

NEW YORK STATE BOARD OF LAW EXAMINERS

CORPORATE PLAZA - BUILDING 3
254 WASHINGTON AVENUE EXTENSION
ALBANY, N.Y. 12203-5195
518-452-8700 (NYS) 800-342-3335
FAX 518-452-5729
<http://www.nybarexam.org>

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Impact of the Increase in the Passing Score On the New York Bar Examination

The New York State bar examination is given over a two-day period and consists of three components: (1) the Multistate Bar Examination (a national test composed of 200 multiple choice questions [MBE]) worth 40% of the total score); (2) the Essay Exam (five New York essay questions and one Multistate Performance Test [MPT] question) representing 50% of the total score; and (3) the New York Multiple Choice Test (50 multiple choice questions [NYMC]) accounting for 10% of the total score. More than 13,500 candidates from all 50 states and over 100 countries now take the New York bar exam each year.

The passing score for the New York bar exam was raised by five points, from 660 to 665 on a 1000 point scale, beginning with the July 2005 bar exam. The increase in the passing score was the result of a comprehensive study undertaken in 2000 at the request of the Board of Law Examiners. At that time, New York's passing score of 660 was lower than the equivalent scores used by at least 30 other states, including California, Connecticut, Delaware, Florida, Georgia, Massachusetts, Michigan, New Jersey, Ohio, Pennsylvania and Virginia.

The 2000 study concluded that an increased passing score for the New York bar exam was indeed appropriate, and eventually the Board considered a 15-point increase in the passing score. However, after consulting with the New York Court of Appeals, conducting public hearings and obtaining comments from law schools, bar associations, members of the legal profession and the public, the Board decided to adopt first a five-point increase – setting the passing score at 665 beginning with the July 2005 bar exam. This five-point increase is roughly the equivalent of two additional correct multiple choice answers or an additional two points on the raw score (on a 10 point scale) for any one essay question (or one point on the raw score for each of two essay questions).

There has been much discussion in the legal community regarding the effect of the increased passing score on candidates for admission to the New York bar. To better analyze the impact of the new passing score, the Board engaged the National Conference of Bar Examiners (NCBE) to evaluate the results of the 665 passing score after the administration of the July 2005 bar exam. That study was completed in October 2006. It analyzed the data regarding domestic-

educated (persons who received a juris doctor degree from a law school in the United States) first-time and repeat test takers, together with foreign-educated test takers. Where available, the study reviewed the data collected by gender, race/ethnicity and age.

There were 125 United States law schools and over 100 countries represented by the candidates participating in the study. 78.7% of the 10,175 candidates in the study obtained their legal education in the United States and 21.3% were foreign educated. Domestic-educated candidates performed much better than foreign-educated candidates, and within both groups, first-time takers performed significantly better than repeat takers.

The October 2006 study and a summary of its findings were released in November 2006 and are available on the Board's web-site at www.nybarexam.org.

That study contained the following findings regarding the performance of the domestic-educated candidates who took the bar exam for the first time in July 2005:

- These candidates obtained a mean total bar score of 727.44, well above the current (665) passing score, with every racial/ethnic group achieving a mean score above the passing score.
- Male candidates did better on average than the females on the MBE and slightly better on the NYMC. Female candidates did better on the Essay, which includes both the NY essay questions and the MPT. These findings apply generally across racial/ethnic groups.
- There were some significant differences in the performances of various groups based on race/ethnicity. Results were fairly consistent in the domestic-educated first-time taker group across test components within each racial group. The fact that each group performed at about the same level on each component of the bar exam suggests that no one component is easier or more difficult for any racial/ethnic group. No one component is causing the differences observed across racial/ethnic groups.
- Passing rates varied significantly across racial/ethnic groups. The differences observed in average scores resulted in passing rates of 86.8% for the Caucasian/White group, 80.1% for the Asian/Pacific Islander group, 69.6% for the Hispanic/Latino group, and 54.0% for the Black/African American group.
- Among the 6,585 domestic-educated first-time test-takers in the sample, 84.4 % would have passed had the passing score been 660, as compared to the 83.0 % who passed at the passing score of 665, a difference of 1.4 %. In numerical terms, there were 93 candidates who failed who would have passed had the passing score been 660, including 51 Caucasian/White

candidates, 18 Asian/Pacific Islander candidates, 17 Black/African American candidates, three Puerto Rican candidates, one Hispanic/Latino candidate, and one Chicano/Mexican American candidate.

- Performance on the bar exam was strongly correlated with performance in law school, as measured by law school grade point average (LGPA) and also positively correlated with performance on the Law School Admission Test (LSAT) and with performance in undergraduate school (UGPA).

The NCBE has now completed two further studies regarding the effect of the five-point increase in the passing score – one study evaluates the results of the February 2006 bar exam and the other study followed the performance of candidates who failed the July 2005 exam when they retook the exam in February and/or July 2006. The Board has now made the reports of both of these additional studies available on its web-site at www.nybarexam.org. The following summary abstracts data and analysis from these follow-up reports.

***Impact of the Increase in the Passing Score
on the New York Bar Examination:
February 2006 Bar Administration***

Similar to the initial study involving the July 2005 exam, this study analyzed the data for the various groups of those who took the New York bar exam in February 2006, including domestic-educated first-time takers, domestic-educated repeat takers (collectively and in accordance with the number of attempts), foreign-educated first-time takers, and foreign-educated repeat takers. Where available, the data was analyzed by gender, race/ethnicity, age at graduation and age at bar attempt.

Among the significant findings of this study regarding the February 2006 bar exam are:

- The candidate pool for the February 2006 administration of the New York bar exam was 64.3% domestic-educated and 35.7% foreign-educated.
- The majority of the domestic-educated candidates (63.2%) were repeat takers of the bar exam.
- On average, the total bar scores for first-time domestic-educated candidates taking the February 2006 exam (710.32) were lower than the scores of the domestic-educated candidates who took the exam for the first time in July 2005 (727.44), but still substantially higher than the passing score of 665.
- The differences in candidate performance among racial/ethnic groups are significant, but the results do not differ substantially across test components within each racial/ethnic group. Differences among the

racial/ethnic groups are not associated with particularly high or low scores on any one component of the bar exam.

- Passing rates were lower for the total domestic-educated first-time taker group and for each racial/ethnic group than the passing rates for domestic-educated candidates who took the New York bar exam for the first time in July 2005. The passing rate for the domestic-educated first-time taker group in February 2006 was 73.7%, compared to 83.0% for the same candidate group in July 2005, as reported in the earlier study. The domestic-educated first-time Caucasian/White and the Asian/Pacific Islander candidates suffered the greatest decline (8.5%) in their passing rates (from 86.8% to 78.3% for the Caucasian/White candidates, and from 80.1% to 71.6%, for the Asian/Pacific Islander candidates). The Black/African American candidates had the smallest decline (from 54.0% to 52.6% or 1.4%). The passing rate for the Hispanic/Latino candidates declined from 69.6% to 64.0%, a difference of 5.6%.
- Among the 843 domestic-educated first-time takers in the sample, 74.9 % would have passed had the passing score been 660, as compared to the 73.7% who passed at the passing score of 665, a difference of 1.2%. In numerical terms, there were 10 candidates who failed who would have passed had the passing score been 660, including six Caucasian/White candidates, two Black/African American candidates and one Hispanic candidate. No Asian/Pacific Islander candidate failed the February 2006 exam who would have passed if the required passing score had been 660.

***New York Bar Examination
Performance in February and July 2006
for Candidates Failing for the First Time in July 2005***

The NCBE has further examined the performance of those candidates who failed the July 2005 exam but retook the bar exam in February and/or July 2006.

The findings of this study, as it tracked the performance of domestic-educated candidates who took and failed the New York bar exam for the first time in July 2005, were:

- Over 85% of these candidates retook the New York bar exam or took a bar exam in another jurisdiction by July 2006. This rate of candidates retaking a bar exam after failing in July 2005 was consistent across racial/ethnic groups.
- On retaking the New York bar exam in February 2006, the domestic-educated candidates who took New York bar exam for the first time in July 2005 and failed improved their scores by an average of 44 points.

Average scores increased on every component of the test, and these increases were consistent across racial and ethnic groups. Every racial and ethnic group studied experienced increases on each component of the exam.

- The passing rates for all racial and ethnic groups who retook the New York bar exam for the first time in February 2006 were quite similar.
- Those candidates who persisted and passed had the highest mean total bar score among domestic-educated first-time failing candidates in July 2005. They also had the highest UGPA, LSAT scores and LGPA, computed both within schools and based on an index adjusted for the selectivity of the law school attended. They were lower on all measures of prior achievement than domestic-educated first-time passing candidates in July 2005.
- Those candidates who persisted but continued to fail the bar exam generally had lower total bar exam scores in July 2005 than those who eventually passed. The persistent, failing candidates generally were also lower than the eventually passing candidates on all prior achievement measures, such as UGPA, LSAT scores and LGPA.
- A candidate's chances of passing the bar exam in July 2005, by February 2006, or by July 2006 were strongly related to performance in law school (as measured by the LGPA scaled in two different ways) and somewhat less strongly to measures of readiness for law school (undergraduate GPA and LSAT scores).

The NCBE also computed the cumulative passing rates overall and of various groups of test-takers who sat for the July 2005 New York bar exam, taking into account performance on the February and/or July 2006 bar exam. With regard to domestic-educated first-time takers, the following findings were made:

- Of the 7,156 domestic-educated candidates who took the New York bar exam for the first time in July 2005, 91.1% had passed a New York bar exam administered within a year later.
- The passing rate for the Black/African American group increased to 72.3% by February 2006, an increase of 18.1%, while the passing rate for the Caucasian/White group increased to 92.1% by February 2006, an increase of 5.3%. The passing rate for the Asian/Pacific Islander group increased from 80.6% to 87.2%. The passing rate for the Hispanic/Latino group improved from 70.1% to 82.0%. By July 2006, the Black/African American passing rate increased to 75.1%, and the Caucasian/White

passing rate increased to 93.4%. The difference in the passing rates between the Caucasian/White group and the Black/African American group decreased from 32.6% on the July 2005 exam to 18.3% in the cumulative passing rate through the July 2006 exam. By July 2006, the passing rate of Asian/Pacific Islander candidates had increased to 89.8%, and the passing rate of Hispanic/Latino candidates had increased to 84.8%.

The cumulative passing rates reported in the study may be underestimated slightly because the candidates who failed in July 2005 and did not persist in New York (for whatever reason) are counted as failing (or not passing) as of February 2006 and July 2006. If the non-persisters are removed from the calculations, the total passing rate as of February 2006, which was 89.5%, would increase to 93.1%. The total passing rate as of July 2006, which was 91.1%, would increase to 94.7%, if the non-persisters were excluded from the analysis. The passing rates for the various groups would also increase if the non-persisters were not included in the calculations. The passing rates would increase as of July 2006 for the Caucasian/White group from 93.4% to 96.3%, for the Asian/Pacific Islander group from 89.8% to 93.9%, for the Black/African American group from 75.1% to 82.6%, and for the Hispanic/Latino group from 84.8% to 89.3%, if non-persisters were excluded.

The passing rates reported are passing rates for the New York bar exam. Some candidates may have taken a concurrent bar exam in July 2005, or may have taken a bar exam in another jurisdiction in 2006, and passed. They are unidentifiable and therefore counted as failing in this analysis, but may, in fact, have passed a bar exam and been admitted to practice in another jurisdiction.

There were 102* domestic-educated candidates who were first-time takers of the New York bar exam in July 2005 who failed with scores between 660 and 665. At the Board's request, the NCBE tracked their performance. 87 of those candidates retook the exam, in February and/or July 2006, with 79 of the 87 passing, leaving eight of these candidates who did not pass as of July 2006. 15 candidates in this group had not repeated the New York bar exam as of July 2006.

The Board is grateful to the NCBE for undertaking this research project and for the extraordinary work product it produced. The Board wishes especially to thank Director of Research, Dr. Michael Kane, for his thorough analysis of the data.

* Following the release of the October 2006 study, the NCBE was able to perform some additional matching of candidate data. As a result, the numbers of candidates in each group and the passing rates for the July 2005 exam reported in this study vary slightly from those reported in the October 2006 study.