



The State Bar of California

OPEN SESSION AGENDA ITEM 702 SEPTEMBER 2021

DATE: September 23, 2021

TO: Members, Board of Trustees

FROM: Audrey Ching, Assistant Director, Office of Admissions
Natalie Leonard, Principal Program Analyst, Office of Admissions

SUBJECT: Proposed Amendments to New Accredited Law School Rule 4.160(D)(6)
Regarding Minimum Cumulative Bar Pass Rate: Request to Circulate for Public
Comment

EXECUTIVE SUMMARY

The Committee of Bar Examiners is proposing amendments to Title 4, Division 1, Chapter 2, rule 4.160(D)(6) to modify the calculation of the Five-Year Minimum, Cumulative Bar Pass Rate (MPR). This proposal would modify one of the new rules for accredited law schools that are scheduled to become effective on January 1, 2022.

Specifically, these amendments address the effect of two pandemic-related events on the calculation of the MPR: the rescheduling the July 2020 bar exam to October 2020, and the creation of Provisional Licensure Program's Expanded Program allowing qualified individuals to become licensed by the State Bar without taking another bar exam. This agenda item seeks approval of the Board of Trustees to post the proposal for a 30-day public comment period.

BACKGROUND

While the MPR formula is set forth in a guideline under the current framework for regulating California accredited law schools, starting next year, when the new rules for California accredited law schools take effect, the MPR formula will be located in a rule instead. (See current rule 4.160(N) and current guideline 12.1; but cf. new rule 4.160(D)(6).)

The new accreditation rules are designed to minimize the need for interpretive guidelines; hence, the inclusion of the MPR calculation in the rules themselves.

In April 2021, after seeking input from the Committee of State Bar Accredited and Registered Schools (CSBARS), the Committee of Bar Examiners amended the MPR formula located in guideline 12.1 to address changes brought about by the rescheduling of the July 2020 bar exam and by the Provisional Licensure Program's Expanded Program. (See Attachment A for full text of amended guideline 12.1). This amended formula was used to calculate and report [2021 MPR values](#) for accredited law schools in July 2021.

The committee recommends that the Board of Trustees authorize posting similar amendments for adoption into the MPR formula that will be located in rule 4.160(D)(6). (See Attachment B, Redline Version, and Attachment C, Clean Copy.)

DISCUSSION

All California accredited law schools must maintain an MPR of 40 percent or more. Each law school calculates its MPR according to the formula set forth in the Guidelines for Accredited Law School Rules and reports the MPR to the State Bar by July 1 each year. Starting in 2022, the MPR formula will be located in the rules for accredited law schools and not in separate interpretive guidelines.

Following the Board's adoption of the new rules for accredited law schools effective January 1, 2022, the Committee of Bar Examiners realized that the MPR formula contained in those rules needed to be amended to address two specific pandemic-related circumstances. As a result, the committee is bringing to the Board the amendments set forth in Attachment C.

First, the amendments update a reference for 2020 because the language of the rule refers to a July bar exam; in 2020, the bar exam was administered in October. Second, and more substantively, the amendments address how to count those graduates participating in the Provisional Licensure Program's Expanded Program, which includes a pathway to licensure without taking another bar exam. The MPR calculation reflects the percentage of individuals who graduate during a specified five-year period and pass the bar exam divided by the total universe of individuals from the school who took the bar exam during that period.¹ Specifically, the amendments exclude program participants from the MPR calculation while they are in the program, and return them to the calculation along with bar exam passers when they become licensed, since these individuals will not be required to take another bar exam.

In addition, several technical changes are proposed to clarify the formula in rule 4.160(D)(6).

First, the reporting deadline was moved up earlier in the rule for emphasis. Second, subsection (b) returns to the rule the definition of the term "qualified taker," as it previously existed in the

¹ The MPR calculation also includes the results of the February bar exam administered after the reporting period for those who graduated during the reporting period and within 10 administrations of that exam. This ensures that all graduates included in the MPR calculation have had at least two opportunities to take and pass the bar exam.

guideline. Adding back this definition made clear that those graduates who became licensed through the expanded program would only be included if they graduated during the specified reporting period for that year's MPR calculation.

Other technical, nonsubstantive amendments include changing the term "student" to "individual" and modifying the language to be clear that only the bar results of the law school's JD graduates are included in the MPR calculation.

Finally, the amendments add language to properly describe that the results of the February bar exam administered after the reporting period are only included when that administration of the bar exam was within 10 administrations of the qualified taker's graduation. This conforms with prior practice.

Staff recommends that the proposed rule amendments as set forth in Attachment C be posted for the minimum 30-day public comment period, since the law schools, which would be the primary commenters of this proposal, had the opportunity to shape the proposal and comment on it at both the Committee of Bar Examiners and CSBARS meetings.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Title 4, Division 1, Chapter 2, Rule 4.160

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None – core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, upon recommendation of the Committee of Bar Examiners, recommends that the amendments to rule 4.160(D)(6) of the new Rules for Accredited Law Schools as set forth in Attachment C be posted 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
- B.** Proposed Amended Rule 4.160(D)(6), Redline Version
- C.** Proposed Amended Rule 4.160(D)(6), Clean Copy

GUIDELINE 12.1**(As 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 AMENDED RULE 4.160(D)(6), REDLINE VERSION

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 the 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.

PROPOSED AMENDED RULE 4.160(D)(6), CLEAN COPY

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- 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.
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