

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

FINAL STATEMENT OF REASONS

Hearing Date: December 3, 2019

Subject Matter of Proposed Regulations: Intensive English Language Programs

One (1) Section Affected: Division 7.5 of Title 5 of the California Code of Regulations: Amend section 70000(k).

Updated Information

The Initial Statement of Reasons is included in this file. No updates have been made to that information.

The 45-Day public comment period began on October 18, 2019 and ended on December 3, 2019. The Bureau for Private Postsecondary Education (Bureau) held a regulatory hearing on December 3, 2019, in Sacramento, California. The Bureau received comments during the 45-day comment period and two oral comments at the hearing.

Local Mandate Determination

The proposed regulations do not impose any mandate on local agencies or school districts.

Anticipated Benefits of this Proposal

Intensive English Language Programs (IELPs) are not generally considered traditional postsecondary educational programs. They generally do not offer degrees or diplomas, just certificates showing how much time has been completed in the immersive study. Their beginning and ending enrollment is generally based on how long a student wants to spend learning the language, not the program itself. In these ways, IELPs are more akin to educational programs offered for personal entertainment, pleasure or enjoyment. Moreover, when the regulations were originally created, federal oversight of IELPs was minimal. Today, the federal government has enacted numerous new regulations and oversight of these programs, and the Bureau's oversight is redundant. The Bureau has limited resources and it benefits everyone for the Bureau to use its resources where they can best serve the people of the State of California by no longer overseeing certain IELPs that meet the specific requirements set forth in the proposed regulations.

Summary and Responses to Comments

The proposed text was made available to the public for comment from October 18, 2019 to December 3, 2019. Several written comments were received during that time period and are addressed below. Oral comments were also received at the Bureau's public hearing on this rulemaking on December 3, 2019 and are also addressed below.

Comment 1: Sean Ferguson, English Language Institute

(for reference, the iBT TOEFL is the internet-based test version of the Test of English as a Foreign Language (TOEFL))

Comment Summary: Mr. Ferguson submitted a letter to the Bureau on November 27th, 2019 on behalf of the English Language Institute. In the letter, Mr. Ferguson states:

“It is our opinion that iBT TOEFL Test preparation programs are substantially different in nature from the two other types of programs identified under Section 7000[0](k)(1): (B) vocational English programs (designed to lead to employment) and (C) education programs which are “designed to develop new or enhance existing knowledge, training, or skills in connection with any occupation or job title”.”

Mr. Ferguson further states that iBT TOEFL Test Preparation programs should fall under the definition of “education offered for the purpose of personal entertainment, pleasure or enjoyment” because “iBT TOEFL Test Preparation programs facilitate the development of learning skills or language proficiency to assist students to learn English as a second language, citing Section 7000[0](k)(2).

Mr. Ferguson also states that iBT TOEFL Test Preparation programs should not be included in section 70000(k)(1) as long as they are offered by an institution that complies with section 70000(k)(2).

Mr. Ferguson requests “any clarification that you could provide about whether the text update is meant to make iBT TOEFL Test Preparations exempt.

Response: The Bureau rejects this comment. The Bureau has determined it will take no action based on this comment. Section 70000(k)(1) further clarifies the meaning of “education offered for the purpose of personal entertainment, pleasure or enjoyment”. Section 70000(k)(1)(A) specifies that education offered for the purpose of personal entertainment, pleasure or enjoyment does include education that assists a student to prepare for a test designed to measure English language proficiency for placing a student within an Intensive English Program. Section 70000(k)(2) also clarifies that the institution must comply with the program(s) to be considered as education offered for the purpose of personal entertainment, pleasure or enjoyment.

Mr. Ferguson's comments appear to be seeking a determination of whether the language is meant to exempt educational programs related to the TOEFL-brand test. This language is meant to remove the portion of the definition which provides that Intensive English Language Programs (IELPs) do not fall under the regulatory definition of "education offered for personal entertainment, pleasure, or enjoyment" and to make IELP institutions exempt under the definition if they meet specific exemption requirements. However, the Bureau cannot prospectively state whether any particular school or category of schools is or is not exempt. Programs are evaluated on a per-program basis according to the relevant laws and regulations.

Comment 2: Sean Ferguson, English Language Institute

(for reference, ACCET is The Accrediting Council for Continuing Education and Training)

Comment Summary: Mr. Ferguson emailed a comment to the Bureau on November 11, 2019, on behalf of English Language Institute. In the email, Mr. Ferguson expressed interest in knowing the "details and implications of the proposed text changes. Specifically, Mr. Ferguson noted there was "a lot of debate" at the "ACCET Annual Conference" about whether the proposed text "makes iBT TOEFL Test Preparation programs at accredited schools exempt from BPPE oversight."

Response: The Bureau accepts this comment. The Bureau has determined it will take no regulatory action based on this comment, as this comment seeks additional information only. As stated in the response to comment #1, this language is meant to remove the portion of the definition which provides that Intensive English Language Programs (IELPs) do not fall under the regulatory definition of "education offered for personal entertainment, pleasure, or enjoyment" and to make IELP institutions exempt under the definition if they meet specific exemption requirements.

Comment 3: Dr. Omer Uyklu, Ph.D, California College of Communications

Comment Summary: Dr. Uyklu appeared at the Bureau's December 3, 2019 hearing. Dr. Uyklu's comments began with a description of the California College of Communications and its history. Dr. Uyklu expressed his agreement with this regulation and stated his school has had ongoing Student Tuition Recovery Fund collection issues with the Bureau, which relate to the fact that the school's attendees are generally international students.

Dr. Uyklu noted the students are not planning on working in California and do not gain any benefit from the state. Dr. Uyklu noted students of his school are there for personal development in as short as one month, and sometimes two or three months. Dr. Uyklu noted his school's accreditation through ACCET since

2011 or 2012, and also noted his school was already in compliance with federal regulations, so it was redundant to have to do the same thing with the Bureau.

Dr. Uyuklu further noted his school receives no federal financial aid, does not prepare its students for specific work, and does not grant any degree or diploma, but instead gives only a certificate of completion. Finally, Dr. Uyuklu expressed satisfaction with the opportunity to have less “work to do” if the regulation were changed.

Response: The Bureau accepts this comment and is appreciative of the support. The remainder of the comment is, in the Bureau’s interpretation, limited to contextual information about the California College of Communications, its programs and its history. The comment did not include any questions requiring a response from the Bureau. The Bureau has determined no regulatory action is necessary based on this comment.

Comment 4: Maria Fraser, California College of Communications

Comment Summary: Ms. Fraser appeared at the Bureau’s December 3, 2019 hearing and gave her comment immediately following that of Dr. Uyuklu, whose comment is described above. Ms. Fraser stated she agreed with everything Dr. Uyuklu said about the school and the law.

Response: The Bureau accepts this comment and is appreciative of the support. The comment did not include any questions requiring a response from the Bureau. The Bureau has determined no regulatory action is necessary based on this comment.

Comment 5: Alexandra Zilovic, ELS Education Services, Inc.

Comment Summary: Ms. Zilovic provided a written comment to the Bureau dated December 2, 2019. Ms. Zilovich noted in her written comment the company she represents, ELS Education Services, Inc., has been compliant with all regulations and financial obligations and supports the Bureau’s proposal. Ms. Zilovich further noted there was substantial oversight of IELPs already being provided by the federal government, rendering the Bureau’s oversight redundant. Ms. Zilovich highlighted ELS’s compliance with Accrediting Council of Education Requirements as well as pointed out that her company does not offer degrees or diplomas, but instead offers certificates of completion instead. She further noted ELS’s enrollments show how long a student wishes to spend studying, and are not ‘by the program itself,’ adding that “learning a language is for personal entertainment, pleasure and enjoyment.”

Response: The Bureau accepts this comment and is appreciative of the support. The Bureau notes the portions of this comment that are not statements of

support are statements of information about the commenter and are not questions or suggestions requiring further response by the Bureau.

Comment 6: Kaye McKay, GFS Truck & Bus Training

Comment Summary: On October 23, 2019, the Bureau received via email three questions from Kaye McKay of GFS Truck & Bus Training, as follows:

- 1) "Is it correct that if the proposals are adopted, it would mean that English Language proficiency is no longer monitored by the BPPE?"
- 2) "If the proposals are adopted would a Post-Secondary School for Truck Driving Commercial Licenses be exempt because the education results or may result in employment?"
- 3) "If a Post-Secondary School for Truck Driving Commercial Licenses are not exempt, if the proposals are adopted, would it eliminate the requirement to submit annual reports or produce student performance fact sheets?"

Response: Regarding the first question, the school offering the English language program must comply with all aspects of section 70000(k) to be considered exempt. Questions two and three are not related to the Intensive English Language Program regulations but appear to be specific questions about a hypothetical school without further information about the type of education offered beyond the implication by the title of the program that it is meant to educate individuals for truck driving commercial licenses. The Bureau cannot evaluate a real-world or hypothetical program's exempt or non-exempt status outside of the established formal evaluation process. The same is true of a determination of whether an institution would need to submit annual reports or produce student performance fact sheets. The Bureau has determined no regulatory action is necessary based on this comment.

Alternatives That Would Lessen Adverse Economic Impact on Small Business

No alternatives were proposed to the Bureau that would lessen any adverse economic impact on small business.

Alternatives Determination

The Bureau has determined that no alternative it considered or that was otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.