



The State Bar of California

OPEN SESSION AGENDA ITEM 50-7 NOVEMBER 2021

DATE: November 18, 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: Return from Public Comment
and Request for Approval

EXECUTIVE SUMMARY

On September 24, 2021, the Board approved circulating for a 30-day public comment period proposed amendments to Title 4, Division 1, Chapter 2, rule 4.160(D)(6).

These amendments adjust the calculation of the minimum, cumulative five-year bar exam pass rate (MPR) to address two specific scenarios stemming from the pandemic: the rescheduling of the July 2020 bar exam to October 2020, and the creation of the provisional licensure program's expanded program allowing qualified individuals to become licensed by the State Bar without taking another bar exam. In all other respects, rule 4.160(D)(6), setting the cumulative MPR for California accredited law schools, remains unchanged from the rule adopted by the Board in May 2021. Having received no public comment responsive to the rule proposal, the Committee of Bar Examiners and staff recommend adoption of the amendments as circulated for public comment.

BACKGROUND

COMPARING THE MPR AND THE ABA'S BAR EXAM PASS RATE STANDARD

All California accredited law schools must maintain an MPR of 40 percent or more. The MPR does not represent a law school's performance on any single bar exam. Rather, it aggregates the cumulative results of those who graduate over a five-year period on all of the bar exams

they take during that period, as well as, in some cases, the February bar exam after that period. Because this is a cumulative pass rate, all examinees included in the calculation have had at least two, or as many as 10, opportunities to take and pass the bar exam.

By comparison, the American Bar Association (ABA) requires a significantly higher cumulative pass rate standard. ABA approved law schools must demonstrate that 75 percent or more of each graduating class passes the bar exam within two years after graduation.

THE MPR WILL MOVE FROM THE GUIDELINES TO THE RULES IN 2022

While the MPR formula is set forth in a guideline under the current framework for regulating California accredited law schools, starting in 2022, 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 as listed in Attachment A; but cf. new rule 4.160(D)(6) as listed with redlined amendments in Attachment B.)

The new accreditation rules are designed to minimize the need for interpretive guidelines; hence, the inclusion of the MPR calculation in the rules themselves. The Board adopted these rules in May 2021.

The MPR Formula Should Be Amended to Explain How to Account for Those Who Participate in the Provisional Licensure Program's Alternative Pathway to Licensure.

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 current guideline 12.1 as necessary to address fairly the rescheduling of the July 2020 bar exam and the creation of 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 California accredited law schools in Summer 2021.

Because the MPR calculation formula will move from the guidelines to the rules in 2022, the Committee of Bar Examiners proposed similar amendments to the Board to incorporate into the new rules for accredited law schools. These amendments were posted for public comment for a period of 30 days through October 29, 2021. (See Attachment B, redline version, and Attachment C, clean copy.)

DISCUSSION

A total of three public comments were received in response to the posting of the MPR amendments, but none addressed the MPR rule changes. One comment discussed the provisional licensure program in general, a second comment discussed the role of self-represented parties in the legal system, and the third comment simply stated disagreement without explanation. Because no comments substantively addressed the proposal, the chair and vice-chair of the Committee of Bar Examiners requested their submission to the Board for adoption, without further need for discussion by the committee.

As discussed with the Board in September, the first of the two proposed amendments are technical in nature, necessary only to address pandemic-related changes. The first amendment simply makes a change to take into account that the bar exam that would have occurred in July 2020 was moved to October 2020. The second amendment explains how to incorporate those graduates participating in the provisional licensure program's expanded program into the MPR calculation as those graduates pursue or achieve licensure without taking another bar exam.

Historically, the MPR reflects the percentage of individuals who graduate during a specified five-year period from a particular law school and pass the bar exam, divided by the total number of graduates from the school who graduated during that same period and took the bar exam during that period at least once.¹ The amendments would exclude expanded program participants from the MPR calculation while they are participating in the program (since they lack incentive to take another bar exam), and return them to the numerator and denominator of the calculation along with bar exam passers when they become licensees of the State Bar of California.

In addition, several technical changes are proposed to clarify the MPR calculation as described in rule 4.160(D)(6).

First, the reporting deadline was moved to the beginning of the rule for emphasis. Second, subsection (b) returns the definition of the term "qualified taker" of the bar exam as it previously existed in the guideline. Adding back this definition makes it easier to understand that to be included in the MPR calculation, those who complete the alternative pathway to licensure must also have graduated within the reporting period for that year's MPR calculation.

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

Finally, the amendments add language to properly describe that a qualified taker's results on 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.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR OF CALIFORNIA

Title 4, Division 1, Chapter 2, Rule 4.160

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 before being included in the MPR calculation.

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 approves the amendments to rule 4.160(D)(6) of the new Rules for Accredited Law Schools as set forth in Attachment C to take effect on January 1, 2022.

ATTACHMENTS 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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