

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 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 from the U.S. Department of Education (USDOE). In addition to the federal grants and loans, private for-profits received an increase in federal G.I. 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 approximately \$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 laws. 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 at 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. The Bureau Chief as of this writing is Deborah Cochrane. 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).

On May 24, 2021, DCA Director Kimberly Kirchmeyer [appointed](#) Melanie Delgado to serve in the consumer advocate role on the Advisory Committee. Ms. Delgado is the Senior Staff Attorney and Director of Transition Age Youth Projects at the Children’s Advocacy Institute at the University of San Diego School of Law. At this writing, there is one student vacancy on the Advisory Committee.

HIGHLIGHTS

BPPE Proposes Alternative Fee Plan to Recuperate Operating Costs

The BPPE is currently in a difficult position financially. With the Bureau’s operating budget continuing to be slashed, a majority of the Bureau’s funding comes from the [annual fees](#) paid by the post-secondary schools it regulates. The Bureau plans to take out a loan for \$8 million for immediate operating costs. Even with the loan, the BPPE will still fail to collect sufficient funds for its existing budget and will require other sources of revenue. The fact that the loan must be repaid within 24 months underscores the deficiency. Taylor Schick, a Department of Consumer Affairs (DCA) staff member, stated at the BPPE’s August 26, 2021, Advisory Committee [meeting](#)

that the Bureau's special fund is projected to become insolvent in the current fiscal year. The DCA projects that it will collect \$14.6 million in revenue this year, falling substantially short of the projected \$21.2 million in expenditures. It is predicted that this deficit will only increase in the following year, even before considering the repayment of the \$8 million loan. Most of the Bureau's revenue stems from the singular annual institutional fee each school pays to the BPPE. The fee amount is based on the revenue that the respective institutions bring in each year.

The DCA recommends two alternative fee adjustments that may help to increase revenue. The first solution presented is to institute a base fee of \$3,500 to all institutions monitored by the BPPE. This base fee would allow the BPPE to pay for the basic cost of approving and monitoring each institution. The second solution is to increase the currently existing revenue-based fee from 0.55% to 0.775% of revenue from the prior year, with some additional adjustment of the minimum and maximum fee notwithstanding that percentage total. The minimum fee would be reduced from the current \$2,500 to \$1,000, while the maximum fee (for those with substantial income) would increase from \$60,000 to \$80,000.

The new fee plan seeks to increase the Bureau's revenue to \$20,800,000, which would allow it to stay solvent. Note, however, that this fee change will only increase as projected if the schools are able to stay profitable and produce some increased revenue. These two major changes, along with additional other fees, such as accreditation fees, several application change fees, and fees for non-accredited institution operation, may allow the agency to become and remain solvent for the upcoming fiscal year. At the time of this writing, the plan remains under consideration.

Bureau's Sunset Review Postponed

In December 2019, the BPPE published its [Sunset Review Report](#), which precedes the Sunset Review Oversight hearing on the agency 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" (suffer the repeal of the statute or of the person(s) assigned the governing role) on January 01, 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 Sunset Review hearing was postponed to March 2021, then later given a 1-year extension to January 01, 2022, in [SB 1474 \(Committee on Business, Professions, and Economic Development\) \(Chapter 312, Statutes of 2020\)](#). [\[26:2 CRLR 158–161\]](#) Then on October 5, 2021, the agency was further extended by one year to January 01, 2023 (see [SB 802 \(Roth\) \(Chapter 552, Statutes of 2021\)](#) (California Private Postsecondary Act of 2009)).

The process of Sunset Review allows DCA and all other interested parties to review BPPE's performance and advise on suggested or required improvements. BPPE must also advocate for the continuation of its existence and demonstrate its effectiveness as a regulatory body in order to obtain another (normal) four-year extension on its Sunset Review. BPPE's Sunset Report outlines the measures that have been taken in response to the issues raised by the legislature at the Bureau's last Sunset Review in 2016.

In preparation for the since postponed Sunset Review, the Bureau released a [background paper](#) that identified major issues, as well as background and recommendations for BPPE. One major issue identified is language in the California Private Postsecondary Act (Act) that could

create loopholes and exemptions to allow an institution to become accredited despite failing required criteria. The Bureau's Report suggests closure of these loopholes by amending the Act to clearly specify criteria for accreditation (Issue #6). In SB 802, the author amends the existing Act by altering the definitions of specific words in order to reduce the ambiguity of what "classifications institutions are allowed to use to describe their programs, making it clear that anything outside" of the definition provided cannot be described with terms allowing inconsistent or untrustworthy descriptors.

This bill redefines terms such as "continuing education" to exclude degree-granting instruction and will redefine "educational program" to exclude any programs that involve less than 32 hours of instruction and are not designed to lead to employment. The bill would also change the definition of "postsecondary education" by replacing the word "curriculum" with the word "instruction." Those in support of this bill argue that enrollments at post-secondary institutions are likely to increase, and so it is important that BPPE have the authority and capacity to protect students and carry out its other responsibilities. By changing these definitions, supporters of SB 802 believe this language will help to strengthen the Bureau's authority. The bill will allow BPPE to make improvements to its enforcement mechanisms, allowing it to better protect consumers against fraud and ethical breaches by the institutions it oversees.

BPPE is particularly concerned with its previous lack of capacity to take formal disciplinary action against institutions that violate the Act (Issue #11). Previously, the Act and Education Code section 94937 allowed BPPE to take action against an institution by placing it on probation or revoking its approval to operate if the institution's action resulted in the harm of a student. Historically, however, the Office of the Attorney General rejected these claims because

the Attorney General's office required that BPPE demonstrate that the student suffered actual harm. SB 802, as amended October 05, 2021, amends section 94937 to allow BPPE to take disciplinary action based on *potential* harm.

Another major goal of BPPE is to alter the Annual Fee Structure in order to remain solvent. The Act allows for BPPE to make these substantive changes that may affect an institution's ability to operate in order to achieve comparative equity among its licensed institutions and to ensure those institutions comply with federally mandated requirements relevant to certain financial aid programs. Supporters of the bill have stated that, in addition to increasing the Bureau's enforcement power and strengthening the language of the bill itself, it is crucial that BPPE be given enough funding to carry out its responsibilities. While there is no clear mention of the Bureau's budget in SB 802, the floor analysis references the legislature's [background paper](#) on BPPE and asserts that the dire current financial predicament of BPPE precludes effective sustenance. While the budget is not directly at issue here, as a practical matter, it cannot be ignored and underlies any effective future role for the agency.

MAJOR PUBLICATIONS

The following study has been conducted relating to BPPE during this reporting period:

- [Calbright College Audit](#), California State Auditor, Elaine M. Howle, May 11, 2021 (Calbright College (Calbright) is an online community college set up by the legislature. It is designed to provide educational opportunities for students lacking access to traditional postsecondary education. The audit determined that Calbright is behind in achieving key milestones because its former executive team failed to develop and execute effective strategies for launching the college. It also used inappropriate hiring and contracting processes. Ms. Howle

recommended that the legislature eliminate Calbright College as an independent entity if it cannot implement its recommendations by the end of 2022.).

RULEMAKING

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

- **Intensive English Language Programs:** On July 1, 2021, the new regulation clarifying 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, and changing the definition of “avocational education” to include Intensive English Language Programs (IELPs) went into effect. [[26:2 CRLR 162–163](#)] The Bureau originally published [notice](#) of its intent to amend the regulations on October 18, 2019. [[25:2 CRLR 119–120](#)] On March 30, 2021, OAL [approved](#) BPPE’s proposed amendment of section 7000, Title 5 of the CCR, as set forth in the [proposed language](#).

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.

- 3D Microblading Inc. (August 16, 2021)
- ABC School of Barbering (July 22, 2021)
- Advanced College (September 16, 2021)
- Altamont Healthcare (April 22, 2021)
- American Beauty Institute (August 23, 2021)
- American University for Human Science (June 15, 2021)
- Arches Eyebrow Microblading, LLC (April 28, 2021)
- Austin University (August 19, 2021)
- Beauty Dreams LA (May 6, 2021)
- Brandon College (June 30, 2021)

- California College San Diego (August 23, 2021)
- Central Baptist Theological Seminary (August 2, 2021)
- Centro de Estudio Técnico Automotriz (June 24, 2021)
- Cosmotek College (July 7, 2021)
- Empire Truck Driving School (June 22, 2021)
- Employed Security Service Center Inc. (May 20, 2021)
- Francesca Scognamiglio Permanent Makeup Academy (April 22, 2021)
- I.E. Microblading and Permanent Makeup Academy, LLC (August 12, 2021)
- Inland Empire Healthcare Training Institute (July 21, 2021)
- Institute of Contemporary Psychoanalysis (August 27, 2021)
- Kaplan International (July 21, 2021)
- Katie Skills Center (August 23, 2021)
- Laguna Technical College (August 19, 2021)
- Massage Therapy Institute (June 23, 2021)
- Microblading Arts Center - Creative Touch Beauty (April 28, 2021)
- Moorebeautylove (October 14, 2021)
- Natural Healing Institute of Naturopathy (May 12, 2021)
- Precise Barber College (August 30, 2021)
- Pretty Woman School (July 1, 2021)
- Pro Barber College (April 19, 2021)
- San Diego Culinary Institute. Inc. (May 13, 2021)
- Shasta Bible College and Graduate School (April 22, 2021)
- Skin City Permanent Cosmetic Academy (July 15, 2021)
- Studio Arts (June 15, 2021)
- Studio V (May 6, 2021)
- Sway Brows (May 12, 2021)
- Swift Transportation (September 29, 2021)
- The Brow Studio & Academy (April 28, 2021)
- Trinity School of Nursing (June 10, 2021)
- Watsonville Institute of Cosmetology (July 22, 2021)
- World Microblading (August 10, 2021)

Accusations of Violations

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

- Business and Insurance School: [Accusation](#) (June 17, 2021)
- College of Botanical Healing Arts: [Accusation](#) (April 9, 2021); [Stipulated Surrender and Order](#) (August 5, 2021)
- Colombia International College: [Accusation](#) (October 19, 2021)

- Commercial Drivers Learning Center: [Accusation](#) (February 25, 2021); [Default Decision and Order](#) (June 30, 2021)
- DiaNova Institute: [Accusation](#) (October 1, 2021)
- Dunnhill Barber Academy: [Accusation](#) (June 2, 2021); [Default Decision and Order](#) (August 5, 2021)
- ELS Language Centers: [Accusation](#) (September 14, 2021); [Default Decision and Order](#) (October 21, 2021)
- Frederick W. Taylor University: [Accusation](#) (June 1, 2021); [Default Decision and Order](#) (August 5, 2021)
- Jinshan Institute of Clinical Massage: [Accusation](#) (April 27, 2021); [Stipulated Surrender and Order](#) (August 5, 2021)
- Panamerican Learning Center: [Accusation](#) (August 25, 2021); [Default Decision and Order](#) (October 5, 2021)
- Saint Joseph's School of Nursing: [Accusation](#) (May 21, 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 required documentation compliant with the California Private Postsecondary Education Act of 2009 and other applicable laws:

- American Heritage University of Southern California: [Order Suspending Degree Granting Programs](#) (June 21, 2021)
- California Beauty Academy: [Statement of Issues](#) (May 10, 2021); [First Amended Statement of Issues](#) (May 18, 2021); [Notice of Withdrawal](#) (June 29, 2021)
- California South Bay University: [Order Suspending Degree Granting Programs](#) (July 14, 2021)
- Center for Early Childhood Professionals: [Statement of Issues](#) (June 8, 2021)
- Difai City College: [Statement of Issues](#) (May 29, 2020); [Decision and Order](#) (May 27, 2021)
- Dynasty Trucking School: [Statement of Issues](#) (April 27, 2021); [Notice of Withdrawal](#) (June 17, 2021)
- GetCutz LLC dba Kaws Barber and Beauty College aka GetCutz College: [Statement of Issues](#) (October 15, 2020); [Decision and Order](#) (July 9, 2021)
- L.A. Vocational Institute: [Statement of Issues](#) (May 6, 2020); [Notice of Withdrawal](#) (May 18, 2021)
- Universal College of Beauty: [Statement of Issues](#) (September 30, 2021)
- William M. Maguy School of Education, a Division of Proteus Inc.: [Statement of Issues](#) (March 26, 2021); [Notice of Withdrawal](#) (July 19, 2021)

LEGISLATION

- [SB 802 \(Roth\)](#), as amended August 30, 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.” [[26:2 CRLR 166](#)] The bill was read for the third and final time on September 10, 2021, with clarifying changes and technical changes being made (see HIGHLIGHTS). Governor Gavin Newsom signed SB 802 on October 5, 2021 (Chapter 552, Statutes of 2021).

- [AB 424 \(Stone\)](#), as amended August 26, 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: 1) evidence that they own the debt; 2) 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 which, by requiring competent evidence, has reduced collection lawsuits for unpaid credit card debt by nearly 60 percent. According to the author, the bill is designed to protect those who have private loans by increasing transparency from private lenders so that borrowers understand who holds their debt and how much is truly owed. Governor Newsom signed AB 424 on October 6, 2021 (Chapter 559, Statutes of 2021).

The following bill reported in [Volume 26, No. 2 \(Spring 2021\)](#), failed to be enacted in 2021: [AB 99 \(Irwin\)](#), relating to the creation of a statewide longitudinal data system.

LITIGATION

- *California v. Ashford University, LLC*, Case No. 37-2018-00046134-CV (Super. Ct., San Diego County). On November 4, 2021, in Department 67, Judge Eddie C. Sturgeon heard pre-trial motions. The bench trial began opening arguments on November 8, 2021. The [complaint](#) was originally filed on November 29, 2017, by Attorney General Xavier Becerra in California Superior Court, Alameda County, against Ashford University and its parent corporation, Zovio, Inc. (then Bridgepoint Education Inc.). [[23:2 CRLR 201–202](#); [24:1 CRLR 187–188](#)] At the time of this writing, the trial is ongoing.