

**State of California
Office of Administrative Law**

In re:
Bureau for Private Postsecondary Education

Regulatory Action:

Title 05, California Code of Regulations

Adopt sections:

**Amend sections: 71210, 71475, 71770,
71920**

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2022-1213-01

OAL Matter Type: Regular (S)

To align with statutory amendments in Senate Bill 607 (Chapter 367, Statutes of 2021), which removed Education Code references to passing an ability-to-benefit test as part of admissions processes, this action likewise removes related regulatory references to passing an ability-to-benefit test either (1) by entirely deleting a regulatory reference to ability-to-benefit; or (2) by replacing a regulatory reference with a provision based upon whether an institution chooses to use passage of an ability-to-benefit test in its admission process.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 4/1/2023.

Date: January 27, 2023



Digitally signed by Mark
Storm
Date: 2023.01.27 10:46:36
-08'00'

**Mark Storm
Senior Attorney**

**For: Kenneth J. Pogue
Director**

**Original: Deborah Cochrane, Chief
Copy: David Dumble**

REGULAR

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
Z-		2022-1213-01	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JAN 27 2023

1:51 pm

OFFICE OF ADMIN. LAW
2022 DEC 19 PM 1:04

For use by Office of Administrative Law (OAL) only	
NOTICE	REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
Department of Consumer Affairs, Bureau for Private Postsecondary Education

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Repeal of Ability-to-Benefit Language	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND 71510, 71475, 71770, 71920 71210
TITLE(S) 5	REPEAL

per agency request

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input checked="" type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> §100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON David Dumble	TELEPHONE NUMBER 279-895-6091	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) david.dumble@dca.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Kimberly Kirchmeyer</i>	DATE November 22, 2022
TYPED NAME AND TITLE OF SIGNATORY Kimberly Kirchmeyer, Director, Department of Consumer Affairs	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JAN 27 2023

Office of Administrative Law

**TITLE 5
BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
DEPARTMENT OF CONSUMER AFFAIRS**

ORDER OF ADOPTION

REPEAL OF ABILITY-TO-BENEFIT LANGUAGE

Legend—added text indicated by underline, deletion by ~~strikethrough~~. Omitted text is indicated by (* * * *).

71210. Instruction and Degrees Offered

(a) The institution shall identify and describe the educational program it offers, or proposes to offer. If the educational program is a degree program, the institution shall identify the full title which it will place on each degree awarded.

(b) In addition to the general title, such as “Bachelor of Arts” or “Master of Science,” each degree title shall include the name of a specific major field of learning involved.

(c) In addition, the institution shall list the following for each educational program offered:

(1) The admissions requirements, including minimum levels of prior education, preparation, skills, or training;

(2) If applicable, information regarding the any ability-to-benefit examination as required by the institution. For the purposes of this section an “ability-to-benefit examination” means an independently administered examination from the list of examinations prescribed by the United States Department of Education pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.) as it is, from time to time, amended, that is designed to help identify students who possess the basic skills necessary to succeed in a post-secondary education program, but who lack a high school diploma; section 94904 of the Code;

(3) The types and amount of general education required;

(4) The title of the educational programs and other components of instruction offered, including a description of the level of the courses (e.g., below college level, undergraduate level, graduate level);

(5) The method of instruction;

(6) The graduation requirements; and

(7) Whether the educational program is designed to fit or prepare students for employment in any occupation. If so, the Form Application 94886 shall identify each occupation and job title to which the institution represents the educational program will lead.

Note: Authority cited: Sections 94803, 94877 and 94888, Education Code. Reference: Sections 94885, 94887, 94888, ~~94904~~ 94909 and 94910, Education Code.

**71475. Renewal of an Approval to Operate for a Non-Accredited Institution;
Cancellation of an Approval to Operate**

(* * * *)

(t) In addition, the institution shall list in the application, the following for each educational program offered unless there have been no substantive changes since the last submission. If there have been no substantive changes made the institution may so state and is not required to provide documentation.

(1) The admissions requirements, including minimum levels of prior education, preparation, or training;

(2) If applicable, information regarding ~~the~~ any ability-to-benefit examination as required by the institution. For the purposes of this section an "ability-to-benefit examination" means an independently administered examination from the list of examinations prescribed by the United States Department of Education pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.) as it is, from time to time, amended, that is designed to help identify students who possess the basic skills necessary to succeed in a post-secondary education program, but who lack a high school diploma; section 94904 of the Code.

(3) The types and amount of general education required;

(4) The title of the educational programs and other components of instruction offered, including a description of the level of the courses (e.g., below college level, undergraduate level, graduate level);

(5) The mode of instruction;

(6) The graduation requirements.

(7) Whether the educational program is designed to fit or prepare students for employment in any occupation. If so, the application shall identify each occupation and job title to which the institution represents the educational program will lead.

(* * * *)

Note: Authority cited: Sections 94803 and 94891, Education Code. Reference: Sections 94802, 94889 and 94931, Education Code.

71770. Admissions Standards and Transferred Credits Policy.

(a) The institution shall establish specific written standards for student admissions for each educational program. These standards shall be related to the particular educational program. An institution shall not admit any student who is obviously unqualified or who does not appear to have a reasonable prospect of completing the program and shall describe in its admissions policy the criteria used by the institution to determine whether each student is qualified for admission to the educational program ("qualified candidate for admission"). In addition to any specific standards for an educational program, the admissions standards must specify as applicable that:

(1) Each student admitted to an undergraduate degree program, or a diploma program, shall possess a high school diploma or its equivalent, or otherwise successfully take and pass the relevant examination as required by section 94904 of the Code meet the institution's criteria for a qualified candidate for admission, including minimum levels of prior education, preparation, skills, or training.

(2) Each student admitted into a post-baccalaureate degree program shall possess a bachelor's degree or its equivalent. If a graduate program leads to a profession or an occupation requiring state licensure and the licensing agency does not require that a member of the profession or occupation possess a Bachelor's degree or its equivalent, this subdivision does not apply.

Note: Authority cited: Sections 94803, 94877 and 94885, Education Code. Reference: Sections 94885 and 94909, Education Code.

71920. Student Records.

(* * * *)

(b) In addition to the requirements of section 94900, the file shall contain all of the following pertinent student records:

(1) Written records and transcripts of any formal education or training, testing, or experience that are relevant to the student's qualifications for admission to the institution or the institution's award of credit or acceptance of transfer credits including the following:

(A) Verification of high school completion or equivalency or other documentation establishing the student's ability to do college level work;

such as successful completion of an ability-to-benefit test if required by the institution. For the purposes of this section an "ability-to-benefit test" means an independently administered examination from the list of examinations prescribed by the United States Department of Education pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.) as it is, from time to time, amended, that is designed to help identify students who possess the basic skills necessary to succeed in a post-secondary education program, but who lack a high school diploma;

(B) Records documenting units of credit earned at other institutions that have been accepted and applied by the institution as transfer credits toward the student's completion of an educational program;

(C) Grades or findings from any examination of academic ability or educational achievement used for admission or college placement purposes;

(D) All of the documents evidencing a student's prior experiential learning upon which the institution and the faculty base the award of any credit;

(* * * *)

Note: Authority cited: Sections 94803 and 94877, Education Code. Reference: Sections 94885, 94900 and 94927.5, Education Code.