

OPEN SESSION AGENDA ITEM

706 JANUARY 2018

DATE: January 27, 2018

TO: Members, Board of Trustees

FROM: Destie Overpeck, Assistant General Counsel

SUBJECT: Productive Mindset Intervention Memorandum of Understanding (MOU)

EXECUTIVE SUMMARY

The State Bar of California (State Bar) and the Productive Mindset Intervention Research Team, which includes Professor Victor D. Quintanilla, Professor Sam Erman, Dr. Mary C. Murphy, and Dr. Gregory Walton, have reached a tentative agreement regarding the terms of an MOU for a productive mindset intervention to improve applicants' performance on the State Bar of California's July 2018 bar exam. The MOU establishes a ten (10)-year relationship between the State Bar of California and the Research Team to share data and conduct analyses for a productive mindset intervention and describes each party's expectations, rights, and responsibilities over the course of this relationship. This is a non-financial agreement.

BACKGROUND

In March 2016, the Board directed the Council on Access and Fairness ("COAF") to advance a bar passage initiative and/or a mentoring program. After nearly a year of study of various bar passage programs, COAF selected the Productive Mindset Intervention ("PMI"), which is an initiative of a Collaborative from Stanford University, the University of Southern California, and Indiana University. Between March and July of 2017 the PMI was presented and discussed at Law School Assembly, Committee of Bar Examiners, and Board of Trustee meetings. The PMI is currently reflected on the Programs Committee work plan.

Productive mindset interventions reframe the struggles experienced when studying as learning (not failure) and as pointing to areas where further effort and attention would be productive to promote success. Productive mindset interventions help students appraise learning and performance challenges as common, surmountable, and even useful.

This project involves collaboration between the State Bar and the Research Team in a user-centered iterative design process that will develop a productive mindset intervention for test-takers preparing for the July 2018 bar exam.

The intervention will be delivered entirely online. First, test-takers registering for the exam online (in March 2018) will be able to opt-into the study and consent to having their bar exam scores evaluated so as to determine the effectiveness of the intervention. Those who opt-in will

receive the intervention via email in May 2018. “Boosters” will follow via email in late June and early July when students are studying in earnest for the bar exam.

Every participating test-taker will be randomly assigned to either an (1) active control condition where students will learn study strategies or (2) the treatment condition where students will receive the productive mindset intervention. Random assignment of test-takers will ensure random dispersal of student traits (e.g., GPA, LSAT, and demographic details) between conditions, leaving the intervention treatment as the only systematic difference between the conditions.

The Research Team predicts that the productive mindset intervention will both improve bar exam scores in the intervention-treatment condition and improve the experience of test-takers studying for the bar exam. The collaboration will also allow for an evaluation of the effectiveness of the productive mindset intervention.

This 2018 intervention will represent the first time the PMI has been implemented for a bar exam. The State Bar’s role in this effort is designed to support a randomized control trial evaluation of the bar exam PMI. Should the intervention prove successful, the goal will be for each California law school to offer the intervention directly to its students.

The PMI Research Team has already conducted and analyzed an online survey of Los Angeles–area law school graduates who sat for the July 2017 bar exam. In addition, the Research Team recently completed focus groups in the Los Angeles area with test takers of the July 2017 bar exam. Findings from the online survey and focus groups strongly support the conclusion that a well-tailored productive mindset intervention will improve performance on the July 2018 bar exam.

The project is fully funded. The Research Team was awarded a \$125,000 grant from the Access Lex Institute. This funding will support the design of the productive mindset intervention, the creation of films that will be incorporated into the productive mindset intervention, and an evaluation of the productive mindset intervention’s effectiveness.

As a next step, the electronic platform that will deliver the intervention will be developed; the Bar must also execute an MOU with the Research Team outlining the nature of the collaboration.

DISCUSSION

The July 2016 California bar exam pass rate was forty-three percent—the lowest in three decades. Passage rates by group revealed wide racial and ethnic disparities. These troubling outcomes suggest a need for research into (1) the factors shaping bar exam performance and (2) interventions to improve exam performance for all bar exam takers, including racial and ethnic minorities. This challenge creates opportunity. For example, the test-taking experience and performance on the bar exam can be improved. Greater bar passage will motivate prospective law school applicants, thereby increasing access to the legal profession. It will also fulfill a promise to law students who expend considerable effort and resources to join the profession, thereby expanding the value of legal education. After this initial demonstration project, individual law schools may choose to work with the Productive Intervention Research Team directly to continue the intervention support for students taking the bar exam in the future.

The State Bar and Research Team have tentatively agreed to the terms of an MOU for a productive mindset intervention, subject to the approval by the Board. Below is a summary of the material terms and issues.

Issues and Terms of MOU:

Protection of Confidential Data: Business and Professions Code section 6060.25 prohibits the State Bar from releasing Admissions' data, including bar examination scores, that may identify an individual applicant. In order to determine if the intervention improves applicants' bar exam performance, it is necessary to match the scores to the applicants who participate in the control group and intervention study. To protect the confidentiality of the data, the State Bar will remain in possession, control and custody of the bar exam scores and ensure that any State Bar data that is released is de-identified. Ron Pi, the State Bar's principal researcher for this project, will use the Research Team's statistical methodologies and procedures to evaluate the effectiveness of the productive mindset intervention. The State Bar agrees to allow the Research Team to direct and advise the State Bar's researcher on the methodologies and procedures to be used in conducting the analyses. The State Bar will also be entering into a non-financial independent contractor agreement with Mary Murphy, Ph.D., for her services in directing the data analysis needed for the study.

Institutional Review Board: It will be the responsibility of the Research Team, with support from the State Bar, to ensure that the evaluation activities are permitted by the Indiana University's Institutional Review Board (IRB). The Research Team will do so by obtaining approval for the study through the IRB application process and the State Bar will support this process by submitting a letter of support, acknowledging cooperation of the State Bar with this study.

Publication: The State Bar agrees that the Research Team may at its discretion publish results from statistics analyzing the non-identifiable data (e.g., means, standard deviations, analysis of variance, regression, and factor analysis results, etc.) that is collected through this evaluation process. The Research Team will neither identify school-specific results, nor identify any specific individuals in the research, without written consent from the State Bar. The State Bar may publish studies based on the data provided by the Research Team and the analyses performed, in consultation with the Research Team.

No Indemnity or Insurance Requirements: This study is not being conducted by an educational institution. Instead, the MOU is with a group of individual researchers. Because of this, the State Bar is unable to obtain indemnity and insurance agreements from the researchers. The State Bar has been assured that there have never been any subjects in any previous projects who have filed claims against the Research Team or parties involved. The study participants sign a consent waiver form prior to participating, which the State Bar will help draft.

Preservation of Data for Ten Years: The State Bar will agree to preserve the data used to evaluate the effectiveness of the productive mindset intervention for 10 years as required by IRB and American Psychological Association (APA) guidelines. The data should be saved in multiple software formats (e.g., ASCII, .csv, SPSS, R) and preserved in anonymized, raw data format, with the necessary data dictionary and code book, so as to be readily accessible if needed in the future. The State Bar agrees, if necessary, to perform additional data analysis to support the Research Team's publication needs for up to ten (10) years following the first publication of the research.

If members of the Research and Design Team are subject to an ethics complaint, or a complaint about the mishandling of data, which relates to the productive mindset intervention or the reporting of findings, the State Bar will cooperate in good faith with any internal review board from the Research Team's university or ethics review board from the APA conducting the investigation. The State Bar's cooperation will include, if requested, providing the internal review board or ethics review board with de-identified, and transformed score data so that investigators may ensure that bar data was properly analyzed, handled, and reported in any publications.

Termination: The Memorandum of Understanding may be terminated by either party following the implementation and evaluation of the productive mindset intervention. Following the implementation and evaluation of the productive mindset intervention, the relationship can be terminated within sixty (60) days of giving written notice of intention to terminate the agreement.

FISCAL/PERSONNEL IMPACT

The MOU requires that Bar staff perform the statistical analyses for the Research Team after the program intervention data is merged with bar exam scores for study participants in late 2018. Material personnel impact is limited primarily to the initial phase of data analysis after the intervention program is completed, with possibility of subsequent reanalysis of the data when needed.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

RECOMMENDATION

Staff recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the State Bar is authorized to enter into an MOU with Professor Victor D. Quintanilla, Professor Sam Erman, Dr. Mary C. Murphy, and Dr. Gregory Walton in order to design and conduct a productive mindset intervention to improve performance on the State Bar of California's July 2018 bar exam.

ATTACHMENT(S) LIST

None.