

Conference of Chief Justices
July 2012

RESOLUTION

WHEREAS, the American Bar Association has been the national accreditor of law schools since 1922;

WHEREAS, the American Bar Association has been recognized by the federal government as the accrediting authority for legal education since 1952;

WHEREAS, every state Supreme Court in the U.S. accepts graduates of "ABA-approved" law schools as meeting the educational eligibility requirements for admission to the bar of that state;

WHEREAS, the Section of Legal Education and Admissions to the Bar of the American Bar Association has developed expertise and an effective and reliable procedure for assessing the quality of the legal education provided by law schools in the United States;

And WHEREAS, the Conference of Chief Justices has confidence in the American Bar Association accreditation project, as evidenced by the universal acceptance of the ABA-approved degree for bar admissions purposes;

NOW, THEREFORE, BE IT RESOLVED that the Conference of Chief Justices supports the application of the American Bar Association for continued recognition by the Department of Education and encourages the Department to approve extending the recognition of the American Bar Association for a full term.

Report in Support of Resolution Regarding Department of Education Recognition of the ABA Section of Legal Education and Admissions to the Bar

The objectives of the ABA Section of Legal Education and Admissions to the Bar, as in the past, are to fulfill its mission to provide a fair, effective, and efficient accrediting system for American law schools that promotes quality legal education; to serve, through its Council, as the nationally recognized accrediting body for American law schools; and to be a creative national force providing leadership and services to those responsible for and those who benefit from a sound program of legal education and bar admissions. Thus the Section is responsible for assuring that law schools maintain a program of legal education that prepares their students for admission to the bar and the effective and responsible participation in the legal profession

In furthering this mission, the Section has viewed its relationship and communication with CCJ as critical in the maintenance of respect for the Accreditation Project by the Supreme Courts in their dependence on the Project in maintaining the highest standards of legal education. Every Supreme Court in the U.S. accepts a degree from an ABA-approved law school as meeting the educational eligibility requirements for admission in the state.

The Section has been continually recognized by the federal government, first by the Department of Health, Education and Welfare and since 1973 by the Department of Education, as the recognized accreditor for the award of the first degree in law. Per instructions from the Department of Education, on January 7, 2011, the Council filed a petition with the Department for re-recognition of the Section's authority to accredit law schools in the United States. The petition was a comprehensive document demonstrating compliance with all the recognition criteria contained in the Department's regulations. The Department staff did an analysis of the petition and submitted it to the Section in late April. The Section responded to the findings in the staff analysis on May 20, 2011. The staff made its final recommendations to the National Advisory Committee on Institutional Quality and Integrity (NACIQI) finding

that the Section needed to bring itself into compliance with several of the Criteria.

The Chair of the Section (Chief Justice Christine Durham) and the Consultant (Hulett H. Askew) appeared before NACIQI on June 9, 2011 and addressed the findings of non-compliance. Many were based upon changes in the regulations as a result of the reauthorization of the Higher Education and Opportunity Act. The Council of the Section has already adopted new Standards, Rules or Internal Operating Procedures to address these new requirements. The other findings required either procedural or Rules changes, all of which have now been implemented. The Section will appear again before NACIQI in June of 2013. During this entire period, the Section continued as the DOE-recognized accrediting authority for the award of the J.D. degree in the U.S.

The Resolution before the Conference expresses the CCJ support for the re-recognition of the Section and its accrediting authority.

ABA Accreditation- Department of Education Recognition Criteria

The Council of the Section of Legal Education and Admissions to the Bar (Council) functions separately and independently as an accrediting agency from the American Bar Association (ABA) , of which it is a part.

The Department of Education (DOE) recognition criteria [**34 C.F.R. Section 602.14(b)**] require that the Section have complete autonomy from the ABA in making accrediting decisions, in determining the budget for the Accreditation Project, and in hiring and firing of staff. The DOE expects that there will be no involvement by the ABA in accreditation decisions, Accreditation Committee or Council meetings (that implicate accreditation), Standards development, or accreditation policy setting. The ABA is not permitted to have access to any confidential information, such as which schools are on report, for what reasons, for how long and so on.

The officers and members of the Council are elected by the members of the Section and not by the American Bar Association. Thus, the membership of the Council is not selected by the affiliated trade or membership organization. The members of the Council are not selected by the governing board of the American Bar Association or its chief executive officer.

The Council's compliance with the separate and independent requirements is confirmed by its authority to revise Standards and Rules governing accreditation. In the late-1990's the ABA restructured the accreditation process to give the Council final decision-making authority to adopt or amend the Standards and the Rules of Procedure for the Approval of Law Schools ("Rules"). The Council's Standards Review Committee considers proposed changes to the Standards and Rules, soliciting comments on proposed changes from a broad range of interested parties,

holding public hearings, and making recommendations to the Council.

The House of Delegates of the ABA no longer adopts or amends the Standards or Rules. The House, however, has the opportunity to review the Council's actions regarding Standards revisions and is required to either concur with an action or refer the matter back to the Council for reconsideration based on the reasons specified by the House. The House does not have the option of deferring its consideration of a Council action; once an action of the Council is properly placed on the calendar of a meeting of the House, the House will have to either concur or refer the matter back to the Council at that meeting.

Moreover, the Council has the final authority to grant, deny or withdraw accreditation. The House, since 2000, no longer has final authority over decisions concerning the accreditation of individual law schools (see Rule 45.9 of the Rules of Procedure of the House of Delegates). Rather, the Council has final authority to grant, deny or withdraw accreditation.

SUMMARY:

1. Administrative and Budgetary Autonomy: This requirement actually appears in the waiver section rather than in the recognition criteria, but DOE has interpreted the criteria as requiring that the "agency" (the Council) have complete autonomy in making accrediting decisions, in determining its budget, and in hiring and firing staff.
2. Independence: DOE expects to see no involvement by the larger association in accreditation decisions, Accreditation Committee or Council meetings, Standards development or accreditation policy setting.
3. Information: DOE expects the larger association to have

access only to publicly available accreditation information and not to any confidential information, such as which schools are on report, for what reasons, for how long, etc.

4. Transparency: DOE's review of whether an agency is separate and independent from its membership association focuses, in large part, on the transparency of the interaction between the two units. For example,

- Does the agency have a governing and decision-making body separate and distinct from the association?
- Is it clear the agency develops its own budget?
- Is it clear where the agency's operating funds come from?
- Is it clear that the agency pays for its share of services provided by the association?

Current Status:

The Section recently received re-recognition by the Department for a period of three years (until 2016). The Section is the only DOE-recognized accreditor for the award of the first degree in law.

**American Bar Association
Section of Legal Education and Admissions to the Bar**

*Chapter 3
Explanation of Changes*

In proposing the following revisions to Chapter 3 of the ABA Standards, the Standards Review Committee (SRC) introduced student learning outcomes as output measures for the program of legal education, along with related Standards pertaining to the assessment of student learning, and the evaluation of the academic program, learning outcomes, and assessment methods.

In 2007, the Council appointed an Outcome Measures Committee. This committee recommended changes in the current Standards to effect a reduction in reliance on input measures and to “adopt a greater and more overt reliance on outcome measures.” This shift was viewed as consistent with best practices in legal education and encouraged by the U.S. Department of Education guidelines.

The Outcome Measures Committee emphasized that outcome Standards should have the following characteristics:

1. Aside from the traditional curricular requirements found in the current Standards, the outcome Standards should provide law schools substantial flexibility in identifying outcomes that are consistent with their missions.

2. The outcomes Standards should not impose unnecessary costs on law schools. In particular, burdensome assessment regimes of individual student achievement for each learning outcome should not be required.

3. Law schools should have flexibility in determining what assessment methods to use across the curriculum.

4. A phase-in period for development of learning outcomes and assessment methods by law schools should be provided.

The SRC recommendations conform with the recommendations of the Outcome Measures Committee.

In addition, the proposed Standards add six credits of experiential coursework as a requirement for the J.D. degree and provide definitions of the coursework that will meet this requirement.

The SRC also proposes adding a Standard that more specifically defines the student work that constitutes a “credit hour.”

More generally, the SRC has refined, developed, reordered, regrouped, updated, and streamlined the current Standards for greater coherence. Provisions have been eliminated if either unnecessary or belonging in a different Chapter.

A transitional phase-in period for the proposed changes in the Standards is recommended.

Proposed Standard 301. OBJECTIVES OF ACADEMIC PROGRAM

The requirement of a rigorous academic program is moved from current Interpretation 301-3 to proposed Standard 301(a). The requirement of preparation for ethical participation in the legal profession, while found in various Standards and Interpretations, is placed upfront in Standard 301(a) pertaining to objectives of the academic program.

Proposed Standard 301(b) is a new provision that introduces the requirement that law schools establish and publish learning outcomes to achieve the objectives of the academic program.

Current Standard 301(b), pertaining to comparable opportunities, is moved to Standard 311.

Current Interpretations 301-4 and 301-5 that address comparable opportunities have been deleted.

Current Interpretations 301-1 and 301-2 have been deleted as unnecessary.

Current Interpretation 301-6 on bar passage has been moved to a new Standard 316. That proposed Standard is still under review by the SRC.

Proposed Standard 302. LEARNING OUTCOMES

Current Standard 302 [Curriculum] has been replaced with proposed Standard 302 [Learning Outcomes] and proposed Standard 303 [Curriculum].

Proposed Standard 302 is a new Standard that outlines the minimum learning outcomes that must be established by a law school. The responsibility of a law school to assess student learning and to evaluate its academic program is found in proposed Standards 314 and 315. The learning outcomes are broadly stated to give law schools maximum flexibility.

Interpretation 302-1 provides a non-exclusive listing of “other professional skills.”

Interpretation 302-2 provides that a law school “may also identify any additional learning outcomes pertinent to its program of legal education.”

Proposed Standard 303. CURRICULUM

Current Standard 302(a) has a list of mandatory requirements for the law school curriculum. The current Standard does not prescribe any credit hour requirements for specific areas. Proposed Standard 303 includes a requirement of two credit hours in professional responsibility and a new requirement of six credits of instruction in an experiential course or courses. To qualify, the experiential course or courses must be a simulation, clinical, or field placement, all as defined in subsequent Standards. Four requirements for a qualifying experiential course are set out.

Proposed Standard 303(b) is a revision of current Standard 302(b), which requires law schools to provide “substantial opportunities” for live-client or other real-life practice experiences; student participation in pro bono activities; and small group work. The proposal changes “live-client or other real-life practice experiences” to “faculty supervised clinical or field placements” and eliminates “small group work” from the Standard. It also changes “pro bono activities” to “pro bono legal services or law-related public service.” Current Interpretation 302-10 has been replaced by proposed Interpretations 303-2 and 303-3, which reference pro bono activities as defined in the ABA Model Rules of Professional Conduct and provide a description of law-related public service activities.

Proposed Standard 304. SIMULATION AND CLINICAL COURSES

This is a new Standard that defines and sets out the requirements for two of the three experiential courses that qualify for the new experiential course requirement in proposed Standard 303(a).

Proposed Standard 314. ASSESSMENT OF STUDENT LEARNING

This is a new Standard that introduces the obligation of law schools to use assessment methods in the curriculum to measure and improve student learning and to provide feedback to students.

Both formative and summative assessments are described in proposed Interpretation 313-1.

Proposed Interpretation 313-2 makes it clear that law schools have flexibility in implementing the assessment requirement.

Proposed Standard 315. EVALUATION OF ACADEMIC PROGRAM, LEARNING OUTCOMES, AND ASSESSMENT METHODS

This is a new Standard. It requires the dean and faculty of the law school to engage in an ongoing evaluation of the academic program, learning outcomes and assessment methods. It also requires that the results of the evaluations be used to make appropriate changes.

The Interpretation offers examples of methods that may be used in these evaluations.

Standard 301. OBJECTIVES OF ACADEMIC PROGRAM

(a) A law school shall maintain a rigorous academic program that prepares its students, upon graduation, for admission to the bar and for effective, ethical and responsible participation as members of the legal profession.

(b) A law school shall establish and publish learning outcomes designed to achieve these objectives.

Standard 302. LEARNING OUTCOMES

A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

(a) Knowledge and understanding of substantive and procedural law;

(b) Legal analysis and reasoning, legal research, problem solving, and written and oral communication in the legal context;

(c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and

(d) Other professional skills needed for competent and ethical participation as a member of the legal profession.

Interpretation 302-1

For the purposes of Standard 302(d), other professional skills include, but are not limited to, the following: interviewing; counseling; negotiation; fact development and analysis; trial practice; document drafting; conflict resolution; organization and management of legal work; collaboration; cultural competency; and self-evaluation.

Interpretation 302-2

The law school may also identify any additional learning outcomes pertinent to its program of legal education.

Standard 303. CURRICULUM

(a) The law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

(1) one course of at least two credit hours in professional responsibility that includes substantial instruction in the history, goals, structure, values, and responsibilities of the legal profession and its members;

(2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and

(3) one or more experiential course(s) totaling at least six credit hours. An experiential course or courses must be: (i) simulation course(s); or (ii) clinical course(s); or (iii) field placement(s). To satisfy this requirement, a course must be primarily experiential in nature and must:

- (i) integrate doctrine, theory, skills, and legal ethics and engage students in performance of one or more of the professional skills identified in Standard 302;**
- (ii) develop the concepts underlying the professional skills being taught;**
- (iii) provide multiple opportunities for performance; and**
- (iv) provide opportunities for self-evaluation.**

(b) A law school shall provide substantial opportunities to students for:

- (1) faculty supervised clinical courses or field placement(s); and**
- (2) student participation in pro bono legal services or law-related public service activities.**

Interpretation 303-1

Factors to be considered in evaluating the rigor of a writing experience include: the number and nature of writing projects assigned to students; the form and extent of individualized assessment of a student's written products; and the number of drafts that a student must produce for any writing experience.

Interpretation 303-2

Rule 6.1 of the ABA Model Rules of Professional Conduct encourages lawyers to provide pro bono legal services primarily to persons of limited means or to organizations that serve such persons. In addition, lawyers are encouraged to provide pro bono law-related public service. In meeting the requirement of Standard 302(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporate the priorities established by the ABA in Model Rule 6.1. Pro bono and public service opportunities need not be structured to accomplish any of the outcomes required by Standard 302. Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

Interpretation 303-3

Law-related public service activities include: (i) helping groups or organizations seeking to secure or protect civil rights, civil liberties or public rights; (ii) helping charitable, religious, civic, community, governmental and educational organizations not able to afford legal representation; (iii) participating in activities providing information about justice, the law or the

legal system to those who might not otherwise have such information; and (iv) engaging in activities to enhance the capacity of the law and legal institutions to do justice.

Standard 304. SIMULATION AND CLINICAL COURSES

(a) A simulation course provides substantial experience not involving actual clients, that is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and that includes:

- (1) direct supervision of the student's performance by the faculty member;**
- (2) multiple opportunities for performance, feed-back from a faculty member, and self-evaluation; and**
- (3) a classroom instructional component.**

(b) A clinical course provides substantial lawyering experience, involving one or more actual clients, and that includes:

- (1) advising or representing a client;**
- (2) direct supervision of the student's performance by a faculty member;**
- (3) multiple opportunities for performance, feed-back from a faculty member, and self-evaluation; and**
- (4) a classroom instructional component.**

Standard 314. ASSESSMENT OF STUDENT LEARNING

A law school shall utilize both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.

Interpretation 314-1

Formative assessment methods are measurements at different points during a particular course or at different points over the span of a student's education that provide meaningful feedback to improve student learning. Summative assessment methods are measurements at the culmination of a particular course or at the culmination of any part of a student's legal education that measure the degree of student learning.

Interpretation 314-2

A law school need not apply multiple assessment methods in any particular course. Assessment methods are likely to be different from school to school. Law schools are not required by Standard 314 to use any particular methods.

Standard 315. EVALUATION OF ACADEMIC PROGRAM, LEARNING OUTCOMES, AND ASSESSMENT METHODS

The dean and faculty of a law school shall conduct ongoing evaluation of the law school's academic program, learning outcomes, and assessment methods; and shall use the results

of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum.

Interpretation 315-1

Examples of methods that may be used to measure the degree to which students have attained competency in the school's student learning outcomes include: review of the records the law school maintains to measure individual student achievement pursuant to Standard 314; evaluation of student learning portfolios; student evaluation of the sufficiency of their education; student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge; bar exam passage rates; placement rates; surveys of attorneys, judges, and alumni; and assessment of student performance by judges, attorneys or law professors from other schools. The methods used to measure the degree of student achievement of learning outcomes are likely to differ from school to school and law schools are not required by this standard to use any particular methods.