



The State Bar of California

**OPEN SESSION
AGENDA ITEM
701 MAY 2024
BOARD OF TRUSTEES**

DATE: May 16, 2024

TO: Members, Board of Trustees

FROM: Audrey Ching, Program Director, Office of Admissions
Cody Hounanian, Program Director, Office of Admissions
Amy Nuñez, Program Director, Office of Admissions

SUBJECT: Discussion and Approval of Agreement with Kaplan North America, LLC For the Preparation of California Bar Exam Materials

EXECUTIVE SUMMARY

In April 2024, the Committee of Bar Examiners voted to recommend to the Board of Trustees that the State Bar retain a new vendor to develop bar exam questions, including multiple-choice questions to replace the Multistate Bar Exam, which would provide the necessary flexibility for the adoption of alternative, cost-effective exam administration approaches beginning with the February 2025 administration. This item summarizes the general terms of an agreement being negotiated between the State Bar and Kaplan North America, LLC for exam development. Staff now seek authorization for the Board chair and the executive director to finalize negotiations and enter into the agreement in an amount not to exceed \$1.475 million annually for five years for multiple-choice and written question development.

BACKGROUND

The Admissions Fund faces insolvency in 2026. The State Bar's adopted 2024 budget forecasts Admissions Fund deficit spending of \$3.8 million; the fund is projected to end 2024 with just \$3.3 million of reserves.

To prudently manage the budget, staff has explored the prospect of transitioning to an alternative, cost-effective exam administration approach such as a fully remote online exam, utilizing small vendor-owned test centers, or a combination of the two, beginning with the February 2025 bar exam administration. Staff estimates that adopting one of these alternatives

would yield savings between \$2.8 million and \$4.2 million annually beginning in 2025—enough to largely or fully eliminate the existing structural deficit.

While the impetus of this proposal is budget-driven, applicants will also benefit from the change to a new administration approach. Each administration option would result in reduced travel and lodging expenses for many applicants. These options also align with test taker preference according to applicant survey responses.

Before the State Bar can pursue the exam administration approaches above, it must retain a new vendor to develop multiple-choice questions for the bar exam. Currently, the multiple-choice component of the exam—referred to as the Multistate Bar Examination (MBE)—is supplied by the National Conference of Bar Examiners (NCBE), which prohibits the MBE from being administered remotely or at vendor-owned test centers. NCBE has announced that it will phase out the MBE in 2028, meaning the State Bar will be required to replace the multiple-choice questions regardless of this current proposal. Additionally, recommendations from the Blue Ribbon Commission on the Future of the Bar Exam, currently awaiting Supreme Court approval, call for creating a new California-developed exam, a recommendation the State Bar will be better equipped to implement if it has control over the current multiple-choice exam. Here staff propose to expedite the transition to a new vendor to achieve much-needed cost savings.

In January 2024, the State Bar issued a Request for Information (RFI), seeking proposals from potential vendors capable of developing multiple-choice questions equivalent to the MBE. Staff also requested information about the development of essays and performance tests to identify additional cost-saving opportunities.

While two years' notice is required for any change to the bar exam that would require substantial modification of the training or preparation for the passage of the examination,^{1,2} notice is not required for this change because no alteration of the exam itself is being proposed. The only proposal on the table is to change the vendor used for exam development to allow for alternative exam administration methods. The format and content will not change, and the new questions will be equivalent to the current questions as far as their alignment with content areas, writing style, and validity for assessing minimum competency.

At the March 2024 Committee of Bar Examiners meeting, the proposal to retain a new bar exam question development vendor was discussed. At the meeting, staff outlined a plan to gather stakeholder feedback ahead of the April committee meeting. Committee Vice Chair Alex Chan and members Larry Kaplan, Vincent Reyes, and Hon. Robert Brody volunteered to serve as liaisons to advise staff throughout the stakeholder engagement and vendor negotiation process.

On April 3 and 4, 2024, staff held meetings with over two dozen deans and faculty members representing California-accredited and registered, unaccredited law schools and over sixty

¹ CA Rules of Court, rule 9.6.

² CA Bus & Prof Code § 6046.6.

representing American Bar Association-approved law schools as part of the stakeholder feedback solicitation effort. On April 16, staff held a public forum to collect additional feedback on the proposal to develop questions with a new vendor.

At the April 2024 committee meeting, staff presented a summary of feedback received from law schools and the public, as well as responses to various concerns and the corresponding adjustments made. Law schools generally raised concerns about students' ability to prepare for the new exam, and the State Bar's ability to evaluate new exam questions in time for a February 2025 exam administration. Staff and the State Bar's psychometrician, Dr. Chad Buckendahl, explained during the feedback sessions and the committee meeting that because the form and content of the exam will be the same as the MBE, no change in preparation is needed. Staff also announced that the State Bar will provide a no-cost study guide to all exam applicants and a guide for law school faculty in advance of the February 2025 exam. Additionally, the psychometrician presented the proposed timeline and process for question validation and committed to conducting a field test of some of the new questions at the California Bar Exam Experiment in October.³ Further details about the public comments received, and the State Bar's response, are provided in Attachment A.

After careful consideration of the feedback and detailed discussion of the staff's proposals, the committee voted to recommend to the Board that the State Bar retain a new vendor to develop bar exam questions.

DISCUSSION

PROPOSED AGREEMENT WITH KAPLAN NORTH AMERICA, LLC

In light of stakeholder feedback and the committee's recommendation, staff proposes that the Board authorize the State Bar to enter into an agreement with Kaplan North America, LLC (Kaplan) to develop exam questions, including multiple-choice questions to replace the MBE, which would then allow for the adoption of cost-effective bar exam administration approaches. Kaplan is qualified to provide these services because it has extensive experience in crafting MBE-like multiple-choice questions and other content for bar exam preparation materials.

Kaplan submitted a proposal in response to the January RFI that met the State Bar's requirements for question validity, exam reliability, and security. Over the past several months, staff, in consultation with the State Bar's psychometrician and committee liaisons, and taking into account stakeholder feedback, have worked with Kaplan to develop terms that meet the State Bar's goals of: (1) ensuring no substantial modification of preparation is required by applicants or law schools; (2) maintaining exam reliability and integrity; (3) ensuring the security of exam materials; and (4) competitive pricing that will enable the State Bar to realize needed cost savings.

³ The California Bar Exam Experiment is a mock exam study that aims to understand the impact of various exam modalities and designs. The mock exams are administered in a way that emulates the bar exam as closely as possible. A pilot California Bar Exam Experiment administered in October 2023 utilized questions developed by the same vendor currently under consideration for this proposal. A full, larger-scale experiment will be conducted in October 2024

Table 1 summarizes the key terms of the agreement that the parties have agreed to as of the time of this posting. Discussions with Kaplan are ongoing; staff will provide an oral update to the Board if there are changes to the terms below.

Table 1. Key Terms of Agreement Between State Bar and Kaplan

Description	Terms
Kaplan to exit California bar exam prep business	<ul style="list-style-type: none"> • Kaplan, its subsidiaries, and its parent companies will exit the business of providing California bar exam test preparation materials and courses. • PMBR, a subsidiary of Kaplan, may continue to offer its nationwide MBE prep course, with assurances that there is no overlap in access to or between developers of the PMBR prep course and the developers of the California bar exam questions.
Scope of question development	<ul style="list-style-type: none"> • MBE-equivalent multiple-choice questions to be used beginning with the February 2025 exam administration. • The parties continue to negotiate mutually acceptable terms in which Kaplan will develop essay and performance test questions to be used beginning with the February 2026 exam administration.
Intellectual property	<ul style="list-style-type: none"> • The State Bar will retain intellectual property rights to the materials developed by Kaplan.
Deliverables	<ul style="list-style-type: none"> • Study guides that the State Bar will provide at no cost to applicants. • Faculty guides that the State Bar will provide at no cost to law schools.
Length of agreement	<ul style="list-style-type: none"> • Five-year term concluding with the July 2029 administration.
Pricing	<ul style="list-style-type: none"> • \$1,350,000 annual fee for multiple-choice question development. • The parties are still negotiating pricing for written question development. • Early termination fee.

TIMELINE AND NEXT STEPS

The agreement with Kaplan includes a timeline to develop the requested materials in time for the February 2025 exam administration. Staff, in consultation with the State Bar's psychometrician, are confident that the timeline allows sufficient time to evaluate the newly developed questions ahead of the February administration. The timeline is as follows:

- *June 2024:* Delivery of an initial 35 multiple-choice questions to begin the content validation process.
- *August 2024:* The study guide for applicants will be prepared. Revised guides will be produced periodically after that.
- *August-December 2024:* 150 multiple choice questions will be delivered roughly monthly. The State Bar, as well as the panel of admittees, supervisors, and law school professors, will evaluate the materials on a rolling basis.
- *September 2024:* The faculty guide for law schools will be prepared.
- *October 2024:* Field testing some of the questions developed by Kaplan at the California Bar Exam Experiment.
- *February 2025:* Newly developed multiple-choice questions will be administered at the bar exam. Subsequently, Item Response Theory, the same approach utilized by the NCBE, will be used for question validation, and a passing score study will allow for equating of future exams.
- *Ongoing:* All questions shall be provided to the State Bar at least six months prior to each bar exam administration.

COLLABORATION WITH NEVADA

The State Bar of Nevada has indicated a desire to transition away from the MBE and to adopt an approach similar to staff's proposal. Due to Nevada being a relatively small jurisdiction with fewer bar exam applicants, it has requested permission from the State Bar to use the questions developed by Kaplan. An agreement has been reached whereby Nevada will be provided with the newly developed questions and will coordinate the administration of its multiple-choice exam concurrently with California to ensure the security of the exam materials. In turn, Nevada will compensate California for the costs of its examinees, offsetting the State Bar's exam administration costs. The State Bar's agreement with Kaplan will allow for this to occur in 2025 only, after which it will be reevaluated by the involved parties.

FISCAL/PERSONNEL IMPACT

Staff estimates the "as-is" cost of bar exam question development and administration in 2025 will total \$8.4 million. The cost of purchasing multiple-choice questions from the NCBE and exam development is roughly \$1 million annually. Comparatively, the agreement with Kaplan will cost up to \$1.475 million annually. While exam development costs will increase, the transition will facilitate significant overall savings through the adoption of alternative exam administration approaches. Table 2 shows the estimated annual cost savings that will be achieved if the State Bar contracts with Kaplan and adopts the various alternative exam administration approaches under consideration beginning with the February 2025 administration.

Table 2. Estimated Annual Savings from Alternative Bar Exam Administration Approaches⁴

Approach	Estimated Annual Savings
Fully remote	\$4.2 million
Vendor-owned test center	\$2.8 million
Hybrid	\$4 million

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

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 authorizes and delegates authority to the Board chair and the executive director to resolve outstanding terms through final negotiations and enter into an agreement with Kaplan North America, LLC in an amount not to exceed \$1.475 million annually for a term of five years for the development of multiple-choice, essays, and performance test questions for the California Bar Exam. The total contract cost shall not exceed \$7,375,000 for the five-year term.

ATTACHMENT LIST

- A.** Committee of Bar Examiners April 2024 Meeting Item III.A Action on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration

⁴ The estimated annual savings have changed since being presented at the April 2024 Committee of Bar Examiners meeting due to ongoing negotiations with Kaplan as well as revised proposals from exam administration vendors.



The State Bar of California

ATTACHMENT A

OPEN SESSION
AGENDA ITEM III.A.
APRIL 2024
COMMITTEE OF BAR EXAMINERS

DATE: April 19, 2024

TO: Members, Committee of Bar Examiners

FROM: Audrey Ching, Program Director, Office of Admissions
Cody Hounanian, Program Director, Office of Admissions
Amy Nuñez, Program Director, Office of Admissions

SUBJECT: Action on Cost Reduction Initiatives Related to the Bar Exam, Beginning with the February 2025 Administration

EXECUTIVE SUMMARY

At the March 2024 Committee of Bar Examiners meeting, the committee discussed a proposal for the State Bar to develop bar exam questions with a new vendor, enabling the adoption of alternative, cost-effective exam administration approaches beginning with the February 2025 administration. Informed by the committee's March discussion, staff worked with committee liaisons to explore the available options. Staff also sought feedback from various stakeholders, law schools, and the public. This item summarizes the feedback received and the State Bar's response, presents additional details regarding projected cost savings and logistics, and seeks the committee's recommendation to the Board of Trustees on a proposed course of action.

BACKGROUND

The Admissions Fund faces insolvency in 2026. The Office of Finance's final 2024 budget forecasts Admissions Fund deficit spending of \$3.8 million; the fund is projected to end 2024 with just \$3.3 million of reserves.

The significant structural deficit is primarily attributed to exam-related expenses, notably escalating testing facility and proctor costs. If the State Bar does not adopt changes to bar exam administration, it may be required to further increase fees, reduce the number of exam locations and proctors, and pursue other exam-related cost-saving measures; such actions would negatively impact applicants and could affect exam security.

To prudently manage the budget, staff have explored the prospect of transitioning to an alternative, cost-effective exam administration approach such as a fully remote online exam, utilizing small vendor-owned test centers, or a combination of the two beginning with the February 2025 administration. Staff estimates that adopting one of these alternatives would yield savings between \$3 million and \$4.3 million annually beginning in 2025 — enough to largely or fully eliminate the existing structural deficit.

Before the State Bar can pursue the exam administration approaches above, it must retain a new vendor to develop multiple-choice questions for the bar exam. Currently, the multiple-choice component of the exam — referred to as the Multistate Bar Examination (MBE) — is supplied by the National Conference of Bar Examiners (NCBE) which prohibits the MBE from being administered remotely or at vendor-owned test centers. The MBE will be phased out in 2028, meaning the State Bar will be required to replace the multiple-choice questions regardless of this current proposal. Additionally, recommendations from the Blue Ribbon Commission on the Future of the Exam, awaiting Supreme Court approval, call for replacing the MBE with a California-specific exam necessitating a similar change. Here staff propose to expedite the transition to a new vendor to achieve much-needed cost savings.

In January 2024, the State Bar issued a Request for Information (RFI), seeking proposals from potential vendors capable of developing multiple-choice questions equivalent to the MBE. Staff also requested information about the development of essays and performance tests to identify additional cost-saving opportunities.

No alteration of the exam itself is being proposed. The only proposal on the table is to change the vendor used for exam development to allow for alternative exam administration methods. The format and content will not change, and therefore no substantial modification of the training or preparation for passage of the examination will be necessary such that two years' notice of the change would be required.^{1,2}

At the March 2024 committee meeting, staff outlined a timeline for collecting stakeholder feedback throughout March and April.

On April 3 and 4, 2024, staff held discussions with over two dozen deans and faculty members representing California-accredited and registered, unaccredited law schools and over sixty representing American Bar Association-approved law schools as part of the stakeholder feedback solicitation effort. Dr. Chad Buckendahl was present to describe the question development processes, provide an overview of the psychometric validation process that would be employed to ensure exam and score reliability, and address inquiries.

Following these sessions on April 12, deans representing California-accredited law schools submitted a letter expressing concerns with the proposal to develop questions with a new vendor. The letter has been provided to the committee as a public comment and included here in Attachment A.

¹ CA Rules of Court, rule 9.6.

² CA Bus & Prof Code § 6046.6.

Staff will host a public forum on April 16 to receive further comments and input from stakeholders regarding the proposal to develop questions with a new vendor. As of this writing, the forum has yet to take place. Staff will provide an oral update to the committee at its upcoming meeting. In addition to feedback received from law schools, several members of the public have already provided written comments which have been shared with the committee and included here in Attachment B.

DISCUSSION

STAKEHOLDER FEEDBACK

Staff have carefully considered concerns raised by stakeholders and address them, by topic area, below in Table 1. The responses are informed by consultation with Dr. Buckendahl; more information about the psychometric validation process to be used for this initiative is included in Attachment C.

Staff believe that most of the concerns have or can be addressed by providing more information about the process, through the psychometric validation process to be employed, and the preparation materials to be provided to law schools and applicants. Some uncertainties are inevitable due to the change to a new question development vendor.

It is important to note that regardless of when administration of new questions occurs or the pre-testing efforts made, the same situation and methodologies in response will arise. The State Bar is committed to upholding industry best practices for question development and validation which, in the case of developing new questions, entails gathering essential statistical data during the initial administration of those questions and evaluating it afterward. Moreover, to ensure the new questions meet expectations prior to administration, a panel of recently admitted attorneys, supervisors of recently admitted attorneys, and law school professors will assess the questions in development as is best practice.

Table 1. Summary of Law School Feedback and Response by Staff and Psychometrician

Feedback	Response
Concerns about the timeline and a lack of pre-testing	<p>While the timeline appears aggressive, staff is confident that the timeframe is achievable given that the vendor under consideration is an existing test-prep provider with experience developing MBE-like questions that will be replicating existing MBE questions.</p> <p>In addition, the State Bar has considerable experience developing and validating multiple-choice questions through the First-Year Law Students’ Exam and is aware of the effort</p>

	<p>and expectations associated with gathering validity evidence prior to administering questions.</p> <p>Regarding the process to be employed, a designated panel of recently admitted attorneys, supervisors, and law school faculty, will evaluate the questions produced by the vendor to ensure alignment of questions with MBE content areas, adherence to writing style, and suitability for assessing minimum competency. After the initial administration, questions will undergo analysis using Item Response Theory to establish new baseline data; the same methodology that NCBE uses to ensure consistency.</p> <p>Some of the new questions will be field-tested via the California Bar Exam Experiment in October 2024.³</p>
<p>Uncertainty regarding how well scores on existing practice exams will predict performance on new questions</p>	<p>The vendor under consideration is an existing test-prep company with expertise in developing practice materials.</p> <p>While information about various test-prep companies' specific methodologies is not available, the new multiple-choice questions will be designed to measure the same content areas using the same item types as the MBE; preparation should remain unchanged.</p> <p>There will always be variations between performance on practice exams developed by test-prep companies and performance on the actual exam administered.</p>
<p>Need for new preparation materials and guidance for law schools and applicants</p>	<p>While new preparation materials aren't necessary, since the proposal is to simply replace the current MBE questions, the State Bar understands that any change to the bar exam may create worry for students and law schools. The State Bar will provide a content map, study guide, faculty guide, and sample questions to alleviate concerns.</p> <p>The proposal is deliberately designed to ensure there is no modification in preparation necessary. The proposal simply replaces MBE questions with equivalent ones while</p>

³ The California Bar Exam Experiment is a mock exam study that aims to understand the impact of various exam modalities and designs. The mock exams are administered in a way that emulate the bar exam as closely as possible. A pilot California Bar Exam Experiment administered in October 2023 utilized questions developed by the same vendor currently under consideration for this proposal. A full, larger-scale experiment will be conducted in October 2024.

	maintaining consistency in domain measurement, item types, and number of questions.
Questions about the replication of MBE questions that no longer meet best practices and suggestions for improvements	<p>Any contract with a new vendor would require the vendor to replicate MBE multiple-choice questions currently in use.</p> <p>Working with a new vendor does allow for future improvements that align multiple-choice questions with current best practices.</p>
Concerns about a lack of a passing score study before administration and uncertainty about the equating and scaling process	<p>In any scenario involving new exam content historical data for equating and scaling wouldn't be available. This remains true regardless of whether a new vendor is hired, the timeframe before new questions are administered, or if pre-testing or other efforts were conducted beforehand.</p> <p>A final “raw” passing score can only be determined after data is collected on a motivated, representative sample of applicants; field test data generally underestimate item performance.</p> <p>To establish a “raw” passing score, the State Bar plans to employ the same validation approach utilized by the NCBE, namely, Item Response Theory.</p> <p>Only questions meeting the criteria for inclusion will be used for scoring. A passing score study after the initial administration recommends a baseline passing score, facilitating equating for future exams. The passing score is not the exam cut score set by the California Supreme Court.</p>

While the State Bar is confident in the effectiveness of proposed psychometric validation processes and other measures to ensure question validity, exam score reliability, and consistent exam preparation, it recognizes that additional steps may be needed to enhance confidence in the proposed changes. In response to the feedback received, as noted in the table above, staff worked with Dr. Buckendahl to develop a plan to integrate a selection of the newly developed multiple-choice questions into the October 2024 California Bar Exam Experiment. This will provide a way to pre-test items ahead of the February 2025 administration. Additionally, some California-accredited law schools voiced concerns about the proposal's potential impact on their compliance with State Bar rules and guidelines related to their bar pass rates. In response to this concern, staff recommends that the committee explore temporary measures that would alleviate any adverse effects on law school compliance during the transition to new exam questions, such as an “MPR holiday” where the State Bar would track bar pass rates at California-accredited law schools in 2025, but the results would not be folded into the five-year average used for compliance purposes.

EXAM QUESTION DEVELOPMENT WITH NEW VENDOR

Staff, in close consultation with Dr. Buckendahl and the committee liaisons, have held extensive discussions over the past several weeks with a respondent to the RFI that has extensive experience in crafting MBE-like questions for bar exam preparation materials. This vendor's proposals meet the State Bar's requirements for question validity, reliability, and security, and have confirmed that it can produce the requested materials in time for the February 2025 administration target. If retained by the State Bar, the vendor would exit the test-prep market in California and develop the requisite number of multiple-choice bar exam questions equivalent to the MBE. The vendor may develop essays and performance tests as well. The State Bar would retain intellectual property rights, and the vendor would produce a no-cost study guide for all bar exam applicants.

At this writing, the vendor's exam development proposals range from \$1.15 million to \$1.375 million annually. Additionally, the vendor's proposal includes a no-cost study guide, addressing stakeholder requests for sample questions and other materials. Staff are currently evaluating the proposals and aim to finalize an agreement before the May Board of Trustees meeting.

As a contingency plan, the committee should be aware that the State Bar can request MBE exam materials from the NCBE up to six weeks before the administration date.

EXAM ADMINISTRATION APPROACHES

The development of new multiple-choice questions is aimed at offering the State Bar flexibility to pursue alternative, cost-effective bar exam administration approaches. Staff explored three approaches, described below, including fully remote, vendor-owned test centers, and a hybrid approach combining the two. Each would produce significant savings compared to the current in-person administration at large venues — estimated to be between \$3 million and \$4.3 million in savings annually.

While the impetus of this proposal is budget-driven, applicants will also benefit from the change to a new administration approach. Each option would result in savings for applicants as well including reduced travel and lodging expenses. These options also align with test taker preference. A survey of 1,589 test takers who sat for the February 2024 bar exam found that 75 percent would prefer to take the exam on a computer remotely or in a smaller test setting.

Fully Remote

Staff have received proposals from vendors capable of administering a fully remote bar exam, possessing the necessary infrastructure to accommodate the significant volume of applicants. All the vendors under consideration offer live remote proctoring, effectively addressing various exam security and integrity concerns that emerged during the pandemic-era remote exams. A fully remote administration approach would alleviate costly and labor-intensive tasks such as securing and managing large exam facilities and the recruitment and compensation of proctors.

Staff continues to assess how to provide an equivalent exam experience for applicants with testing accommodations in a fully remote environment.

Vendor-Owned Test Centers

A vendor-owned test center approach offers many of the cost savings and operational benefits that a fully remote administration would as well as additional benefits such as on-site proctors who can promptly address technology issues and a standardized testing environment, particularly beneficial for those lacking suitable home environments. This approach would also help mitigate or eliminate issues related to testing accommodations in a fully remote administration. One concern has been vendors’ ability to meet the high volume of applicants that sit for each bar exam administration. Staff is actively working with test center vendors to develop a custom solution.

Hybrid: Remote and Vendor-Owned Test Center

Combining remote administration with the opportunity for applicants to choose to test at a vendor-owned test center presents a compelling strategy for achieving substantial cost savings while maximizing benefits and tailoring the exam experience to individual applicant needs. Vendors under consideration have, without developing a custom solution, the capacity to serve all applicants via a hybrid remote/test center approach. Staff continues to assess how to provide an equivalent exam experience for applicants with testing accommodations in a hybrid environment.

Contingency Planning: “As-Is” In-Person Administration

Staff is actively working to reserve facilities for February 2025 as a contingency plan.

FISCAL/PERSONNEL IMPACT

Staff estimates the “as-is” cost of bar exam question development and administration in 2025 will total \$8.4 million. Table 2 shows the estimated annual cost savings that will be achieved if the State Bar contracts with a new question development vendor and adopts the various alternative exam administration approaches beginning with the February 2025 administration.

Table 2. Annual Cost Savings from Alternative Bar Exam Administration Approaches

Approach	Annual Savings
Fully remote	\$4.3 million
Vendor-owned test center	\$3 million
Hybrid	\$4 million

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – core business operations

RECOMMENDATIONS

Staff recommend that the State Bar retain a new vendor to develop exam questions which would allow for the adoption of cost-effective bar exam administration approaches.

Should the Committee of Bar Examiners concur, passage of the following motion is recommended:

MOVE, that the Committee of Bar Examiners recommend to the Board of Trustees that the State Bar retain a new vendor to develop bar exam questions.

ATTACHMENT(S) LIST

- A.** Letter from California-Accredited Law Schools
- B.** Written Public Comment Bar Exam Question Development with New Vendor
- C.** Presentation from State Bar Psychometrician Chad Buckendahl on Test Development and Validation Process



CALS CALIFORNIA ACCREDITED
LAW SCHOOLS

April 12, 2024

State Bar of California
Office of Admissions
180 Howard Street
San Francisco, CA 94105

Re: *Stakeholder Forum on Bar Exam Question Development*

Dear Office of Admissions,

The California Accredited Law Schools (CALs) deans are writing to express serious concern with the State Bar's proposed aggressive timeline to attempt to create a valid, reliable, and fair multiple-choice bar exam. The State Bar's primary mission is public protection, and it has identified the bar examination as a key component of that mission. Yet the State Bar's decision to create a new multiple-choice exam in less than a year appears primarily to be motivated by the State Bar's budget concerns and not its mission. In addition, as institutions vested with the responsibility to prepare law students for licensure, the deans have serious reservations about whether applicants can properly prepare for the new exam without appropriate advance notice of such significant exam changes.

During a recent stakeholder meeting, the State Bar identified several proposed steps to create a valid, reliable, and fair multiple-choice exam. According to the State Bar staff, the questions would need to be finalized by November 2024 to be used in February 2025. In just over six months, the State Bar has proposed that it can hire a vendor; confirm an exam blueprint; review existing questions; develop new questions; review questions for content, cognitive complexity, bias, diversity, inclusiveness, and appropriate level to meet the minimum competence standard; construct exam forms; complete an operational pretest; evaluate technical quality to remove questions that do not function properly; and determine a raw passing score. This proposal does not appear to be practical or realistic. In contrast, the National Conference of Bar Examiners (NCBE), an organization with more than 90 years of expertise in exam development and implementation, dedicated over three years to creating a new exam, including conducting field testing, publishing exam design and content specifications, administering a prototype exam, and performing a standard-setting exercise *before* the first administration of the exam.

Moreover, neither the law schools nor the applicants will have sufficient information to properly prepare for the exam. Applicants preparing for the bar examination rely heavily on law schools and bar preparation companies to properly prepare for both the substantive content and exam-

taking methodology for such a high-stakes test. The bar examination companies create multiple-choice questions that mimic the current Multistate Bar Examination (MBE). Based on years of data, applicants, and those supporting their efforts, are aware of what practice scores are necessary to be successful on the MBE portion of the examination. Law schools use these practice questions and data to build bar preparation courses and to support applicants' study efforts.

If the State Bar goes forward with its proposed aggressive timeline, neither the law schools nor the February 2025 applicants will have the necessary guidance, practice questions that mirror the form and structure of the new multiple-choice questions, and understanding of the raw score they will need to achieve to be successful. In fact, during the stakeholder meeting, Chad Buckendahl suggested that the raw score standard may not be determined until *after* the exam is administered. In contrast, the NCBE has already released sample multiple-choice questions for the 2026 NextGen Bar Exam.

Moreover, it seems that there are invalid assumptions being made, such as that most, if not all, takers perform similarly on essays and multiple choice. Based on information available to the schools in terms of bar preparation performance or data from unsuccessful applicants, it is often not the case. Because there is no public data to confirm whether it is the case on the actual bar exam, there is even less of a basis for advising February 2025 applicants of their performance during bar preparation studies. In addition, some schools have been advised that only the more recently drafted style of MBE questions will be created by the vendor. The NCBE, however, continues to use some of the older style MBE questions. This is concerning because February 2025 applicants have been and will be studying for the exam using NCBE questions, which continue to use the earlier style of questions.

These issues call into serious question the State Bar's assertion that there is "no substantial modification of the training or preparation for passage of the examination." Given the above factors, this is simply not true. The MBE portion of the exam is worth 50 percent of the applicant's score. Law schools and bar prep programs spend significant time helping students learn how to dissect and answer MBE questions. Applicants spend a significant amount of money on bar preparation material that is expected to be accurately geared toward the exam that the individual will be taking. The current proposal makes that impossible. It is not accurate to assert that substantial modification in training will not be necessary. It is also clear from the proposed timing that no appropriate training could be accomplished in time for the February 2025 exam when the State Bar will not even have completed or tested the potential questions until November 2024.

The timeline creates serious administrative issues as well. As proposed, the State Bar will not know if it has created a valid, reliable, and fair multiple-choice exam until, at the earliest, November 2024, and at the latest, after the exam is administered. This raises serious questions, such as: If the State Bar does not meet these exacting standards, will it be able to pivot back to the standard MBE questions and rent appropriate venues? Does this create a scenario in which the February 2025 bar examination needs to be canceled or postponed? Additionally, how will

applicants be able to alter their preparation from one exam to another without any reasonable notice? Finally, because the exam development, design, and implementation as proposed will be unvalidated, how will the validity of the 2025 MPR scoring and results be accomplished without calling the overall exam into question?

Given these very serious concerns, the CALS strongly encourage the State Bar to reschedule the launch of new multiple-choice exam until it is confident that the exam is valid and reliable, a baseline score has been determined, and law schools and applicants have access to sufficient time and material to properly prepare for the exam. The NCBE will continue to offer the MBE until February 2028. While we understand that the State Bar may not want to wait nearly four years to launch its alternative to the MBE, cost consideration alone is not a compelling argument or justification for the State Bar to rush toward a hasty, risky, and poorly planned 10-month implementation of such a critical public protection process for professional licensure.

Respectively submitted,

California Accredited Law Schools

Dean Sandra Brooks
Cal Northern School of Law

Dean Jackie Gardina
The Colleges of Law (Santa Barbara Campus)
The Colleges of Law (Ventura Campus)

Dean Martin Pritikin
Purdue Global Law School

Dean Brian Purtill
Empire College School of Law

Dean Matthew Reynolds
Humphreys University
Drivon School of Law

Dean Lisa Hutton
JFK College of Law and Public Service
National University

Dean Filomena Yeroshek
Lincoln Law School of Sacramento

Dean Mitch Winick
Monterey College of Law
Kern County College of Law
San Luis Obispo College of Law
(A branch campus of Monterey College of Law)

Dean Michael Clancey
Northwestern California University
School of Law

Dean Janice Pearson
San Joaquin College of Law

Dean Linda Keller
Thomas Jefferson School of Law

Dean Eric Halvorson
Trinity Law School
Trinity International University

Dean Kevin Marshall
University of La Verne
College of Law and Public Service

From: [Raymond Hayden](#)
To: [AdmissionsDirector](#)
Subject: 16 Apr 2024 Meeting submission
Date: Friday, April 5, 2024 6:46:12 PM

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I might have sent this to the wrong addresses initially - sorry about that.

I would like this note distributed to the 16 April 2024 Meeting, and as always, I thank you all in advance!

Ray Hayden, JD
ray@rayhayden.us

I want to bottom line this because humans do not read until things are broken, and I want to save you all some time here.

CAVEAT - if you want the MORE details, contact me and ask me, I have tons, and can talk for hours on end, but this is going to be short.

BOTTOM LINE UP FRONT: This process MUST Assure a more Competent Newly Licensed Lawyer, provide Greater Protection for the General Public, and Guarantee a more Diverse California Bar Membership. Anything less is a complete failure.

Less than a 90% PASS rate is a failure of the exam, not the exam taker!

The FYLSX MUST have a passing rate of better than 90% - anything less than that is a complete failure of that exam.

I sat for it six times, I scored two 65's and three 72's before I nailed the 78 on the FYLSX that I passed in Oct 2014. I have tons of information that others, and myself, had been looking into all this time to prove it, less than a 90% pass rate on the FYLSX is wrong on every single level.

The MCQ's MUST be HONESTLY Objective, no tricks or traps, no nonsense! They must also be FAIR... no more East is driving west on North Avenue when South was travelling north on Eastern Way... STOP IT!

The Feb 2025 CGBX MUST be remote, ONLY MCQ's, and MUST have a Pass Rate of greater than 90% - anything less than that is a complete failure of the exam, not the exam taker!

CalBar tells us what to study, and how to study it. I've done the math, it is IMPOSSIBLE to justify the insanely lame pass rate of the California Bar Exam - or any other bar exam!

- 1) All bar exams, everywhere, are invalid.
- 2) The MBE portion of the Bar Exam, is specifically invalid.

IAALS, and the NCBE themselves, determined TWO key points after MULTI YEAR STUDIES.

I was at ALL of the Blue Ribbon Commission meetings on the Future of the California Bar Exam, they both presented on it... and it is true. In 2020, IAALS reported first, and the NCBE blew a gasket... two months later? The NCBE released their results CONFIRMING what IAALS had reported after their OWN multi year study...

In case anyone missed it? This was the reported reason WHY the NCBE tossed the entire exam to start up the NextGen Bar Exam in the first place!

Oh, and in case anyone missed THAT - the MBE was released in Feb 1972... it has NEVER been valid... and this demonstrates that NOT ONE SINGLE ATTORNEY, anywhere, who passed the bar exam with an MBE component, has EVER passed a valid bar exam.

I have a relatively short way to create what must be done for the Feb 2025 CGBX - but you're going to have to invite me to speak at the meeting to hear how to (almost free) create honestly objective, and FAIR MCQ's within a period of less than three months time!

I could get it done in two months with help from CalBar, but I cannot create the actual questions... but I can tell you how to get it done fast!

From: [Teresa Belville](#)
To: [AdmissionsDirector](#)
Subject: Re: Agenda and Materials Posted: Stakeholder Forum on Bar Exam Question Development with a New Vendor | April 16, 2024
Date: Saturday, April 6, 2024 1:11:27 AM

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CalBar Admissions Director,

I have read the Executive Summary for the proposed bar exam changes.

My understanding of this proposal is as follows:

- If exam administration continues as-is, then the Admissions Fund is projected to be insolvent by the end of 2026.
- The realization of the benefits of these cost-savings opportunities is contingent on independence from the NCBE and its exam administration requirements, which includes its prohibition on the delivery of the MBE by remote delivery or in a vendor-owned test center.

First, I fully support the State Bar to declare independence from the NCBE, in order to pursue a potential adoption of an alternative cost-effective bar exam administration. It appears that bar administration costs are escalating, and at this point, with insolvency on the horizon, the State Bar clearly needs to make reasoned changes.

Second, I do not believe that bar exam administration is compromised either in testing remotely or in a test vendor center. I have taken several exams in test vendor centers (e.g. national insurance exams for professional designations, and a PMP project management certification exam). Remote testing generally uses AI functionality, which is already used in many commercial applications (e.g. technical writing, creative writing, radiological or MRI imaging medical analysis, research areas).

Third, given today's alternatives, I feel that my disabled colleagues taking the bar exam are far too constrained within the current methodology. Generating more alternatives for this group will likely help some of them to have less challenges in getting to the exam, and hopefully to have more of them pass. I feel that this group is better equipped to understand disabled or disadvantaged clients. Additionally, I see this group generally as being disadvantaged by both explicit and implicit biases within society.

Fourth, I see passing the bar exam as just one metric, and certainly no guarantee. I have

read countless postings from the State Bar about people who passed the bar, and are now suspended, on probation, resigned pending charges, or disbarred. Moreover, not all of those persons with active licenses are actually practicing law, and resulting in no contribution in those areas where it is potentially most needed. Then for those who converted their licenses to inactive (and are not limited by some physical or mental challenge), I feel that there should be some encouragement or incentive for them to activate their license for pro bono matters or clinics, some of which can be done remotely/virtually.

Fifth, I would encourage the State Bar to continue to explore innovative pathways to licensure, especially those pathways focused on promoting competence with diversity and inclusivity. I feel that those of us not fitting within a particular socio-economic stratum are the ones struggling the most with bar costs, bar preparation and then the bar exam. I see that other neighboring states have derived alternative pathways, such as Oregon and, recently, Washington state.

I certify that the aforementioned is my own assessment on this topic, and I used no AI suggestions or toolkit to create a response.

Thank you for consideration of this comment.

Teresa Belville

From: The State Bar of California - Office of Admissions <admissions@calbar.ca.gov>

Sent: Friday, April 5, 2024 2:17 PM

To: teresab306@gmail.com <teresab306@gmail.com>

Subject: Agenda and Materials Posted: Stakeholder Forum on Bar Exam Question Development with a New Vendor | April 16, 2024



From: [Andy Murphy](#)
To: [AdmissionsDirector](#)
Subject: New Vendor to Develop a Multiple-Choice Exam for the State Bar of California.
Date: Sunday, April 7, 2024 4:40:28 PM

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RE: New Vendor to Develop a Multiple-Choice Exam for the State Bar of California.

The bar exam has become expensive for applicants. Preparing for the bar exam can be expensive too. This is an undue hardship on applicants with little money, like me.

I therefore support the State Bar looking to reduce the cost of taking the bar exam, and I do support the proposal to get a new vendor to develop a multi-choice exam. And I understand the MBE is going away in 2026, so if the State Bar wants to use a multiple-choice exam, it must develop its own exam.

However, I think it is a mistake to make the exam too much like the MBE. The MBE can test some obscure points of law that have no relevance to the practice of law. The MBE can hardly be described as a fair exam to assess minimum competence to practice law. So I urge the State Bar to develop a fair multiple-choice exam that should be passable by anyone with a law degree.

Andy Murphy, JD.

From: [Jaesang Lee](#)
To: [AdmissionsDirector](#)
Subject: Cost Reduction Initiatives Related to the Bar Exam: Comment from a Stakeholder
Date: Thursday, April 11, 2024 4:19:19 AM

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Dear Audrey Ching, Cody Hounanian, and Amy Nunez,

Thank you for the invitation. I am very glad that I have the opportunity to provide feedback and input regarding Cost Reduction Initiatives Related to the Bar Exam to the State Bar.

I **agree with** Staff's perspective that "Vendor-owned test-center exam administration with newly developed MBE-like multiple-choice questions presents an appealing option for cost savings and operational efficiency enhancements," **on the condition** that the State Bar can implement a system of internal control to ensure that newly developed MBE-like multiple-choice questions meet the State Bar's standard and that the Vendor-owned test-center appropriately administers the bar exam.

To ensure that the newly developed multiple-choice questions, similar to the MBE, meet the State Bar's standard and do not compromise the effectiveness of the State Bar exam, it is imperative to implement a verification procedure. This will ensure that a new vendor adheres to the content validation methodology and IRT in developing new questions that meet the exact goals of those methodologies.

To achieve this, the State Bar should closely work with the new vendor during the development stage to ensure that the new vendor follows the instructions and that the newly developed questions maintain the same level of difficulty, rigorousness, and comprehensiveness as previous MBE questions. The State Bar should not give complete discretion to the new vendor regarding how it applies those methodologies.

In order to address any complaints from stakeholders about the reliability of the newly developed questions, the State Bar should document all the steps that the new vendor has taken to ensure the proper application of those methodologies and that the State Bar has

taken to ensure the validity of the new vendor's work. By doing so, the State Bar can ensure that the newly developed questions meet the State Bar's standards and maintain the same level of rigor and comprehensiveness as previous MBE questions.

To ensure that the changed exam, including newly developed MBE-like multiple-choice questions, is appropriately administered at the vendor-test center, the State Bar may consider the following, among others:

- 1) getting periodic audits of randomly selected testing centers from an outside audit firm that provides affordable audit services,
- 2) regularly reviewing video footage of exam administrations,
- 3) examining what algorithms or mechanisms a test-center vendor will be using to choose which questions from the question bank will pop up on each applicant's computer screen,
- 4) determining whether those algorithms are fair enough,
- 5) looking for any risk of hacking or system error, and
- 6) adopting a disaster recovery process in case something goes wrong at a vendor-test center.

This approach will help the State Bar to uphold the integrity of the exam and ensure that the exam results are reliable. This will also help to maintain the trust of stakeholders in the State Bar's examination process.

Thank you.

Sincerely,

Jaesang Lee

jslee875@gmail.com

From: [Merritt, Deborah](#)
To: [AdmissionsDirector](#)
Subject: Comment on Bar Exam Question Development with a New Vendor
Date: Monday, April 15, 2024 6:46:23 PM

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I applaud the State Bar's proposal to pursue development of exam questions with a new vendor. This step seems essential for financial reasons. It is also laudable from a public policy perspective: Having more than one vendor creating bar exam questions may lead to an improved product nationally. Other states might choose to adopt California's questions rather than the ones offered by NCBE.

My one reservation is that the State Bar should not let this short-term need affect design of the California exam recommended by the Blue Ribbon Commission. After investing in creation of new MBE questions, it may be tempting to incorporate those questions wholesale into the new exam. The Blue Ribbon Commission, however, stressed the need for an exam with "a significantly increased focus on assessment of skills," one "de-emphasizing the need for memorization of doctrinal law," and one that "is fair, equitable, and minimizes disparate performance impacts based on race, gender, ethnicity, disability, or other immutable characteristics." MBE-style questions are unlikely to meet any of those objectives. I trust, therefore, that the State Bar will separate this initiative from its design of the future California exam.

Best wishes on this endeavor, Deborah

Deborah Jones Merritt
Distinguished University Professor
John Deaver Drinko/Baker & Hostetler Chair in Law Emerita
The Ohio State University Moritz College of Law
Cell: 614-361-6402

For up-to-date information on lawyer licensing, see <https://lawyerlicensingresources.org/>

From: [Julian Sarkar](#)
To: [AdmissionsDirector](#)
Subject: Re: Agenda and Materials Posted: Stakeholder Forum on Bar Exam Question Development with a New Vendor | April 16, 2024
Date: Tuesday, April 16, 2024 7:02:33 AM

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To the Office of Admissions:

I am providing this comment in response to the proposal to retain a new vendor to develop bar exam questions, including the development of multiple-choice questions to replace the Multistate Bar Examination (MBE).

The Office of Admissions has recently represented that it is spending more than the tens of millions in revenue it generates from the bar exam, even after having recently increased the bar exam fees. The Office of Admissions has not identified what constitutes the current tens of millions in expenditures, such as money currently spent towards question development and on the NCBE.

Based on these representations, it seems unfeasible for the State Bar to hire a new vendor for exam question development at this time. The State Bar should strongly consider ceding its responsibility and financial burden over attorney admissions to the Department of Consumer Affairs. Finally, the Office of Admissions should consider whether hiring a vendor is necessary for the proposal. For years, the State Bar has benefited from volunteer committee members that represent a wide array of the legal profession, including law school faculty. The Office of Admissions can explore creating a subcommittee of volunteer law school professors and legal professions.

Thank you for your consideration.

Julian Sarkar (he/him/his)

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345 Franklin Street
San Francisco, CA 94102
(415) 795-8795
jsarkar@sarkar.law

On Fri, Apr 5, 2024 at 2:17 PM The State Bar of California - Office of Admissions <admissions@calbar.ca.gov> wrote:





Re: Agenda and Materials Posted: Stakeholder Forum on Bar Exam Question Development with a New Vendor Meeting | April 16, 2024

The State Bar of California is exploring the possibility of retaining a new vendor to develop bar exam questions to be used as soon as the February 2025 administration. This would include the development of multiple-choice questions to replace the Multistate Bar Examination (MBE). A proposal was initially discussed at the Committee of Bar Examiners meeting on March 15, 2024. A written agenda item describing the proposal can be found [here](#) and a recording of the meeting can be found [here](#).

[The State Bar's Office of Admissions invites you to a Stakeholder Input Forum on Tuesday, April 16, 2024, from 10:00 a.m. to 12:00 p.m.](#) The State Bar seeks public comment and input from stakeholders to identify considerations that will further inform the exploration of this initiative. More details about joining the forum and providing public comment can be found [here](#).

If you would like to submit written comments in advance, you may do so by sending them to admissionsdirector@calbar.ca.gov.

Please, note that the State Bar is continuing to explore options. The facilitators' comments during the forum should not be interpreted as committing to or rejecting any particular course of action. Rather, the State Bar hopes to gather input from the stakeholders and the public.

Thank you,

Office of Admissions



State Bar of California, 180 Howard Street, San Francisco, CA 94105, 415-538-2000

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Test Development & Validation – GBX

Managing change



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General Bar Exam (GBX)

Steps in development and validation



GBX:

- Confirm exam blueprint
- Review existing questions
- Develop & review new questions*
- Construct exam forms*
- Collect applicant data
- Analyze data*
- Determine raw passing score*

Influencing factors

- Administration mode(s)
 - Event based, remote proctored, testing centers, combination
- Capacity to maintain administration timing
 - Same days, testing window, combination
- Number of applicants testing concurrently
 - Limits on administration modes
- Security considerations
 - Question bank size, number of forms, question exposure

Develop & review new questions

- Draft new questions relative to exam blueprint
- Review questions for:
 - Content and cognitive complexity
 - Bias, diversity, and inclusiveness
 - Appropriate level (i.e., minimally competent/qualified applicant)
- Construct forms with sets of common questions and pretest questions
 - Common question support equating across forms
 - Pretest questions are used to collect data to increase size of question bank

Analyze data

- Initial administration to collect baseline data (“operational pretest”)
- Multiple choice questions evaluated using:
 - Item response theory (IRT) – item parameters that are sample independent
 - Classical test theory (CTT) – item difficulty, item discrimination, option analysis
- Essay and PT questions evaluated using:
 - Intra- and Inter-Rater agreement indices
 - Embedded performances (validity papers)
- Evaluate technical quality to remove questions that do not function appropriately prior to finalizing scores
- Additional analyses:
 - Differential item functioning (DIF) to empirically evaluate potential bias
 - Mode effects to evaluate potential differences in delivery approaches
 - Forensic analysis (e.g., item drift, similarity analysis)

Raw scores and Scale scores



- Raw scores – number of points earned on a question or form of an examination
 - Associated with specific questions and forms of an examination
 - Not directly comparable unless the same questions are used every time
- Scale scores – transformation of raw scores to an interpretative scale
 - Intended to maintain a common interpretation of scores across forms of an examination
 - Fixed location on the scale is used as an anchor point for the passing score to maintain fairness through statistical equating

Options for GBX standard setting

- Key changes – replacement of multiple-choice items on the exam, lack of anchor items for equating the initial examination
- Could consider equipercentile equating to link to current examination
 - Not recommended because of normative interpretation
- Options to establish baseline raw passing score (no change to scale score)
 - Conduct study prior to administration
 - Content anchored but not informed by applicant data
 - Conduct study following administration
 - Content anchored and informed by applicant data
 - Initial judgments before and evaluation once student data area available
 - Content anchored, informed by applicant data, and reduces reporting time