



May 13, 2020

Diane F. Bosse, Chair  
Council of the Section of Legal Education and Admissions to the Bar  
American Bar Association  
321 N. Clark Street, 19th Floor  
Chicago, IL 60654

*Re: Association of Academic Support Educators Position on ABA Standard 316*

Respected Members of the Council:

On behalf of the Association of Academic Support Educators (“AASE”), we are writing to join the Society for American Law Teachers (“SALT”) in requesting that the Council suspend enforcement of ABA Standard 316 (concerning ultimate bar passage). AASE is a non-profit organization made up of nearly 300 academic support professionals from more than 180 law schools in the United States and Canada. Our mission is to foster and promote the professional development of our members and to encourage research-based teaching methods so our members can help law students reach their full potential—including graduating, passing the bar exam, and practicing law.

For the reasons stated below, we believe the Council should suspend temporarily the enforcement of ABA Standard 316. ABA Standard 316 requires “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.” As a graduate’s bar passage from any state applies towards that school’s ultimate bar passage rate, Standard 316 presumes and relies upon stable, predictable, and regular administrations of the bar exam in all jurisdictions. And it presumes, at the very least, that law graduates will have prepared for the bar exam under stable, predictable, and normal study conditions. Due to the advent of the COVID-19 global health crisis, these presumptions could be no further from reality.

The COVID-19 pandemic has thoroughly disrupted and destabilized the established semi-annual administration of the bar exam throughout the United States. Many, if not most, jurisdictions already have conceded that regular administration of the July 2020 exam is no longer possible and have delayed administration of the exam. Moreover, given the uncertainties surrounding recovery from this health crisis, normal administration of the September 2020

(rescheduled), February 2021, and even the July 2021 exams may be equally unlikely.

In addition to the cancellation or rescheduling of 2020 exam administrations, some states also have adopted rules that will prioritize who may and may not take the exam, using geographic location of the candidate's law school or their state of residency. A few states allow examinees to select one of two available dates, other states will divide their bar applicants into two disparate settings spaced five weeks apart. These first-come first-served rules, or lottery-style selection processes, adds to the growing uncertainty and anxiety that has become associated with July 2020 bar exam. In addition to the anxiety this creates, the timelines also may present financial hardship to many recent law graduates, making it even more difficult for at-risk graduates to pass the bar exam. The Council should take into account that the constantly-shifting bar exam landscape—this *force majeure*—will make it difficult for students to prepare and perform as effectively as they otherwise might. So much of a graduate's bar exam performance is out of their control. The same is true for law schools.

AASE's members, who have dedicated themselves to assist law students and recent law school graduates in preparing for the bar exam, likewise are struggling to advise students in light of the mounting uncertainty. We cannot advise students *when* to begin bar preparations because neither we nor our students knows decisively whether they will sit for an exam in July or September. We cannot advise our students *how* to prepare for the bar exam because some states will offer the exam in a shortened or online format that we have not seen. Some states have advised only that the exam will be held in September online but have not provided any guidance on what that exam will entail. Due to the lottery-style bar rules, many graduates may not even know *where* they are taking the exam. And most concerning, we cannot advise our students as to *what* they can do to mitigate the risk of being exposed to the coronavirus during an in-person exam administration.

In light of these concerns, the most reasonable approach is for the Council to suspend Standard 316 to account for this unprecedented situation that adversely impacts every planned 2020 bar taker as well as the faculty members and academic support professionals who support them. While we respect the Council's desire to ensure that law schools are in fact producing graduates capable of passing a bar exam, it is unreasonable to impose the same standard for bar passage in an environment completely unlike any seen in our lifetimes.

We endorse SALT's position that law graduates will have faced unprecedented challenges in the months leading up to the exam and that, in this climate, overall bar passage rates will bear little relation to the quality of the graduates or their respective law schools. Instead, bar passage rates will reflect the impact that COVID-19 disruptions had on the bar takers individually and in the aggregate. For example, while the impact will be widespread, it is likely to be more acute for particular geographic regions hit hardest by the virus, including California, Illinois,

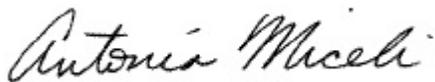
Massachusetts, New York, and Washington, states with disproportionately high numbers of law schools and prospective bar takers. In addition, early data seem to show that the virus has a greater impact on people of color. Law schools with higher percentages of graduates disproportionately affected for whatever reason would be unfairly measured by Standard 316 without a suspension of the rule.

We also find compelling SALT's proposition that temporary suspension of Standard 316 is consistent with the determination made by many law school faculties throughout the country that adjusted their traditional grading rules this Spring 2020 due to the pandemic. (As you know, many law schools moved to pass/fail grades or significantly more lenient grading criteria.)

As academic support educators, we take seriously the calling to produce law school graduates capable of passing a bar exam. It is core to our professional mission. As lawyers, parents, grandparents, grandchildren, and global citizens we also recognize the serious threat that, under the current circumstances, bar passage scores for 2020 will not measure accurately the quality of bar takers or their academic institutions.

For these reasons, we call upon the Council to suspend enforcement of Standard 316 through the 2022 reporting period.

Submitted on behalf of the Association of Academic Support Educators by



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cc: William E. Adams, Managing Director