

COMPREHENSIVE REVIEW OF AMERICAN BAR ASSOCIATION LAW SCHOOL ACCREDITATION POLICIES AND PROCEDURES: A SUMMARY

by Donald J. Polden

American legal education is governed by accreditation standards promulgated by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association.¹ The Council has been designated by the United States Department of Education as the official accreditation agency for American legal education. The importance of the ABA's accreditation cannot be overstated, since graduates of accredited law schools are eligible to sit for the bar examination in any state of the United States and are eligible for federal loans to finance their legal education.

The Department of Education requires that all accreditation agencies periodically review and update their standards and policies concerning approval of schools and programs.² In legal education, the accreditation review and all proposals for changes in the accreditation policies are undertaken by the Standards Review Committee (hereinafter "Committee") of the Section of Legal Education and Admissions to the Bar. This Committee recently began a new three-year comprehensive examination of the current Standards and Rules of Procedure for Approval of Law Schools. The current comprehensive review has greater significance than other recent reviews because of heightened national concerns about the proper role of professional program

accreditation and increasing criticism among law school faculty members and administrators about several of the Standards.

In this article I will describe the most significant issues facing the Committee as it undertakes a comprehensive review of the Standards and Rules of Procedure. Pertinent excerpts from the 2009–2010 Standards are on page 47. It promises to be an exciting endeavor and one that will not lack controversy or a diversity of opinions on important policy issues. However, the ultimate goal of this process, and therefore of the Committee, will be to prepare, and submit to the Council, a relevant, improved, and more efficient set of accreditation policies and procedures.

THE STANDARDS REVIEW PROCESS

The current review of the Standards is occurring at a propitious, but difficult, time for legal education as it experiences considerable turmoil and critical self-reflection. Many critics of the current accreditation regime have argued that legal education is overregulated, that accreditation requirements appreciably increase the cost of educating law students, and that there is frequent micromanagement of otherwise well-run programs and schools. Others have argued that the accreditation process can be improved by modest, carefully tailored changes in the current Standards and that, all in all, the regula-

tory oversight of American legal education seems to function well. Moreover, the current economic crisis has dramatically affected the business model for law firms (including hiring practices), reduced resources available to law schools, and reduced opportunities for law student jobs. It is, as some have argued, a bad time to add or leave in place any regulatory restrictions that burden law schools.

In 2007 William R. Rakes of Virginia, chair of the Section, assembled the Accreditation Policy Task Force to review accreditation policies and practices by taking “a fresh look at accreditation from a policy perspective.” The task force issued a report describing some of the current issues and problems with accreditation of legal education and formulated several recommendations to improve the accreditation process.³

Thereafter, in October 2007 the new chair of the Section, Chief Justice Ruth V. McGregor, appointed three special committees that were asked to consider the recommendations of the task force and to report their suggestions to the Council. The three main topics were (1) the transparency or clarity of the accreditation process, (2) the focus on terms and conditions of employment and protection of academic freedom of faculty members, and (3) the need for a policy requiring law schools to articulate expected student learning outcomes and periodically measure actual outcomes. In May 2008 the three special committees reported back to the Council, and the Council referred key findings and recommendations of the special committees to the Standards Review Committee for its consideration in the comprehensive review of the Standards.⁴

The process for making changes to the Standards, Interpretations, and Rules of Procedure includes the submission of recommended changes to the

Council, which can accept the changes or request additional consideration by the Committee. If the Council accepts the changes, it “notices up” the proposed changes, including solicitation of written comments and public hearings at national meetings that attract many interested parties (e.g., American Law Institute and ABA annual meetings). Following the public comment period, the Committee submits to the Council the final recommended changes, which the Council can accept or reject.

The Committee has carefully studied the May 2008 special committee recommendations and proposals for action and has reviewed accreditation policies and practices from many other professional disciplines. Moreover, the Committee has identified what it perceives to be the fundamental goals of proper accreditation of American legal education and has described how those accreditation goals will advance the system of legal education in the United States. These goals are described in the following section.

THE GOALS OF ACCREDITATION OF AMERICAN LEGAL EDUCATION

A. Assuring Educational Quality Accreditation review in the discipline of law must provide assurances to various groups (especially to prospective students) as to the quality of the schools’ educational programs that are held out as meeting national accreditation standards. There are at least three aspects to this principle.

First, there is a consumer protection attribute whereby accreditation review provides assurances to potential consumers (e.g., prospective students, employers of law school graduates) that the law school program is credible and, in fact, is what it says it is.

Second, accreditation review must provide assurances of institutional integrity—that is, that the program meets appropriate professional standards for the education of lawyers for multiple employment opportunities and is a program of educational quality and integrity. State supreme courts, state boards of bar examiners, and the Department of Education rely on the national accreditation agency to fully review, in a principled manner, all law schools whose graduates seek to sit for examination and seek admission to the profession.

Third, accreditation, especially for new law schools, helps ensure that the law school and, when applicable, its university, is committed to providing a program of legal instruction into the future. Given the reliance on the continuity of law school programs by students, graduates, bar admission agencies, and faculty members, accreditation serves to affirm the school's continuing commitment to educating students for entry into the legal profession. Moreover, it is essential that programs and institutions participating in a regime of accreditation review and approval must, through institutional self-examination and planning, constantly improve the professional preparedness of their students. It is similarly essential that accreditation agencies create appropriate incentives for programs and institutions to improve the quality of their instruction.

B. Advancing the Core Mission of Legal Education Accreditation attempts to measure and evaluate the basic requirements and attributes, shared by all law schools, of a fundamental and sound program in legal education. Consistent and uniform evaluation according to appropriate discipline-specific standards is necessary so that law schools (like other disciplines' educational institutions) can engage in useful and efficient interactions (e.g., facilitate transfers of students, information sharing, and other

collaborative enterprises) between and among institutions. It also permits agencies such as state supreme courts and bar admission committees to approve graduates of those programs to gain admission to practice in the many jurisdictions. Accreditation processes must rely on a common set of basic educational and programmatic attributes shared by the approved schools. In essential part, then, meeting national accreditation standards becomes the "gold standard" of approval for law school programs.

This does not mean that all schools should or must have exactly the same educational purposes, but rather that every school has been found to have the core or essential qualities necessary to be held out as "approved" or "accredited." This balance between a common or shared mission and individual schools' pursuit of unique attributes or purposes is reflected in other disciplines' accreditation processes.

In this regard, then, all accredited law schools share a common overarching mission which accreditation reviews attempt to measure, and, more importantly, to advance and promote. In American legal education, a commonly embraced and overarching mission would be stated something like this: *to educate men and women for entry into and ethical participation in the legal profession.* An equally pertinent description was provided by a member of the Committee: *an approved law school must have a program of instruction that will develop the cognitive, performance, and professional identity competencies that the profession and the public expect of a lawyer and member of the legal profession.*

In addition to a common or core mission shared by all law schools, individual law schools should be encouraged to create and provide programs that advance other missions without undue interference from the accreditation agency. For example, schools

should be permitted to advance their programs of interdisciplinary research or scholarly publication, to promote student engagement in social justice and public service careers, or to educate lawyers for “county seat” practices. The pursuit of a narrow or unique mission is appropriate so long as it does not impair the institution’s ability to meet the overarching shared mission of legal education.

C. Accountability of Law Schools Accredited institutions have an obligation to be accountable for the funds that students pay to them and to fulfill the commitments made to those students and to the profession they will serve. One of the most important accountability factors is having sufficient financial resources to meet, at a minimum, the fundamental goals of the educational enterprise and to provide students with the education and professional preparedness necessary for their entry into the profession and success in the careers they choose. Without sufficient resources a law school cannot provide educational programs and career opportunities sufficient to meet the minimum expectations of legal education.

Moreover, law schools are accountable to their students and other constituencies (such as alumni, university administration, etc.) for the efficient and effective operation of the law school enterprise. Accreditation review can assist law schools in ensuring that sufficient financial resources are dedicated to supporting the educational missions of the schools and in sharing best practices in the efficient administration of law school programs.

Accreditation review should not unduly burden law schools by imposing costly and irrelevant procedures and standards that hamper innovation or creativity in legal education or unnecessarily increase

the cost of attending law school. Accreditation standards should be evaluated by, among other things, the costs they are likely to impose on the schools that seek accreditation review and approval.⁵

D. Clarity and Precision for Compliance Accreditation standards and requirements should be clearly stated so that subjectivity and uncertainty during program review are reduced to minimal levels. Again, the policies and procedures should be carefully drawn to advance the fundamental goals of the discipline. Moreover, accreditation review cannot be unduly intrusive, and all standards and rules of procedure should be carefully and precisely formulated so that all programs and institutions undergoing review know the meaning and purposes of the standards. Law school accreditation should consider the best practices of other professional education accreditation programs. Finally, accreditation standards and requirements should be enforced fairly and consistently.

E. Assessment of Program Quality and Student Learning Applying the lessons learned from and practiced in other disciplines’ accreditation review processes, legal education programs and institutions should be evaluated both by essential program quality indicators (e.g., sufficiency of faculty and adequacy of facilities in light of mission and student body) and by the learning achieved by their students. In the past, most accreditation measurements have been on “input” factors, and very little attention has been given to “output” factors. Indeed, the only real output measure on which law schools are evaluated is the pass rate of their graduates on state bar admission tests. According to the Accreditation Policy Task Force, accreditation review in law, like other disciplines, must move law schools toward articulation and assessment of student learning goals and achievement levels.

CRITICAL ISSUES IN THE CURRENT COMPREHENSIVE REVIEW OF THE STANDARDS

Some of the policies and practices that the Committee is currently examining are likely to generate considerable interest and discussion as the Committee moves forward with its comprehensive review of the current Standards and Rules of Procedure. An overview of some of these policies and practices follows.

Articulating and Measuring Student Learning Outcomes Nearly all professional school accreditation agencies (for medicine, dentistry, pharmacy, etc.) require accredited schools and programs to articulate student learning goals and periodically measure student learning outcomes. Legal education accreditation has been criticized because its focus has been almost entirely on input measures (for example, financial resources, size of the library collection, etc.) and the only outcome measured by law school accreditation is the rate at which the schools' graduates successfully pass state bar examinations. The Committee has prepared drafts of revised Standards that will require law schools to articulate student learning goals and systematically measure student learning outcomes and has initiated a national discussion about the proposed new student learning outcome standards.

Admissions Requirements The current Standards provide that all accredited law schools must require admitted students to have taken an entrance examination (commonly, the LSAT is used). Critics claim that this requirement limits admission flexibility by schools, generates information that is misused by ranking publications, and adds unnecessary cost to the admissions process. Proponents claim that the LSAT provides law schools with reliable

and meaningful information concerning the likelihood of success of each admitted student in his or her first year of law school and provides applicants with some comparative data about the likelihood of admission to a particular school or range of schools.

Further, the current Standards require that (with a few narrow exceptions) all matriculated law students must have earned a bachelor's degree before completing the first year of law school. Some commentators have argued that this requirement should be eliminated and that junior college graduates, for example, should be permitted to enroll in law school. On the other hand, proponents of the current requirement argue that American legal education is a graduate-level (i.e., post-bachelor's-degree) program and that other countries' legal education systems are moving away from law as an undergraduate study to the American approach; those proponents ask why we should move away from a legal education system that many countries seek to emulate.

Terms and Conditions of Faculty Employment The Standards require schools to have a policy with respect to academic freedom of faculty and to have conditions sufficient to attract and retain a competent faculty. They also provide that in normal circumstances, the dean and director of the law library would be tenured. Finally, the Standards provide that clinical faculty members hold academic appointments that are "reasonably similar to tenure," including appointments pursuant to contracts with specific terms (such as addressing the right to participate in governance) between the law school (or university) and those faculty members.

The proponents argue that these employment terms and conditions are necessary to permit law schools to attract and retain highly qualified faculty, permit clinical faculty members to be more deeply

EXCERPTS FROM THE 2009–2010 STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS

CHAPTER 2: ORGANIZATION AND ADMINISTRATION

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Standard 206. DEAN

(a) A law school shall have a full-time dean, selected by the governing board or its designee, to whom the dean shall be responsible.

(b) A law school shall provide the dean with the authority and support needed to discharge the responsibilities of the position and those contemplated by the Standards.

(c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.

...

CHAPTER 3: PROGRAM OF LEGAL EDUCATION

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Standard 304. COURSE OF STUDY AND ACADEMIC CALENDAR

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(c) A law school shall require that the course of study for the J.D. degree be completed no earlier than 24 months and no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.

(d) A law school shall require regular and punctual class attendance.

(e) A law school shall not permit a student to be enrolled at any time in coursework that, if successfully completed, would exceed 20 percent of the total coursework required by that school for graduation (or a proportionate number for schools on other academic schedules, such as a quarter system).

(f) A student may not be employed more than 20 hours per week in any week in which the student is enrolled in more than twelve class hours.

...

Standard 305. STUDY OUTSIDE THE CLASSROOM

(a) A law school may grant credit toward the J.D. degree for courses or a program that permits or requires student participation in studies or activities away from or outside the law school or in a format that does not involve attendance at regularly scheduled class sessions.

...

Interpretation 305-3

A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation. This Interpretation does not preclude reimbursement of reasonable out-of-pocket expenses related to the field placement.

...

Standard 306. DISTANCE EDUCATION

(a) A law school may offer credit toward the J.D. degree for study offered through distance education consistent with the provisions of this Standard and Interpretations of this Standard. Such credit shall be awarded only if the academic content, the method of course delivery, and the method of evaluating student performance are approved as part of the school's regular curriculum approval process.

...

(d) A law school shall not grant a student more than four credit hours in any term, nor more than a total of 12 credit hours, toward the J.D. degree for courses qualifying under this Standard.

...

CHAPTER 4: THE FACULTY

...

Standard 405. PROFESSIONAL ENVIRONMENT

(a) A law school shall establish and maintain conditions adequate to attract and retain a competent faculty.

(b) A law school shall have an established and announced policy with respect to academic freedom and tenure of which Appendix 1 herein is an example but is not obligatory.

(c) A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members....

...

Interpretation 405-6

A form of security of position reasonably similar to tenure includes a separate tenure track or a program of renewable long-term contracts. Under a separate tenure track, a full-time clinical faculty member, after a probationary period reasonably similar to that for other full-time faculty, may be granted tenure....

A program of renewable long-term contracts shall provide that, after a probationary period reasonably similar to that for other full-time faculty, during which the clinical faculty member may be employed on short-term contracts, the services of a faculty member in a clinical program may be either terminated or continued by the granting of a long-term renewable contract. For the purposes of this Interpretation, "long-term contract" means at least a five-year contract that is presumptively renewable or other arrangement sufficient to ensure academic freedom....

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CHAPTER 5: ADMISSIONS AND STUDENT SERVICES

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Standard 502. EDUCATIONAL REQUIREMENTS

(a) A law school shall require for admission to its J.D. degree program a bachelor's degree, or successful completion of three-fourths of the work acceptable for a bachelor's degree, from an institution that is accredited by an accrediting agency recognized by the Department of Education.

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Standard 503. ADMISSION TEST

A law school shall require each applicant for admission as a first year J.D. student to take a valid and reliable admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's educational program....

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CHAPTER 6: LIBRARY AND INFORMATION RESOURCES

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Standard 603. DIRECTOR OF THE LAW LIBRARY

(a) A law library shall be administered by a full-time director whose principal responsibility is the management of the law library.

(b) The selection and retention of the director of the law library shall be determined by the law school.

(c) A director of a law library should have a law degree and a degree in library or information science and shall have a sound knowledge of and experience in library administration.

(d) Except in extraordinary circumstances, a law library director shall hold a law faculty appointment with security of faculty position.

...

Interpretation 603-3

The granting of faculty appointment to the director of the law library under this Standard normally is a tenure or tenure-track appointment. If a director is granted tenure, this tenure is not in the administrative position of director.

...

Standard 606. COLLECTION

(a) The law library shall provide a core collection of essential materials accessible in the law library.

...

Interpretation 606-1

All materials necessary to the programs of the law school shall be complete and current and in sufficient quantity or with sufficient access to meet faculty and student needs. The library shall ensure continuing access to all information necessary to the law school's programs.

...

involved in the governance of the law school, and protect faculty members' academic freedom. The opponents to these provisions argue that these are employment matters properly left to each university and its law school, that they limit flexibility in designing a school's academic workforce, and that they therefore add unnecessarily to the cost of a legal education. Moreover, it has been pointed out that other professional education accreditation standards do not require tenure policies or specific employment arrangements.

Accreditation of Foreign Law Schools

Currently, 200 law schools, all within the United States and Puerto Rico, are accredited under the ABA's policies and Standards. Recently, however, a few law schools have been established in other countries expressly for the purpose of preparing their graduates for admission to practice in the United States or with U.S. law firms and corporate law offices in other countries. It is anticipated that these schools will seek accreditation through the ABA Standards and Rules of Procedure and, at the present time, there is no bar on foreign law schools seeking full approval under the Standards. Clearly, bar admission officials, including state supreme courts, will be very interested in the decisions on these requests for approval of foreign law programs because of, among other factors, the complexity of evaluating remote programs.

Student Academic Requirements There are several current requirements in the Standards that, according to critics, increase students' education costs or limit their ability to reach out for potential employment opportunities. These include, for example, the requirement that a student who takes an externship for academic credit cannot be compensated by the law firm or office at which he or she interns, and the requirement that full-time students

may not work more than 20 hours per week outside of the law school. There are other policies that require regular and punctual class attendance by students, specify the length of time that candidates have to complete their law degrees, and limit the amount of coursework that students can take in any one academic period. Some critics have argued that these requirements are not worthy of status as accreditation requirements and that law schools should be given more latitude to experiment with flexible work/study schedules and completion plans.

Distance Education The Standards currently impose limits on the amount of law school credit toward the J.D. degree that can be earned through courses taught via distance education technologies. Critics argue that distance education can reduce the overall cost of a legal education and that current technologies are sophisticated enough to permit students to learn many of the skills needed in law practice. Proponents of the current requirements argue that the case for distance education has not yet been made and that there are too many uncertainties in permitting a significant portion of a legal education to be provided online.

Law Libraries' Core Collections The Standards currently require a law school library to provide a core collection of essential materials and to make it available for access and use through multiple and appropriate formats. However, some critics argue that the requirement of a uniform core collection is costly and unnecessary at a time when there are so many ways of accessing the core store of legal knowledge. Moreover, they argue that schools should have greater flexibility in making legal information available to their users. On the other hand, proponents of the current requirements argue that the body of stored knowledge in modern American law school libraries is the envy of many other countries'

programs of legal education and that law libraries should continue to maintain a common collection of materials and information.

Public Information about Accreditation Status The Rules of Procedure limit the public dissemination of most key documents and reports promulgated in the accreditation review process. The self-study reports prepared by law schools in advance of an inspection as well as the site teams' reports and the reports of the Accreditation Committee are not publicly disclosed except in limited circumstances. The Special Committee on Transparency recommended that the Standards Review Committee consider making some of these documents and reports available to the public at an earlier stage in the accreditation review process. Such disclosures may permit law schools to understand how the Accreditation Committee is interpreting particular Standards and Rules of Procedure and applying them to other law schools.

CONCLUSION

The Standards Review Committee will be considering and resolving many topics and issues, both substantive and procedural, as it conducts the comprehensive review of the Standards and Rules of Procedure. It is unlikely that the Committee's work will conclude with a dramatically revised regime of law school accreditation policies and practices, but I am confident that in several areas, including some of those described above, the ABA's Standards and Rules of Procedure will be clearer, provide for greater institutional flexibility, and reduce the costs of accreditation compliance. I also believe that the accreditation process will be more transparent. Finally, I hope that the Committee's work will enhance the role of ABA accreditation as the continuing benefactor of the "gold standard" in high-quality legal education. 

ACKNOWLEDGMENTS

The author acknowledges, with gratitude, the helpful suggestions from Professor Joseph Tomain, Reporter for the Standards Review Committee, and Becky Stretch, Assistant Consultant for the American Bar Association.

NOTES

1. American Bar Association Section of Legal Education and Admissions to the Bar, STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS (2009–2010), available at <http://www.abanet.org/legaled/standards/standards.html> (last visited January 19, 2010).
2. 34 C.F.R. § 602.21 (2010).
3. American Bar Association Section of Legal Education and Admissions to the Bar, REPORT OF THE ACCREDITATION POLICY TASK FORCE (2007), available at http://www.abanet.org/legaled/AC%20Task%20Force/cmtetf_20070612134026.pdf (last visited January 19, 2010).
4. See "Reports of the Special Committees and Submitted Comments," available at <http://www.abanet.org/legaled/committees/subcomm.html> (last visited January 19, 2010).
5. In response to inquiries from two U.S. senators, the Government Accounting Office undertook an analysis of the reason for the increasing cost of a legal education. The GAO report concluded that "[a]ccording to law school officials, the move to a more hands-on, resource-intensive approach to legal education and competition among schools for higher rankings appear to be the main factors driving the cost of law school, while ABA accreditation requirements appear to play a minor role. Additionally, officials at public law schools reported that recent decreases in state funding are a contributor to rising tuition at public schools." See "Higher Education Issues Related to Law School Cost and Access" (October 2009), available at <http://www.gao.gov/new.items/d1020.pdf> (last visited February 2, 2010).



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