2018, where she has held multiple positions since 2007. Additionally, Cochrane has worked in higher education for fifteen years. In addition to the Bureau Chief, 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

Attorney General of California Files Lawsuit Against USDOE for Alleged Rollback of Federal Oversight of For-Profit Schools

On January 15, 2021, in *People of the State of California v. United States Department of Education, et al.*, Case No. 21-cv-00384 (N.D. Cal.), Xavier Becerra, the Attorney General of California, filed a [complaint](#) on behalf of the people of California in federal district court for the Northern District of California against the USDOE, and then-Acting Secretary of Education, Mitchell Zais, alleging that defendants have enacted new “Distance Education and Innovation” regulations that are arbitrary and capricious in violation of the Administrative Procedure Act. On September 2, 2020, the USDOE enacted the final rules regarding “Distance Education and Innovation” to enhance online and proficiency-based education and remove “barriers” to educational innovation. ([85 Fed. Reg. 54,742–43](#)) However, according to the complaint, the barriers of federal oversight have historically allowed for the protection of postsecondary students from predatory institutions responsible for scams and fraud. Title IV of the Higher Education Act of 1965, 20 U.S.C. § 1070 et seq., authorizes federal student-assistance programs that provide financial aid to students that enroll in eligible education programs at eligible postsecondary

institutions of higher education. According to the complaint, for-profit schools receive the vast majority of their revenues from federal sources, including Title IV funding, but spend relatively little on education and instruction compared to marketing, advertising, and recruiting. Students are also increasingly unable to pay off the student loan debt they take on to attend these institutions.

Specifically, plaintiffs challenge a provision under the new regulations that automatically certifies a school to receive federal Title IV funds if the USDOE has failed to act on its certification application after twelve months. Plaintiffs allege that this regulation is directly contrary to the Higher Education Act, which mandates that the Secretary affirmatively certify that a school has the administrative capability and financial responsibility to receive federal funds, among other critical statutory requirements. For example, the Department may be delayed in certifying the application of an institution that is under extended investigation by a state attorney general. Accordingly, plaintiffs allege, this new provision is a potential regulatory windfall to predatory institutions, allowing them to evade important oversight.

Additionally, plaintiffs challenge the rollback of a 50% cap on the outsourcing of instruction by for-profit schools to schools with “common ownership,” now allowing institutions to outsource 100% of its instruction. Plaintiffs allege that the USDOE relied on generalizations and assumptions not supported by data or other types of evidence and failed to provide “a reasoned explanation for the Challenged Provisions,” therefore violating 5 U.S.C. § 706(2)(A).

Due to the new rules, students at institutions that are licensees of BPPE are at risk of victimization by institutions that have not been adequately investigated or regulated by the USDOE. Additionally, because of institutional outsourcing, students are at risk of being forced to attend schools in which they never enrolled. The rules officially become effective on July 1, 2021 but institutions have been allowed to utilize them since their enactment.

Plaintiffs request that the district court vacate the provisions, declare the provisions unlawful and violative of the APA, and grant other relief as determined by the court. On April 6, 2021 Defendants filed a motion to dismiss. The initial case management conference and the hearing on the motion to dismiss are both set for July 15, 2021.

USDOE Proposes That the Federal Government Cease Recognition of the Accrediting Council for Independent Colleges and Schools

On January 22, 2021, the USDOE released a [staff report](#) to the Senior Department Official on Recognition Compliance Issues regarding the Accrediting Council for Independent Colleges and Schools (ACICS) and its compliance with specific sections of Title 34 of the Code of Federal Regulations (CFR). Citing the agency's noncompliance with various aspects of the Secretary's Criteria for Recognition or the agency's ineffective application of those criteria, the report recommends the termination of recognition of ACICS as a lawful accrediting body.

Recognition as an accrediting body allows ACICS to receive federal funding for student assistance under Title IV of the Higher Education Act of 1965, 20 U.S.C. § 1070 et seq. (HEA). Title IV authorizes federal student-assistance programs that provide financial aid to students that enroll in eligible education programs at eligible postsecondary institutions of higher education. Title 34 of the CFR contains the current regulations that implement the HEA. Non-compliance with Title 34, therefore, implies that recognition as an accreditor and the Title IV funds that accompany it are improperly granted. This means that students at institutions licensed by BPPE may be victimized by their institution's loss of proper accreditation.

In 2016, the USDOE ceased recognition of ACICS as an accrediting agency due to compliance issues. [\[23:1 CRLR 236–237\]](#) However, on November 21, 2018, then Education

Secretary Betsy Devos decided to continue the federal recognition of ACICS as an accrediting body. To support this decision, Devos required ACICS to submit a report demonstrating its compliance with sections 602.15(a)(2) and 602.15(a)(6) of Title 34 of the CFR. ACICS submitted the report on December 19, 2019, but the current Department of Education staff has determined that ACICS' report did not actually demonstrate proper compliance.

Specifically, section 602.15, Title 34 of the CFR, entitled "Administrative and Fiscal Responsibilities," specifies in section 2 that agencies must have "competent and knowledgeable individuals" with specific qualifications in education as well as training by the agency who "conduct on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions." Although the compliance report indicates that active team chairs must attend and complete multiple trainings, USDOE staff found that ACICS failed to discuss the outcome of those who did not complete trainings, as well as provide dates of site visits to determine if training requirements were met on time.

Additionally, section 602.15(a)(6) requires "clear and effective controls against conflicts of interest... by the agency's board members, commissioners, evaluation team members, consultants, administrative staff, and other agency representatives." Staff found that ACICS also failed to establish that the required trainings of site visitors were effective for their requisite roles and responsibilities.

BPPE regulates over 1,000 private postsecondary institutions in California, some of which are accredited by ACICS. If ACICS loses its recognition, these institutions will lose their accreditation and potentially prevent their students from obtaining licenses in their chosen field that require graduation from an accredited school. This in turn could impact a student's future job placement and financial aid. The Department of Education can allow schools accredited by ACICS

to retain federal financial aid for up to 18 months, however, it is unclear whether this will be an option.

On March 4, 2021, the National Advisory Committee on Institutional Quality and Integrity considered the staff's report and voted 11-1 to recommend that ACICS lose its recognition. A Senior Department Official in the Education Department is responsible for making a final decision within 90 days of the meeting. ACICS will have 30 days to appeal that decision.

Bureau Undergoes Sunset Review

On December 1, 2019, BPPE published its [Sunset Review Report](#) in preparation for its Sunset Review Oversight hearing before the Assembly Business and Professions Committee and the Senate Business, Professions and Economic Development Committee. Initially, the Bureau's enabling Act, section 94800, et seq. of the Education Code, was scheduled to "sunset" (be repealed) on January 1, 2021, pursuant to section 94950 of the Education Code if not extended as part of the sunset review process. [\[25:2 CRLR 117-119\]](#) Due to the COVID-19 pandemic, the original Sunset Review hearing set for March 30, 2020, was postponed to March 16, 2021. BPPE was provided a one-year sunset extension to January 1, 2022, in [SB 1474 \(Committee on Business, Professions, and Economic Development\) \(Chapter 312, Statutes of 2020\)](#). [\[26:1 CRLR 146\]](#) The sunset process provides an opportunity for the DCA, the legislature, the bureaus, and interested parties to discuss BPPE's performance, and make recommendations for improvements, and requires BPPE to justify its existence and effectiveness as a regulatory body under DCA in order for the sunset date to be extended another four years.

BPPE's Sunset Report includes performance measures on licensing and enforcement programs, as well as responses to issues raised by the legislature during the Bureau's last sunset

review in 2016, and raises sixteen new issues that the Bureau seeks to discuss with the legislature as part of the sunset review process. For a complete list of new issues the Bureau is raising, see section 11 of the [Report](#).

Of note, BPPE seeks a legislative change to section 94937 of the Education Code, which currently requires *actual* student harm before the Bureau can take disciplinary action for an institution's violation of the law (Issue #1). Citing the legislative intent set forth in section 94801(d)(6), which is to ensure prevention of student and public harm as a result of fraudulent or substandard educational programs, the Bureau recommends amending section 94937 to authorize BPPE to take disciplinary action if there is *potential* harm to students. Additionally, BPPE seeks a statutory amendment to require institutions applying for an Approval to Operate with the Bureau to post a surety bond as part of the application process (Issue # 4). According to the Bureau, this practice would bring it in line with eleven other states¹ requiring the same and with other DCA entities² which have the authority to require a bond as part of the licensing process. When a school precipitously closes, the high extrinsic costs and unique student needs can be provided for by the surety bond. BPPE reports that sudden closure causes significant economic harm to students who have invested time and money for an incomplete program of study. The [STRF](#) helps mitigate some of these losses after the school closes but it is statutorily prohibited from funding the storage, maintenance and availability of student records, faculty compensation to complete instruction through the end of a term, or keeping temporary school staff to assist students in transferring to other institutions—all of which may be in the best interest of the students. The Bureau reported

¹ Arizona, Alaska, Florida, Georgia, Maryland, Nebraska, New Mexico, South Carolina, Tennessee, Texas, Utah.

² The Board of Pharmacy, Contractors State Licensing Board, Bureau of Cannabis Control, Cemetery and Funeral Bureau.

that it also incurs unforeseen travel and lodging costs for personnel to assist students across the state when the larger institutions close, which can cause personnel to be pulled from their normal duties, resulting in temporary backlogs.

In preparation for BPPE's Joint Sunset Review Oversight hearing, committee staff issued a [background paper](#) for members of the respective Business and Professions committees, which provides background about the Bureau, updates the committees on the changes and improvements BPPE made regarding ten issues from the previous sunset review, and identifies new issues to raise with the Bureau during the sunset review process.

Among its primary concerns, the legislature asks whether the recent fee increases are necessary for the Bureau to remain solvent (Issue #2). Fees have increased at rates up to 1309% and the legislature raises the concern that ultimately, students will bear the brunt of the heightened costs. Additionally, the legislature asks whether the current exemptions from oversight, such as the religious exemption, are sensible or if changes are necessary (Issue #4). Also of note, the legislature asks how BPPE ensures the protection of students attending distance education provided by out-of-state institutions that lack physical presence that triggers oversight (Issue #7). The Background Paper points out that Section 94858 of the Education Code defines a Private Postsecondary Educational Institution as "a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge," yet fails to define physical presence, leading to confusion.

At the Joint Sunset Review Oversight [hearing](#) on March 16, 2021, the Director of the DCA, Kimberly Kirchmeyer, the Deputy Bureau Chief, Leeza Rifredi, and Office of Student Assistance and Relief (OSAR) Chief, Scott Valverde, appeared on behalf of the Bureau. After the initial presentation, the Bureau representatives addressed questions from members of the committees as

to the fee increases, religious exemption, and oversight of out-of-state institutions as well as the accuracy of rates of job placement upon receipt of a certificate or license, the importance of surety bonds to private postsecondary institutions, and the need to amend the Bureau's minimum operating standards to increase student protection and BPPE oversight.

The committees also heard comments from several public members as to the Bureau's performance. Four former students of institutions licensed by the Bureau testified to various harms such as the failure of the Bureau to investigate a claim, the inability to find a job upon graduation, and the fact that hundreds of past students collectively owe over seventy million dollars in student loan debt. Representatives from the Professional Beauty Federation of California and the California Aesthetic Alliance urged the legislature to shift sole oversight from BPPE to the California State Board of Cosmetology due to their expertise and prominence among current cosmetology and esthetics students. A coalition of student, veteran, consumer, civil rights, and higher education advocates provided [written testimony](#) highlighting numerous concerns and recommendations to the legislature, including requiring schools to obtain surety bonds and authorizing the Bureau to create stronger minimum operating standards. In addition to signing this written testimony, the Center for Public Interest Law also provided public comment at the hearing expressing support for reforms proposed by the Governor and the committees in the background paper.

The Bureau's sunset bill is [SB 802 \(Roth\)](#), although, at this writing, it has not yet been amended to extend BPPE's sunset date (*see* LEGISLATION). The Bureau's written responses to the legislature are due on April 16, 2021.

MAJOR PUBLICATIONS

The following studies have been conducted by or about BPPE during this reporting period:

- [Bureau for Private Postsecondary Education Fund Condition and Fee Study](#), Capital Accounting Partners, February 23, 2021 (provides an in-depth review of the reasonability of BPPE's current fee structure and whether alternative fee structures would create a more sustainable revenue stream; concludes that a higher level of economic analysis and forecasting expertise is needed to fully assess the situation; Kimberly Kirchmeyer, DCA director, presented the report at the Advisory Committee [meeting](#) on March 17, 2021).

RULEMAKING

The following is a status update on recent rulemaking proceedings that BPPE has initiated:

- **Student Tuition Recovery Fund Fee Assessment Rate Change:** On February 8, 2021, OAL [approved](#) BPPE's [proposed amendment](#) to section 76120, Title 5 of the CCR, to permit an increase to the STRF fee assessment rate, which became immediately effective on that date. According to the enabling Act, BPPE is required to start collecting the STRF fee when the fund falls below twenty million dollars and stop collecting the STRF fee when the fund reaches twenty-five million dollars. The STRF fee increased from zero to 50 cents per one thousand dollars (\$1,000) of institutional charges, rounded to the nearest thousand dollars, from each student in an educational program who is a California resident or is enrolled in a residency program, and only applies to enrollment agreements that occurred after February 8. Due to the sudden implementation of the fee, BPPE allowed a grace period for any issues arising before February 11, 2021.
- **Intensive English Language Programs:** On March 30, 2021, OAL [approved](#) BPPE's proposed amendment of sections 94874 and 94818 of the Education Code to change the definition

of “avocational education” to include Intensive English Language Programs (IELPs) as set forth in the [proposed language](#). The Bureau originally published [notice](#) of its intent amend the regulations on October 18, 2019. [[25:2 CRLR 119-120](#)] The new regulation clarifies that certain IELPs are exempt from BPPE oversight if they meet certain requirements, such as not providing financial aid or loans to students and not offering degree-granting programs. The new regulation becomes effective on July 1, 2021.

- **Student Tuition Recovery Fund Application Form Change:** On April 13, 2021, OAL [approved](#) BPPE’s proposed amendment to section 76200 of Title 5 of the CCR to alter language in the STRF application forms to reflect legislative changes to the STRF, which is set forth in the [proposed language](#). According to the [section 100 justification](#), the proposed changes have no regulatory effect as they do not materially alter any regulatory elements of the CCR provision. The changes are solely being made to reflect a changed California statute, [AB 1346 \(Medina\) \(Chapter 521, Statutes of 2019\)](#), which amended section 94923 of the Education Code to allow students of California Corinthian Colleges enrolled as of June 20, 2014, to receive payment from the fund. The new [STRF application](#) now includes enrollment at a California Corinthian College as a qualifying event, as the proposed regulations became effective immediately as of April 13, 2021.

ADJUDICATION

Assessments of Fines and/or Orders of Abatement

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

- 3D Brows by MH (February 25, 2021)
- A-1 Truck Driving School, Inc. (January 14, 2021)
- Aberdeen College (April 1, 2021)
- Advance Microblading Academy (March 18, 2021)

- Microblading L.A. (April 1, 2021)
- Always Hired (November 19, 2020)
- American Beauty College (March 29, 2021)
- Audrey Glass Cosmetic Tattoo (March 25, 2021)
- Beauty and the Blade (April 1, 2021)
- Beauty Elements by Cindy Vu (April 14, 2021)
- Brandon College (April 13, 2021)
- Cali Cosmo DJH, Inc. (March 24, 2021)
- California Institute of Science and Technology DBA South Bay Job Institute (February 11, 2021)
- California International University (February 25, 2021)
- California Premier Culinary (April 8, 2021)
- California Preparatory College, Inc. (January 14, 2021)
- Christian Theological University In America (March 11, 2021)
- College of Southern California (November 12, 2020)
- Columbia College, San Diego (March 4, 2021)
- Commercial Drivers Learning Center (January 14, 2021)
- Contractors Career Centers, Inc., DBA Contractors State License Schools (November 5, 2020)
- Couture Brows (March 18, 2021)
- Creative Career Options (December 29, 2020)
- Deluxe Brows Microblading Academy (January 19, 2021)
- Fibroblast USA (November 24, 2020)
- Golden State University (March 1, 2021)
- Hamilton College (February 18, 2021)
- Hello Beautiful Face/ Institute of American Aesthetics (April 14, 2021)
- L.A. Translation and Interpretation (February 11, 2021)
- LRS Computer Techniques (January 20, 2021)
- Medtek College Hayward (December 2, 2020)
- Montessori Northwest (December 15, 2020)
- Napa Valley School of Massage (March 4, 2021)
- New School of Cooking (April 8, 2021)
- Permatech Makeup Inc. (February 9, 2021)
- Prima Fashion Design School (March 11, 2021)
- Professional Schools of Beauty, Fashion and Arts, Inc. (April 14, 2021)
- Technology Training Institute (February 5, 2021)
- The Brows Academy (March 25, 2021)
- The College of Certified Psychophysicologist (March 11, 2021)
- The Stride Center (April 2, 2021)
- Victoria Eyebrows (March 4, 2021)

Accusations of Violations

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

- 101 School of Trucking: [Accusation](#) (December 11, 2020)
- College of Botanical Healing Arts: [Accusation](#) (April 9, 2021)
- Commercial Drivers Learning Center: [Accusation](#) (February 25, 2021)

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:

- Andaman Institute of Massage: [Statement of Issues](#) (March 19, 2021)

LEGISLATION

- [AB 424 \(Stone\)](#), as introduced February 4, 2021, would add Title 1.6.C.15 (commencing with section 1788.200) to part 4 of division 3 of the Civil Code, to prohibit private education lenders and loan collectors from initiating private education loan collection proceedings without providing evidence that they own the debt, and the exact amount the borrower owes. The Committee analysis explains that the bill is modeled on California’s Fair Debt Buying Practices Act, a 2013 law that has reduced collection lawsuits for unpaid credit card debt by nearly 60 percent by requiring competent evidence. According to the author, as of June 2020, more than 650,000 Californians owed \$10.3 billion in private student loan debt, which often has higher interest rates and fewer consumer protections than federally-backed student loans. This bill is intended to protect private student loan borrowers from frivolous lawsuits and the collection of illegitimate debt. *[A. Jud]*

- [AB 99 \(Irwin\)](#), as amended February 12, 2021, is a comprehensive bill that would amend and add various sections to the Education Code to establish the Cradle-to-Career Data System, as well as set its vision, mission, and strategic objectives. According to the author, California is just one of a handful of states lacking a data system that spans across educational segments and into the workforce. The proposed data system is intended to provide the public and organizations with verifiable information and resources regarding milestones in K-12, higher education, skills training, and employment. Of note, the bill would establish the California Cradle-to-Career Data System Governing Board, consisting of 12 data contributors and six public members. The will would designate a representative of BPPE, appointed by the Bureau Chief, as one of the 12 data contributors. *[A. HiEd]*

- [SB 802 \(Roth\)](#), as introduced February 19, 2021, designated as BPPE’s sunset bill, would amend sections 94827 and 94857 of the Education Code to revise the definitions of “continuing education” and “postsecondary education.” The definition of “continuing education” would be revised to exclude instruction that leads to a degree, and the definition of “postsecondary education” would be revised to include a formal institutional educational program whose “instruction” is designed primarily for those students. The term “instruction” replaces the previously used term “curriculum.” Although the bill has not yet been amended at this writing, the committee analyses of the bill indicate that it will eventually incorporate changes address at the Bureau’s sunset review oversight hearing (*see* HIGHLIGHTS). *[S. BP&ED; S. ED]*