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November 3, 2010

Honorable Christine Durham, Chair
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Dear Judge Durham and Mr. Askew:

In February 2009, several of the affiliate organizations of the Council wrote to Chair Randy Hertz and the Consultant about the selective invitation to some, but not all, of the affiliates to participate in the discussion and deliberations that were taking place at the Council. Today, the Society of American Law Teachers (SALT) writes to express its concern about the limited role that affiliates and others involved in legal education have been allowed to play in the deliberations of the Standards Review Committee (SRC) and its subcommittees. We believe that, with rare exceptions, the process that is being employed in the current comprehensive review and revision of the accreditation standards does not afford sufficient opportunity for members of the legal academy to provide input into the deliberations of the SRC, and that the practices of the Committee violate the spirit, if not the letter, of the Department of Education requirement that an accrediting agency “ensure that its program of review . . . involves all of the agency’s various relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review,” 34 C.F.R. §601.21(b)(4).

For more than a year, representatives of various constituencies in legal education, many of them from affiliate organizations, have regularly attended meetings of the Council and the SRC. Those attending include representatives from the Society of American Law Teachers, the Association of Legal Writing Directors, the Clinical Legal Education Association, the Association of American Law Schools, the American Association of Law Libraries, the American Law Deans Association, and the ACCESS Group. We attend the meetings because we believe the accreditation standards and their application are vital to the education of law students, and we hope to offer our expertise and assistance in this important work, but we have found ourselves frustrated in our collective efforts to contribute.

At the Council meetings, affiliates are invited to report only on their own activities. They have not been permitted to comment on any of the matters that come before the Council,

except in one instance—addressed in our February 2009 letter—when select affiliates were invited to speak about Council matters. At SRC meetings held before July 2010, affiliates were allowed the opportunity to speak briefly at the end of each meeting about issues on the agenda, though only after committee deliberations on those issues had been concluded. In July 2010, that practice ended abruptly and affiliates were told that there was no time for any comments, even though the meeting was being adjourned more than an hour early. Shortly thereafter a formal written policy appeared on the SRC website, stating that:

Meetings of the Standards Review Committee are business meetings and are not hearings that solicit or permit public comment. Given time constraints on the Committee, there will not be opportunities for interested parties to testify at Committee meetings concerning proposed revisions.

The Committee indicated that written comments would be welcome and that it plans to solicit additional comments “once the full Committee has reached a consensus on a draft of a particular topic or chapter of the Standards . . . before finalizing recommendations that will be sent to the Council.” Although we value the opportunity to submit written comments, and we have done so with respect to a number of the proposals, we believe that written comments alone, without the opportunity to discuss the proposals with Committee members, are inadequate. The limited efficacy of written comments has been most evident in the current discussion of the proposed revisions to the security of position standard. Many individuals (including current and past presidents of the AALS and Judges Guido Calabresi and Louis Pollak), as well as affiliate groups, have submitted strongly-worded written comments opposing the changes proposed in current drafts and disputing the accuracy of the subcommittee’s interpretation of the current standards. No one other than Committee members has been allowed to speak at Committee or subcommittee meetings, however, and to date there has been no response to the written comments or any evidence the comments have been seriously considered.

The effect of the limitations on participation at this stage of the development of the standards is compounded by the Committee’s apparent plan to send its recommendations to the Council without conducting public hearings, which seems inconsistent with the bylaws of the Council. Article X, Section 1(b) says the SRC:

...shall conduct an ongoing review of the Standards for Approval of Law Schools, . . . propose amendments and revisions thereto, solicit comments *and conduct public hearings* on proposed Standards, Interpretations and Rules, and make recommendations to the Council.

Given the extensive changes being contemplated in all of the Standards, early involvement, not only by the affiliates but by “all of the [Council’s] relevant constituencies,” is vital. We suggest that holding a public hearing after the provisions are finalized by the SRC does not reasonably satisfy the DOE regulation that requires accrediting agencies to ensure all relevant constituencies have a meaningful opportunity to provide input into the review. Meaningful participation in the process of review should include an opportunity to engage with Committee members on the issues being discussed *as they are* being discussed, not afterwards, as well as an opportunity for public hearings before any revisions are adopted and recommended to the Council.

We believe that given the extent of the changes contemplated and the controversy that surrounds some of the draft proposals, a much broader discussion and involvement of the various constituencies is needed. As our comments indicate, the process being followed by the SRC affords insufficient opportunity for meaningful input even by the affiliates who have been invited to attend the meetings, much less by the members of the wider community of legal educators. Such participation is critical, especially in the review and possible revision of the provisions dealing with security of position and academic freedom. The current proposals for revision of these and other standards adversely affect the ability of faculty to help shape the future of legal education through shared governance and the availability of sufficient numbers of full-time faculty to provide responsible legal education and guidance to law students. A revision of the standards for accreditation that is as radical as the de-regulatory model currently contemplated should be subject to a full and inclusive deliberative process, not only because the regulations require meaningful participation, but because the expertise available in the broader academic community will produce a better set of standards.

We thank you for your dedication to legal education and urge you to use your positions of leadership at the Council to ensure that the process used by the SRC and Council for the present critically important effort to review and revise the accreditation standards provides for more substantial participation by the Council affiliates and by other “relevant constituencies.”

Sincerely yours,



Raquel Aldana
Co-President



Steven Bender
Co-President

cc: Dean Donald J. Polden