

## **Team Report**

Team Focus: (1) Consumer Protection (2) Transparency (3) Diversity, Equity and Inclusion

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### Background

In 2008, to increase diversity in the legal profession, by increasing the minority passage rate on the bar exam, the ABA Section on Legal Education and Admission to the Bar removed restrictions on law schools regarding the teaching of bar preparation courses.<sup>1</sup> For purposes of promoting diversity, and taking into consideration the rising cost of law school education and the cost of commercial bar preparation, the American Bar Association (ABA) amended its rules to allow the teaching of 'for credit' bar review courses in law school.

The Committee of Bar Examiners (CBE) of the State Bar of California, soon after, changed its rules to allow California Accredited Law Schools to offer bar review courses for course credit. It did so in former Guideline 1.8 of the Guidelines for Accredited Law School Rules, adopted by the CBE on January 1, 2009. That guideline, as amended, now exists as Rule 4.160(D)(7) of the Rules for Accredited Law Schools that became effective on January 1, 2022.

Rule 4.160(D)(7) reads, as follows:

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.

A similar guideline was not put in place for California Registered (Unaccredited) law schools. Instead, guideline 1.11 of the 2008 Guidelines for Unaccredited Law School Rules applied to those schools.

It allowed them to offer and charge for a First-Year Law Students' Examination and a bar examination review course. However, such courses could not be part of the credit requirements to obtain a J.D. degree, and the schools could not condition any student's continued enrollment or graduation on the taking of a review course offered by the law school or otherwise.

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<sup>1</sup> Cassandra Sneed Ogden, Esq., and E. Christopher Johnson Jr., Esq., The ABA Bar Passage Standard, One Year Later (May/June 2009 issue of Diversity & The Bar), <https://mcca.com/mcca-article/aba-bar-passage-standard> (accessed 2 April 2022).

In 2009, the CBE adopted a temporary waiver of a portion of guideline 1.11 to permit California-registered law schools to offer credit for bar exam preparation courses. It is still in effect. The provisions of it do not permit California-registered law schools the liberty to condition enrollment or graduation on the taking of a review course.

Since the adoption of the waiver, the wording of guideline 1.11 has not been amended, and the temporary waiver has not been changed to allow CBE-registered law schools the same scope afforded to the CBE-accredited law schools for the offering of bar preparation courses to students.

#### Content of Bar Preparation Courses in ABA-Approved and CBE-Accredited Law Schools in California

Given a limited timeframe, a total of seven California ABA-approved law schools and CBE-accredited law schools were reviewed by our team, using publicly available information at their websites and in their catalogs. Bar passage information was pulled from American Bar Association and State Bar of California websites.

A chart listing information pertaining to bar preparation courses at three ABA-approved law schools and four CBE-accredited law schools is submitted with this report.

Three California ABA law schools were selected for review based on the following criteria:

- 1) being on the list for 2022 Best Part-time Law Programs by the US News & World Report, which can reflect a law school's current interest to serve working adults;
- 2) having law school admissions processes that accepts admissions assessment scores beyond the LSAT (e.g. GRE), since that could make their data at least more incrementally closer to the demographics of registered law school students;
- 3) having higher ultimate bar passage rates as disclosed in 2021 disclosures at this American Bar Association required disclosures site, which can reflect a law school with a recently successful strategy for higher bar passage:  
<https://www.abarequireddisclosures.org/BarPassageOutcomes.aspx>.

Four CBE-accredited law schools were selected for review based on the following criteria:

- 1) having law school admissions processes that admit students without an LSAT (although LSAT reports if available are accepted by the law schools), since that could make their data at least more incrementally closer to the demographics of registered law school students;
- 2) having higher minimum cumulative pass rates as disclosed in the 2021 Minimum Cumulative Five-Year Bar Examination Pass Rates (MPR) for California

Accredited Law Schools as posted on the State Bar of California website, which can reflect a law school with a recently successful strategy for higher bar passage:

<https://www.calbar.ca.gov/Portals/0/documents/admissions/Education/MinimumPassRateStandardCumulativePassRates.pdf>.

As shown on the chart, the sample of ABA-approved law schools and CBE-accredited law schools studied had information on their websites about course credits for bar review courses offered by them in a range from two units to nine semester units of course credit. The courses are focused on teaching substantive nuances in law for the subjects that are tested on the bar examination, and further provide students with special instruction in how to write and organize like a lawyer, and other skills important to passing a bar examination. Some courses focused only on a specific skill set while other courses only mentioned bar review within a broad context of program capstone activities.

### Consumer Protection

The ABA and the CBE mandate minimum pass rates for law schools as a condition of their getting and maintaining accreditation. That pressure on performance metrics is now, more than ever, making law schools a consumer product with the schools and the students in a 'consumer-product provider' relationship.

Since ultimate success for law school students is now measured by their ability to competently practice in the legal profession upon graduation, which requires passing the bar examination, law schools need to do more to help them pass the bar examination. Allowing both California accredited and registered law schools to develop and offer 'for credit' courses focused on bar review is an important step in doing so.

The reality is that many of the students and graduates of California accredited and registered law schools cannot afford the price of a commercial bar review course. Prices of one bar review company range from \$2,000 for the least inclusive course to \$4,000 for the all inclusive course. The prices of another commercial bar review course range from \$2,995 for an abbreviated course to \$6,400 for a repeatable full service course.

Allowing students to take a 'for credit' bar review course or courses in law school would certainly be of special value to those who simply cannot afford the price of any of the commercial courses.

It should be the prerogative of each school offering review courses to decide if one, or more than one course, is to be offered; and to determine if and how much credit can be allowed to students for completing outside providers' courses, and requirements related to the content of each.

A proposed amendment to guideline 1.11 of the Guidelines for Unaccredited Law School Rules is submitted by this team together with this report. It includes suggested

changes in wording that would permit California registered law schools, in parity with California accredited law schools, to develop and provide such courses to students for completion as part of the credit requirements to obtain a J.D. degree, and to allow the schools to condition student enrollment or graduation on the taking of a review course offered by the law schools or by a commercial provider of review courses.

### Transparency

It is the opinion of this team that law schools that require successful completion of a bar examination review or preparation course as a condition of graduation should be allowed to grant course credit to students who complete commercial review courses. It would be reasonable and fair to do so if the amount of time and effort they expend completing commercial courses is at least equivalent to the time and effort expended by students in 'for credit' bar review courses offered by the law schools.

The proposed guideline submitted by this team includes wording that states that individual law schools may grant credit to students who complete commercial review courses and, if they do, they must disclose to their students the ownership interest of the school, its owners, administrators, instructors and staff in any commercial course or courses recommended.

### Diversity, Equity and Inclusion

The actions that the ABA Section on Legal Education and Admission to the Bar took in 2008 were taken to increase diversity in the legal profession, by increasing the minority passage rate on the bar exam. The factors considered then by the ABA, including not only diversity, but also the rising cost of law school education and the cost of commercial bar preparation, remain challenging factors today for the law school students that the team's proposed edits for guideline 1.11 may impact.

California-registered law schools should be in parity with California-accredited law schools for the offering of review courses for course credit to law students. Rule 4.160(D)(7) is the benchmark for this team's proposed edits to guideline 1.11 in that regard.

The team additionally considered whether the curriculum in 'for credit' bar review courses in law school should include special lessons for those students for whom English is a non-primary language, and for those who for cultural, socio-economic and other reasons have language challenges that can be problematic when being tested. Rather than placing such a requirement in the proposed changes to the guideline, it was decided by the team that the schools individually must have latitude to determine whether or not such course components are needed for their students.

## Conclusion

Teaching law students substantive nuances in law, and providing them with special instruction in how to write and organize like a lawyer, and other skills important to passing a bar examination, should be allowed in 'for credit' bar preparation courses taught both in California accredited and registered law schools.

California-registered law schools should be allowed the same liberty that California-accredited law schools have to not only offer such courses for credit, but to condition student enrollment or graduation on taking them. The knowledge gained in those courses can help students, not only on the bar examination but also in the representation of clients when engaged in the practice of law.

Guideline 1.11 of the Guidelines for Unaccredited Law School Rules should be amended to allow California-registered law schools to offer bar examination review courses for credit; to award credit for approved commercial bar examination review courses taken; and to require successful completion of a bar examination review course as a condition of graduation.

CBE-Accredited Law Schools Sample			
<b>Criteria (4 total CALS selected)</b>	i.CALS that permitted admissions of students without an LSAT and ii.higher recent MPRs from on 2021 Min Cumulative Five-Year Bar Examination Pass Rates (MPR) for CALS		
<b>Questions reviewed</b>	Lincoln Law School of Sacramento	Glendale University School of Law	Santa Barbara and Ventura College of Law
<i>Admissions permitting other than LSAT</i>	No LSAT required / permits other tests than LSAT	No LSAT required / permits other tests than LSAT	No LSAT required / permits other tests than LSAT
<i>Higher MPR?</i>	66.7 (2018), 60.8 (2019), 60.1 (2020), 66.3 (2021)	66.7 (2018), 62.2 (2019), 64.3 (2020), 77.1 (2021)	58.9 (2018), 57.7 (2019), 58.0 (2020), 65.4 (2021)
<i>How is bar prep. defined, if at all, by the law school?</i>	<p>*Applied Legal Reasoning A review of courses studied in the first and second years of law school designed to assist fourth-year students in their preparation for the bar examination. Class sessions include lecture, essay writing, and multiple-choice testing. 3 Units – Pass/Fail</p> <p>(Quoted wording from Fourth Year Part of the Class Schedule on the LLSS page)</p>	<p>“CA Bar Exam Review” Course “Through nine months of instruction and practice (including Advanced Document Drafting), students prepare fully for the Bar exam performance test. In addition, select Bar subjects are reviewed in the final quarter, prior to graduation.”</p> <p>(Quoted wording from Fourth Year Part of the Curriculum Page of the GUCL Website)</p>	<p><b>Bar Studies (Required)</b> This course will emphasize the analytical, writing, time-management and organizational skills necessary to prepare for the California Bar Exam. Students will have the opportunity to become familiar with the subjects tested and formats presented by the exam, including essay, multiple choice and performance test sections. Study and exam-taking strategies will be examined in the context of several bar-tested subjects. Units: 3 Grading: Pass/Fail (Quoted wording from Fourth Year on Juris Doctor page)</p>
<i>Bar prep. course voluntary or mandatory?</i>	Mandatory	Mandatory	Mandatory, but not for hybrid JD
<i>One or more courses? How many units overall?</i>	One course, 3 units	One course  5 units	One course  3 units

<i>Do variations of the bar review exist for specific demographics? If so, what.</i>	None referenced	None referenced	None referenced
<i>Does the law school engage outside providers?</i>	None referenced	None referenced	None referenced
<i>Does the law school have financial interest in the bar prep. for credit?</i>	None apparent (except for the standard tuition collected for the period of study program)	None apparent (except for the standard tuition collected for the period of study program)	None apparent (except for the standard tuition collected for the period of study program)

<b>Questions reviewed</b>	CALS School 4 – University of La Verne
<i>Admissions permitting other than LSAT?</i>	No LSAT required / permits other tests than LSAT
<i>Higher MPR?</i>	... (2018), 69.0 (2019), 66.0 (2020), 75.1 (2021)
<i>How is bar prep. defined, if at all, by the law school?</i>	<p><b>3L/4L – Multistate Bar Strategies (Required)</b></p> <p>Multistate Bar Strategies (MBS) is an advanced survey of legal analysis and communication focusing on the Multi-State Bar Examination subjects, with writing exercises designed for graduating students preparing to transition to bar study. The course covers planning and preparation techniques for completing assignments involving substantive areas of the law, analyzing and solving bar essay and multiple choice questions, and communicating legal analysis in writing. Components of the course include an online memory enhancement program, strategic approaches to essay writing and MBE question formats, and a particular emphasis on essay writing under exam-like conditions. <b>This class is not a substitute for a commercial bar review course.</b></p> <p><b>Comprehensive Legal Education Capstone (LAW 521 – 5 units)</b></p> <p>This course serves a dual purpose of assessing particular program learning outcomes for La Verne College of Law and to provide early review and preparation for the bar exam. The Capstone provides a substantive review of</p>

	<p>the doctrine tested on the Multistate portion of the bar exam and helps students reach mastery level for skills associated with passing the bar exam. During the five hours of classroom time, each week students will have the opportunity to simulate time and exam management under bar exam-like conditions. While the Capstone is intended to close the knowledge and skills gap between law school and the bar exam, it is not a substitute for the bar review program that occurs after graduation.</p> <p>Post Grad – Bar Exam Strategic Training (BEST) - Free, non-academic program</p> <p>Performance test strategies – 1 unit, elective</p> <p>(References to offerings from law school's website Bar Readiness Programs page and Academic Offerings page)</p>
<i>Bar prep. course voluntary or mandatory?</i>	Mandatory and voluntary
<i>One or more courses? How many units overall?</i>	One in catalog, 5 units
<i>Do variations of the bar review exist for specific demographics? If so, what.</i>	None referenced
<i>Does the law school engage outside providers?</i>	None referenced
<i>Does the law school have financial interest in the bar prep. for credit?</i>	None apparent (except for the standard tuition collected for the period of study program)

California ABA Law Schools Sample	
<b>Criteria (3 CA ABA selected)</b>	<p>i. Have JD part-time programs as mentioned in the US News &amp; World Report 2021</p> <p>ii. Have admissions of students without an LSAT (typically, GRE)</p>



	iii.higher recent ultimate bar passage as reported on the ABA law school disclosures site		
Questions Reviewed	University of San Diego SOL	Western State School of Law	California Western SOL
Admissions permitting other than LSAT	GRE permitted	GRE permitted	GRE permitted
Higher ultimate bar passage?	Ultimate bar passage: 94.59%	Ultimate bar passage: 80.43%	Ultimate bar passage: 80.32%
How is bar prep. defined, if at all, by the law school?	<p>"Fundamentals of Bar Exam Writing" Course (2 credits)</p> <p>"The course is geared to basic bar writing skills, and covers the fundamentals of bar exam essay writing and performance test writing. The first class is an introduction to bar exam components and topics. The next several classes focus on the details of essay exam writing and performance test drafting. Students practice under timed conditions most weeks, and receive specific feedback on their written work. The course includes self and peer review, as well as professor-student conferencing as needed."</p> <p>(Quoted wording from the Course Description Page of the USDSOL Website)</p>	<p>"Courses like Basic Bar Studies and Solving Legal Problems help students start early to acquire the skills and substantive knowledge required for success on the bar exam and in the first year of practice. Our goal is to help you succeed through practice, simulation and feedback. You'll have the chance to review substantive topics; practice and receive feedback on essay and performance exam questions; and attend special workshops geared toward improving bar exam skills. And of course the hallmarks of our S.T.E.L.L.A.R. program — individualized encouragement and support — are also a key part of the bar preparation programs. The S.T.E.L.L.A.R. program prepares you to pursue success — in law school, on the bar exam, and as a respected professional.</p> <p>Western State College of Law does not guarantee third-party certification/licensure. Outside agencies control the requirements for taking and passing certification/licensing exams and are subject to change without notice to Western State College of Law."</p>	<p>"Advanced Legal Analysis" Course (2Ls)</p> <p>"Advanced Legal Analysis is an 8-week course designed to improve students' test-taking skills to help students improve their grades in law school and to improve their ability to pass a bar examination. The course is designed to improve students' fluency in essay and multiple choice questions, the two formats most frequently used to assess a law student's ability to apply rules of law to hypothetical fact patterns. The course is offered in both the Fall and Spring trimesters."</p> <p>(Quoted wording from the Bar Review Program Page of the CWSL Website)</p>

<p>“Multistate Bar Exam Review” Course (4 credits)</p> <p>“USD has licensed every published MBE question from previous examinations. Students in this course will take these MBE questions each week using customized online software (also accessible from tablets and smartphones), which tracks each student’s strengths and weaknesses in every substantive area of the bar exam (constitutional, criminal, real property, torts, contracts, evidence, and civil procedure). The online software will provide real-time review material for each area of the law. Each in-class session will cover test-taking techniques and the substantive law for one of the seven areas of law. Clickers are used to answer questions and provide immediate feedback to students. Students must complete each week MBE questions</p>	<p>(Quoted wording from WSU page Academic Success Program)</p> <p>3 / 6 unit courses</p>	<p>“Pre-Bar Review” Course (3Ls)</p> <p>“Pre-Bar Review is designed to introduce students to the California Bar Examination. The course focuses on refining students' essay and multiple-choice exam-taking skills, and also provides students with the opportunity to become familiar with the performance test component of the exam. Pre-Bar is generally taken in the final trimester of law school. In order to enroll in the course, students must first attend a Pre-Bar Orientation session, which is offered several times each semester. This course is offered in both Fall and Spring trimesters.”</p> <p>(Quoted wording from the Bar Review Program Page of the CWSL Website)</p> <p>The school also has a “Post-graduate CWSL California BARBRI Bar Review” Course that is offered in a special</p>
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	<p>in the required online modules (approximately 5-8 hours per week of work). The final grade will be based on two midterms and a final (plus timely completion of the weekly exams is necessary to pass the course)."</p> <p>(Quoted wording from the Course Description Page of the USDSOL Website)</p>		<p>arrangement with BARBRI.</p> <p>"In order to qualify for the post-graduate bar review course, students must complete Advanced Legal Analysis and the Pre-Bar Review course."</p> <p>"The course is offered at a heavily discounted rate to J.D. graduates who meet the eligibility requirements [of having completed the other two courses]."</p> <p>(Those two quotes are from the Bar Review Program Page of the CWSL Website)</p>
<i>Bar prep. course voluntary or mandatory?</i>	Voluntary	Voluntary	Voluntary
<i>One or more courses? How many units overall?</i>	<p>Two courses</p> <p>6 units</p>	<p>Two courses mentioned</p> <p>9 units (due to mention of one class with 3 and 6 units in catalog)</p>	<p>Two courses</p> <p>Unknown number of units (possibly none)</p>
<i>Do variations of the bar review exist for specific demographics? If so, what.</i>	None referenced	None referenced	None referenced
<i>Does the law school engage outside providers?</i>	None referenced	None referenced	None referenced

<i>Does the law school have financial interest in the bar prep. for credit?</i>	None apparent (except for the standard tuition collected for the period of study)	None apparent (except for the standard tuition collected for the period of study)	None apparent (except for the standard tuition collected for the period of study)
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TO: CSBARS

FROM: Dean Linda Keller (TJSL) and Mr. Greg Murphy

RE: Research on Alternative to Unaccredited Guideline 1.11 – Student Success

DATE: April 6, 2022

Dean Keller and Mr. Murphy were tasked with exploring issues related to student success re: provision of credit for courses to prepare students for the First-Year Law Students' Examination (FYLSE) and the California bar examination (bar exam).

Implications of Definitional Difficulties & How to Address Concerns without Explicit Limitations

As further discussed below, we suggest that while some students matriculate into law school without intent to become licensed lawyers, it ought to be taken as a given for these purposes that the vast majority of law students attend law school with a goal of becoming a licensed lawyer.

A threshold issue is how to define a preparation/review course. The entire first year could be said to be a preparation or review for the FYLSE, while the courses throughout the curriculum could be characterized as preparation for the bar exam. Indeed, if the bar exam is an accurate measure of knowledge and skills required for practice, then every law school course aimed at preparation for practice is a bar exam preparation course.

We recognize that most common bar preparation courses probably seek to provide a review of the law likely to be tested on the bar examination and to assist in honing the skills necessary to be successful on the bar exam. It may be posited that while many students and graduates do not necessarily enjoy bar preparation courses, they indeed provide pedagogical value. Defining the exact contours of these courses and distinguishing them from other classes, however, is challenging.

If the bar exam tests the knowledge and skills that are used in practice, which is why it is required for licensure, then there should be no distinction between bar preparation courses and other courses that foster law knowledge, the ability to think through and solve a problem, and the ability to spot issues and to communicate how to resolve them. Elective courses in specialized areas still reinforce the analytical, and often writing, skills that are necessary to succeed on the bar exam and in practice, and therefore they would also fall under the term "bar preparation courses." Thus, every class is FYLSE/bar exam preparation *and* preparation for practice, and there should be no limitations on the ability of schools to offer such classes.

Even if this maximalist approach is questioned, the definition of exam preparation courses may be impossible to lay out or apply accurately and fairly, given the overlap between preparing for FYLSE or the bar exam and preparing law students to practice law. Take, for example, (a) a three-unit FYLSE or bar review course that focuses on test preparation skills, including multiple choice and essay writing, while reinforcing law knowledge, application, and analytical writing in multiple bar-tested first-year subjects, and (b) a five-unit course first-year course in a FYLSE or bar tested subject, e.g. torts, that incorporates regular and significant practice in FYLSE or bar -like multiple choice questions and essay writing skills. It may be impossible to distinguish fairly between these two courses for the purposes of defining which counts, in whole or part, as a FYLSE or bar examination preparation or review course.

Based on either of these understandings, the red-lined version of Unaccredited Guideline 1.11 would read as follows:

#### 1.11 First-Year Law Students' Examination and Bar Examination Review Courses Permitted; Limitations

A law school may offer and charge for a First-Year Law Students' Examination and bar examination review course. Any such review course ~~must not~~ **may** be part of the credit requirements to obtain a J.D. degree. ~~The law school may not condition any student's continued enrollment or graduation on the student taking a review course offered by the law school or otherwise. The law school may also permit commercial First-Year Law Students' Examination and bar examination review courses to post advertisements and promote their courses to law students. Law school administrators, instructors and staff must not compel or solicit students to attend any particular review course.~~

This is consistent with another part of the unaccredited school guidelines, which specifies: "A law school is not required to follow a specific curriculum and is free to set the number of units of study allocated to individual courses." Guideline 5.10.

To address concerns regarding potential self-dealing, ineffective courses or imbalanced curriculum, the guideline could explicitly cross-reference to other rules, for example:

A law school may offer and charge for a First-Year Law Students' Examination and bar examination review course. Any such review course ~~must not~~ **may** be part of the credit requirements to obtain a J.D. degree. *All courses offered by the law school must meet the Unaccredited Law School Rules and Guidelines including 2.2 (Honesty Regarding Finances), 2.9 (Fairness in Academic Standards and Student Assessment), 5.3 (Minimum Requirements for Award of Juris Doctor (J.D.) Degree), 5.9 (Quantitative Academic Requirements) and 5.11 (Balanced and Comprehensive Course of Study).*

To address concerns that a school might award academic credit for students who take a commercial course on their own, the guideline could address this, for example, by adding to the above:

*A review or preparation course may be taught by law school faculty or by a commercial preparation company, provided the law school provides oversight of the course to ensure that it meets the requirements of Unaccredited Law School Rules and Guidelines.*

While all courses must meet the requirements and guidelines, it is not necessary to require a particular type of review course. Some schools, particularly those with the resources and expertise, will find it more effective to create, offer, and perhaps require, courses developed and taught in-house. Others will find it more effective for students to learn from experts in test preparation who tailor their commercial course materials (or modify their post-graduation bar exam course) to meet the requirements of the relevant rules and guidelines. Some may find a middle-ground most effective, where a commercial test preparation company provides the materials and some of the practice, feedback, or assessments while law school faculty are also directly involved in content delivery or assessments. Given the line-drawing difficulties inherent in distinguishing between these types of courses, it is advised that there be no distinction between so-called "in-house" or "commercial" (or in-between) courses – all must conform to the relevant rules and guidelines.

Thus, the proposed revised guideline would read as follows in full:

A law school may offer and charge for a First-Year Law Students' Examination and bar examination review course. Any such review course ~~must not~~ **may** be part of the credit requirements to obtain a J.D. degree. ~~The law school may not condition any student's continued enrollment or graduation on the student taking a review course offered by the law school or otherwise. The law school may also permit commercial First-Year Law Students' Examination and bar examination review courses to post advertisements and promote their courses to law students. Law school administrators, instructors and staff must not compel or solicit students to attend any particular review course.~~ *A review or preparation course may be taught by law school faculty or by a commercial preparation company, provided the law school provides oversight of the course to ensure that it meets the requirements of the Unaccredited Law School Rules and Guidelines, including 2.2 (Honesty Regarding Finances), 2.9 (Fairness in Academic Standards and Student Assessment), 5.3 (Minimum Requirements for Award of Juris Doctor (J.D.) Degree), 5.9 (Quantitative Academic Requirements) and 5.11 (Balanced and Comprehensive Course of Study).*

#### Definition of Student Success & Trade-off Issues

For unaccredited law schools, passing the FYLSE is an inherent requirement for demonstrating student success while passing the bar exam is critical for students at all law schools (unaccredited, CALS<sup>1</sup> or ABA<sup>2</sup>). It is a core responsibility of law schools to prepare students for the bar, and prohibition or limitation on courses that do so undermines this responsibility. A law school does not serve student success by offering a curriculum that yields a "well-rounded" law graduate who has taken plentiful electives in many interesting areas of law but who cannot pass the FYLSE or the bar exam. Law schools should do all that they can to support students to succeed on standardized tests that are barriers to continuation in school (FYLSE) or practice (bar exam). This is particularly true when standardized tests from the LSAT on disfavor students of color and other marginalized groups served by unaccredited law schools.<sup>3</sup>

When a law school offers a course for credit, it signals the importance of the course. The course itself then fits into the student's course load, meaning that the time to do the work for the course is built in rather than something students have to somehow squeeze in on top of their regular load. For students eligible for financial aid, the provision of credit for such a course also provides them access to such aid as part of their law school loans.

While it may seem attractive to respond to concerns about elective availability by limiting the number of credits for exam preparation courses, the issue may be more complicated in practice. As discussed above, it is difficult to define an exam preparation course. A last-semester bar preparation course might be combined with new doctrinal material, making it difficult to parse out which units count toward exam

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<sup>1</sup> California-Accredited Law Schools.

<sup>2</sup> Schools accredited by the Council of the Section of Legal Education and Admissions to the Bar.

<sup>3</sup> Access and Inclusion staff presented charts from survey that showed the diversity of the unaccredited, CALS and ABA schools in California, indicating ABA are the least diverse. We've requested these to share with the committee.

preparation. It may also be difficult to draw a line between a last-semester bar preparation course and a penultimate-semester bar preparation course. As discussed below, eliminating the ability of law schools to offer penultimate-semester bar preparation courses would remove a key tool to enhance student success on the bar exam. Students, particularly part-time students, need to revisit the material and work on memorization and practice for a longer-time than full-time students who can devote two months of time to exclusive bar study post-graduation.

Moreover, law schools are already required to offer a balanced and comprehensive course of study, something that should be assessed in the context of the overall curriculum and the school's mission, rather than set out as a one-size fits all limit.

Even for those who enter law school and even graduate without intending to practice law, test preparation is important. For these students, passing the FYLSE is required to achieve their goal of earning a J.D. degree. Moreover, it is not feasible to exclude these students from bar preparation courses due to unpredictability and flexibility. Anecdotally, some of the students who initially do not intend to practice law may experience changed circumstances and decide a week before graduation that passing the bar exam has become important to them. Even students who do not intend to practice law often decide to take the bar, "just to see" what happens. Others take the bar "just in case" – i.e., to provide themselves with the maximum flexibility if their career trajectory changes at any point in the future. In measuring outcomes on the bar exam, these examinees are counted with those who need the bar for their future careers. As a result, if a school chooses to require bar preparation courses, all students should fall under that requirement.

#### Advancing Student Success on Gatekeeping Tests without Specialized Courses

Assuming that it is possible to draw fair and accurate distinctions between FYLSE and bar preparation courses on one hand and "doctrinal courses" on the other (see above), it is not sufficient to insert test preparation into "doctrinal" courses. Pedagogical approaches such as spaced repetition and interleaving require students to revisit material at regular intervals to enhance comprehension and retention, sometimes reviewing the interconnected nature of the law. This is why many educational programs require various types of "capstone" courses.<sup>4</sup>

For example, it is far more effective for a student to revisit first-year subjects just before graduation than to merely practice bar exam skills during their first year of study. While first year courses tend to focus on individual subjects (i.e., torts, contracts, etc.), a pre-graduation bar exam course will teach how content intersects. Students' subsequent coursework further serves to enrich their understanding of how the rules of law function and cross-over, which is how the information is tested on the bar exam. The best approach is to lay the foundation in terms of law knowledge and skills in the first-year course, *and* to expect students to review the material in the context of exam preparation at the end of their law school career. As noted above, they will put forth more effort in doing so if they are able to earn credit for it. Revisiting content more than once during law school also reinforces the need to space learning

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<sup>4</sup> See, e.g., Louis N. Schulze, Jr., *Using Science to Build Better Learners*, 68 J. LEGAL EDUC. 230, 234 (2019) (explaining spaced repetition as a "scientifically proven theory holds that most study does not efficiently encode memory, because the brain requires repeated immersion in the material at specific intervals" ); Patrick Barry, *Editing and Interleaving*, 18 Legal Comm. & Rhetoric: JALWD 59, 60 (2021) (summarizing interleaving as effective strategy of switching topics to "produce much deeper and longer-lasting comprehension").



and to contemplate personal strengths and weaknesses in analytical reasoning and written communication. This type of self-regulation is a skill that legal practitioners need to develop so that they can improve while in practice.

Effective test preparation courses are more than rote memorization or unreflective skill drills. A quality bar preparation course is pedagogically sophisticated, reinforcing and deepening analytic and writing skills essential to good lawyering. A bar preparation course may be integrated with the rest of the curriculum in ways that make the whole curriculum more effective, and therefore contribute to the making of well-rounded lawyers.

### Diversity & Equity Issues

Adding courses that prepare students to take the FYLSE and bar exam support diversity, equity, and inclusion goals. Bar examinees from marginalized groups perform less successfully on the bar exam. As noted above, unaccredited (and CALS) schools serve a higher proportion of students from this population than do ABA schools. The ABA Council's current Standards do not prohibit awarding credit for successful completion of a bar examination course. It is difficult to see a good justification for drawing a distinction between ABA law schools and unaccredited or CALS schools on the pending question.

ABA students can take bar preparation courses without restriction, for credit, using financial aid if they are eligible. In fact, at many schools, additional bar preparation courses are required for those who are not performing as well academically as their peers at that school, meaning they are required to take additional units to prepare them for the bar exam as a graduation requirement. These bar preparation courses are offered because they are deemed beneficial to graduates, giving them a jump-start on preparation for the bar exam and increasing the chances of completion of all work necessary to success on the bar exam.

To prohibit or limit bar preparation courses at registered unaccredited schools would disadvantage the populations they serve. These graduates are taking the same test with same graders as ABA graduates. However, non-ABA schools in California serve more diverse students, from underserved and underrepresented populations. They are less likely to have the time and resources to devote to bar preparation courses for no credit or to exclusive post-graduation bar study due to work or family responsibilities. Their opportunities to prepare should be increased, not limited, as part of the overall curriculum offered in compliance with the Unaccredited Rules and Guidelines.

### Summary

Student success may be fostered by allowing unaccredited law schools to offer for-credit courses to prepare students to succeed on the FYLSE and the bar exam. Sound pedagogy underlies the provision of exam preparation courses, separate from incorporating test-taking skills into doctrinal courses. Students should be able to earn credit for these courses to ensure they are not trying to squeeze them in on top of a regular course load. Existing rules and guidelines require that schools offer a balanced curriculum and that all courses, including courses focused on test preparation, meet the standards. Given the inherent difficulties in adopting and implementing fair and accurate definitions of FYLSE or bar preparation courses, limits on courses that might be labeled as test preparation courses for the classes of schools at issue does not appear advisable. Nor is it advisable to prohibit schools from bringing in

outside expertise to offer these courses, provided they are integrated into the schools' curriculum with appropriate oversight. Diversity and equity principles dictate that unaccredited schools fulfil their responsibility to support students by providing them with every opportunity to succeed in law school, on the FYLSE, and on the bar exam.

## 1.11 First-Year Law Students' Examination and Bar Examination Review Courses ~~Permitted~~; ~~Limitations~~

A law school may offer and charge for a First-Year Law Students' Examination and bar examination review course. Any such review course ~~may must not~~ be part of the credit requirements to obtain a J.D. However, the total credit awarded for the course shall not exceed 12.5 percent of the total hours required for graduation

~~The law school may not condition any student's continued enrollment or graduation on the student taking a review course offered by the law school or otherwise. The law school may also permit commercial First-Year Law Students' Examination and bar examination review courses to post advertisements and promote their courses to law students. Law school administrators, instructors and staff must not compel or solicit students to attend any particular review course.~~

First-Year Law Students' Examination and bar examination review courses are defined as those courses which are primarily focused on both: 1) the review of materials previously covered within the curriculum and 2) the unique particularity of examinations conducted by the Committee of Bar Examiners (i.e. standardized, timed, closed book, examinations that focus on general principles of legal doctrine like the UCC)

1. As to DEI – “The Testing Column: Ensuring Fairness in Assessment” The Bar Examiner print edition, Spring 2021 (Vol. 90, No. 1), pp. 73–85. And online at <https://thebarexaminer.ncbex.org/article/spring-2021/the-testing-column-ensuring-fairness-in-assessment/>

A fascinating article which presents an overview of the disparate impact of standardized testing with research on the California Bar specifically referenced back to 1997 by doctors Bolus and Klein. In pertinent part is the beginning of the article quoted below:

“People from both historically and socioeconomically disadvantaged groups often obtain lower scores on standardized tests. Score differences occur during elementary school on tests of academic achievement and aptitude<sup>1</sup> and later in life on college admissions tests<sup>2</sup>, employment tests<sup>3</sup>, and licensure tests<sup>4</sup>. The legal profession is no exception, with Black and Hispanic examinees obtaining lower mean scores than White examinees on the Law School Admission Test (LSAT) and on the bar examination.<sup>5</sup>

These troubling score differences lend themselves to different interpretations. One view is that the discrepancies exist because standardized tests are biased, and that eliminating the bias in the tests will reduce or eliminate the group differences. An alternative interpretation is that score differences are a consequence of the disparities in educational and economic opportunities that minority groups have experienced for generations. The National Council on Measurement in Education (NCME) advocated this view when it noted that “[d]ifferences in socioeconomic status and quality of education exist across racial/ethnic groups in this country. Criticizing test results for reflecting these inequities is like blaming a thermometer for global warming.”<sup>6</sup> A similar interpretation is implied in the Standards for Educational and Psychological Testing (hereafter referred to as “the Standards”), which state that group differences in test scores should lead to rigorous investigation to identify possible sources of the differences; however, such differences do not in themselves indicate the presence of measurement bias (see discussion below).<sup>7</sup> Other writers have endorsed this perspective.<sup>8</sup>

Studies of the bar exam are consistent with the interpretation that score differences among groups are not necessarily indicative of test bias. Research on the Multistate Bar Examination (MBE)<sup>9</sup> and the California Bar Examination<sup>10</sup> indicate that minority group differences in bar exam scores are similar in magnitude to the minority group differences observed in law school grades and on the LSAT. The authors of the California study concluded that “[t]he bar exam itself is not the source of the differences. It merely reflects the disparities that were present when the students graduated from law school.”<sup>11</sup>

Although it is often acknowledged that members of minority groups are more likely to experience socioeconomic disadvantages early in life, research also indicates that such disadvantages can persist into graduate education. A study of the Texas Bar Examination found that students who worked during the weeks leading up to the bar exam obtained lower scores, presumably because they had less opportunity to prepare. Black and Hispanic students were about 1.5 times more likely to be among those who worked during the pre--examination period.<sup>12</sup>