



AMERICAN **BAR** ASSOCIATION

Legal Education and
Admissions to the Bar

Managing Director's Guidance Memo

Standard 316 and Reporting of Bar Exam Outcomes June 2019

Standard 316. BAR PASSAGE

At least 75 percent of a law school's graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.

Background

This memo provides guidance on Standard 316 of the *ABA Standards and Rules of Procedure for Approval of Law Schools* as approved by the Council at its May 2019 meeting and on how schools will demonstrate compliance with it. As discussed more fully below, the revised Standard bases compliance on the pass rate of all graduates of a law school over a single, two-year period. It replaces previous Standard 316 that permitted measuring compliance based on as few as 70 percent of a law school's graduates and included multiple methods for complying, including multiple measures for first-time and ultimate pass rates based on different cohorts of students and different time frames.

Demonstrating compliance under the revised Standard

Under the revised Standard, law schools will report the "ultimate pass rate" for graduates for the two-year period following graduation. The standard is binary—a pass rate of 75 percent or better for the cohort demonstrates compliance; a pass rate below 75 percent means the school is out of compliance. Schools will report the number of graduates not sitting for a bar examination in the two-year period, and those graduates will not be included in the computation of the school's bar pass rate for purposes of Standard 316.

Schools will file their completed bar examination outcomes questionnaires on or about February 1 for the preceding year's bar exam outcomes. Staff will review these filings with the intent to have the data ready for the Council to review at its meeting later in February. At that meeting, the Council will review the data and send a letter to each school reporting a bar pass rate below

75 percent, pursuant to Rule 11(a)(3), stating that the Council “has reason to believe” that the law school “has not demonstrated compliance” with the Standard and, pursuant to Rules 5 and 6, requesting a response from the school. That response provides the school the opportunity to dispute and correct the data it reported. At a subsequent meeting, likely the Council’s May meeting, the Council will review the school’s response. Absent a data reporting error, the Council will likely conclude that under Rule 11(a)(4) a school with a two-year ultimate pass rate below 75% is out of compliance with the Standard. That conclusion will trigger several events:

1. Because bar passage is a core standard that must be publicly reported under Department of Education guidelines, the finding of non-compliance will become a matter of public record [Rule 48(b)(7)]. A notice of non-compliance will be posted on the Section of Legal Education’s website and be posted on the school’s website with its other ABA Required Disclosures. Notices will also be given to other appropriate regulatory and accrediting groups, as required.
2. The finding of non-compliance triggers a two-year period for the school to demonstrate that it had returned to compliance, in this case by reporting a pass rate of at least 75 percent for a subsequent cohort. The period for returning to compliance will run from the date of the letter to the law school reporting the finding of non-compliance. [Rule 13(a)(1) and (b)]
3. The school will be requested to report steps it will take to bring itself into compliance. The response will be reviewed by the Council, likely at its August meeting.
4. If the Council concludes that the response by the school outlines a plan to take appropriate steps to come into compliance, the two-year period to do so will continue and the Council will review subsequent outcome reports to determine compliance. If the Council concludes that the response does not outline satisfactory steps, the school will be asked to appear at a hearing, likely at the Council’s November meeting, to determine whether the Council will impose sanctions, which could include specific remedial action and/or probation, which will become a matter of public record.
4. If the bar pass results reported in the bar pass questionnaire filed in a subsequent year reports a bar pass rate of 75 percent or better, the school will have cured its non-compliance and will be found back in compliance with the Standard; the finding of compliance will be publicly reported. There will be no further analysis of the class that failed to reach a 75 percent bar pass rate that triggered the finding of noncompliance.
5. If the bar pass results reported in the bar pass questionnaire filed in the year following a finding of non-compliance show a bar pass rate below 75 percent, the school remains out of compliance and the two-year period to demonstrate compliance continues to run. The Council will have the authority under Rules 2(g), 15, and 16 to impose or increase sanctions at this time.
6. If the bar pass results reported in the bar pass questionnaire filed in the second year following a finding of non-compliance show a bar pass rate below 75 percent, the school will be required to appear at a hearing at which the Council will determine whether to withdraw the school’s accreditation [Rules 2(g), 15, and 16] or grant an extension of time based on a finding of good cause by the Council. [Rule 13(c)].

Demonstrating “good cause” to justify an extension of the two-year period to come back into compliance with Standard 316

Each case is different and a request by a school for additional time to come into compliance with Standard 316 will be evaluated based on the school’s specific circumstances. That said, previous Standard 316(c) set forth several factors relevant to determining good cause for

extending the period a law school has for coming into compliance with the bar pass Standard. Although revised Standard 316 does not list the factors that appeared in the prior Standard, the Council agreed that those factors will continue to be relevant as part of Rule 13(c). Those factors are:

(1) The law school's trend in bar passage rates for both first-time and subsequent takers: a clear trend of improvement will be considered in the school's favor, a declining or flat trend against it.

* * *

(3) Actions by the law school to address bar passage, particularly the law school's academic rigor and the demonstrated value and effectiveness of its academic support and bar preparation programs: value-added, effective, sustained, and pervasive actions to address bar passage problems will be considered in the law school's favor; ineffective or only marginally effective programs or limited action by the law school against it.

(4) Efforts by the law school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the law school will be considered in the school's favor; ineffective or limited efforts by the law school against it.

(5) Efforts by the law school to provide broader access to legal education while maintaining academic rigor: sustained meaningful efforts will be viewed in the law school's favor; intermittent or limited efforts by the law school against it.

(6) The demonstrated likelihood that the law school's students who transfer to other ABA-approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school's favor, provided the law school has undertaken counseling and other appropriate efforts to retain its well-performing students.

(7) Temporary circumstances beyond the control of the law school, but which the law school is addressing for example, a natural disaster that disrupts operations or a significant change in the bar examination or increase in the required passing score.

(8) Other factors, consistent with a law school's demonstrated and sustained mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school's efforts to improve them.

Going forward, another consideration likely to be applied will be how frequently in recent years the law school's reported ultimate bar pass rate has been below 75 percent and the school found out of compliance, even if the school came back into compliance within two years as required. Having been out of compliance likely will be considered a relevant factor against a finding of good cause.

An extension of time to comply is not an exemption from complying with the Standard

The extension of time is a period to allow the school to take additional steps to come back into compliance or to allow steps taken to mature to demonstrate to the Council that the corrective actions taken worked. There is no exemption for this or any other Standard.

Revisions in the revised Standard 316 from the prior version of the standard

The revised standard does not change the basic requirement in the previous standard that a law school must achieve at least a 75 percent ultimate bar pass rate. However, while the ultimate passage rate (75%) remains unchanged in the revisions, the new standard does make important changes to measuring law school graduate success on the bar exam for law school accreditation:

- (1) The look-back period for determining compliance is shortened from five years to two.
- (2) The previous requirement that a school needed to report on only 70 percent of its graduating class is eliminated. The required bar pass rate in new Standard 316 is the bar pass rate based on 100 percent of the school's graduates in a particular year. The standard requires a school to make reasonable efforts to find and report on all its graduates.
- (3) The new standard eliminates first-time pass rates as a basis for compliance. Law schools can no longer demonstrate compliance by showing the school's rate is within 15 points of the pass rate in the jurisdiction(s) where its graduates took the bar exam, regardless of the school's ultimate pass rate. First-time pass rates will continue to be collected and reported as consumer information, but compliance with new Standard 316 will be based exclusively on the new two-year ultimate pass rate for a school's graduates who sat for the bar exam.

Effective Date of the new Standard and Transition Rules

New Standard 316 became effective at the conclusion of the Council's May 2019 meeting where the revisions were approved. Bar exam outcomes are collected and reviewed once each year, in the winter/spring for outcomes from the prior year. Schools will be subject to revised Standard 316 beginning in the spring of 2020, when schools file reports of ultimate outcomes for 2017 graduates. As explained above, schools not apparently complying with Standard 316 will be afforded process, time to report additional outcomes, and time to consider programs designed to improve performance.

Reporting bar pass outcomes

Schools must complete and submit the ABA Bar Exam Outcomes Questionnaire by the deadline established by the Council, which will be around February 1 each year. The information required to be filed is necessary to monitor compliance with Standard 316 and to gather consumer information to report under the authority of Standard 509(b)(8).

Revised Standard 316 requires a school to make good faith, reasonable efforts to find and report bar exam data on all its graduates. The recent reporting that schools have done shows this is a reasonable expectation. Full reporting is appropriate and presents a more accurate picture of how a school's graduates are doing.

The form of the questionnaire is Appendix A to this guidance memo. Importantly, in addition to the data that a school has had to report on this questionnaire for the past several years, for the questionnaire to be reported in February 2020, schools must report outcomes that include outcomes by race/ethnicity and gender. Those outcomes will be part of the public reporting required by Standard 509 in the reports that the Managing Director's Office makes public.

The questionnaire asks for information on a graduate "one year after graduation" and "two years after graduation." The intent of the Standard is to collect and report bar examination outcomes for the four administrations of the bar examination after a student graduates. The form of the question follows that intention and there were few questions in this regard over the past two years.

Reporting graduates who take the bar examination in an UBE Jurisdiction

Specifics on how to report a law school's graduates for Standard 316 and Standard 509 are detailed in the instructions for the Bar Exam Outcomes Questionnaire posted on the Section of Legal Education and Admission to the Bar webpage. With respect to graduates taking a bar examination in an UBE jurisdiction, a school will report the graduate as a first-time passer or non-passer in the jurisdiction where the graduate was registered for and sat for the bar examination. If a second UBE jurisdiction later accepts the score of a graduate who failed in the first jurisdiction, that graduate is not considered a first-time taker in the second jurisdiction but can be counted as a passer for reporting ultimate bar passage results.

Evidence a school may rely on in reporting bar exam outcomes

In reporting a graduate as a bar passer, a law school may rely on reports published or sent to the school by a jurisdiction's bar admissions office, listing a graduate on a roll of licensed attorneys published in a jurisdiction, or the direct report of the graduate to the law school. For graduates who were certified by the school to a bar admissions office who were not reported as passing and, therefore, may have either not passed or not sat, the school shall make good faith, reasonable efforts to determine whether the person should be reported as "not passing" or "not taking." Absent information that the graduate took the bar exam and failed, the graduate should be reported as "not taking."

Continuing commitment to diversity in student enrollment

The Council took several steps to address the concern expressed in some comments filed during the revision process that the new Standard could have a disproportionate impact on minority students. The Council directed the Managing Director to emphasize in this Guidance Memo their commitment to continue enforcing Standards 205 and 206, related to diversity and inclusion, which remain in full force and effect. A school may not use Standard 316 as an excuse for non-compliance with those Standards. The Council also noted that, although new

Standard 316 does not list the factors that appeared in the previous Standard, the Council has directed that those factors continue to be relevant and include items the school considers relevant, including its “demonstrated and sustained mission.” Finally, the Council authorized the collection of race, ethnicity, and gender data as part of the bar passage data that schools must file in the Bar Pass Questionnaire to provide information that will help the Council evaluate schools under its diversity and inclusion standards.

Background and rationale for Standard 316

The ABA Standards include a standard on bar pass outcomes for several reasons. Among them are:

- a. Because how a law school’s graduates perform on the bar examination is a key outcome measure in assessing whether a law school is maintaining a “rigorous program of legal education that prepares its students ... for admission to the bar ...” as required by ABA Standard 301(a). Bar passage rates are also directly relevant to Standard 501(b) which states, “A law school shall only admit applicants capable of satisfactorily completing its program of legal education and *being admitted to the bar*. (Emphasis added.)
- b. Because how a law school’s graduates perform on the bar examination is one of the critical pieces of consumer information that prospective law students should consider in deciding where to study law. For that reason, bar passage outcomes must be reported under Standard 509.
- c. Because bar passage outcomes are an important element in the Council’s satisfying the criteria of the United States Department of Education for recognition as an approved accrediting agency. Section 34 of the Code of Federal Regulations (CFR), Part 602 sets forth the requirements and standards accrediting agencies must meet in the discharge of their duties. Section 602.16 of the CFR requires an accreditor to:
 - (a) . . . demonstrate that it has standards for accreditation . . . that are sufficiently rigorous to ensure that the agency is a reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits. The agency meets this requirement if -
 - (1) The agency's accreditation standards effectively address the quality of the institution or program in the following areas:
 - (i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of State licensing examinations, course completion, and job placement rates. . . .
- d. Because while applicants to law school and law school students are adults and, given good information, should be free to make their own decisions about matters such as education and finances, risk and debt, Council members also accept that in today’s world their responsibility extends beyond simply providing information. The Council plays a critical role in protecting prospective and current students as a matter of consumer

34 C.F.R. §602.16(a) (2010).

protection. As many entities, including the ABA have noted, most law students incur substantial debt to earn a law degree. Whether students pass a bar exam influences their future livelihood and quality of life immensely, including their abilities to pay back their loans while maintaining an acceptable quality of life.

The Managing Director's Office will issue Guidance memoranda from time-to-time when new Standards or Interpretations have been adopted or when, in the course of the Office's dealings with schools about compliance with the Standards, a number of schools are asking for clarification or direction regarding a particular Standard, Interpretation or reporting requirement. The Office does its best to provide helpful guidance, but we remind schools that we do not have the authority to bind the Council. That said, the Council understands the necessity of providing guidance and will take that guidance into account in any determination about a school's operating in compliance with the Standards.

APPENDIX A - Bar Passage Questionnaire

Due: February 3, 2020

Bar passage outcomes are collected annually in this questionnaire. Bar passage outcomes are no longer collected in the Annual Questionnaire. Moving bar passage outcome data collection here allows for more timely reporting of this data.

I. Ultimate Bar Passage Data

For ultimate bar passage, the questionnaire follows graduates by calendar year of graduation and asks for information about the number who passed the bar examination within one year after graduation and within two years after graduation. Each year, schools will be asked to report on graduates from two calendar years. The questionnaire due in February 2020 will cover the following years:

Graduates in 2017 calendar year (graduates from Jan – Dec 2017)

Report on the number who took the bar examination within two years of graduation.

Graduates in 2018 Calendar year (graduates from Jan – Dec 2018)

Report on the number who took the bar examination within one year of graduation.

Reporting graduates who never sit for a bar examination or who cannot be located

Schools report the number of graduates who they know have not sat for a bar examination within the two-year compliance period. Schools also report the number of graduates who, after reasonable and good fair effort by the law school, cannot be located. Neither of these groups are taken into account in calculating the law school's ultimate pass rate under Standard 316.

II. Bar Passage of First-time Takers

The information on first-time bar passage is the same as what has been collected previously in the Annual Questionnaire, but requests information for all graduates.

Only those taking the bar examination for the first time may be counted as a first-time taker. While a person might take a bar examination in successive administrations in different jurisdictions and may be taking the examination for the first time in each of those jurisdictions, a person is only reported as a first-time taker when taking the examination for the first time in any jurisdiction.

Reporting on graduates who take the bar examination in an UBE jurisdiction

A graduate who takes the bar examination in an UBE jurisdiction is counted as a first-time taker in the jurisdiction where the examination was taken. The graduate must be reported as having passed or failed as a first-time taker in that jurisdiction. If a second UBE jurisdiction *later* accepts the score of a graduate who failed in the first jurisdiction, that graduate is not considered a first-time taker in the second jurisdiction but can be counted as a passer for reporting ultimate bar passage results.

Reporting on graduates who take the bar examination twice in one administration

Where a graduate took the bar examination twice in one administration, the graduate shall be reported only once. If the graduate passed or failed in both jurisdictions, the graduate should be reported in the jurisdiction that has the higher number of graduates taking the bar exam. If the graduate passed in only one jurisdiction, the graduate should be reported in that jurisdiction.

The following examples illustrate the reporting on bar exam passage for graduates who took the bar exam for the first time twice in one administration.

Graduates taking the bar exam twice in one administration

	Jurisdiction X [higher number of graduates being reported]	Jurisdiction Y [smaller number of graduates being reported]	Report Graduate As:
Graduate A	Passed	Failed	A person who passed in Jurisdiction X
Graduate B	Passed	Passed	A person who passed in Jurisdiction X
Graduate C	Failed	Failed	A person who failed in Jurisdiction X
Graduate D	Failed	Passed	A person who passed in Jurisdiction Y

BAR PASS QUESTIONNAIRE

Part I. ULTIMATE BAR PASSAGE

Graduates in Calendar Year 2017

- A. Number of graduates in calendar year 2017 _____
- B. Number who sat for a bar examination
within **two years** of their date of graduation. _____
- Total number of takers _____
- Total number of passers _____
- C. Number of 2017 graduates for whom no information is available _____
- D. Number of graduates who did not take a bar examination
within two years of their date of graduation _____

For each ethnicity group, provide:

- Gender
Number of Takers
Number of Passers

Graduates in Calendar Year 2018

- A. Number of graduates in calendar year 2018 _____
- B. Number who sat for a bar examination
within **one year** of their date of graduation. _____
- Total number of takers _____
- Total number of passers _____
- C. Number of 2018 graduates for whom no information is available _____
- D. Number of graduates who did not take a bar examination
within one year of their date of graduation _____

For each ethnicity group, provide:

- Gender
Number of Takers
Number of Passers

Note: Examples of Opportunities to take the bar examination for different cohorts in a calendar year

For graduates in calendar year 2017:

- *May graduates: July 2017, February 2018, July 2018, February 2019*
- *August graduates: February 2018, July 2018, February 2019, July 2019*
- *December graduates: February 2018, July 2018, February 2019, July 2019*

Sample Report on Ultimate Bar Passage

Calendar Year of graduation	Number of graduates in calendar year	Graduates who sat for a bar examination within one year of their date of graduation.			Graduates who sat for a bar examination within two years of their date of graduation.			Number with no information	Number who did not take a bar examination	
									within one years of graduation	within two years of graduation
		# of takers	# who passed	% that passed	# of takers	# who passed	% that passed			
2018	100	88	63	72%	--	--	--	5	7	--
2017	100	--	--	--	95	82	86%	2	--	3

Detail 2018

Ethnicity	Male			Female			Other			Total		
	Takers	Passers	%									
Hispanics of Any Race												
American Indian or Alaskan Native												
Asian												
Black or African American												
Native Hawaiian or Other Pacific Islander												
Two or More Races												
Nonresident Alien												
Race/Ethnicity Unknown												
White												

Detail 2017

Ethnicity	Male			Female			Other			Total		
	Takers	Passers	%									
Hispanics of Any Race												
American Indian or Alaskan Native												
Asian												
Black or African American												
Native Hawaiian or Other Pacific Islander												
Two or More Races												
Nonresident Alien												
Race/Ethnicity Unknown												
White												

Part II. FIRST-TIME BAR PASSAGE QUESTIONNAIRE

Calendar Year 2019

- A. Number of graduates in calendar year 2019 _____
- B. Number of 2019 graduates who DID NOT take the bar in any jurisdiction in 2019 _____
- C. Number of graduates from prior years who took the bar for the first time in 2019 in any jurisdiction _____
- D. Number of Early-Takers* who took the bar for the first time in 2019 _____
- E. Number of 2019 graduates for whom no information is available _____
- F. Total number of graduates who took the bar for the FIRST TIME in any jurisdiction in 2019 (Report only first-time takers) _____

For each jurisdiction where graduates took the bar, provide:

- Jurisdiction
- Number of Takers
- Number of Passers

For each ethnicity group, provide:

Gender

Number of Takers

Number of Passers

*Early Takers are those who took a bar exam before graduating

Sample Report– First time bar passage

	A	B	C	D	E	F	G	H	I	J
Calendar Year	Total Graduates in Calendar Year	Number from Calendar Year NOT taking Bar Exam	Number from Previous Years Taking Bar for FIRST Time in Calendar Year	Number of Early Takers	Number from Calendar Year with no information	Total First Time Takers in any jurisdiction	Total who passed the bar in any jurisdiction	ABA first time weighted average pass rate	Percent who passed the bar in any jurisdiction	Law School weighted average pass rate
2019										

Example of detail on each jurisdiction.

Detail 2019

Jurisdiction	Takers	Passers	Pass %	State Pass % for ABA-approved law schools	difference
Alabama					
Arkansas					
Texas					

Example of detail on the ethnicity breakdown.

Detail 2019

Ethnicity	Male			Female			Other			Total		
	Takers	Passers	%									
Hispanics of Any Race												
American Indian or Alaskan Native												
Asian												
Black or African American												

Native Hawaiian or Other Pacific Islander												
Two or More Races												
Nonresident Alien												
Race/Ethnicity Unknown												
White												