



The State Bar of California

OPEN SESSION

AGENDA ITEM O-404 - AMENDED

AUGUST 2021

COMMITTEE OF BAR EXAMINERS

DATE: August 20, 2021

TO: Members, Committee of Bar Examiners

FROM: Natalie Leonard, Principal Program Analyst, Office of Admissions

SUBJECT: Proposed Conforming Amendment to Accredited Law School Rule 4.160(D)(6)

EXECUTIVE SUMMARY

All accredited law schools must maintain a Minimum, Cumulative Five-Year Bar Examination Pass Rate (MPR) of 40 percent or more. In April 2021, the Committee of Bar Examiners (CBE) amended the MPR calculation, as set forth in Attachment A, to explain how to incorporate those graduates who are pursuing or have completed the Provisional Licensure Program under the expanded pathway to licensure. Completion of the expanded pathway allows eligible applicants to obtain licensure without having to pass the bar examination. This agenda item proposes that the CBE recommend to the Board of Trustees that those amendments be incorporated into the new Rules for Accredited Law Schools that will take effect on January 1, 2022, as set forth in Attachment B.

BACKGROUND

The CBE recommends State Bar rules to the Board of Trustees, who then review them to determine whether to solicit for public comment, and eventually, to adopt, modify or reject them. The CBE creates guidelines that explain and interpret the rules relating to law school regulation.

Currently, the MPR calculation is located in guideline 12.1 of the Guidelines for Accredited Law School Rules, interpreting Rule 4.160(N). In April 2021, the CBE modified the MPR calculation after receiving public comment, including feedback and a recommendation from the Committee on State Bar Accredited and Registered Schools.

Under the new Rules for Accredited Law Schools that take effect on January 1, 2022, the MPR formula has been relocated from the guidelines and incorporated into Rule 4.160(D)(6). Therefore, in order to incorporate these MPR amendments into the new Rules for Accredited Law Schools, the CBE must make a recommendation to the Board of Trustees for consideration, as only the Board of Trustees can amend State Bar rules after a period of public comment.

Staff recommends that the rules be posted for the minimum 30-day public comment period, since significant public comment has been collected and the amendments have already been discussed at the CBE meetings in March 2021 and April 2021 prior to the CBE's amendment of the current MPR formula located in guideline 12.1.

DISCUSSION

In April 2021, the CBE amended the MPR formula in guideline 12.1 as set forth in Attachment A. The amendments addressed two key issues.

The first amendment clarified that graduates' results on the October 2020 bar exam should be included as if that bar exam had taken place as originally scheduled in July 2020.

The second amendment explained how to incorporate those graduates who were pursuing or completing the PLP Expanded Program including a pathway to licensure.

Those participating in the pathway as of the July 1 MPR reporting date were excluded from the calculation even though they had previously taken a bar exam.

Those who completed the pathway as of July 1 were included in both the numerator and denominator of the 2021 MPR calculation along with those who passed a bar exam.

In addition, several changes are proposed to reintroduce and clarify prior language.

First, the July 1 deadline is now clearly stated in the header of the rule.

Next, subsection (b) is re-inserted into the rule using the text from the current guideline to provide a clear definition of the term qualified taker.

In addition, two minor clarifying changes were made to what is now subsection (b), versus the current wording in Guideline 12.1. The term student was changed to "individual" to reflect that they had completed their legal education and the term "JD program" was added to clarify which law school program the individual was required to complete as some law schools offer different programs of study.

Finally, the phrase with the double underlined language, initially omitted from the language shared with the Board of Trustees, is added to correctly describe that the February results of the bar exam after the reporting period are only included when the results were within 10 administrations of the qualified taker's graduation.

FISCAL/PERSONNEL IMPACT

None

RECOMMENDATIONS

The amendments discussed above have already been adopted for use in the 2021 calculation of the MPR and staff recommends that they be incorporated into the new Rules for Accredited Law Schools as well.

If the CBE should agree, it would be appropriate to recommend these that these changes, as set forth in Attachment B, be considered for approval by the Board of Trustees after reviewing the public comment received after a 30-day posting period.

PROPOSED MOTION

Should the Committee of Bar Examiners agree with the staff recommendations, the following motion should be made:

MOVED, that the Committee of Bar Examiners recommends that the Board of Trustees post the amendments to Rule 4.160(D)(6) of the new Rules for Accredited Law Schools as set forth in Attachment B for a 30-day period of public comment, after which they may be considered for modification or approval.

ATTACHMENT(S) LIST

- A.** Guideline 12.1, Guidelines for Accredited Law School Rules
- B.** Proposed Change to Accredited Title 4, Div. 1, Chap. 2, Rule 4.160(D)(6)

GUIDELINE 12.1, GUIDELINES FOR ACCREDITED LAW SCHOOLS
Currently in Effect and Being Applied to the 2021 MPR**12.1 Criteria for Determining Compliance with Accredited Law School Rule 4.160(N)**

In evaluating the compliance of a law school with the accreditation standard set forth in Accredited Law School Rule 4.160(N), a law school must maintain a minimum, cumulative bar examination pass rate (MPR) of at least 40 percent for the most recent five-year reporting period. The rate will be calculated and reported annually to the Committee on or before July 1st of the year following each reporting period.

To calculate and report its MPR accurately, the law school must use the following reporting period and methodology: The “reporting period” covers the five most-recent twelve-month periods (August 1 through July 31) prior to the calendar year in which the MPR is reported to the Committee.

For purposes of MPR calculation, a “qualified taker for the reporting period” includes any student who both graduates from the law school during the reporting period, and takes any administration of the California Bar Exam (CBX) during the reporting period or the first February administration after the reporting period that was also no more than 10 administrations after the taker’s graduation. For the calculation of the MPR to be reported by July 1, 2021, the reporting period will also be deemed to include the administration of the October 2020 California Bar Examination. A student who does not meet both requirements is not a qualified taker for the purpose of the MPR report and is not to be included in the calculation of a law school’s MPR.

A law school’s MPR is to be calculated as a fraction that is the sum of all qualified takers for the reporting period who passed any administration of the CBX during the reporting period or the first February administration after the reporting period that was no more than 10 administrations after the taker’s graduation, plus the sum of all qualified takers who have satisfied the requirements for the alternative pathway to licensure set forth in California Rule of Court 9.49.1(i)(4) by the July 1 reporting deadline (the numerator) divided by the sum of all qualified takers for the reporting period who, whether they passed or failed, took any administration of the CBX during the reporting period or the first February administration after the reporting period that was also no more than 10 administrations after the taker’s graduation minus the sum of all qualified takers who are provisionally licensed lawyers pursuing the alternative pathway to licensure set forth in California Rule of Court 9.49.1 and who have not yet completed or exited the program by the July 1 reporting deadline (the denominator), unless that program has concluded, with the resulting numeral being expressed as a percentage.

PROPOSED AMENDMENT TO TITLE 4, DIV. 1, CHAP. 2, RULE 4.160(D)6
MPR Calculation in the New Rules for Accredited Law Schools

4.160(D)(6): Minimum Cumulative Pass Rate: The [California accredited] law school must maintain a minimum, cumulative bar examination pass rate (MPR) of 40 percent in each reporting period. The rate will be calculated and reported annually to the Committee on or before July 1 of the year following each reporting period.

- a. The “reporting period” covers the five most recent 12-month periods (August 1 through July 31) prior to the calendar year in which the MPR is reported to the Committee.
- b. For purposes of MPR calculation, a “qualified taker for the reporting period” includes any individual who both graduated from the law school’s JD program during the reporting period and took any administration of the California Bar Examination during the reporting period or the first February administration after the reporting period that was also no more than 10 administrations after the taker’s graduation. The October 2020 California Bar Examination shall be treated as if it were administered in July 2020 for purposes of MPR calculation. A student who does not meet both requirements is not a qualified taker for the purpose of the MPR report and is not to be included in the calculation of a law school’s MPR.
- c. A law school’s MPR is to be calculated as a fraction that is the sum of all ~~applicants~~ qualified takers who took the bar exam during the reporting period and who passed any administration of the California Bar Examination during the reporting period or the first February administration after the reporting period that was no more than 10 administrations after the taker’s graduation, plus the sum of all qualified takers who have satisfied the requirements for the alternative pathway to licensure set forth in California Rule of Court 9.49.1(i)(4) by the July 1 reporting deadline (the numerator) divided by the sum of all qualified takers for the reporting period who, whether they passed or failed, took any administration of the California Bar Examination during the reporting period or the first February administration after the reporting period that was also no more than 10 administrations after the taker’s graduation, minus the sum of all qualified takers who are provisionally licensed lawyers pursuing the alternative pathway to licensure set forth in California Rule of Court 9.49.1 and who have not yet completed or exited the program by the July 1 reporting deadline, unless that program has concluded (the denominator), with the resulting numeral being expressed as a percentage. The MPR for a law school with one or more branch campuses is to be calculated and reported as the combined rate of all such campuses.