

**TITLE 5. EDUCATION
DIVISION 7.5. BUREAU OF PRIVATE POSTSECONDARY EDUCATION**

FINAL STATEMENT OF REASONS

Hearing Date: None.

Subject Matter of Proposed Regulations: Repeal of “Ability-to-Benefit” Language

Sections Affected: Division 7.5 of Title 5 of the California Code of Regulations, amend sections 71210, 71475, 71770, and 71920.

Updated Information

The Initial Statement of Reasons is included in the file. The information contained therein has not been modified.

No public hearing was originally set for this proposal, and none was requested. Board staff noticed the proposed rulemaking with a 45-day comment period ending on Tuesday, November 1, 2022, by 5 p.m. The Board received one comment which is summarized below.

No changes have been made in applicable laws or to the effect of the proposed regulations from the laws and effects described in the Notice of Proposed Action.

Local Mandate

A mandate is not imposed on local agencies or school districts.

Small Business Impact

The Bureau is unaware of the number of potential small businesses that would be impacted by this regulatory proposal.

Economic Impact/Assessment analysis

The regulatory proposal will have the following effects:

- It will not create or eliminate any jobs within the State of California because the regulations only permit postsecondary educational institutions in California to no longer refer to or administer details concerning students qualifying for admissions through ability-to-benefit tests, which should not cause either the creation or elimination of any jobs within California.

- It will not create new businesses or eliminate businesses in the State of California because the regulations only permit postsecondary educational institutions in California to no longer refer to or administer details concerning

students qualifying for admissions through ability-to-benefit tests, which has no known fiscal impact and should not create or eliminate any businesses in California.

- It will not affect the expansion of businesses currently doing business in the State of California because the regulations only require permit postsecondary educational institutions in California to no longer refer to or administer details concerning students qualifying for admissions through ability-to-benefit tests, which has no known fiscal impact and should not affect the decision of any business to expand in California.
- The regulatory proposal benefits the health and welfare of California residents by eliminating regulatory requirements for private postsecondary institutions that are no longer supported in statute, allowing institutions to operate as intended by the legislature.
- The regulatory proposal does not affect the state's environment because they only require private postsecondary institutions to convey information about their programs to the Bureau, which should not affect the state's environment.
- The regulatory proposal would not affect worker safety because these regulations are not relevant to the enhancement of worker safety and are to conform the Bureau's regulations to statutory language.

Fiscal Impact

It has been determined that there will be no fiscal impact from this proposal.

Anticipated Benefits of this Proposal

The specific benefit anticipated from the proposed regulation is to have the Bureau's regulations conform to existing statutory language. By removing the three references to Ability-to-Benefit tests that were in the Education Code, the legislature is signaling its intent to no longer require students without a high school diploma or the equivalent to have to do anything to be eligible for enrolling at postsecondary institutions. The Bureau's regulations need to accurately reflect the current statutory language that they are interpreting. This regulation does not directly affect the health of California residents. This regulation may improve the welfare of California residents by conforming regulations to existing statutes that broaden access to postsecondary education.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons or businesses and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected.

1. Not adopt the regulations. This alternative was rejected because it would allow the Bureau's regulations to be out of compliance with the statutes that create the Bureau's regulatory authority.

Incorporation by Reference

This proposal does not include any documents incorporated by reference.

Summary of Comments Received During the 45-day Notice Period

The proposed text was made available to the public for comment from September 16, 2022, to November 1, 2022. No hearing was held on this rulemaking, nor was a hearing requested.

The Bureau has elected not to change the proposed regulation based on the comments received. The Bureau's summary of and responses to the comments received are presented below.

Comment 1: Renee Garza Adams, September 19, 2022

Garza Adams of California Truck Driving Academy emailed comments, the text of which is below:

California Truck Driving Academy wishes to express our support of the repeal of "ability-to-benefit tests" from the regulatory language in the Education Code.

It is our opinion that a student's ability to pass a standardized ability-to-benefit test does not directly translate to a student's ability to learn how to drive a commercial vehicle, as the subject matter is vastly different. In fact, ability-to-benefit tests have at times been a hindrance to applicants we believed could have done well in our program and our industry but were unable to continue with the application process due to this requirement.

This move will make it easier for unemployed Californians to find employment in a profitable industry. It is especially timely given that the commercial driving industry now requires entry-level driver training from an FMCSA approved provider prior to issuance of a commercial driver's license. A primary effect of this regulation has been that those who are interested in becoming commercial drivers have sought out institutions regulated by the BPPE, even if they would have sought training from a family member or other less regulated entity prior to the implementation of those FMCSA regulations on February 7 of this year.

We appreciate the work this body has done to ensure access to quality postsecondary education for all Californians, and we are excited that this proposal would further increase that access.

Bureau Reply: The Bureau appreciates the support expressed on behalf of the California Truck Driving Academy. The Bureau will not be modifying the proposed text due to this comment, as the comment does not request any changes.