



The State Bar *of California*

OPEN SESSION AGENDA ITEM O-409 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: Discussion Regarding Proposed Guidelines for Accredited Law School Rules

EXECUTIVE SUMMARY

The State Bar has adopted new Rules for Accredited Law Schools that will take effect on January 1, 2022. The Committee of Bar Examiners (CBE) has the authority to create guidelines that interpret the rules as needed. A proposed set of guidelines created by the Committee on State Bar Accredited and Registered Schools (CSBARS) is set forth in Attachment A, while a modified staff proposal is set forth in Attachment B.

BACKGROUND

The Board of Trustees adopts and approves the rules of the State Bar, including the Rules for Accredited Law Schools as set forth in Title 4, Division 2. The Board of Trustees has adopted a completely new set of Rules for Accredited Law Schools that will replace the current set of rules in full as of January 1, 2022, subject to a two-year phase-in period. The CBE proposed these new rules after considering substantial research and input from CSBARS.

The CBE has the authority to adopt guidelines to interpret these rules after reviewing public comment including feedback from CSBARS. Guidelines can address nuances and details that are too specific to warrant addressing in the rules themselves but provide guidance to schools and to the CBE and State Bar staff on whether a particular action is intended to be found compliant with the rules.

This item introduces an initial set of guidelines proposed by CSBARS set forth in Attachment A, as well as staff edits to that proposal set forth in Attachment B. Today's discussion will provide background to assist the CBE to prepare to take action regarding the guidelines at the October 2021 meeting, or a future meeting identified by the CBE.

DISCUSSION

The purpose of this item is to foster discussion before the CBE adopts an initial set of guidelines to accompany the new Rules for Accredited Law Schools scheduled to take effect on January 1, 2022. Through CSBARS, the public has also been invited to submit public comment as to these guidelines throughout 2021, though no specific comments were received. CSBARS will be available to collect further public comment at lawschoolregulation@calbar.ca.gov if it should be received after this meeting.

The new rules consolidate the authority governing the law schools into a plain-language rule set, greatly reducing the need for the multiple sources of authority in use today including 60 pages of guidelines and other memoranda issued over the years.¹

Additionally, the shift in focus of the rules reduces the need for extensive guidelines, focusing on student outcomes and in lieu of law school actions. Here, the primary governing authority should be statute and rules. Guidelines are only to interpret the rules – to provide a level of detail or nuance that may not be appropriate for a broad rule. The new rules, with a focus on outcomes and not actions of the school are less in need of interpretive guidelines than the old rules which focused heavily on requirements on the schools. The guidelines proposed are the only ones needed to provide this interpretive guidance.

The current rules were drafted at a time when all accredited law schools were required to be fixed-facility law schools. These fixed-facility law schools were generally locally-focused, limited in technology, and modest in size. The existing guidelines prescribe nearly all aspects of operation for that law school format. Today, however, accredited law schools are permitted to teach via both classroom modality and a wide range of online modalities. And students at an individual school may come from across the state, the country, and the world. Though each law school's methods may differ, the outcomes should be the same.

The four new purposes for accreditation around which the new rules are organized describe these outcomes: Consumer Protection and Transparency; Student Success; Diversity, Equity and Inclusion; and Preparation for Licensure and Professionalism.

CSBARS created the proposed guidelines after reviewing the new rules over a six-month period at three public meetings where public comment was also taken. CSBARS identified the rules that for which the group believed more nuanced detail would be helpful to assist the law schools in understanding their compliance responsibilities.

¹ Accredited law schools will still be subject to any applicable admissions rules, Rules of Court or statutes.

CSBARS drafted a total of five proposed guidelines set forth in Attachment A. In order to provide context, each proposed guideline is placed adjacent to the particular element of the rule that it interprets in the attachment.

In addition, CSBARS considered, but could not yet determine, whether to include a guideline to interpret the new rules section on Diversity, Equity, and Inclusion.

CSBARS created the tentative proposal in June and will be reviewing it once again in August, so further updates may be provided at the CBE's meeting today.

The five guidelines are discussed below along with the reasons that staff would support three of the guidelines with edits, but would not recommend two of the guidelines.

- Describe a method by which a jointly accredited law school can satisfy its reporting obligations (G-4.147(C)(i))

It is intended that the jointly accredited law schools may satisfy their annual obligations to the State Bar through the maintenance of institutional accreditation through an approved national or regional accreditor and compliance with a specified list of responsibilities in Rule 4.147. Once such responsibility is periodic reporting required by Rule 4.161. CSBARS's guideline proposal would provide that the State Bar's Annual Report would fulfill this obligation.

Staff does not recommend this guideline because additional reporting such as that required under California Business and Professions Code 6061.7(a) is necessary and other data may be necessary in the future (such as COVID online teaching waivers that became necessary this year). Instead, staff proposes that the reporting obligations be set forth in the jointly accredited application and agreement between the State Bar and the law school.

- Clarify the services that can be offered from outside of California (G-4.160(A)(1))

California accredited law schools must maintain an administrative office in California. The guideline proposed by CSBARS would ensure that hosting services, technology and some administrative personnel could be located outside of California. Several current CALS do have a parent university or affiliate located in another state and providing some services, including accounting functions, information technology and other institutional support. Several law schools have key administrators located in other states as well. The guideline ratifies this practice.

Staff's edit to this guideline makes clear that all services must be readily accessible in California.

- Explain how to list the State Bar as an accreditor in social media posts (G-4.160(6)(B))

When a law school refers to accreditation, it must state that its degree granting authority is from the State Bar of California. The guideline described by CSBARS would allow law schools to

make this statement by including a link in social media due to limited space. The staff edit clarifies that the link should be prominent and clear.

- Limit the documentation that law schools must keep between inspections (G-4.160(B)(11))

Here, the CSBARS proposal would only require law schools to keep data for two inspection cycles in those areas where the law school had previously been found to be noncompliant.

Staff does not recommend this guideline. Instead, staff recommends upon relying upon the rule itself, which requires a full data set. Instead, staff proposes that the text of the rule should be followed regarding maintenance of records subject to inspection. This allows an inspection team to better examine trends and to ensure compliance is maintained. Recently, the CBE encountered inspection results in which a law school complied after an inspection, but compliance was not maintained, and this cycle continued over several inspections. The CBE used this data to formulate appropriate corrective action.

- Describe the minimum contents of each law school's academic program plan (G-4.160(D)(5))

Here, the CSBARS proposal describes a minimum list of items that should be included in a law school's academic program. Staff has no further edits.

FISCAL/PERSONNEL IMPACT

None

ATTACHMENTS LIST

- A. Committee on State Bar Accredited and registered Schools Proposed Guidelines for Rules for Accredited Law Schools Under Consideration
- B. Staff Proposal Recommending Modifications to CSBARS Proposed Guidelines for Rules for Accredited Law Schools

COMMITTEE ON STATE BAR ACCREDITED AND REGISTERED SCHOOLS
PROPOSED GUIDELINES FOR RULES FOR ACCREDITED LAW SCHOOLS UNDER CONSIDERATION

Rule 4.147 (C)

- C. Core accreditation requirements and jointly accredited status requirements
 - 1. A law school that is jointly accredited under Rule 4.147(B), and within the meaning of Rule 4.105(F), must comply with the following:
 - a. fees required by Rule 4.110;
 - b. location and compliance with applicable law required by Rule 4.160(A)(1) and Rule 4.160(A)(2) and communication disclosures required by Rules 4.160(A)(3), (4), and (6);
 - c. student success standards required by Rule 4.160(B);
 - d. diversity, equity and inclusion policies and practices required by Rule 4.160(C)
 - e. practice-based skills and competencies curriculum required by Rule 4.160(D)(2);
 - f. financial responsibility required by Rule 4.160(D)(3);
 - g. curriculum required by Rule 4.160(D)(4);
 - h. Minimum Cumulative Pass Rate (MPR) required by Rule 4.160(D)(6);
 - i. **periodic reporting required by Rule 4.161**; and

*Proposed Guideline: A jointly accredited law school can fulfill 4.147(C)(i), by submitting designated periodic reports for jointly accredited law schools.

- j. the orders, directions, and notices required by the State Bar pursuant to these rules.

- 2. The accreditation standards listed in Rule 4.147(C)(1) are the core requirements of accreditation as that term is used elsewhere in these rules.

Rule 4.160 (A)

A. Consumer Protection and Transparency: A law school shall ensure that prospective and current students are timely informed of the rights, responsibilities, and limitations of attending the law school, the resources and requirements needed to earn a JD degree, and the law school's student outcomes with respect to retention, licensure, and career outcomes.

1. Location: A law school must maintain its primary administrative office and all law school campus locations in California and operate in compliance with all applicable federal, state, and local laws and regulations.

***Proposed Guideline:** As long as a law school maintains its primary administrative office and all law school campus locations in California, a school does not violate the rule if its software or electronic records are hosted or stored outside of California, or if it offers some student services via offices or personnel located outside of California.

2. Compliance with laws: While the State Bar will not warrant a law school's compliance with laws, evidence of violation of laws or regulations may result in a determination of noncompliance with these rules.

3. Disclosure: A law school shall publish, on its Consumer Information webpage, a disclosure statement, revised annually and submitted with the Periodic Compliance Report, that complies with California Business and Professions Code section 6061.7(a) in a format prescribed by the State Bar. The Committee may also require disclosure of additional information, including statistics on retention and diversity, when to do so is not in conflict with 4.160(A)(6).

4. Statement of Limitation on Bar Examination Eligibility: A law school shall publish, on its home page, the following Statement of Consumer Information, as well as on the Consumer Information Page, Application and Enrollment Agreement:

Study at, or graduation from, this law school may not qualify a student to take the bar examination or be licensed to practice law in jurisdictions other than California. A student who intends to seek licensure to practice law outside of California at any time during their career should contact the admitting authority for information regarding its education and licensure requirements prior to enrolling at this law school.

5. Refund Policy: A law school must adopt a written refund policy that is fair and reasonable. A law school must provide refunds in accordance with its written refund policy, accompanied by a clear explanation of the method of calculation, within 45 days after a student withdraws from a class or a program, or within 45 days of the law school's discontinuing a course or educational program in which a student is enrolled.

6. Public Communications: All information that a law school reports, publicizes or distributes shall be accurate and not misleading to a reasonable law school student, applicant or member of the public. A law school shall use due diligence in obtaining and verifying such information.

- a. A law school must not mislead prospective students as to their reasonable prospects of admission, obtaining a degree in the program in which they seek to enroll, their ability to qualify for or be licensed by the bar in any jurisdiction, the cost of the requirements for obtaining a degree, or the financial support available through loans or scholarships for their course of study.
- b. Whenever the words "Accredited" or "Provisionally Accredited" appear in law school communications in relation to qualification to take the California Bar Examination or admission to the practice of law in California, they must be accompanied by words clearly indicating that such accreditation is by the Committee of Bar Examiners of the State Bar of California.**

***Proposed Guideline:** Where a law school employs social media or other platforms for communications whose space constraints make it impractical or impossible to state in full that accreditation (or provisional accreditation) in relation to qualification to take the California Bar Examination or admission to the practice of law in California is by the Committee of Bar Examiners of the State Bar of California, it shall be sufficient for purposes of the rule that the communication provide a hyperlink to a webpage or other document that contains the full required disclosure.

7. Student Privacy: A law school must protect student privacy and the confidentiality of student communications and records in accordance with the law. Notwithstanding any other provision of law, a law school must not disclose, without a student's consent, grades, grade average, class schedule, address, telephone number, or other personally identified information, unless:

- a. required by law, including administrative subpoena or court order;
- b. requested by the State Bar;
- c. designated "directory information" and students are advised of its designation as such;
- d. requested by another accrediting agency; or
- e. required in case of emergency.

8. Academic Standards: A law school must adopt and timely publish written academic standards, including:

- a. standards for examinations and grading;
- b. the courses, units, grades, and grade point average required for good standing, retention, advancement, and graduation;
- c. the terms of the student probation policy, including requiring students advanced on probation to be academically disqualified if they do not meet the law school's requirements for advancement in good standing and retention after no more than one year on probation;
- d. the circumstances under which a student is subject to disqualification for academic deficiency;
- e. policy on course repetition which includes a prohibition on earning credit more than once for substantially similar coursework;

- f. prompt return of grades;
 - g. policy on review and appeal of grades; and
 - h. policy for authenticating student work.
9. **Student Discipline:** A law school must have a written policy for the imposition of student discipline and that policy must be fair.
- a. The law school's policy must include, but is not limited to, cancellation of a student's score on an examination or assignment, denial of course credit, suspension, and dismissal.
 - b. The law school's policy must include reasonable notice to the student of the discipline or action to be taken and provide an opportunity for the student to be heard, at the student's election, either in person, or in writing before a panel or members of the faculty and/or administration. An in-person hearing may be held electronically, at the law school's discretion.
 - c. The requirements of these rules for a law school's student discipline policy do not apply to academic probation or disqualification, other failures to meet academic standards, or failure to pay tuition, fees, or charges billed to the student.

10. **Compensation Based on Number of Applicants, Enrollment and Students Prohibited:** A law school may not base the compensation paid any employee of the law school engaged in work related to advertising, marketing, and admissions on the number of persons enrolled in any class or on the number of persons applying for admission to or registering to enroll in the law school.

11. Maintaining Accurate and Complete Records: A law school must maintain complete and accurate records of its programs and operations pursuant to a written plan readily accessible to its administration, to students as appropriate, and to the Committee, in a manner properly secured and backed up to prevent or recover from loss. The law school must also maintain sufficient records to demonstrate its compliance from its last two periodic inspections to the present and maintain student grade records and Committee correspondence permanently.

***Proposed Guideline:** Schools must maintain records relevant to addressing any areas of non-compliance identified in the last two prior inspections or longer if directed by the CBE. All other data generally need only be maintained for a period of five years.

12. **Written Notice of Changes to Policies:** A law school shall timely provide applicants, students and faculty with written notice of changes to policies that may affect them.

Rule 4.160 (D)

D. Preparation for Licensure and Professionalism: A law school shall prepare JD students to become licensed attorneys and to practice law in an ethical and professional manner. The JD degree must be granted only upon completion of a law program that satisfies the educational requirements for a student to take the California Bar Examination.

1. Access to Faculty: A law school must provide a policy for students to access the faculty, whether through scheduled office hours, regular or electronic mail, chat rooms, telephone contact or other means.
2. Practice-Based Skills and Competencies
 - a. The law school must require that each student enrolled in its JD Degree program satisfactorily completes a minimum of six semester units (or their equivalent) of course work designed to teach practice-based skills and competency training. Such competency training must teach and develop those skills needed by a newly licensed attorney to practice law in an ethical and competent manner.
 - b. A law school must provide the opportunity for students in the JD degree program to complete a minimum of 15 semester units (or their equivalent) of practice-based skills and competency training. A law school is encouraged to provide externship, clinical, law review, and similar experiences to enrich the legal education of its students.
 - c. A law school must provide the opportunity for LLM students who are enrolled in the law school to qualify to take the California Bar Examination to complete a minimum of five semester units (or their equivalent) of practice-based skills and competency training.
3. Expenditure of Assets and Funds to Provide a Sound Program of Education: A law school must use its assets and funds, including tuition, fees, and other charges collected from, or on behalf of, students, to provide a program of legal education reasonably calculated to lead to licensure in the law. A law school must establish reasonable safeguards against financial fraud and other financial improprieties. The Committee reserves the right to require a law school to submit an audited financial statement prepared by an independent certified public accountant
4. Curriculum: There is no prescribed program of legal education. An effective program of legal education for the JD degree will include, but not be limited to all of the following:
 - a. a balanced and comprehensive course of study with subjects and materials presented in an organized and logical manner and sequence that satisfy the legal education requirements to take the California Bar Exam;
 - b. learning experiences that support the acculturation of program graduates to the mores and values of the legal profession, including service, preparation, responsiveness, confidentiality, excellence, civility, professionalism, and ethics;
 - c. knowledge of process and skills for legal research and writing, which shall include access to legal research resources adequate to accomplish this requirement; and

- d. the subjects tested by the California Bar Examination, including a course in Professional Responsibility that all students must complete and pass.

5. Academic Program Plan: A law school must adopt and maintain a written plan for its academic program.

***Proposed Guideline:** The topics to be covered in the plan should include but need not be limited to: (1) Academic Program Description; (2) Current Curriculum; (3) Proposed Curriculum Changes; (4) Annual Educational Goals and Long Range Program Goals; (5) Human Resources, Equipment, Supplies, Software and Other Resources Needed to Implement Annual Program Goals; and (6) Learning Outcomes Assessment Methods and Calendar.

6. Minimum Cumulative Pass Rate: The law school must maintain a minimum, cumulative bar examination pass rate (MPR) of 40 percent in 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. A law school’s MPR is to be calculated as a fraction that is the sum of all applicants who took the bar examination 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 (the numerator) divided by the sum of all takers for the reporting period who, whether they passed or failed, took any administration of the California Bar Examination taker’s graduation (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.

7. Academic Credit for Bar Examination Review: A law school may offer and grant academic credit for a bar examination review or preparation course. A law school may also require successful completion of a bar examination review or preparation course as a condition of graduation.

8. Acquiescence Required to Award Professional Law Degrees in

Addition to the JD Degree: In order to award any professional law degree in addition to the JD degree, a law school must apply to and obtain the advance acquiescence of the Committee, and must agree to use the disclosures prescribed by the State Bar in the law school’s communications and enrollment agreements. As provided in rule 4.105(L) of these rules, a “professional law degree” is the Bachelor of Laws (LLB), Executive JD Non-Bar-Qualifying Degree (EJD), Juris Doctor (JD), Masters of Law (LLM), Master of Legal Studies (MLS), or other post-graduate degree.

STAFF PROPOSAL RECOMMENDING MODIFICATIONS TO
CSBARS PROPOSED GUIDELINES FOR RULES FOR ACCREDITED LAW SCHOOLS

Reference Rule 4.147 (c)

- b. Core accreditation requirements and jointly accredited status requirements
 - 1. A law school that is jointly accredited under Rule 4.147(B), and within the meaning of Rule 4.105(F), must comply with the following:
 - a. fees required by Rule 4.110;
 - b. location and compliance with applicable law required by Rule 4.160(A)(1) and Rule 4.160(A)(2) and communication disclosures required by Rules 4.160(A)(3), (4), and (6);
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 - e. practice-based skills and competencies curriculum required by Rule 4.160(D)(2);
 - f. financial responsibility required by Rule 4.160(D)(3);
 - g. curriculum required by Rule 4.160(D)(4);
 - h. Minimum Cumulative Pass Rate (MPR) required by Rule 4.160(D)(6);
 - i. periodic reporting required by Rule 4.161; and

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- j. the orders, directions, and notices required by the State Bar pursuant to these rules.
 - 2. The accreditation standards listed in Rule 4.147(C)(1) are the core requirements of accreditation as that term is used elsewhere in these rules.

Reference Rule 4.160 (A)

A. Consumer Protection and Transparency: A law school shall ensure that prospective and current students are timely informed of the rights, responsibilities, and limitations of attending the law school, the resources and requirements needed to earn a JD degree, and the law school's student outcomes with respect to retention, licensure, and career outcomes.

1. Location: A law school must maintain its primary administrative office and all law school campus locations in California and operate in compliance with all applicable federal, state, and local laws and regulations.

***Proposed Guideline:** As long as a law school maintains its primary administrative office and all law school campus locations in California, a school ~~does not violate the rule if it may host or stores~~ its software or electronic records ~~are hosted or stored~~ outside of California, or if it offers some student services via ~~offices or~~ personnel located outside of California, so long as the records and services are available at the law school's administrative offices and otherwise reasonably available to students and alumni.

2. Compliance with laws: While the State Bar will not warrant a law school's compliance with laws, evidence of violation of laws or regulations may result in a determination of noncompliance with these rules.

3. Disclosure: A law school shall publish, on its Consumer Information webpage, a disclosure statement, revised annually and submitted with the Periodic Compliance Report, that complies with California Business and Professions Code section 6061.7(a) in a format prescribed by the State Bar. The Committee may also require disclosure of additional information, including statistics on retention and diversity, when to do so is not in conflict with 4.160(A)(6).

4. Statement of Limitation on Bar Examination Eligibility: A law school shall publish, on its home page, the following Statement of Consumer Information, as well as on the Consumer Information Page, Application and Enrollment Agreement:

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5. Refund Policy: A law school must adopt a written refund policy that is fair and reasonable. A law school must provide refunds in accordance with its written refund policy, accompanied by a clear explanation of the method of calculation, within 45 days after a student withdraws from a class or a program, or within 45 days of the law school's discontinuing a course or educational program in which a student is enrolled.

6. Public Communications: All information that a law school reports, publicizes or distributes shall be accurate and not misleading to a reasonable law

school student, applicant or member of the public. A law school shall use due diligence in obtaining and verifying such information.

a. A law school must not mislead prospective students as to their reasonable prospects of admission, obtaining a degree in the program in which they seek to enroll, their ability to qualify for or be licensed by the bar in any jurisdiction, the cost of the requirements for obtaining a degree, or the financial support available through loans or scholarships for their course of study.

b. Whenever the words "Accredited" or "Provisionally Accredited" appear in law school communications in relation to qualification to take the California Bar Examination or admission to the practice of law in California, they must be accompanied by words clearly indicating that such accreditation is by the Committee of Bar Examiners of the State Bar of California.

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A law school that uses social media or other platforms for communication may provide a prominent hyperlink, in a font size consistent with the majority of the page, to a webpage or other document that contains the full required disclosure when space constraints make it impractical to post the full disclosure regarding accreditation on the communication platform.

7. Student Privacy: A law school must protect student privacy and the confidentiality of student communications and records in accordance with the law. Notwithstanding any other provision of law, a law school must not disclose, without a student's consent, grades, grade average, class schedule, address, telephone number, or other personally identified information, unless:

- a. required by law, including administrative subpoena or court order;
- b. requested by the State Bar;
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- c. the terms of the student probation policy, including requiring students advanced on probation to be academically disqualified if they do not meet the law school's requirements for advancement in good standing and retention after no more than one year on probation;
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- c. The requirements of these rules for a law school's student discipline policy do not apply to academic probation or disqualification, other failures to meet academic standards, or failure to pay tuition, fees, or charges billed to the student.

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Reference Rule 4.160 (D)

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 - b. learning experiences that support the acculturation of program graduates to the mores and values of the legal profession, including service, preparation, responsiveness, confidentiality, excellence, civility, professionalism, and ethics;
 - c. knowledge of process and skills for legal research and writing, which shall include access to legal research resources adequate to accomplish this requirement; and

- d. the subjects tested by the California Bar Examination, including a course in Professional Responsibility that all students must complete and pass.

5. Academic Program Plan: A law school must adopt and maintain a written plan for its academic program.

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- 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.

- c. A law school’s MPR is to be calculated as a fraction that is the sum of all applicants who took the bar examination 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 (the numerator) divided by the sum of all takers for the reporting period who, whether they passed or failed, took any administration of the California Bar Examination taker’s graduation (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.

7. Academic Credit for Bar Examination Review: A law school may offer and grant academic credit for a bar examination review or preparation course. A law school may also require successful completion of a bar examination review or preparation course as a condition of graduation.

8. Acquiescence Required to Award Professional Law Degrees in

Addition to the JD Degree: In order to award any professional law degree in addition to the JD degree, a law school must apply to and obtain the advance acquiescence of the Committee, and must agree to use the disclosures prescribed by the State Bar in the law school’s communications and enrollment agreements. As provided in rule 4.105(L) of these rules, a “professional law degree” is the Bachelor of Laws (LLB), Executive JD Non-Bar-Qualifying Degree (EJD), Juris Doctor (JD), Masters of Law (LLM), Master of Legal Studies (MLS), or other post-graduate degree.