A Tightened Bar Passage Standard is Needed

OPINION: An ABA proposal would make law schools ensure 75 percent of their graduates pass after two tries.


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The American Bar Association's Section of Legal Education and Admissions to the Bar has proposed tightening up its regulation of those law schools with a significant percentage of graduates who have failed their state's bar exam. Under the proposed new accreditation standard, law schools must ensure that at least three-quarters of their graduates pass the bar after two attempts, rather than five, as is the case under the current standards. As with any numerical benchmark, the measure is imperfect, yet its purpose is a sound one.

Law students invest substantial time, money and energy in law school and the prospect that their investment will not, at the very least, adequately prepare them to pass the bar examination is troubling.

ACCOUNTABILITY MEASURES

There are two ways in which the ABA standards impose some measure of accountability for student quality. First, the ABA standards preclude law schools from admitting students who do not appear capable of satisfactorily completing the program of legal education and being admitted to the bar. This standard has rightly given law schools the flexibility to take some risk on students whose academic credentials are lower, measured by their LSAT scores, undergraduate grade-point averages and other indices.

As the number of applicants to law schools has declined dramatically over the past few years, however, many law schools have lowered their requirements for admission. Unsurprisingly, the percentage of students passing the bar exam nationwide has also declined, raising the concern that law schools are violating the ABA standard for admission in order to keep tuition dollars flowing.

The second way in which the ABA imposes a limiting principle on law school flexibility in admissions is by ensuring that, during three years of legal education, law schools have prepared the students they have admitted to succeed on the bar exam.

The ABA's proposal has engendered vocal criticism by a number of law school deans, many of whom lead institutions that have traditionally enrolled comparatively large numbers of students with low LSAT scores and undergraduate grade-point averages. Their basic objection is that a tighter restriction will reduce the opportunities for students of color to obtain a legal education, pointing to historic data that highlights a disparity in scores between standardized test-takers of different racial and ethnic backgrounds.
These criticisms are well-meaning and they are based upon an important premise that we unequivocally share: that is, law schools should be working hard and creatively to enhance opportunities for minority students. We educate future members of a profession that increasingly understands that a demographically and ideologically diverse workforce results in better decision-making and enhanced profits. A more diverse community of lawyers is also imperative if we are to guarantee that all members of society have access to justice. However, the claim that minority law students are provided an opportunity to practice law rings hollow when the law school admitting them cannot prepare them to pass the bar.

To be sure, law schools can and should develop innovative mechanisms of academic support to meaningfully improve the abilities, and hence the opportunities, of students who enter law school with weaker numbers. After all, the measure of a prospective law student cannot be captured by test scores and grades alone, especially in a nation in which discrimination and historic inequality have made the playing field less than level.

But objecting to stricter standards on the assumption that students of color will be unable to clear a higher bar of success is inadequately supported by the data at best, and condescending at worst. When academic support cannot raise a substantial percentage of the students admitted by a law school to a level of preparation sufficient to permit them to pass the bar, that school should be held accountable.

PREPARING STUDENTS FOR SUCCESS

What constitutes success in law school is an admittedly complex question, but there are a relatively small number of students for whom the answer is not preparation for the practice of law. Regardless, all law students should have the opportunity to practice law should they choose to do so, and, therefore, passing a bar exam should be the minimum criterion against which we measure the choices a law school makes about the students it admits and the quality of its legal education program.

In this difficult economic climate for law graduates, the challenge for law schools is twofold. First, schools must commit to creative strategies to bring in able students who will thrive in law school, pass the bar, and move on to meaningful and successful careers. This is at least as important with regard to students of color as everyone else in the student community.

Second, they must develop mechanisms of student support and academic assistance to measurably increase the bar passage rates of students. That most law schools have been able to do precisely that over the long run indicates that a high bar-exam passage standard can be met. A law school that cannot or will not meet this criterion should not be permitted to continue to operate with the imprimatur of ABA accreditation.

The consequence of maintaining the status quo on this issue is distressing: students with a demonstrably small likelihood of success will continue to pay tuition to unscrupulous law schools. The ABA Section of Legal Education should be commended, not criticized, for its efforts to require greater accountability from the law schools it accredits.