

# 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 in 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 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.

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. In 2022, STRF increased rates beginning in April 2022. Statutes require institutions to charge \$2.50 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 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. 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 its February 23, 2022 [meeting](#), the Advisory Committee elected Committee member Joseph Holt, an institutional representative appointed by the DCA director, as Chair of the Committee. Margaret Reiter, a consumer advocate member appointed by the Senate Rules

Committee, was reelected as Vice Chair. At this writing, there are four vacancies on the Advisory Committee: two for student representative positions and one position for an institutional representative to be appointed by the DCA Director, and one public member appointed by the Senate Rules Committee.

## **HIGHLIGHTS**

### **AB 1731 Seeks to Protect GI-Bill Recipients from Predatory Postsecondary Educational Institutions**

[AB 1731 \(Davies\)](#), as introduced on January 31, 2022, would add section 67102.5 to the Education Code to require the California State Approving Agency for Veterans Education (CSAAVE) to establish reasonable criteria for postsecondary institutions seeking to enroll students eligible for federal Title 38 awards on or before January 1, 2024. Title 38 of the United States Code codifies all veteran education programs and is colloquially referred to as the “GI Bill.”

Specifically, the bill would require CSAAVE to establish regulations requiring postsecondary educational institutions to provide information such as: (1) the institution’s loan default rate; (2) evidence that the institution meets financial responsibility requirements; (3) evidence of the institution’s accreditation status; (4) if lawsuits from students, former students, or public prosecutors have been filed against the institution on charges such as fraud within five years of the application; and (5) information regarding student’s success rates during and after their programs.

According to the author’s [legislative background sheet](#), for-profit postsecondary schools aggressively recruit veterans in order to enroll GI bill beneficiaries in their institutions. Recruiting departments at private for-profit postsecondary educational institutions face pressure to enroll GI

Bill beneficiaries even though many schools have high tuition costs and a low probability of student success after completing programs. While CSAAVE began to issue regulations that would have established such “reasonable criteria,” it has not finalized them. AB 1731 would ensure that CSAAVE has all the information necessary to determine whether or not a postsecondary educational program should receive access to this federal funding.

The bill is currently pending before the Assembly Committee on Appropriations.

## **Court Orders For-Profit College, Ashford University, to Pay Over \$22 Million in Civil Penalties**

In *The People of the State of California v. Ashford University*, Case No. 37-2018-00046134-CU-MC-CTL (March 3, 2022), the San Diego County Superior Court [held](#) that for-profit giant Ashford University violated the law by misleading students as to their potential career outcomes, cost of attendance and financial aid, pace of degree programs, and transferability of credits to and from Ashford. On November 29, 2017, the California Attorney General [filed suit](#) against Ashford University, and the case proceeded to a bench trial on November 9, 2021. [[23:2 CRLR 201–202](#); [27:1 CRLR 184](#)] The state argued that Ashford University enrolled vulnerable students via an admissions department whose primary goal was to increase enrollment numbers by whatever means necessary. The state further argued that Defendants created a high-pressure environment for their employees, encouraging them to lie to prospective students to increase enrollment and mislead students in areas critical to their enrollment decision-making.

The Court found that Defendants engaged in misrepresentations in 11 categories, including misleading students about their career opportunities in fields requiring licensure using Ashford degrees; misleading students about the cost of attendance, financial aid rules, and downplaying the student’s potential debt; and misleading students about the pace and time commitments of courses

required to obtain an Ashford degree. Moreover, evidence showed that Defendants knew about this deception and misrepresentation and tolerated and promoted it.

On March 3, 2022, the Court entered judgment in favor of the People of the State of California and ordered \$22,375,282 in penalties against Defendants for the foregoing misrepresentations. The Court, however, denied the People's request for an injunction concerning Defendants' debt collection practices, finding insufficient evidence of ongoing misconduct.

On March 28, 2022, Ashford filed a Notice of Intent to move for a new trial.

## MAJOR PUBLICATIONS

- [\*Sunset Review Report: 2022 Addendum\*](#), BPPE, 2022 (supplements the [2019 Sunset Review Report](#) after the Bureau's 2020 sunset hearing was postponed due to the COVID-19 pandemic, and the legislature only granted a single year's sunset extension in 2021 in [SB 802 \(Roth\) \(Chapter 552, Statutes of 2021\)](#). [[25:2 CRLR 117](#); [26:1 CRLR 146](#); [26:2 CRLR 158](#); [27:1 CRLR 177](#)] The addendum provides a brief overview of key developments at the Bureau over the intervening period, offers five new issues for the legislature to consider, and updates the legislature on four issues from the 2019 report. It covers key issues such as improving accreditation practices, closing disclosure loopholes for institutions, and clarifying rules for out-of-state operators. The addendum also includes a set of updated tables regarding bureau operations and funding. [SB 1433 \(Roth\)](#), a spot bill, is expected to be amended to serve as the sunset extension vehicle for BPPE. The bill hearing is set for April 18, 2022.

## RULEMAKING

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

- **Graduate Data Reporting:** On March 11, 2022, the Bureau published [notice](#) of its proposal to amend section 74110, Title 5 of the CCR to require approved institutions to report that graduate identification data through an online portal designed by the Bureau. The [proposed text](#) would add subsection (c) and subsection (d) to require reporting of graduate data and provide the specific timeframe for reporting such data. In addition, the action would revise subsection (f) to add new electronic filing requirements demanding that institutions submit annual report information on the Bureau’s designated portal. Other proposed changes involve revisions to subsections to add clarifying language. According to the [initial statement of reasons](#), the proposal will allow the Bureau to implement the legislative mandate of the California Education Code section 94892.6, which authorizes the Bureau to obtain information on labor market outcomes from institutions as well as graduate earnings and student debt information. According to the BPPE’s [notice of extension of the public comment period](#), the public comment period ends on April 29, 2022.

- **Student Tuition Recovery Fund Fee Assessment Rate Change:** On January 12, 2022, 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 effective on April 1, 2022. [[23:1 CRLR 225](#); [26:2 CRLR 162](#)] 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 \$0.50 to \$2.50 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 April 1, 2022.

# 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.

- Beauty & the Blade (December 2, 2021)
- Broadway Grooming Clinic and School (December 23, 2021) Amended Citation (December 30, 2021)
- Brows by Linnie (January 5, 2022)
- Browtendre (February 14, 2022)
- Central California School of Continuing Education (February 2, 2022)
- Commercial Drivers Learning Center (February 10, 2022)
- Eyebrows LA (December 2, 2021)
- Galvanize, Inc. (March 8, 2022)
- Microblading L.A. (Modified Citation: April 7, 2022)
- Northern California School of Sleep Medicine (November 18, 2021)
- Pacifica Graduate Institute (January 27, 2022)
- Softtech (April 14, 2022)
- Vitality University (April 14, 2022)

## Accusations of Violations

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

- Austin University: [Accusation](#) (April 8, 2022)
- Center for Early Childhood Professionals: [Statement of Issues](#) (June 8, 2021); [Notice of Withdrawal](#) (January 20, 2022)
- Computer Institute of Technology: [Accusation](#) (December 2, 2021)
- ELS Language Centers: [Accusation](#) (September 14, 2021); [Notice of Withdrawal](#) (January 10, 2022)

## 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 laws:



- International University of California: [Order Suspending Degree Granting Programs](#) (January 10, 2022) [Appeal of Order Suspending Degree Granting Programs](#), Decision (April 4, 2022)
- San Diego University for Integrative Studies [Order Suspending Degree Granting Programs](#) (December 1, 2021); [Decision](#) (January 26, 2022); [Notice of Entry of Order](#) (March 2, 2022)

## LEGISLATION

- [SB 1433 \(Roth\)](#), as introduced February 18, 2022, would amend sections 94933 and 94936 of the Education Code to authorize BPPE to establish an order to compensate students whom institutions have harmed. The bill would also require BPPE to take action against institutions based on the severity of their violations. The action taken by BPPE must reflect the severity of the violation by the institution and must consider the nature and seriousness of the violation, the persistence of the violation, the good faith of the institution, the history of previous violations, the purposes of this chapter, and the potential harm to students when determining its assessment of an administrative fine. This bill would allow BPPE to act proactively against institutions engaging in misconduct before harm occurs. The bill is set for hearing on April 18, 2022. [*S. BP&ED* and *S. Ed*]

- [AB 2341 \(Medina\)](#), as introduced February 16, 2022, would amend section 94874.9 of the Education Code to require that independent institutions of higher education exempt from the California Private Postsecondary Education Act of 2009 shall comply with state and federal laws relating to fraud, abuse, and false advertising. This bill also would allow exempt institutions, including public institutions of higher education, to contract with BPPE to be managed by the Bureau. This bill would also allow the Bureau to contract with public postsecondary schools outside of California in order to extend federal financial aid to students who are California residents planning to attend an out-of-state postsecondary institution. Arizona State University

sponsors this bill in an effort to extend federal financial aid to ASU students who attend the ASU California Center campus in downtown Los Angeles. *[A. B&P and HiEd]*

- [AB 2572 \(Rubio\)](#), as amended March 24, 2022, would amend section 94874.9 of, and add to Article 23.2 (commencing with section 70040) to the Education Code to establish the Adult Learners Grant Program to be administered by the Student Aid Commission (CSAC). This program would make grants available to California residents 25 and older enrolled solely in distance education courses at a postsecondary institution. CSAC is required to prioritize grants for students who come from traditionally underserved populations. This bill would allow out-of-state institutions to contract with BPPE, allowing the Bureau to review, investigate, and approve private postsecondary institutions participating in this grant program. *[A. HiEd]*