The Case for Reauthorization:
Empowering the Bureau for Private Postsecondary Education To Protect California's Students

Housing & Economic Rights Advocates
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Acknowledgments

Housing & Economic Rights Advocates (HERA) is a California statewide, not-for-profit legal service and advocacy organization dedicated to helping Californians—particularly those most vulnerable—build a safe, sound financial future, free of discrimination and economic abuses, in all aspects of household financial concerns. We provide free legal services, consumer workshops, training for professionals and community organizing support, create innovative solutions and engage in policy work locally, statewide and nationally.

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Introduction

In ordinary times, oversight of private postsecondary education is fraught with holes. Thousands of underperforming and fraudulent for-profit schools operate without sufficient oversight. And it is students who ultimately “find themselves in debt with no degree or a dead-end credential” through no fault of their own.¹

Congress has delegated oversight of private postsecondary education to the “program integrity triad,” consisting of three independent bodies: the accrediting agency, the state and the U.S. Department of Education.² Yet, this triad is notorious for devolving into a “game of hot potato”—ultimately resulting in a failure to check institutional misconduct.³

And under Education Secretary DeVos’ leadership, students are left twisting in the wind. Federal protections have been eviscerated while the for-profit industry’s role in federal decision-making has seen a boost.⁴

As the country grapples with a nationwide pandemic, these oversight gaps will become even more problematic.

In February 2020, following the outbreak of the COVID-19 pandemic, the U.S. entered “the worst recession since World War II,” and current economic forecasts are nothing short of grim.⁵ As demonstrated during the Great Recession, individuals enter higher education at greater rates in an economic downturn, and predatory for-profit schools ramp up aggressive recruiting tactics.⁶ Indeed, there is evidence that a “surge” in for-profit school enrollment has already begun.⁷

In these turbulent times, Californians need their government to step up. The current system—where accrediting agencies rubber stamp predatory institutions and the Department of Education has abdicated its regulatory role—is insufficient for managing what is to come.

To that end, the Bureau for Private Postsecondary Education is California’s “front line” to protect students from harmful practices of for-profit schools. Under the Department of Consumer Affairs (DCA), the Bureau is responsible for approving institutions for licensure and holding those institutions accountable to the standards that serve as a bulwark between students and predatory schools.⁹

In light of the inherent conflict created by this dual purpose, the Legislature has made clear that the Bureau’s “highest priority” is to protect the public. Indeed, under California law, this duty is “paramount” over all other interests.¹⁰
Bureau Sunset: An Opportunity for Change

Originally scheduled for 2020, the Bureau’s “sunset” review and reauthorization have been postponed until 2021. The Legislature will review the agency to determine whether to reauthorize and extend its charter and what, if any, amendments should be made to the law governing its operations. Thus, the Bureau, Legislature and stakeholders have a unique opportunity to evaluate the Bureau’s efficacy—and most importantly, to further empower the Bureau in its role as the protector of students and the public.

In December 2019, the Bureau published a lengthy and detailed sunset report providing extensive data on its operations as well as a comprehensive list of issues that impede its progress. In the report, the Bureau discusses several limitations on its capacity to protect students and the public, and makes recommendations for policies to address those issues.

This Report focuses on the obstacles that impede the Bureau from affirmatively addressing school misconduct and providing robust assistance and relief to students who have been harmed by school misconduct and closure. We further recommend that the Legislature take expedient action to empower the Bureau in its role as the protector of California’s students.

Background

California has a difficult history with predatory schools

Tens of thousands of California students have been impacted by abrupt school closures, typically at schools charged with or found liable for misconduct. Across the past four years, an average of 31 schools (78 campuses) closed in California. Some recent school closures include Education Corporation of America (ECA) (Brightwood), Dream Center (Argosy), Corinthian Colleges, ITT Technical Institute, and Marinello School of Beauty.

“I was told a lot of things about the paralegal program that did not turn out to be true: that my salary would be at least $50,000 and the program was very well-respected. I was not told that the program wasn’t ABA-approved. I applied to about 70 paralegal jobs but couldn’t get a job, because the program was not ABA-approved. I’ve never been employed as a paralegal, and now, I’m saddled with federal student loan debt that I’m struggling to pay.” —Britney, Heald College Graduate
The problem persists

In 2019 alone, 21 schools and 37 campuses closed in California. When a school closes, students are unable to complete the program and obtain their credential, and typically cannot transfer their credits to another school. Those who do graduate are often unable to find a job in their field of study.

Thus, predatory schools impose a compounding harm: students are lured into programs by deceptive advertising promising false educational outcomes; they are pressured to take out tens of thousands of dollars in loans for courses that fail to train them in their field of study; and when a school closes due to financial insolvency, they are stuck without the education but with mounting debt they cannot pay.

In California, for-profit students earn less, are deeper in debt, and more likely to default on their loans than students of four-year public or private non-profit schools.

The current recession will exacerbate financial insolvency of for-profit schools—causing further closures and resulting in harm to students.

California Needs to Do More

Historically, California has taken action in this arena. In response to devastating harm caused by predatory for-profit schools during the Great Recession, the Legislature amended the California Private Postsecondary Education Act of 2009, which aims to provide students with “essential avenues of recourse” and a regulatory structure for school oversight. Among other things, the Act prohibits misleading advertising and recruiting; requires disclosure of data on educational outcomes; and imposes minimum operating standards.

“Counselors misled me about the cost of the visual arts program and pressured me to take out the maximum amount of loans available. They also lied about the education I would receive and jobs I would get after graduation. Since graduation, I have been unable to find any permanent position in visual journalism. Eventually, I could not afford to pay back my loans and I defaulted. Aside from some personal relationships gained, going to Brooks is by far the biggest regret of my life.”

—Rachel, Graduate of Brooks Institute of Photography

“My education in automotive technology was a waste of time and money. I wasn’t able to find a job after school, the closest thing I got was a job changing oil on cars. Contrary to what I was told, no employers valued the diploma. In the end I gave up on pursuing a career in my field of study and I went into a different trade. Years after graduating I am still in limbo, both financially and career wise. This has impacted my family too, especially my mother who took on debt to help me attend this useless program.”

—Juan, Graduate of WyoTech
Under the Act, the Bureau has a number of tools it can wield to protect students from unlawful schools, including: conducting announced and unannounced inspections of schools; targeting schools that are at higher risk of closure for investigation; investigating student and consumer complaints; disciplining schools that violate the Act and implementing regulations; issuing relief from the Student Tuition Recovery Fund; and assisting students harmed by schools’ misconduct or closure.

Recent history demonstrates, however, that the Bureau's enforcement capacity is insufficient to prevent grave harms to students from predatory schools that go unchecked. Improving the Bureau's ability to effectively wield its enforcement authority is essential to protecting students.

Without Robust Enforcement, California Students are Vulnerable

Before the pandemic created havoc in our economic landscape, predatory for-profit schools continued to engage in deceptive and unlawful conduct. Absent checks, this fraudulent behavior is likely to increase during the recession.

Complaints Filed with the Bureau by Fiscal Year

The number of complaints filed with the Bureau has consistently remained in the several hundreds. Advocates report that common complaints against schools include misrepresentations about educational programs and the likelihood of employment after graduation; overcharging; failing to credit payments made to the school; failing to provide adequate instruction; subpar teaching staff; lack of supplies and materials; and retaliation for complaining.
The Bureau has made headway to increase enforcement against bad actors. It has created a task force to reduce the number of open complaints, established a process to streamline complaint investigation and maintain manageable workloads, and engaged in training with the DCA Division of Investigation (DOI) and the Office of the Attorney General. Notably, the Bureau’s inspections increased by 97 percent from 2018 to 2019, and 185 percent more citations were issued in 2019 than in 2018.

Notwithstanding these improvements, the number of serious disciplinary actions taken against private postsecondary schools in recent history is scant. In FY2018-19, the Bureau filed just 12 accusations against licensees; only one license was revoked; no licenses were suspended; and two schools were placed on probation.

From this historical view it is clear that, while the Bureau is integral to the protection of students from predatory schools, there is more work to be done.

**Sunset Recommendations**

**Stopping Bad Actors Before Students are Harmed**

The Bureau has identified one obstacle to robust enforcement against bad actors, and it is one that can—and should—be expediently resolved by the Legislature.

California law, Education Code § 94937, requires the Bureau to demonstrate that a school’s misconduct has caused “actual harm” to a student before it can place the school on probation, or suspend or revoke the school’s license. This is an onerous standard; it requires the Bureau to demonstrate (with evidence) that a school’s misconduct has caused harm to a student or students.

**Other States and DCA Agencies Do Not Require “Actual Harm”**

This requirement is in stark contrast to many other states, which authorize suspension or revocation of a school’s license where there has been a serious
violation of governing laws. In many states, the regulatory agency’s finding that a school has engaged in prohibited conduct is the trigger to start processes to suspend or revoke a license—not that the misconduct has already resulted in harm to students. For example, in Ohio and Arizona, the agency may suspend or revoke a school’s license for violating state laws that govern private postsecondary schools and discipline schools for fraudulent conduct.

The Bureau’s harm requirement is even an outlier among other agencies within DCA, which can suspend or revoke a license without the equivalent of an “actual harm” finding. For example, both the Bureaus of Security and Investigative Services and Household Goods and Services are empowered to suspend or revoke certain licenses based on a finding that the licensee has engaged in one or more prohibited activities, including a violation of governing law.

While the harm requirement appears to model the standard for private causes of action for fraud, that is not an appropriate analogue. The Bureau acts as the gatekeeper to schools seeking state permission to operate and the monitor of licensed schools’ conduct. Thus, it is responsible to protect the public trust associated with a state license and should not be required to wait for harm to occur before taking action. It should be authorized to act when it learns of serious misconduct that—if unaddressed—poses a significant risk of harm to students.

This is a simple fix—one that does not require full agency review. Identified by the Bureau as an obstacle to enforcement, the Legislature should follow the commonsense recommendation and expediently remove the “actual harm” requirement from § 94937.

Removing “Actual Harm” is Just the Starting Point

As the Legislature conducts its comprehensive review during the 2021 reauthorization, it should encourage the Bureau’s vigorous enforcement against problematic institutions by clarifying the acts that warrant serious discipline.

In addition to requiring “actual harm” to trigger the Bureau’s authority to suspend or revoke a school’s license, the Act currently requires the Bureau to find either repeated violations of governing laws or a “material violation.” Under California law, material violations are limited to fraudulent conduct and criminal behavior. This means that an institution can violate governing law or engage in other serious misconduct—like discrimination against students—and the Bureau could not seek suspension or revocation of the school’s license.
This is insufficient. The Bureau’s “paramount” duty is to protect students, and it should have authority to engage in serious discipline when it is warranted.

Other States Specify Misconduct That Triggers Serious Discipline

California should follow other states that designate a robust list of misconduct as grounds for serious discipline (e.g., probation or suspension or revocation of the school’s license).

Arizona Law

Arizona delineates more than eighteen “grounds” on which the agency may, among other things, suspend or revoke a school’s license. Examples include:

- Violation of the governing law;
- “False or misleading advertising, solicitation or recruitment practices”;
- “Unprofessional or dishonorable” conduct, including improper sexual acts and verbal and physical abuse by the school or its employees or agents;
- Failure to comply with accreditation standards;
- Failure to ensure “adequate management capability,” employ faculty who meet minimum qualifications, provide programmatic “facility, equipment and other resources” and follow the governing regulations;
- Failure to “maintain records” as required by regulation; and
- Failure to “provide a safe learning environment.”

Ohio Law

Ohio also provides a comprehensive list of misconduct that can warrant suspending or revoking the institution’s license to operate. Examples include:

- Violation of governing law and minimum operating standards;
- Furnishing “false, misleading, deceptive, altered, or incomplete” information to the Board;
- Presenting students with “misleading, deceptive, false, or fraudulent information relating to any program, employment opportunity, or opportunities for enrollment”;
- Failure to provide safe and sanitary premises and equipment;
- Failure to maintain adequate financial resources;
- Discrimination against students; and
- Use of money or “valuable consideration” to induce students to enroll.

While comprehensive, these states limit serious discipline to the specified wrongful acts. The California Legislature should likewise delineate a
comprehensive list of misconduct that warrants serious discipline. And it should go further by making clear that the list is non-exhaustive—thereby empowering the Bureau to act when it discovers other serious wrongdoing by a school.

This statutory guidance will clarify the scope of the Bureau’s authority to take action and empower it to prevent serious misconduct. Perhaps most importantly, it will put schools on notice that such conduct will not be tolerated.

For the Bureau to fulfill its duty of protecting the public from fraudulent or predatory schools, it must have authority to place a school on probation or suspend or revoke its license before students are harmed.

The Legislature should eliminate the “material violation” requirement and delineate a non-exhaustive list of types of misconduct sufficient to trigger serious discipline. Minimally, the Legislature should clarify that violations of governing law constitute grounds for those serious consequences.

Mitigating Harm From School Misconduct and Closure

The Bureau has two primary mechanisms to assist students who have been harmed by school misconduct: the Office of Student Assistance and Relief (OSAR) and the Student Tuition Recovery Fund (STRF). OSAR is California’s first responder when a private postsecondary school collapses, causing havoc for hundreds (or thousands) of students. OSAR conducts outreach to the towns and counties of closed campuses and assists students with determining their eligibility for relief. And STRF is the state’s resource to provide relief to the thousands of California students who have suffered economic harm because of school closure or misconduct.

The Bureau’s Role in the Aftermath of a School Closure

After a closure, the Bureau is tasked with managing the needs of students who are harmed. The Bureau sends staff to the campus to triage students’ needs. Because schools frequently fail to follow proper closure procedures, it often assumes responsibility for tens of thousands of student records with little or no notice. This requires agency capacity to cover unexpected statewide travel expenses, additional staffing needs, and costs related to the transfer and retention of student records.

The Bureau does not presently have this capacity. While OSAR has significantly increased its outreach to the towns and counties of closed campuses over the last two years, it has just three employees to conduct outreach events across the state. Nor does the Bureau have the financial resources to manage the task of transferring and retaining student records of closed schools.
In its sunset report, the Bureau identified this capacity gap and made two recommendations to increase its financial resources for needs that arise in the wake of a school closure: STRF funds and surety bonds.

**STRF is for students.**

We do not believe that STRF is the appropriate resource to cover the Bureau’s costs associated with school closure. The sole and critical purpose of the Student Tuition Relief Fund is to relieve economic loss suffered by students of closed institutions. While we recognize that the STRF fund balance has not significantly diminished—it was $24,144,533 as of February 5, 2020—its underuse is not reason to divert the resources elsewhere. Vast numbers of California students have been harmed by closed schools. To the extent the STRF fund has not been exhausted because eligible students do not know about it, that is reason to increase the Bureau's outreach, not divert funds. Nor do we know how much of the fund is needed to cover existing claims. As of February 2020, there was a backlog of 1,097 pending STRF applications, some of which were submitted in the 2017-18 fiscal year. The Bureau has made progress in reducing the backlog, but it is hampered by current staffing levels, with just three staff devoted to reviewing and deciding STRF applications.

**The Bureau Needs to Ensure That Harmed Students Receive Help**

**The Bureau lacks critical capacity to cover the needs of students who have been harmed by closed schools.**

At a time when robust enforcement is needed the most, the Bureau is heading into a fiscal year that threatens its very existence. In its 2019 Report, the Bureau forecasted that it would be insolvent by 2021. While the Legislature should consider directly addressing this problem by appropriating funding to the Bureau, these are unparalleled times.

There are solutions that the Legislature could readily authorize—including a surety bond requirement—which would help to address the Bureau's shortfall.

**Surety Bonds: A Reasonable (But Limited) Solution**

We agree with the Bureau that a surety bond requirement is a reasonable and fair solution to mitigate some of the costs triggered by school closure. Indeed, it would place the burden on the school whose misconduct or mismanagement triggered the need to remedy students’ harm.
This is an area where California lags behind other states. Many states already require private postsecondary schools to post surety bonds to cover costs incurred when schools fail and close. Most states base the surety amounts on gross tuition. But states often cap the bond amount, limiting its effectiveness in covering the many and varied costs that arise when a school closes. An example of a state that requires higher bond amounts is Georgia.

Georgia’s Surety Bond Requirements

<table>
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<th>Minimum Bond</th>
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<tr>
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<td>$20,000</td>
</tr>
<tr>
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Even Georgia’s requirements are insufficient to provide fulsome coverage of costs related to school closures. As the Bureau has noted, the direct costs to the Bureau from a school closure “are proportional to the size of the institution with large-scale closures using significant financial and personnel resources.” While Georgia’s scale largely accounts for the size and scope of school closures, it fails to require a bond amount that is proportional to tuition in excess of $500 thousand. In California, there are a number of schools whose gross tuition exceed this amount.

To account for costs incurred by the Bureau when a school closes, the Legislature should enact a surety bond requirement that similarly matches bond amounts to a school’s gross tuition, but with no maximum threshold. And it should clarify that amounts recovered from a school’s bond should be applied to the Bureau’s efforts to aid students impacted by the closure.

Record Retention is Critical to Mitigating Harm After a Closure

For students, one of the most stressful aspects of a school closure is the inability to obtain copies of their records. Existing law requires schools to provide the Bureau with a plan to ensure access to students’ records upon closure. But closing schools often fail to create or follow an orderly plan for retention of
students' records, and the Bureau regularly learns of school closures without the 30-day notice required under California law.75

Schools typically close because of financial insolvency, with no funds to expend on record retention. If a school ends up in bankruptcy, this duty falls to the estate's trustee, who is more motivated to maximize payments to creditors than to ensure record retention.

**Records are Important to Students**

Records are necessary to obtain federal and state relief from student loan debt (including STRF payments), to transfer credits to other schools and demonstrate academic credentials in the job market. Indeed, students have been denied jobs because they could not prove their credentials.

To ensure students have access to all possible relief, the Bureau must be equipped to retain *all necessary records*—not just students' transcripts. Other types of records—like enrollment agreements, disclosures made to the students, ledgers showing charges to and payments by a student, loan documents, and ability-to-benefit testing records—provide invaluable evidence in students' applications for federal and state relief from student loan debt.

**Lack of adequate funding and ineffective enforcement mechanisms impede the Bureau from ensuring the transfer and retention of student records—and ultimately, California students bear the brunt of the harm.**

Because this is a critical need for students harmed by predatory schools, it is imperative that the Legislature fund the Bureau to cover these costs. Short of appropriating funds, the Legislature can look to other states for mechanisms to reduce costs and raise revenue.

“As legal aid lawyers, we’ve represented so many clients who can’t track down their student records, including transcripts. This is an enormous problem, especially for clients who have been defrauded by their school. Without records, clients aren’t able to prove elements of a claim of defense to repayment, for example, and end up without a means to pursue relief.”

—Kara Acevedo, *East Bay Community Law Center*

“We have had students who believed their documents were in the possession of the BPPE have their STRF applications denied because they didn’t have adequate school records.” —Leigh Ferrin, *Public Law Center*
Reducing Costs of Record Retention

To reduce the costs of record retention, California should look to Massachusetts, which mandates that institutions maintain student records in paper and digital format.\textsuperscript{76} If California similarly required schools to maintain electronic copies of records, the Bureau’s costs associated with transferring and maintaining the records of a closed school would be significantly reduced. As with the surety bond, this places the burden on the school to ensure that students are protected in the event of a closure. The Legislature should likewise follow Massachusetts’ example and require schools to maintain records for a sufficient period of time to cover all possible student needs.\textsuperscript{77}

Increasing Funding for Record Retention

Although the Legislature could authorize funding the cost of record retention through surety bonds, as previously noted, the surety bond amounts will likely be insufficient to cover all of the Bureau’s costs related to a school’s closure. To provide additional funding to the Bureau for record transfer and retention, the Legislature could enact a mechanism for collecting a modest fee from private postsecondary schools, as Connecticut has done. Connecticut requires for-profit schools to pay the state treasurer a very small percentage (“one-half of one percent”) of tuition per school quarter.\textsuperscript{78} Connecticut uses this fund to provide tuition relief to students, similar to California’s STRF.\textsuperscript{79} If California created a similar fund, those monies could instead be utilized to cover the Bureau’s costs in maintaining access to student records after a school closes.

The fee itself would place a minimal burden on schools, while providing an enormous benefit to harmed students. To that end, the Legislature would need to consider—and to the extent it can, \textit{mitigate}—the possibility that schools may attempt to pass this added cost on to students through increased tuition or fees.

Improving Enforcement Mechanisms

The Bureau’s enforcement of record retention requirements is limited to administrative actions against closing schools.\textsuperscript{80} But because closing schools rarely plan to operate again, this threat has limited impact. Thus, compliance with record retention requirements might also be improved by expanding the Bureau’s enforcement tools.\textsuperscript{81}

Hawaii, in particular, provides powerful enforcement mechanisms against closed schools that fail to maintain students’ records. If a private college closes, it must deposit student records with the Hawaii Department of Commerce and Consumer Affairs.\textsuperscript{82} And if this does not happen, the department has the
authority to hold the institution, its owners, and board of directors liable. The
director of the department is explicitly authorized to seek a court order and
seize an institution’s records upon determining that a school is at risk of not
properly maintaining them. Indeed, just having strong mechanisms on the
books creates an incentive for schools to comply.

The Bureau neither has the financial resources nor necessary enforcement
mechanisms to ensure that records are transferred and retained after a
school closure. Thus, the Legislature should provide both. It should require
schools to maintain student records in electronic and paper formats;
impose a fee structure funded by for-profit schools to cover costs of record
retention; and increase the Bureau’s enforcement mechanisms.

Policy Recommendations

All of these recommendations are important. However, given the increased risks
during the COVID-19 recession, the Legislature should consider implementing
certain recommendations in short order. Specifically, it should remove the
“actual harm” obstacle to Bureau enforcement and provide necessary funding
through a surety bond requirement. Acting now, the Legislature can mitigate the
anticipated harm from the increased school closures and predatory practices
during these challenging times.

Ensure that the Bureau is positioned to prevent harm to students

1. The Bureau must have the authority to prevent harm to students by permitting
   it to temporarily or permanently remove private postsecondary schools from
   the marketplace when they commit serious misconduct. The Legislature
   should therefore amend California Education Code § 94937 to eliminate the
   requirement that the Bureau demonstrate “actual harm” in order to place a
   school on probation or suspend or revoke the school’s license. The Bureau—
   and by proxy, California students—should not be required to wait for harm to
   occur before taking action to prevent further harm.

2. To empower the Bureau and protect Californians from harm, the Legislature
   should follow other states and further amend § 94937 to replace the “material
   violation” requirement with a non-exhaustive list of misconduct sufficient to
   trigger serious discipline. Minimally, it should make clear that any violations of
   the Act or its implementing regulations are sufficient to trigger serious
   discipline (e.g., probation or license suspension or revocation).
Position the Bureau to assist students who have been harmed

3. It is imperative that the Bureau have capacity to triage students’ needs following a school closure. The Legislature should enact a surety bond requirement for private postsecondary schools seeking to operate in California. To ensure that it sufficiently covers the costs of assisting students, the minimum bond amount should be tied to the gross tuition of the school. If the gross tuition is high, the bond amount should likewise be proportionally high. It should further direct that bond amounts be allocated to the Bureau’s efforts to address students’ needs after a school closure.

4. California students of private postsecondary schools must have access to school records after their school closes. The Legislature should appropriate money for this purpose, because the need is critical and any other measure could fall short of satisfying the need. In the absence of direct funding, the Legislature should take steps to mitigate the costs of record retention and increase the Bureau’s funding to manage the process:

- Require schools to maintain student records in paper and electronic format. This will significantly reduce the costs of transferring and retaining records after a school closure.

- Enact a mechanism to collect a small fee from schools and direct the Bureau to apply monies from the fund towards the cost of transferring and retaining records after a school closure. The Legislature should likewise seek to prohibit schools from passing the fee (as an added cost) on to the students.

- Expand the Bureau’s enforcement mechanisms, to incentivize compliance with record retention requirements. Give the Bureau authority to hold the school, its owners and board of directors liable for a school’s failure to follow record transfer and retention requirements. The Bureau director should likewise be authorized to seek a court order and seize a school’s records upon determining that a school may fail to properly maintain or transfer the records upon closure.

Conclusion

The Legislature should reaffirm the Bureau’s “paramount” duty as the protector of California private postsecondary students by giving it full authority to prevent harm to students, as well as the capacity to mitigate harm in the aftermath of a school’s misconduct and closure.
Endnotes


2 Institutional Eligibility for Participation in Title IV Student Financial Aid Programs, Cong. Research Serv. 10 (updated Feb. 14, 2019), https://fas.org/sgp/crs/misc/R43159.pdf (“Title IV of the HEA sets forth three requirements to ensure program integrity in postsecondary education, known as the program integrity triad. The three requirements are state authorization, accreditation by an accrediting agency recognized by ED, and eligibility and certification by ED. This triad is intended to provide a balance in the Title IV eligibility requirements. The states’ role is to provide consumer protection, the accrediting agencies’ role is to provide quality assurance, and the federal government’s role is to provide oversight of compliance to ensure administrative and fiscal integrity of Title IV programs at IHEs.”).

3 The Bermuda Triad, supra.


10 Cal Educ. Code § 94875. See also § 94932.5(b) (requiring the Bureau to adopt policies to “ensure that student protections are the highest priority of inspections and that inspections are conducted based on risk and potential harm to students”); Bureau, About Us, supra (mission is to “protect[] students and consumers through the oversight of California's private postsecondary educational institutions”).
Before COVID-19, the Bureau was set to sunset in 2020. See Bill Analysis, SB 1192 (Hill), Assembly Comm. on Bus. and Prof. 4 (June 28, 2016). Agencies under the Department of Consumer Affairs come up for reauthorization on a four-year cycle. Id. In 2016, the Bureau’s sunset cycle was extended from 2017 to 2021. E.g. § 94950 (laws governing private postsecondary institutions sunset as of January 1, 2021). Yet, in light of COVID-19, the California Legislature is pushing all agency reauthorizations to 2021. See Cal. Senate Bill 1474 (in process).

12 SB 1192, supra at 4 (“An eligible agency is allowed to sunset unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency.”).

13 See generally Bureau, Sunset Review Report 2019, supra. During the sunset process, the Bureau must submit a report to the Legislature that reviews, among other things “the purpose and necessity of the agency and any recommendations of the agency for changes or reorganization in order to better fulfill its purpose.” SB 1192, supra at 4.


15 It is the Legislature’s role to “continually and carefully evaluate this chapter and its administration and enforcement” and “[w]here there are deficiencies in the law or regulatory oversight, the Governor and the Legislature should act quickly to correct them.” Cal. Educ. Code § 94801(e).


20 Zinner, Bittersweet Relief, supra at 6.


25 Id. §§ 94801(d)(2), (3).


Cal. Educ. Code § 94932 (“When the bureau has reason to believe that an institution may be out of compliance, it shall conduct an investigation of the institution.”); § 94941(c) (directing the Bureau to target institutions based on criteria that may indicate underlying problems).

\textit{E.g.}, Cal. Educ. Code §§ 94941(a), (e); 5 Cal. Code Reg. § 75300.


Cal. Code Educ. §§ 94949.7 – 94949.73 (Office of Student Assistance and Relief).


\textit{See id.} at 9, 63.

\textit{Advisory Committee Meeting Materials}, Bureau for Private Postsecondary Education, 43 (February 19, 2020) (155 inspections in 2018; 305 inspections in 2019).

\textit{Id.} at 47 (334 citations in 2019; 117 citations in 2018).


\textit{Id.} at 65.

The Bureau’s current authority to suspend or revoke a license requires, first, that it find that the institution “[o]btain[ed] an approval to operate by fraud,” or engaged in “repeated violations” of the laws governing private postsecondary institutions or committed a “material violation . . . [that] resulted in harm to students.” Cal. Educ. Code § 94937(a). The law further limits “material violations” to fraudulent or misleading conduct that caused actual harm to a student or students. \textit{Id.} § 94937(a)(2).

There is no statutory definition of “actual harm.” An example of how the Bureau has previously demonstrated harm: in an accusation it alleged that a for-profit school failed to issue federal aid stipend payments to students and provide information to students regarding imminent closure. \textit{See e.g.}, First Amended Accusation against Argosy University (Aug. 27, 2019), https://www.bppe.ca.gov/enforcement/actions/argosyuniv_1staccu.pdf.


Cal. Bus. & Prof. Code § 7591 (Bureau of Security and Investigative Services); id. § 9810 (Bureau of Household Goods and Services).

Cal. Bus. & Prof. Code § 7599.61(b) (regarding alarm company licenses); id. § 9855.7(c) (regarding service contractor licenses).

See Lazar v. Superior Court, 12 Cal. 4th 631, 638 (1996) (elements of fraud action: “(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or ‘scienter’); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage.” (emphasis added)).

It is worth noting that Cal. Educ. Code § 94938 does permit the Bureau to make emergency decisions to protect students, prevent misrepresentations to the public, or prevent the loss of public funds. See also Notice and Emergency Decision, Bureau for Private Postsecondary Educ. (June 10, 2018), https://www.bppe.ca.gov/enforcement/actions/queenston_emerdec.pdf (Queenston College of America).


Ohio Rev. Code Ann. § 3332.09(A), (B), (F), (G), (I), (K), (M).

Cal. Educ. Code § 94949.73(a), (b).

Id. § 94923.


Cal. Educ. Code § 94923(a) (STRF “relieves or mitigates economic loss suffered by a student . . . “); § 94923(b)(1) (“The fund shall be used to provide awards to students who suffer economic loss.”).

Advisory Committee Meeting Materials, supra at 71.

Zinner, Bittersweet Relief, supra at 5-6.

Advisory Committee Meeting Materials, supra at 73.

Id. at 27 (organizational chart).

Bureau, Sunset Review Report 2019, supra at 71

Advisory Committee Meeting Materials, supra at 70.

As the Bureau notes, this is also a requirement that other DCA agencies impose on their licensees. Bureau, Sunset Review Report 2019 at 71.


71 Id. § 20-3-250.10(b)(1).

72 Bureau, Sunset Review Report 2019, supra at 70.


74 “At least 30 days prior to closing, the institution shall notify the bureau in writing of its intention to close. The notice shall be accompanied by a closure plan, which shall include . . . [a] plan for the disposition of student records.” Cal. Educ. Code § 94926; id. § 94926(d). The Bureau has delineated a list of records that must be maintained, including transcripts, diplomas, verification of high school completion (or GED), and copies of all documents signed by the student. Id. § 94900(b); Cal. Code Regs § 71920. Schools can appoint a custodian of records or, in some circumstances, transfer the records to the Bureau. Id. § 94927.5.

75 Bureau, Sunset Review Report 2019, supra at 71-72.

76 230 Mass. Code. Regs. 15.03 (8). Massachusetts also requires closing schools to pay a fee to the agency upon the transfer of records. Id.

77 Most student records must be maintained for at least seven years after the student has graduated or separated from the school; transcripts must be kept for 60 years. 230 Mass. Code. Regs. 15.03 (8)(1)(b), (c).


79 Id. § 10a-22v.


81 Currently, Cal. Educ. Code § 94926 does not contain any specific enforcement provisions. Rather, the Bureau is limited to the general scope of its enforcement authority outlined in Article 18, which includes pursuing administrative actions against a school.

82“If a private college or university, seminary, or religious training institution under the jurisdiction of the department ceases operating within the State, the institution, its owner, or the owner's designee, and its governing board shall be jointly and severally liable to deposit with the department the institution's educational records requested by the department in a form to be prescribed by the director.” Haw. Rev. Stat. § 305J-13(a).

83 Haw. Rev. Stat. § 305J-13(b). See also Haw. Rev. Stat. § 305J-13(c) (“The director or the department of the attorney general may enforce this section by filing a request for an injunction with a court of competent jurisdiction.”).