

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

FINAL STATEMENT OF REASONS

Subject Matter of Proposed Regulations: Substantive Change Approval for Method of Instructional Delivery

Section Affected: California Code of Regulations (CCR), Title 5, Division 7.5, amend section 71600.

Updated Information

The Informative Digest and Initial Statement of Reasons are included in the rulemaking file and incorporated as though set forth herein.

The Bureau of Private Postsecondary Education (Bureau or BPPE) staff noticed the proposed rulemaking with a 45-day comment period ending on Tuesday, January 30, 2024, by 5 p.m. The Bureau received one comment during the comment period. There were no requests for a public hearing and no separate public hearing was held.

Local Mandate

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

Consideration of Alternatives

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be more effective in carrying out the purpose for which the regulation is proposed, would be more effective and less burdensome to affected private persons than the adopted regulations or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Board incorporates by reference the alternatives identified in its Initial Statement of Reasons and did not receive any comments that altered its findings.

Incorporation by Reference

Application for Significant Change in Method of Instructional Delivery *or Change in Distance Education Learning Management System* form (Form INS rev. 8/23)

All forms incorporated by reference in this rulemaking would be cumbersome, unduly expensive and otherwise impractical to publish in the CCR because the Board requires a particular format not conducive to inclusion in the CCR. All forms incorporated by reference that are being adopted, amended, or repealed in this rulemaking were available on the Bureau's website and hardcopies will be available from the Bureau upon request.

Summary of Comments Received During the 45-day Notice Period

The Bureau's summary of and response to the comment received is presented below.

Comment 1: Darby Dickerson, January 11, 2024

Summary of Comment

The commenter opposed the provision that requires institutions to seek Bureau approval for any "change in the distance education learning management system."

The commenter stated that the Bureau lacks the necessary technical expertise to evaluate the intricacies and complexities of modern learning management systems (LMSs), which are sophisticated software platforms that require in-depth knowledge to assess properly. The commenter opined that requiring BPPE approval would create undue burdens for institutions and that a regulatory body may not fully comprehend nuances of implementing an LMS change.

The commenter also stated that the proposed regulation effectively forces educational institutions to seek BPPE approval before entering into contracts with LMS vendors, which can result in significant delays, causing schools to lose favorable contract terms and affecting the timely implementation of these systems for the start of an academic term. The commenter stated that institutions rely on efficient procurement processes to meet the evolving needs of their students and faculty.

The commenter outlined typical steps a school takes to implement an LMS with monthly time periods, and opined that inserting the BPPE into this process could result in students not having access to the best LMS the school could provide or paying higher fees as a result of delays.

The commenter suggested that the Bureau consider developing a list of approved LMS that schools could adopt without prior approval, such as Canvas, Blackboard, and Moodle, and update this list annually.

The commenter suggested that if the Bureau proceeds with the proposed regulations, "new distance education learning management system" should be defined. The commenter proposed to define "distance education learning management system" be defined as "a software platform designed to facilitate the creation, delivery, and management of educational content and courses in remote, online, or in-person learning environments" and list examples of what are and what are not LMS.

The commenter suggested that a "change" in a distance education LMS explicitly exclude certain modifications and enhancements to existing learning management systems, and listed conditions which a "new distance education learning management system" does not encompass.

Response to Comment

The Bureau has reviewed and considered the comment and declines to make any amendments to the proposed text based thereon.

As described on pages 1-3, 5 and 10 of the Initial Statement of Reasons, this regulatory proposal implements Education Code (Ed. Code) section 94894, which now lists a “change in the distance education learning management system” as a substantive change that requires prior authorization by the Bureau.

The comment opposes the provision that requires institutions to seek Bureau approval for any “change in the distance education learning management system,” however, the requirement is mandated by Ed. Code 94894(l). Thus, the Bureau has no authority to make any amendment to the proposed text, based on the statutory mandate.

The commenter opined that the Bureau lacked technical expertise to evaluate the learning management systems (LMSs) and that there is potential for undue burden or delays from obtaining BPPE approval before entering into contracts with LMS vendors. However, the Bureau has gained the required expertise in order to implement the oversight responsibility granted by the Legislature and the Bureau's implementation is as minimal as allowed and mandated by Ed. Code 94894, requiring only that institutions obtain pre-approval before changing their Distance Education Learning Management System. To the extent the comment claims any issues with the approval requirement, the Bureau must follow statutory mandate and has no authority to make any amendment to the proposed text.

The comment further recommends two definitions, one that defines “distance education learning management system” in the context of specific existing products, and another that defines “change” as excluding “certain modifications and enhancements”.

As described on page 5 of the Initial Statement of Reasons, the proposal adds 71600(c): ““Distance education learning management system” is defined as an online system designed or used for the facilitation of distance education to create, distribute, and manage the delivery of educational content.” The Bureau chose this definition as one encompassing the most common elements of a learning management system. Listing examples as the comment suggested would potentially result in requiring to amend the definition if the examples were no longer appropriate due to changes in the technology marketplace.

Additionally, as described on page 3 of the Initial Statement of Reasons, the proposal states that a “change in distance education learning management system” is a change in the distance education learning management system other than either an upgrade or a renaming of the existing system, or a system that is renamed but otherwise unchanged from the previous system other than an upgrade”” which is sufficiently

precise to provide guidance to institutions while being flexible enough to incorporate future products. Listing conditions as the comment suggested would potentially result in requiring to amend the definition if the examples were no longer appropriate. Additionally, the definition's exclusion of upgrades to an existing system or the renaming of an existing system would encompass the commenter's proposed definition that "change" included exemptions for "Routine upgrades", "New versions or rereleases," "Patches and bug fixes," "Add-ins, plug-ins or extensions," and the other alternatives mentioned in the comment.