

# Most New York Law Schools See Decline in Bar Pass Rates

Andrew Denney, New York Law Journal

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Ten of New York's 15 law schools had their pass rates decline from last year on the July 2015 bar examination, according to figures that the law schools provided to the Law Journal.

Three institutions—Touro Law School, New York Law School and Albany Law School—had a double-digit or near double-digit slide.

The exam was administered on July 28-29. There were 3,291 candidates who sat for the test for the first time, down from 3,740 first-time test takers a year earlier.

The statewide pass rate was 79 percent, down from 83 percent last year and the lowest since 2004, when the New York State Board of Law Examiners began breaking out the pass rate for first-time test takers who graduated from American Bar Association-accredited schools.

Touro Law Center recorded a 15-point slide, from 67.5 percent to 52.5 percent, the largest of any of the state's law schools.

Touro Dean Patricia Salkin called this year's pass rate an "anomaly"—the school's pass rate was 74 percent in 2012 and 67 percent in 2013—but also said she found the rate to be "disappointing, unacceptable and out of line with the increases we have been achieving most recently."

"The faculty and administration are taking immediate action," Salkin said. "We are collecting and examining all relevant data and conducting a thorough analysis of our curriculum, bar support programs and academic policies to emerge with a comprehensive blueprint to ensure the success of our future graduates."

New York Law School's pass rate for its 245 first-time test takers was 60.4 percent, down from 71 percent last year. In 2013, the school's pass rate was 83 percent.

The school declined to comment.

Albany Law School, which had 151 graduates sitting for the test, had the third-largest decline, dropping almost 10 points to 68.2 percent.

Alicia Ouellette, dean of Albany Law, said that this year's pass rate is "deeply disappointing."

"We can and we will do better," Ouellette said. "We are analyzing exam results, meeting with our students, and developing a short-term response for the current 3Ls, and a long-term response for future graduates. "

Among the five schools that improved were Cornell Law School, which reported a 96.6 percent pass rate, the highest in the state and an improvement of more than two percentage points over last year. There were 118 Cornell graduates who took the test.

"I was delighted to see that Cornell's graduates did so well on the New York bar exam this year," Cornell Law Dean Eduardo Penalver said in a statement to the Law Journal. "Although we don't 'teach to the bar' at Cornell, our students are extremely smart and hardworking, and their strong performance on the bar exam is a testament to that."

Candidates who graduated from Pace Law School also bucked the overall trend, increasing the school's pass rate by three percentage points to 73 percent. David Yassky, dean of Pace Law, attributed the rise to the fact that the school has strengthened its bar preparation program.

"There's part of me that doesn't want to see law schools, including our own, spend too much time teaching to the test," Yassky said. "I don't think that's the ideal use of time."

But, he added: "The bar exam is the gateway to the profession. We have to make sure our students are passing through that gateway."

Yassky noted that the July bar exam was the first to be held since the genesis of the Pro Bono Scholars Program, in which students can take the February bar exam before they graduate and spend their final semesters performing pro bono work. A total of 106 Pro Bono Scholars sat for the February exam, of whom 90 passed.

If the seven Pace Law students who took and passed the bar in February had sat for the July exam, the school's pass rate would have been one percentage point higher, Yassky said, noting that pro bono scholars tend to be strong students.

The other schools that improved their pass rates were Columbia Law School, New York University School of Law and the City University of New York School of Law.

While a larger portion of law schools in the state were able to improve over last year when compared with July 2014 test takers—three reported improved numbers last year—the overall decline in the state's numbers tracks with a general nationwide trend.

Erica Moeser, director of the Madison, Wisconsin-based National Conference of Bar Examiners estimated that based on the decline in both 1Ls' LSAT scores and law schools applications, pass rates will keep dropping over the next few years. "It's taken a while for everyone to recognize and adjust to this new normal," she said.

The National Conference of Bar Examiners administers the multistate bar examination portion of the exam.

In New York, the gradual decline in pass rates over the past several years may reflect a resetting of an atypical spike.

John McAlary, director of the New York State Board of Law Examiners, told the BLS Advocate, a Brooklyn Law School student publication, in a 2013 article that New York's bar passage rate historically ranged between the high-70s and the low-80s. According to the board's data, the overall bar exam pass rate peaked in 2008 at 91 percent and, in the years since, has gradually ratcheted downward.

Through this lens, bar pass rates are returning to normal, wrote Dwayne Thomas, who authored the BLS Advocate article while attending Brooklyn Law, in a letter to the Law Journal published on Nov. 3.

"We shouldn't be surprised; rather we should expect this to happen," wrote Thomas, who graduated from Brooklyn Law in 2013 and who now works as an assistant law clerk in Brooklyn. "And that's where we are today with the latest round of bar exam results at normal."

## **Lowering the Bar**

However, some observers say the decline in pass rates follows an overall decrease in the LSAT scores of incoming law students and a relaxation of admissions standards.

According to a recent report by the nonprofit Law School Transparency, which uses data from the American Bar Association and the Law School Admission Council, LSAT scores from 2010 to 2014 for incoming students who scored in the 25th percentile decreased at 12 of New York's 15 law schools; only Columbia, Cornell and Syracuse saw no change in their numbers.

The 25th percentile for 1Ls in New York schools scored between 144 and 145.

A student's LSAT score before they enter law school, the report stated, is the best predictor of whether they will pass the bar.

With law admissions standards changing throughout the country, Law School Transparency predicted that "bar passage rates will drop significantly over the next three years, leaving thousands deep in debt with few prospects for employment that will enable them to pay off their debt."

"These bar pass rates will not satisfy students or the public; neither will they reflect well on law schools and the legal profession," the report said.

In her President's Page column for the June 2015 issue of *The Bar Examiner*, a quarterly publication from the National Conference of Bar Examiners, Moeser wrote that, with the reported downward shift in high-scoring LSAT takers and an increase in low-performing ones, news about candidates' performance on the multistate bar examination is "unlikely to be rosy anytime soon."

Moeser also wrote that students in the 25th percentile are the ones who are more likely to pay "full sticker price" for their legal educations and struggle with the bar exam and experience disappointment when they get out into the job market. High-performing students are more likely to be offered discounted tuition, she said.

But, she wrote, lawyers, judges and legal educators agree that the material on the multistate bar examination—including civil procedure, constitutional law, contracts and criminal law—constitutes the core curriculum for law students and that faculty members responsible for instructing 1Ls may offer the "best chance for upgrading the education experience for students who are most at risk."

"I see this as an exciting time for entire law school faculties to meet the challenge of teaching students from day one," she wrote.

The other New York schools that reported declines in their pass rate this year was the Maurice A. Deane School of Law at Hofstra University, which had a 67 percent this year, six points lower than the 2014 pass rate.

Hofstra Law dean Eric Lane said A. Gail Prudenti, who stepped down as New York's chief administrative judge to become a special adviser at Hofstra Law, was asked to work with the school's faculty and administration so "our students are given the best opportunity" to pass the Uniform Bar Examination next year. The exam, known as the UBE, will be administered to New York graduates for the first time in July 2016, and Lane said it is a "new playing field" for students.

Before going to work for Hofstra, Prudenti also served on a committee formed by Chief Judge Jonathan Lippman to study switching to the UBE. New York is the 16th state to make the switch.

Lane said that Hofstra also is hiring a director of academic success to better prepare students for the bar and researching how UBE preparation could be integrated into the school's curriculum.

But Lane said he takes issue with the notion that there is a correlation between declines in the LSAT scores of incoming 1Ls and declines in bar exam pass rates. He said that a better barometer for a student's success on the bar is their performance through the three years of law school.

"The idea that the LSAT determines your fate is simply wrong," he said.

The 25th percentile of 1Ls at Hofstra decreased by 9 percentage points from 2010 to 2014.

In its report, Law School Transparency wrote that while LSAT scores are the best predictor of how well students perform on the bar exam, and that the bar exam is an "unrelenting barrier" to practicing law, a 2008 study by a University of California-Berkeley School of Law Professor and a UC-Berkeley psychology professor found that high LSAT scores do not always make for effective lawyers.

Some, such as Brooklyn Law School dean Nicholas Allard, have questioned the bar exam process itself, as partially evidenced by his September op-ed in The New York Times headlined "The Bar Exam Is Not the Best Test of a Good Lawyer."

This year, Brooklyn Law School saw its pass rate slide by more than three percentage points to 81 percent. The decline in Brooklyn Law's pass rate this year, however, was not as steep as the 9.5 percent drop it posted for its July 2014 test-takers.

"The bar passage rate does not reflect the fact that all our graduates receive an intense and rigorous education that makes them practice-ready and prepared to take on the unprecedented challenges of a rapidly changing 21st century legal profession," Allard said in a statement. "Our graduates are in demand by employers and continue to obtain meaningful jobs in the public and private sectors and in business."

But Allard said that the overall drop in scores both statewide and nationwide raises "fundamental questions" about whether the process "fairly and adequately" measures graduates' readiness to practice law.

"We are confident that law deans and other leaders in the legal community will continue to raise this issue, as we work together to explore ways we can better assess law school graduates," he said.