



# The State Bar of California

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**OPEN SESSION  
AGENDA ITEM  
6.2 JULY 2024  
BOARD OF TRUSTEES**

**DATE:** July 18, 2024

**TO:** Members, Board of Trustees

**FROM:** Audrey Ching, Program Director, Office of Admissions  
Bridget Gramme, Special Counsel, Division of Consumer Protection,  
Admissions, Access & Inclusion

**SUBJECT:** Update on Contracting with Kaplan North America LLC for Preparation of  
California Bar Examination Materials and Consideration of Actions, Including  
Contract Approval

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## 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 (MBE), which would provide the necessary flexibility for the adoption of alternative, cost-effective exam administration approaches. Under the contemplated proposal, Kaplan North America LLC (Kaplan), would develop a bank of exam questions beginning with the February 2025 administration. At the May 16, 2024, meeting of the Board of Trustees, the [item](#) seeking Board approval for the proposal was withdrawn and continued. Kaplan asked the State Bar to defer the discussion of the Board item as a result of a communication it had received from the National Conference of Bar Examiners (NCBE) raising intellectual property, copyright and other contractual concerns. Staff has continued to work with Kaplan and had discussions with the NCBE to mitigate potential concerns. Negotiations are ongoing with Kaplan to ascertain the feasibility of developing questions in time for the February 2025 administration of the exam. This item provides background and context for the pending negotiations with Kaplan. The situation remains in flux; staff will update the Board on the current status of the negotiations with Kaplan at its July 18–19, 2024, meeting.

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## RECOMMENDED ACTION

Staff will provide an update on the status of the ongoing negotiations and, as appropriate, may seek the Board's approval of delegated authority to the chair and executive director to finalize negotiations and execute a contract with Kaplan.

## DISCUSSION

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 applicant 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 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 \$2.5 million and \$3.8 million annually beginning in 2025—enough to largely or fully eliminate the existing structural deficit.

While the impetus of this change is budget-driven, applicants will also benefit from a new administration approach. Each option would result in reduced travel and lodging expenses for many applicants. Survey responses also reveal that test takers prefer online or test center administration to the large testing sites we currently use.

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, 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.

Staff held a number of stakeholder engagement sessions over the past several months to understand the potential impact of switching vendors. In the months following the May Board meeting, when the presentation of this item had to be withdrawn at the last minute, staff have continued negotiations with Kaplan to identify and address any outstanding issues and obstacles so that a set of multiple-choice questions could be developed for the February 2025 bar exam<sup>1</sup>.

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<sup>1</sup> These negotiations have included the development by Kaplan of a subsidiary to create State Bar exam questions.

These efforts included engaging in productive discussions with the NCBE directly to better understand the parameters of any potential copyright concerns it may have. Staff is appreciative that the NCBE leadership continues to engage in dialogue with the State Bar, as well as their responsiveness our inquiries.

Staff is continuing in its efforts to reach an agreement with Kaplan that will result in the development of quality multiple-choice questions in time for the February administration of the exam.

## **PREVIOUS ACTION**

- [CBE April 19, 2024, meeting](#)
- [Board of Trustees May 16, 2024, meeting](#)
- [CBE June 21, 2024, meeting](#)<sup>2</sup>

## **FISCAL/PERSONNEL IMPACT**

TBD. Contracting with Kaplan would result in millions of dollars of savings annually when taking into account the fact ensuing changes in test administration.

## **RESOLUTIONS**

Should the Board be asked to take action, the appropriate, resolution language will be presented prior to or upon consideration of the presentation of the item.

## **ATTACHMENT LIST**

None

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<sup>2</sup> This agenda item from the CBE meeting has an attached letter from the NCBE to Kaplan North America, LLC.