

California Legislature Updates Private Postsecondary Education Act ... Again

May 12, 2023

A number of [amendments to the governing statute](#) of the California Bureau for Private Postsecondary Education (BPPE) took effect January 1, 2023, impacting in-state and out-of-state institutions. The BPPE recently posted a helpful memo on its website, where [the amendments to the California Private Postsecondary Education Act are explained in detail](#). We encourage institutions operating in, or enrolling from, California to carefully review it. We've described the key changes below.

Unaccredited out-of-state institutions

After six years of uncertainty around how the BPPE's "out-of-state registration" process applied to unaccredited institutions offering distance education programs to California residents, the recent update makes clear that an application for registration is required, regardless of accreditation status. The revised California Education Code (CEC) §94801.5 added two words that closed a long-standing "loophole" in the registration process, which for the past six years technically required unaccredited schools to register, but also specified that only accredited schools were eligible to register. Now, the law only requires evidence of accreditation "as applicable," meaning that any out-of-state institution, accredited or not, that is not otherwise exempt, must submit an application with all the required documents and disclosures, "as applicable," to the institution. The BPPE will evaluate the application to determine whether registration will be granted.

If you operate an unaccredited institution and were relying on that gray area to avoid registration in California, the area is gray no more. You should complete and submit [the registration application](#) to the BPPE as soon as possible. **Note:** By registering with the BPPE, you also will be obligated to update your catalog and enrollment agreements used for California residents to include new language regarding the Student Tuition Recovery Fund (STRF), and you will be required to collect and remit, on a quarterly basis, the STRF fees to the BPPE.

Void enrollment and loan agreements for unapproved operations

As many institutions in California have learned, there was a long-standing provision in the CEC stating that any enrollment agreement or instrument of indebtedness (including, for example, an income share agreement) executed between a student and an institution that is not authorized to operate in California (if such authorization is required) is unenforceable. This existing provision has been amended to state that the contract is not only unenforceable – it is void. And the application of this provision has been expanded to institutions that are required to be registered as out-of-state institutions.

Additional prohibited activities

In addition to the already long list of prohibited business activities in CEC §94897, the following have been added:

- Committing fraud against, or making a material untrue or misleading statement to, a student or prospective student under the institution's authority or the pretense or appearance of the institution's authority.
- Charging or collecting institutional charges not authorized by an executed enrollment agreement.
- Refusing to provide a transcript for a current or former student because the student owes a debt, conditioning the provision of a transcript on the payment of a debt, charging a higher fee for obtaining a transcript, providing less favorable treatment of a transcript request because a student owes a debt, or using transcript issuance as a tool for debt collection.
- Requiring a student or employee to sign a nondisclosure agreement, except to protect intellectual property or trade secrets.
- Failing to maintain policies related to compliance with the Private Postsecondary Education Act or adhere to the institution's stated policies.

While all of these are important to note, we are aware of a number of institutions that have included NDAs in their enrollment agreements, typically to protect the institution's intellectual property, but it is important to ensure those

clauses (or any NDAs) are narrowly drafted as to not violate this provision.

‘Physical presence’ and ‘limited physical presence’

The BPPE’s statutory authority is different depending on the location of the institution. The definition of a private postsecondary education institution always included a limitation to those with a “physical presence” in California, but that term was not clearly defined. With the recent amendments, CEC §94801.7(b) now specifies that “an institution is considered to have a physical presence in the state if it offers instruction or core academic support services from a physical location owned, operated, or rented by or on behalf of the institution in California.”

This more detailed explanation has been the BPPE’s practice for many years, but this amendment codifies it in law. In addition, CEC §94801.7 now authorizes the BPPE to establish, through regulation, types of California-based activity that could constitute “limited physical presence,” which would subject institutions to registration requirements rather than approval requirements. The process to promulgate regulations in California is a long one, so we anticipate it will be late 2023 or early 2024 before those regulations are published.

This post does not address every amendment to the Private Postsecondary Education Act, and we encourage clients to closely review the underlying governing statute and the BPPE’s memo (both linked above) to ensure compliance. For more information, please reach out to Cooley’s education team.

Kate Lee Carey focuses on the legal, accreditation, administrative and regulatory aspects of regionally and nationally accredited higher education institutions and companies that provide services to the education industry.

Nancy Anderson focuses on regulatory issues affecting higher education institutions, including compliance with federal, state and accrediting agency requirements.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as “Cooley”). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our [AI Principles](#), may be considered Attorney Advertising and is subject to our [legal notices](#). Copyright © 2026