

Report on Concerns Regarding Online Administration of Bar Exams

**The National Disabled Law Students Association
July 29, 2020**

Introduction

Between July 24th and July 28th, the National Disabled Law Students Association (NDLSA) received responses from 281 individuals, of whom 260 were registered for a 2020 remotely proctored bar examination. Their responses identified accessibility concerns related to online examinations.

Jurisdictions around the country have placed significant restrictions on exam takers that do not exist during traditional exam administrations. The concerns published in this report are responsive to both the requirements that various jurisdictions have released and prior experiences with online administrations of examinations. Some of the troubling policies that we have been made aware of include:

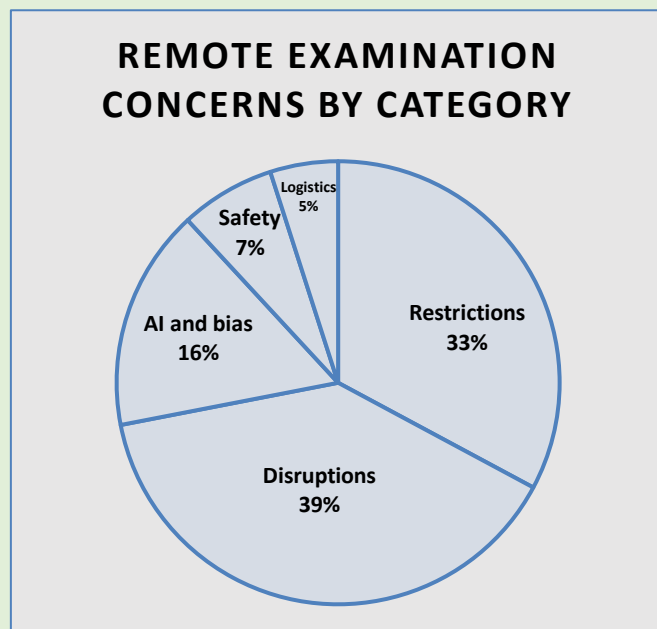
- Restrictions on scrap paper
- Requiring some accommodated test takers to test in person
- Restrictions on ear plugs
- Restrictions on extraneous noise
- Restrictions on presence of other individuals or pets
- Restrictions on looking away from the computer
- Restrictions on leaving the frame of the camera during the examination
- Restrictions on fidgeting and/or touching the face

Although our report covers a wide range of accessibility concerns that will impact all test takers, we believe it is important to highlight the disparate impact that the decision to hold a remote examination will have on people of color, people with disabilities, people from low socioeconomic backgrounds, and people who are pregnant, nursing, or menstruating.

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Ambient noise was by far the most cited concern, expressed by 114 respondents. Internet stability and motion restrictions were the next-most cited concerns: 68 and 62 respectively. The charts that follow map out the number of respondents citing each concern in six categories: restrictions, disruptions, AI and bias, safety, logistics, and miscellaneous.



Restrictions

Concern	Number of times cited
Motion restrictions	62
Scratch paper restrictions/no hard copy of examination	47
Bathroom restrictions	37
Ambient noise restrictions	23
Earplug and headphone restrictions	13
Restrictions on food and medication	8
Restrictions on other people in room	5
Restrictions on number of monitors	2
Restrictions on breastfeeding and pumping	2

Disruptions

Concern	Number of times cited
Noise	114
Internet instability	68
In-home distractions	40
Technology malfunctions/systemic failure	15

AI and Bias

Concern	Number of times cited
AI racial bias	45
Disability bias	37
AI (in general)	15
Transgender bias	1

Safety

Concern	Number of times cited
Privacy	16
In-person testing requirement for examinees with accommodations	12
Security	8
Proctors contacting examinees through social media	6

Logistics

Concern	Number of times cited
Childcare	18
No opportunity to apply for new accommodations for remote examinations	9
Pets/pet care	3

Miscellaneous

Respondents also reported concerns about anxiety, home lighting conditions, contracting COVID-19 before the examination, and software accessibility.

Bias

Many respondents expressed concerns that their fellow test takers or themselves would be the victim of bias as a result of discriminatory policies and/or proctoring software. Although the bias-related responses that we received were focused on race, disability, and gender, we are aware that these policies can negatively impact all individuals regardless of their identities.

Flagging Disability as Cheating

“I am terrified that remote proctors will flag me fidgeting or walking around as potential cheating. I have ADHD and have always fidgeted/needed to stretch while testing. It is completely inequitable that a disability beyond my control could invalidate my score on this exam right out of the gate, simply because this test wasn't designed with disabled examinees in mind.”

“Worried about remote proctoring that will pick my ADHD symptoms as signs of cheating (fidgeting, touching my face and hair, staring off into space as I consider a question).”

“I have (undiagnosed) adhd and fidgeting with my hands and hair a lot. Now having to also continuously monitor my natural habits while already stressed is unreasonable. To think that I could possibly fail this exam because a proctor thought I was cheating simply because I fidget or for looking around the room is infuriating.

“Not to mention the fact that individuals who engage in stimming and other repeated physical behaviors (whether due to ADHD or for any other reason) will be automatically flagged as cheating by AI that simply cannot recognize these behaviors as legitimate and, for many, necessary. And on, and on.”

Racial Bias

“How can we make meaningful steps toward a just society when we are asking our Black peers to volunteer their biometric data to a database that will later use it against them at disproportionate rates?”

“Because I am not a white man, I am more likely to be flagged for cheating, which means my results could be delayed or I could fail for reasons out of my control.”

“I am concerned as a black female with distinct features being a problem.”

“This is all above and beyond concerns with the proven racial biases of such biometric surveillance-based systems, especially those which rely so heavily on facial recognition AI trained with woefully inadequate training data sets.”

Ambient Noise

The most commonly referenced concern by respondents was the ability to secure a testing location that was free of any “ambient” noise. Respondents referenced a variety of noises that they cannot control including sirens, air conditioners, neighbors, traffic, construction, and pets. Respondents also indicated that due to financial and COVID-19 constraints they lack the ability to remove themselves from potentially noisy testing situations. As will be discussed later in the report, many respondents also cohabitate with family members, partners, roommates, children, and pets that may cause unavoidable ambient noise during their examination.

Respondents raised concerns both that any extraneous noise would be flagged as cheating and that it would be distracting to their ability to perform on the exam.

Noisy Testing Environments

“Multi-unit apartment building with noisy neighbors, and have my only study/exam space in a bedroom that is off of a main [large city] road with frequent traffic, near a hospital so I also have frequent police, fire, and ambulance sirens.”

“I have no way to ensure that there will not be extraneous noise. The only room I have in my apartment is right next to a window where you can hear everything outside from people talking to landscaping.”

“Ambient noise is a big concern, I live close to a train track where the trains MUST signal that they are coming through via leaning on the horn for several seconds. This also causes everything in the house to shake.”

“My neighbors are building an addition onto their house and just broke ground. They don’t expect the project to be completed until late November. I have no other place to take the exam.”

“We live in [a large city], so there is always ambient noise from neighbors, the street, etc.”

“I live in a neighborhood with lots of people who enjoy time outside, including playing music.”

“How much noise is unacceptable? We have a house phone that I will disconnect and I have asked my grandmother (whom I live with) to go to a friend's that day (one she knows is safe and not at risk of giving her covid). These are relatively easy fixes for me, but I feel concern for my friends in different, harder to adjust situations. Also, what if there is noise outside? Will that get picked up as cheating?”

“My blind mother does not have a cellphone, and because my mentally ill brother lives in a group home, we need access to the house phone at all times. The bar has not explained how sound and noise will effect the security software, and I am afraid to unplug our phone line due to the need to access my brother’s group home during an emergency.”

Distraction

“My neighbors are loud at all times of the day and it’s honestly hard to focus already but to have to take the most important exam of my life? I don’t know how I will do that in this environment.”

“And my apartment is in a noisy neighborhood - there is pretty much a constant stream of noise, whether it's music, landscaping equipment, ice cream trucks, etc. I don't know if I'll be allowed to wear noise cancelling headphones; if not, it will be extremely difficult to perform.”

Flagged as Cheating

“The area I live in has a lot of new construction homes, and there simply is no guarantee that construction will not be happening right outside my window. Will this qualify as "extraneous noise" that will cause me to fail due to something I have absolutely no control over?”

“I live in a studio, have pets, and live in a building with thin walls. I even get random loud noises in the bathroom, should I try to take the test there. There is also an ongoing construction project down the street. It is nearly impossible for me to assure that there will be no ambient noise that will be picked up on my microphone.”

“My apartment has so many people at home and thin walls that you can hear couples fighting and kids screaming at all hours of the day - I thus, usually do not study at home but all libraries are closed and it is very difficult to study in these conditions but I have no where I can go

because my friends are scared that I might give them COVID-19 or that they might give it to me; I do not have a quiet place to take the exam as a result and I could be flagged for cheating if any person makes any noise and I will fail the exam according to the exam rules - this is not fair to me because I cannot control others.”

Environment Necessitates the Wearing of Ear Plugs

“Ear plugs provide a sensory deprivation which allows some (including me) the ability to focus on the material in front of them. Otherwise, quick retention of a reading would require multiple read throughs due to distraction.”

“I am concerned that not all students have a quiet place to take the exam. For example, I live in a duplex that shares a thin wall with a neighbor. My neighbor is very pregnant and will have a newborn baby when I'm taking the exam, she also has at least 4 kids under the age of ten. I constantly hear my neighbors kids through the wall. Am I going to be allowed to wear earbuds during my exam to block out the noise?”

“I am accustomed to earplugs during the exam even when in a relatively quiet environment.”

Internet Access

The second most frequently cited concern from respondents was unreliable internet access. These fears are exacerbated by the increased number of people working from home and using residential Wi-Fi during the day. Some respondents suggested that they may need to rent a hotel for the duration of the exam due to the instability of their personal internet connection, while others indicated that this is an untenable option due to cost, security, and unpredictability of the hotel atmosphere and internet.

Generally Unreliable Internet

“My internet has been cutting in and out for a few hours at a time for the past two weeks. It makes studying intensely frustrating and difficult.”

“I pay for the most expensive high speed internet service that my apartment offers and because so many people are working from home or video-gaming since they are home/laid-off, the internet crashes for hours and days and we have no notice of when it will crash or when it will be turned back on - and this happens every other day.”

“I also worry because my house doesn't have the strongest wifi connection--it regularly drops in and out. Like, all the time. That's just how it is. My parents both have jobs that require them to

be on the internet. If my internet dips out during the exam I'm screwed. I don't have an alternative." I'm seriously considering the merits of booking a hotel room just so I can have semi-reliable wifi.

"Live in a rural area with unreliable internet, can't go to the library to take the exam without worrying about capacity requirements due to Covid."

"My internet has gone out multiple times recently because it RAINED!!!! Internet is not reliable on a normal day, and there is absolutely no way to guarantee it will be reliable for the most important and consequential exam of our lives. That's before even considering that thousands of people are supposed to be able to take this test at the same time, which clearly will not help this matter."

"I do not have access to consistent internet. I work (remotely, obviously) full-time. My internet cuts out at least 5-6 times daily, and it isn't a huge deal because I eventually can reconnect within the hour and continue working. I do not have the financial capability to book a quiet hotel room for two days on end, nor do I feel comfortable using a hotel's non-secure Wi-Fi connection in order to use software that only works when anti-virus programs are turned off and yet require regular periods of internet connection."

"First, the Wi-Fi internet requirement is beyond unrealistic, especially given increases in outages (at least in my city) due to more daytime traffic as people work from home. I am fortunate enough to be able to afford high-quality internet, but even that has been unstable due to increased work-from-home activity. It goes out and stays out for at least several hours each week no matter what we do. This makes it impossible to guarantee being able to safely submit the exam or stay connected -- I am also fortunate enough to be able to switch to using my phone as a hotspot if the Wi-Fi goes down, but this would mean turning on the phone and changing the connection, or running up my phone data plan in order to avoid potential WiFi issues."

"Stable internet in south Florida in hurricane season."

Fear of Outage During Exam

"The online exam is also set up so that students are required to log on for each "session" (requiring stable internet access during each log on period) which will consist of a single essay, a set of 50 questions, or the performance test."

"I am concerned that my bandwidth will fail as my roommate tries to work from home in the other room."

"I'm concerned that unstable internet access will prohibit me from accessing the exam during one of the checks in periods and I will fail the exam after committing to months of rigorous study and potentially completing the majority of the exam."

Other Residents and/or Uninvited Persons

Many respondents expressed concerns about the presence of their co-habitants including spouses, roommates, children, and other family members during the exam. Many respondents are currently living with others who are working from home. Co-habitants working from home can cause ambient noise or put a strain on an examinee's internet connection. Additionally, some respondents live with other examinees and are concerned about restrictions placed on taking the examination in the same room, when there is either only one continuous space or only one suitable location in their dwelling for the examination. Respondents also expressed concerns regarding the possibility that someone could unexpectedly come to their home during the examination including neighbors, maintenance, or delivery people.

"I live with five other people and my house is in a busy area. In order to assure there is no noise I would have to get a hotel room. Hotels have much spottier WiFi not to mention it's just as likely that outside noises and interruptions will be an issue. Not sure what I'm supposed to do."

"I live in a small apartment with 2 other people, one of whom will also be taking the remote exam. We don't have anywhere else to go to take the exam, and our third roommate has nowhere to go while we sit for the exam, so I am concerned that any policies requiring no one else in the house would disqualify us from sitting for the bar exam."

"Live in a studio apartment with a significant other who works from home, unreliable internet access, and a dog."

"I live with many people in a one bedroom apartment and have pets and there is no way for me to legally tell those people to not talk or to leave during my exam."

"Strict testing protocols that mean other people could end up jeopardizing my test accidentally."

Childcare

Respondents expressed concerns regarding the care of their children during a remote examination. COVID-19 has restricted access to out-of-home childcare options for many

individuals. Respondents who have a partner or other caretaker who can provide childcare during the examination are concerned that this will not be sufficient to keep the child quiet enough for the entirety of the exam.

“I live in an apartment with my 2 children who can’t be out of the house for two days. My partner will try to keep them quiet, but I’m very concerned about the possibility of ambient noise being a problem. We live in a small apartment without thick walls and I can hear them crying and playing from the bedroom where I will be testing.”

“Parents might not be comfortable sending their children to childcare during this time.”

“Childcare for my newborn baby who will be born in September.”

“Childcare and nursing for an infant and noise caused by that infant”

“I have two stepdaughters and I’m anxious about my husband & I finding adequate child care during the day while I take the exam”

“I have a 7 month old! Given the pandemic I don't think my child will be out of the house during the exam.”

“There is simply no guarantee that daycare or other options will be safe by the time the remote exam rolls around.”

“I have a 7 month old son. How I will take this exam is completely beyond me.”

“I will have three children at home who will be attending their own classes virtually during the exam and a spouse working from home during the exam.”

Pets and Service Animals

Respondents with pets expressed concerns that their pet would make noise or inadvertently wander into the screen and have their exam flagged for cheating or their score canceled. Respondents remarked on the availability and cost of removing their pet from their home for the duration of the examination. Respondents also questioned whether exceptions will be made for the presence of service dogs and/or emotional support animals.

“I have a pet. I can't afford a pet sitter. My dog isn't going to help me cheat. My dog is not professionally trained and could cause potential problems if she gets bored, but I can mitigate that by exercising her beforehand.”

“My cat will scream endlessly if I close him out of the room and if my dog hears even a small noise outside, she's going to bark like the world is ending.”

“Noise with 2 easily excitable dogs in the home”

“Service dog must be with me.”

Mental Health

Respondents had various concerns related to their mental health both on test day and in preparation for the examination. Primarily, respondents were concerned that anxiety would cause them to be flagged for cheating by causing them to fidget, pick at their lips, bite their nails, or shake during the examination. Other respondents expressed concerns that their anxiety would be triggered by “being monitored” or “trying to stay as still as possible.” Some respondents expressed anxiety-related concern with the lack of clarity related to the test format and accommodations. Finally, respondents brought up the impact of COVID-19 on their own mental health and the impact that it has had on them preparing for the examination.

“I feel like crying and giving up every day, but I force myself to continue through the stress, worry, anxiety, confusion, frustration, and utter panic every time I heard about something else being moved or a bar exam being cancelled. Because what else am I supposed to do?”

Pregnancy and Nursing

Respondents who will be pregnant or nursing during the examination expressed concerns about the restrictions imposed by online examinations. Pregnant respondents flagged the need for frequent bathroom usage and regular access to food water. Nursing respondents also flagged concerns related to anatomical complications and time restraints. Given that many

examinees will be taking the exam three months after they originally planned, some pregnant and nursing individuals may need an additional opportunity to request accommodations.

“I am pregnant, and it is vital for me to have access to water to maintain higher levels of hydration and food (to both relieve and prevent nausea, heartburn). I also have a weight on my bladder and may need to use the restroom sooner than the exam schedule allows.”

“Very worried about breastfeeding, leaky breasts, and possibly clogged ducts due to the impossibility to pump/breastfeed.”

Focus on Screens

Respondents raised concerns that restrictions on their ability to look away from the screen could cause severe eye strain and other physical health problems.

“I have chronic daily migraines which are exacerbated by looking at computer screens, which is why I opted to hand write my exam. I cannot even use my computer for a short study assessment without getting a migraine, which—in addition to causing pain—obscures my vision and makes me nauseous.”

“Keeping eyes glued to the screen since looking in any direction is cause for a flag and causes eye strain-I use strong corrective lenses.”

“My eyes and the ensuing headache I will get from having to keep my eyes on the screen for the entire duration of each part of the test.”

“I cannot stare at a computer screen for hours continuously without my eyes being strained and need to look away sometimes for a brief moment.”

“I wear glasses in part because reading on a computer for long stretches aggravates my astigmatism and gives me headaches.”

Respondents also expressed concerns regarding the possibility that their failure to maintain consistent eye contact with the screen for an extended period of time will be flagged as cheating. The decision to avert one’s gaze from their screen is often an involuntary one associated with learning disabilities and/or learning strategies.

“I have ADHD and am constantly looking around the room when I am trying to remember rules and I am concerned that this will be flagged as cheating by AI. I am unsure how I can possibly be expected to look at one place (my screen) for the entire exam, but the current rules state that we must keep our faces centered on the screen for the entire exam. The rules also state we will receive a violation for ‘suspected cheating’.”

Restroom Usage

Respondents expressed concerns regarding rules that restrict bathroom usage by prohibiting examinees from being out of the view of the camera at any time during a section. Some respondents indicated that they do not ordinarily request an accommodation on an examination for their GI-related disability and instead forego test-taking time to tend to their symptoms. Restrictions on bathroom usage during the examination eliminate the ability for test takers to make that calculation for themselves.

GI Issues

“I have an IBD. I am concerned about failing if I need to use the restroom.”

“I have multiple food allergies/stomach issues with gastrointestinal symptoms, so not being allowed to go to the restroom freely is going to be a HUGE issue for me.”

“As someone with a chronic GI condition which is aggravated by stress, I am highly likely to need to get up at least once during an exam session. In the past I have accepted the risk of losing a bit of time in such scenarios rather than requesting an accommodation for time, but to risk disqualification for the same is simply out of bounds.”

“I have IBS, which is exacerbated by stress. I won't be able to use the bathroom.”

Bladder Problems

“I have bladder problems and will likely need to use the bathroom throughout the test.”

“As for the lack of bathroom breaks, even when the exam is in shorter sessions pregnant women simply can't hold it for 90 minutes sometimes.”

“People on diuretic medications will also have extreme difficulty with such a rule.”

“I have endometriosis and as a result need to use the restroom often.”

“My prescription medication makes my mouth dry, so I drink a lot of water which makes me have to go to the bathroom a lot, so I'm concerned about the possibility of not being able to take bathroom breaks.”

Menstrual/Pregnancy

“As a person with a uterus I might need to change a menstrual product during the test.”

“I'm pregnant, and I don't know if I'll be able to sit still/not go to the restroom for the required length of time.”

Newly Needed Accommodations

Multiple respondents expressed that they may now be in need of additional accommodations due to the changed format and new restrictions imposed on the exam. Given that this is a non-traditional way of administering an examination, test takers are unlikely to have readily available documentation to support these new accommodation requests.

Respondents also expressed concerns that their jurisdictions have not told them specifics of the exam administration generally or about how their accommodations will be implemented.

Need for Scratch Paper

“I didn't apply for disability [accommodations] because I am not competing for the best grade but am trying to pass. Now that we can't have scratch paper, my adhd is severely impacting my ability to focus as I heavily rely on diagramming and writing out my answers. I am panicking.”

Need for Physical Printout of Exam

“I have trouble comprehending things on the screen and require interaction to comprehend.”

“My learning disability impairs my visual processing and working memory. Not having physical printout of the exam is going to significantly impair my ability to succeed on the bar exam.”

“I am visually disabled and require increased font size in order to read. I am concerned about not having my test booklet printed out and in front of me. Increased font size will crowd my computer screen so much, I can't even imagine what the MPT will be like.”

Ear Plugs

“Ear plugs provide a sensory deprivation which allows some (including me) the ability to focus on the material in front of them. Otherwise, quick retention of a reading would require multiple read throughs due to distraction.”

“I usually use earplugs to block out any noises during my law school exams and during this bar exam period, which has not been a problem to me so far (i.e. my school allowed us to use ear plugs during exams). In instances where earplugs were not allowed (LSAT), I didn't face issues with noise because I was in an environment with limited distractions anyway, so I was not concerned with the lack of ear plugs during an in-person bar exam (under normal conditions). The bar examiners have said nothing about ear plugs or other noise-canceling options. I'm particularly concerned because I will be taking the exam in my apartment, which is susceptible to noise from neighbors (people walking upstairs, loud music) and major construction on a nearby road.”

“I did not request earplugs because they are allowed for in-person exams but I am unsure if they will be allowed during my online exam (I know at least one jurisdiction is not allowing them for the online exam). Earplugs are critical for me because my space has a lot of ambient noise and I am unable to focus if I cannot block it out with earplugs.”

Fidgeting

“I did not request accommodations but as someone with diagnosed ADHD, OCD, and Generalized Anxiety Disorder, seeing the rules for the TN online exam that prohibit touching the face, fidgeting, hair twirling, etc., I am very concerned that the movements I commonly make when anxious (or always) will be flagged as cheating.”

“Inability to stand, fidget, look around, etc. seem very likely to cause me to fail this exam. I will already be struggling to grapple with anxiety and panic of normal testing conditions but trying to keep all my anxious habits and tics under control seems very likely to cause me to spiral and have an attack during the exam.”

“My ADHD has never been a problem during exams, however I fidget a lot when I'm nervous and it's very hard for me to sit still for long periods of time without adjusting.”

“We just learned that our remote exam software will count fidgeting, playing with hair, touching your face as cheating, all of which fall in the domain of my anxious tics.”

“I have a mild form of Tourette's which causes me to make “fidgety” body movements.”

“The rules also limit fidgeting and looking around the room, which are impossible to avoid as someone with ADD.”

“I have to readjust in my seat now and then to prevent pain from sitting too long, especially in one position (it's hard for anyone to sit totally still for a long time, and I have preexisting issues it could exacerbate).”

“I wear glasses which regularly slide down my nose. I often have to touch my face to push my glasses back up. I saw that another state released guidelines warning students not to touch their faces too often during the exam, or it might look like cheating. This is absurd. Not only do I regularly touch my face to push up my glasses, but I imagine there are plenty of students with nervous ticks, or even disabilities, who will be erroneously penalized based on such behaviors as well.”

Need for Movement

“I have chronic pain in my leg and my back and am concerned about remote proctoring if we are not allowed to move. Limited stretching—at least twisting and moving my legs—is what allows me to sit for long periods of time.”

“Needing tactile occupation while thinking (certain states' remote exams ban fidgeting or looking around while preparing answers).”

“The requirement that you keep your entire torso in the frame at all times I can't read my small computer screen from that far away even with corrective lenses.”

Access to Food and Water

“I am diabetic, and require food, water, and using the bathroom at any given moment. I am worried that my needs will result in my failing the exam because we are not allowed to eat, drink, or leave the room.”

“I have a neurological/cardiac condition that causes me to become sick/dizzy/pass out without constant access to water/Gatorade. My understanding is states that offer the remote bar exam will not be allowing drinks on the desk you take it at.”

Privacy and Security

Respondents raised security and privacy concerns related to the technology that is utilized for the exams.¹ Some respondents were concerned that they have not yet been notified as to what the required software will be and what access it will have to their computers. Other respondents raised concerns that their personal information will be vulnerable due to the

¹ Response submissions closed before the public announcement of the July 28, 2020 cyberattack on ExamSoft during the Michigan exam administration.

access that the proctoring or technology companies will have to their devices. Respondents also noted recent incidents in which real proctors exhibited predatory behavior towards the individuals that they observed.

Software

“As of now we have not been told how the required software will ensure our security. As someone who hopes to work in data privacy the idea of allowing an unknown party remote access to my computer, including my mic and camera, is horrifying. Further, we have not been instructed on how to safely remove this software after use.”

Predatory Behavior

“After recent reports of test monitors adding women on Facebook it is clear that these programs provide not only data privacy issues but physical and personal security issues for examinees.”

“Real proctors sending me friend requests or contact requests via social media or other means.”

“I don’t want a random man proctor staring at me for hours and then possibly tracking me down on social media or outside of the exam and possibly hurting me or even just harassing me.”

“Medical students have been friend requested by proctors of online board examination.”

Privacy

“It's one thing for information we choose to put on the internet (which some of us don't have social media) another thing to be basically forced to give approval of a recording of you in your own home of your face for hours AND limit your moments to what they prefer. That is not okay.”

“Privacy in access to my laptop, 16 hours if video, and the right to keep and use for profit my biometric data.”

Data Protection

“The proctoring software platforms that exist presently do not provide sufficient detail about their internal security processes for handling this incredibly sensitive data. I have been unable to find any proof of beta-testing for the software, or even an internal auditing process. At the very least, these vendors could inform partnering institutions what happens with the biometric data collected: How long do they retain the data? What are their retention and data destruction policies? Where are their servers located and, if located in the EU, do their policies comply with the GDPR (including the recently struck-down decision in Data Protection).”

“I am concerned about my vulnerable personal information being stolen from my computer while testing.”

“Can third parties access the data, and if so, who? Is the data encrypted, and if so, how?”

Artificial Intelligence

Respondents raised concerns regarding the use of artificial intelligence to monitor their examination. Respondents were particularly concerned about the racial and disability bias that is infused in the algorithms.

Bias

“I am definitely very concerned that the AI will include a racial and/or disability bias.”

“I am specifically concerned about BLEs' ready adoption of AI-based surveillance techniques which not only predominantly flag non-white male faces, but which necessarily require the constant collection, storage, and retention of biometric data (facial recognition, iris scanning/tracking), as well as environmental data. At least three states currently regulate the collection of biometric data (with Illinois's BIPA providing a private right of action for non-consensual collection), and these states explicitly recognize that when someone's facial geometry or iris scans are compromised, they cannot simply get a new face/eyeballs. The potential for identity theft via biometric information reaches a whole new level of personal and financial devastation, especially as biometric identification systems are increasingly adopted in personal devices (phones, laptops), residential units (facial recognition-based apartment security devices), and financial platforms (thumb/face-print mobile bank access).”

“The AI will flag me for cheating because I’m black.”

“This is literally uncharted territory, so I have no idea the extent to which it will negatively impact test-takers, especially BIPOC and those with disabilities. I have no idea what innocuous actions will "flag" my behavior as potentially cheating (e.g. I wear contacts, but my eyes get dry and sometimes my vision gets blurry. Would anything happen if I squinted at the screen or if I closed my eyes for a couple seconds?). The bar examiners have not given us any transparency so far, and I doubt that any transparency they do provide in the next couple months will do anything to fix our extremely valid concerns.”

“My disability can come on quickly and I'm concerned the AI will automatically cancel my score.”

Accuracy

“The only exam I took that was remotely proctored did not have these restrictions. The AI however did not recognize me at first and I had to bypass the first picture recognition to take the exam. (This was an ExamSoft exam). It did not seem to be an issue later however. I am an Asian Indian student.”

“Software told me during trial that my face didn’t match my license (license pic is two years old and I’m white - even more of a problem for people of color)”

In-Person Accommodations

Respondents expressed concerns that some jurisdictions are refusing to administer some or all accommodations remotely, requiring examinees with accommodations to take the test in person. The test was moved online for health and safety reasons, but examinees with disabilities are not being afforded the same protections as their non-disabled peers.

Accommodated test takers would be faced with the untenable choice of choosing between the accommodations that they are legally entitled to and their safety. These policies ignore the possibility that an individual with a disability or condition that requires accommodations may also be immunocompromised or otherwise at high risk of complications from COVID-19 or live in close proximity with an individual who is at high risk.

Forced In-Person Testing

“No one should be taking an in- person exam or feel forced too. I hope more people in all communities help raise this important issue for y'all because it's not right.”

“Forcing students requiring accommodations to show up in person for proctored tests in the middle of a pandemic is deeply problematic and serves as a further hurdle disabled lawyers must overcome.”

“I also do not want to take an in-person exam in the middle of this pandemic, because I do not want to get sick or die.”

“I was told that if I got accommodations I would have to take the test in person. I can’t afford to get sick so I had to make the decision to take the exam without accommodations because I

can't risk my life. Now I am afraid that I am more likely to fail because I haven't taken any exam without my accommodations."

"I like others shouldn't have to choose between getting their accommodation or risking their health."

Safety Concerns

"I still have no idea if my accommodations will require my CA Bar Exam to be administered in-person nor where that would occur in Los Angeles -- which reported on July 24th a record number of COVID deaths."

"I am required to take the exam in person at a casino with both a proctor and a scribe in a small hotel room."

Concerns about the Feasibility of Accommodations

"My disability accommodations in law school permitted me to take rest breaks during exams so that I could use the bathroom as needed, at my convenience. I do not see how it will be possible for me to do this without being wrongly accused of cheating. However, I also do not want to take an in-person exam in the middle of this pandemic, because I do not want to get sick or die."

Technology

Respondents expressed concerns regarding their use of technology during the examination. Under normal circumstances, there are contingency plans, such as allowing test takers to begin handwriting at the time of a software failure. Remote administrations include no such failsafes and some jurisdictions have announced they will cancel scores if a device disconnects from the server for too long. Respondents also expressed financial concerns regarding the need to purchase new devices that meet the modified technology requirements.

Technology Failures

"Unclear whether score might be canceled if disconnected or laptop freezes."

"ExamSoft is not a reliable vendor. If (1) there has never been an exam administered in North America that can support over 10,000 test takers at one time without failing, and (2) bar takers have expressed this concern to State Bars/ Supreme Courts, will we get refunds if the system does fail?"

“Florida is not providing any tech. support. ILG360 has crashed in GA and IN now. We have no help or actual ability to take the exam if the program fails. The FAQs instruct us to call ILG directly while at the same time banning cell phones. Others have tried calling ILG and all calls go right to voicemail. We literally won't be able to access the exam itself when the program inevitably crashes.”

Technology Requirements

“Unclear if I can use my laptop given the placement of my webcam and unclear if an external webcam is allowed instead.”

“My laptop will need to be replaced. After already paying a laptop registration fee.”

“The current exam rules state that if our computer crashes during the exam, we will fail the exam. Traditionally, students are permitted to write out their answers if their computer crashes, but this is not allowed for the online exam. This has given me immense anxiety and I am now considering purchasing a new computer for the exam out of fear that mine will crash. My fear is not unfounded as my computer has crashed when running the exact software that California is using for the exam and my computer will be running additional AI proctoring software as well. This requirement also limits exam access to those who can afford the equipment necessary to take the exam.”

“In my jurisdiction, they admitted to knowing the exam software would not be compatible with common talk to text software. And the committee admitted to not considering whether some applicants may not have access to a laptop.”

“I do not feel that I have the same financial and home resources as others that are well off so I am at a disadvantage as a result because I cannot afford a laptop with the required specifications to take the exam, nor the required quiet setting and I am a person of color that is also disabled. This should be illegal!”

“The emotional stress and financial stress is unbearable and now I have to decide whether to buy food or a laptop, because if I do not buy a laptop, I will have my job offer rescinded and will become homeless.”

Scrap Paper and Physical Copy of the Exam
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Respondents expressed numerous concerns about the unavailability of a physical copy of the exam and restrictions on the use of scrap paper during the examination. Many respondents explained that using scrap paper is a way for them to manage symptoms of their

disabilities. Several respondents emphasized that diagramming and notetaking are standard, necessary test-taking practices. Some respondents focused on the fact that they spent thousands of dollars taking preparatory classes that taught them strategies that require them to diagram and/or markup questions. Examinees are primarily worried about the lack of access to scrap paper and/or printouts of the exam for the MBE and MPT.

Disability

“Not being able to take notes on questions on paper will be absolutely horrific for so many neurodivergent people, myself included. It’s also something no one has had to practice during our three years in law school. Being able to answer multiple choice questions and outline essays without being able to take notes on scrap paper is a skill that is almost impossible to develop in 3 short months WHILE also studying for the bar and also working full time.”

“Are we supposed to memorize the important locations of information for the MPT?”

“I have ADHD, the way that I memorize material is by drawing charts and writing concepts in different colors. I study by remembering how many colors are on a page (for example, for hearsay I would write all the exceptions in a different color, then remember that say 8 colors = 8 exceptions), and by remembering the layout of the page. Then when I take an exam, the first thing I do is look at the essay topics, and draw my charts for each topic on scrap paper. The only way I remember concepts is by remembering the colors and layout of the page, then making the same chart with the same layout on scrap paper during the exam. This is the only way I know how to memorize. I have a really hard time putting concepts together in my head, I NEED to visualize things a certain way to learn and remember them. If students are not allowed to use scrap paper on an exam, I am going to have to completely restructure the way I learn and approach essays. Aside from that, how are ANY students supposed to answer questions on horizontal and vertical privity without drawing it out? What about questions with math? There are lots of students who need to write/draw things out to answer certain types of questions.”

“PTSD makes concentrating very challenging for me due to working memory issues, so physically noting on a paper test or diagramming on scratch paper is an essential reasonable accommodation. Otherwise, I am reading a fact pattern 3 times without getting it and I'm exhausted by the 30th MBE question. Physical notation is the strategy I have been practicing for 3 years since a stranger slashed my neck on the street and I was diagnosed.”

“I am borderline ADHD. I am worried about not having scratch paper to visually map out my argument, since I am a visual learner.”

“I have ADD and have always needed scratch paper to outline and organize my thoughts.”

“I have a specific learning disorder - impairment in reading. The combination of this and ADHD make taking an exam without physical scratch paper and without the ability to mark up the exam incredibly challenging. I always choose to read printed materials because it is much harder for me to read and digest information on a screen and without active engagement with the material.”

“I have ADHD and can’t read on screens generally so I’m truly afraid I’m going to fail because my brain doesn’t work cohesively for screens and reading on them.”

Study Methods

“I’m extremely concerned about lack of access to scratch paper and ability to annotate long and complicated fact patterns. This exam will be more reading comprehension and who can quickly memorize question details rather than test knowledge base.”

“I am concerned that I may not be allowed to use scratch paper when all I have been taught in bar prep revolves around diagraming and outlining, as well as the fact that I cannot print exam questions. I need to write things down to best process information.”

“I am very upset and concerned that it seems that most jurisdictions are not allowing the use of scratch paper or paper materials; this is upsetting as this is something that Bar Review courses emphasize, and something that we pay thousands of dollars for.”

“I’m also not able to use scratch paper so I’m worried I will struggle because my normal study methods are now somewhat useless.”

“I have no idea how to mentally diagram and outline the Performance Test and Essays/MBEs for Contracts, Property, Federal Civil Procedure, CA Civil - especially considering I will automatically fail/be flagged for cheating should I look off screen to focus or use my fingers to count.”

“We’ve been taught to diagram this whole time so I have no idea how that will work. You can’t type out most of these diagrams. I know that not being able to diagram will mean looking away from the screen, scrunching my forehead, fidgeting, etc. all of which the TNBLE has told us will flag us.”

“I’m worried about not being able to use scratch paper which makes it really hard to concentrate without even having printed questions.”

“Visual learner who needs scrap paper.”

“I want scratch paper because it is impossible to answer some of these questions without drawing a picture.”

“I need to highlight, cross out, write out ideas by hand, map things out, etc. Without that I have no chance of becoming a lawyer.”

Fear of Getting Flagged as a Cheater

Many respondents' fears centered upon a fear of being flagged as a cheater, having their scores canceled, and/or facing future problems due to character and fitness concerns.

"If we get flagged as cheaters, we might as well kiss our licenses goodbye because character and fitness will deny us them."

"I have concerns for my colleagues who will be experiencing these issues. I have concerns with the inability to appeal a decision of cheating made by AI."

Conclusion

This report reveals widespread concerns related to the administration of online bar exams. Bar examinees expressed significant concerns related to bias, ambient noise, interruption of internet access, distractions from other residents, lack of childcare, presence of pets, impact on their mental health, pregnancy and nursing, focus on screens, restroom usage, newly needed accommodations, privacy and security, artificial intelligence, inability to accommodate test takers remotely, technology failures, lack of access to scrap paper and physical copies of the examination, and fear of getting wrongly flagged as a cheater. NDLSA plans to respond to these concerns by compiling a collection of obligations bar examiners must meet in designing an online bar exam. That document will be released in August.

Appendix: Survey Questions

1. Are you registered to take a "remote" Bar Exam?
2. Do you have a disability?
3. Do you have any concerns about the accessibility of the examination? (e.g. pregnancy, child care, ambient noise, artificial intelligence racial bias and/or disability bias)
4. Has your jurisdiction announced any policies that would limit your access to the exam?
5. Which jurisdiction?
6. Have you previously taken a remotely proctored exam?
7. If applicable, what is the nature of your disability?
8. Please share any accessibility issues or challenges that you faced during the exam.