

CONSULTANT'S MEMOS

In its report to the Council in 2008, the Section's Special Committee on Transparency recommended the following:

The Committee RECOMMENDS that, in appropriate circumstances, the Consultant's Office prepare a "Consultant's Memo" to assist schools in coming into compliance with the Standards.

The Accreditation Committee considered this recommendation and determined that it will, in appropriate circumstances, authorize the Consultant to issue Consultant's Memos. The goal of the memos are to guide schools in their efforts to comply with the Standards and occasionally provide explanations about Accreditation Committee policies on various issues of importance to the schools. In no event are these memos to serve as interpretations of the Standards or as new policy-making guidance to the schools or other interested parties. Their purpose is to be helpful to schools in understanding certain compliance requirements or processes utilized by the Committee to determine compliance with the Standards (i.e. to be "transparent" both in the sense of being open and being clear).

CONSULTANT'S MEMO 1 STANDARDS 503 & 802 AUGUST 2009

Introduction

Over the last several months there has been significant publicity about the plans of several law schools to initiate special admission programs for cohorts of entering students that do not require the use of the LSAT. We believe that all of these programs have been brought to the attention of the Accreditation Committee, and the Committee has had ongoing dialogue with the schools about these programs and their compliance with the Standards. Rule 25 does not permit me to release compliance information tied to individual schools, but I am able to provide general information about the approach taken by the Accreditation Committee and the Council in dealing with these special admissions programs.

Standard 503 in General

Standard 503 says in relevant part: **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.** Additionally, Interpretation 503-1 says: *A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall establish that such other test is a valid and reliable test to assist the school in assessing an applicant's capability to satisfactorily complete the school's educational program.*

Interpretation 503-1 makes it clear that the burden is on the law school to demonstrate the validity and reliability of any test or assessment methodology, other than the LSAT, that is used for law school admission purposes. I should note that “validity” and “reliability” are terms of art in the world of testing. Validity asks if the scores reflect what the test or assessment method is intended to measure. Reliability asks if repeated applications of the test or assessment method will produce substantially the same results. The LSAT has been determined to be a valid and reliable test for law school admission purposes. For each of the law schools proposing to use something other than the LSAT for admissions purposes, the Accreditation Committee has asked that the school provide certain information so that the Committee can determine if Standard 503 and Interpretation 503-1 are satisfied, and if not, whether a variance pursuant to Standard 80 is warranted. In each case where an admissions program implicating the concerns of Standard 503 has been brought to the attention of the Committee, the school has been asked to answer the following questions:

Is the law school using the SAT, ACT, or some test other than the LSAT for admissions purposes; and if so, what evidence does the school have that the test is “... a valid and reliable test to assist the school in assessing the applicant’s capability to satisfactorily complete the school’s educational program”?

Does the law school intend to seek and obtain a variance of Standard 503 from the Council?

The basic issue for the Accreditation Committee to decide under Standard 503 is whether admissions criteria being employed by the special admissions program are comparable to the admissions criteria being applied under the standard admissions program (i.e., the admissions program under which most incoming J.D. students are admitted). The assessment methods used should be shown to be valid for the intended purpose (i.e., to assess “the applicant’s capability of satisfactorily completing the school’s educational program”), by demonstrating that the performance of students admitted under the special criteria is, in general, about as good or better than that for students admitted under the standard criteria.

Once the Committee has received and reviewed the requested information, it will make determination as to compliance with Standard 503 and Interpretation 503-1. If the school satisfies the requirements, that ends the inquiry. If the school is not able to demonstrate compliance through the documentation and evidence it submits, it can either end the program or seek a variance from Standard 503 pursuant to Standard 802.

Variations under Standard 802

Standard 802 provides: **If the Council finds that the proposal is nevertheless consistent with the general purposes of the Standards, the Council may grant the variance, may impose conditions, and shall impose time limits it considers appropriate.** The relevant part of Standard 802 is the one relating to experimental programs. Interpretation 802-1 permits the granting of a variance for an experimental program based on all of the following:

- (1) Good reason to believe that there is a likelihood of success;
- (2) High quality experimental design;
- (3) Clear and measurable criteria for assessing the success of the experimental program;
- (4) Strong reason to believe that the benefits of the experiment will be greater than its risks; and
- (5) Adequately informed participation by students involved in the experiment.

The Accreditation Committee, in assessing the application for a variance, will consider (among other things) whether the program in question is one that might, with further evidence from experience, be found to be in compliance with Standard 503 and Interpretation 503-1. It is also important to keep in mind that under Standard 802 and Interpretation 802-5, variances are school-specific and based on the circumstances existing at the law school filing the request.

Committee and Council Determinations to Date

The Accreditation Committee, at its April 2009 meeting, voted to find one admissions program that uses a test other than the LSAT in its admissions process in compliance with Standard 503. The Committee also voted to recommend, and the Council at its June 2009 meeting voted to approve, variances to Standard 503 for several other law school admission programs. The applications for variances in these cases were found to comply with the requirements of Standard 802. The Committee has since recommended, and the Council approved at its July 2009 meeting, a variance for one additional school. Thus, there are currently five programs not relying on the LSAT for admissions purposes that have received variances to Standard 503. One school was able to demonstrate compliance with Standard 503 despite not using the LSAT because it has a joint degree program that has been using a different admissions test for many years. The school was able to present historical data showing that the students admitted using the other test performed as well as, or better than, students admitted who presented an LSAT score.

Each school that was granted a variance received a letter detailing the terms of the variance and the response required by the law school over the five-year period of the variance. Even though the

details of the variances are confidential pursuant to Rule 25, the critical part of the letter that each school received reads in part:

CONCLUSIONS:

- (1) *In accordance with Standards 503 and Interpretations 503-1 and 503-2, the Committee concludes that it has reason to believe the admissions criteria employed under the Program may be comparable to the admissions criteria applied by the Law School under its regular admissions program, and that the assessment methods used in connection with the Program may be valid and reliable for the purpose of assisting the Law School and applicants to assess the applicant's capability to successfully complete the Law School's educational program.*
- (2) *The Committee further concludes that the Program is consistent with the general purposes of the Standards, within the meaning of Standard 802.*
- (3) *The Committee further concludes that the Program is an experimental program based on all of the following:*
 - (a) *Good reason to believe that there is a likelihood of success;*
 - (b) *High quality experimental design;*
 - (c) *Clear and measurable criteria for assessing the success of the experimental program;*
 - (d) *Strong reason to believe that the benefits of the experiment will be greater than its risks; and*
 - (e) *Adequately informed participation by students involved in the experiment.*
- (4) *The Committee recommends that the Council grant a variance under Standard 802 and Interpretations 802-1(b) and 802-5 for five years to the Law School with respect to the Program, as presented by the Law School, and to the admissions criteria used in connection with the Program.*

RESPONSE REQUESTED:

In the event the Council grants a variance, the Committee requests that the Law School report by September 15 of each year regarding the following:

- (1) *For the most recent entering class, the number of students who applied for admission under the Program, the number of those students admitted, and the number who matriculated.*

- (2) *For the various student populations referred to in paragraph (a), the distribution, mean, median, and standard deviation of the following: SAT score; ACT score; UGPA; and LSAT scores for those applicants under the Program who took the LSAT and reported LSAT scores.*
- (3) *A report on the reliability of the assessment method used in connection with the Program.*
- (4) *A report on the performance (including means, medians, and standard deviations) of students who matriculated under the Program, with respect to first semester Law School GPA, first year Law School GPA, cumulative GPA, attrition, graduation rate, bar passage, and employment; and a comparison of such data with corresponding data for students who matriculated under the Law School's regular admission program.*
- (5) *A report on any other evidence or studies regarding the validity of the assessment method used in connection with the Program and the comparability of that assessment method with the assessment method used under the Law School's regular admission program.*
- (6) *A description of the regular admission program of the Law School then in effect and the assessment method used under it.*
- (7) *A description of the person or persons who performed the psychometric and other analyses reported to the Committee in connection with paragraphs (a)-(e), above.*
- (8) *A report on the impact of the Program on the Law School's obligation to comply with Standard 212(a), and a description of the actions undertaken by the Law School to assure compliance with Standard 212(a) in light of the implementation of the Program.*
- (9) *The information provided to applicants to the Law School under the Program regarding the experimental character of the admissions aspects of the Program.*
- (10) *The information provided to applicants to the Law School under the Program regarding the possible need for such students to take the LSAT in order to apply to another law school as either first-year or transfer students.*
- (11) *A report on the means by which the Law School complies with Standard 509 and Interpretation 509-1(1), concerning the publishing of basic consumer information regarding admissions, for students admitted to the Law School under the Program. Such consumer information shall include information on the LSAT scores of students admitted under the Program, both separately for such students and in the aggregate with all students admitted to the Law School.*

Summary

The Accreditation Committee urges any school that is considering implementing a special admission program not requiring the use of the LSAT to consider the analysis above, to give notice to the Consultant's Office, and to be prepared to address all the issues identified and provide the documentation and evidence outlined above.

CONSULTANT’S MEMO 2
H1N1 FLU AND STANDARD 304
SEPTEMBER, 2009

The Consultant’s Office is monitoring the H1N1 flu situation and will be developing policies and processes for schools to follow as quickly as necessary. For now, I am providing a link (<http://www.cdc.gov/h1n1flu/schools/>) to the guidance provided by the CDC for institutions of higher education and encourage you to consult and follow the guidance to the extent it applies to your school. In the CDC materials, there is advice about educating individual students who miss substantial time as well as what to do in case of a school closure. We do not endorse any particular approach, but you should be aware of this guidance. In addition, Associate Dean Aric Short of Texas Wesleyan has created a “wiki” which aggregates school materials on the subject and provides a platform for possible collaborative drafting. You can access the wiki by going to <http://lawdeansflu.wetpaint.com>.

At this stage, I can say the following:

1. If a student misses classes, but the school does not close, that situation should be covered by your current policies and procedures. The ABA Standards most likely will not be implicated in such a situation
2. If the school closes (either by university mandate, government requirement or board decision), the Standards could be implicated depending on the length of closure [see Standards 304(a) and (b)]. It is hoped that the school will be able to make up the lost class time in the weeks or months remaining in the semester or academic year. If this is impossible (lack of time remaining, other intervening factors, etc.), then we anticipate implementing an “emergency variance” procedure pursuant to Standard 802. This was done after Hurricane Katrina and worked well for the schools affected. The school affected would submit a variance request to the Consultant’s Office and be asked to provide all relevant information. The variance request would be processed as quickly as feasible and appropriate. The Consultant’s Office will be working over the next several weeks on a template for that submission, specifically delineating the kinds of information the school would be expected to provide. I can imagine that at a minimum the Accreditation Committee and Council would want to know the reasons for the closure, the reason why the classes cannot be made up and the steps the school has taken to ensure the delivery of the full course content for the semester. We will be in further communication once these procedures are put into place.

Our goal is similar to yours: to avoid disruption to the extent possible while respecting the health concerns of students, faculty, staff and the institution. The primary objective will be to get the educational program delivered to all students in a safe and secure environment, and at the same time, to make certain the Standards are followed.

I encourage you to contact the Consultant’s Office as soon as it is evident to you that disruption to the school calendar will likely occur.

CONSULTANT’S MEMO 3
STANDARD 302(a)(4), STANDARD 304, STANDARD 504, STANDARD 509
MARCH 2010

This memo addresses four rather technical Standards about which the Accreditation Committee believes law schools can benefit from guidance regarding compliance. The goal is to explain the requirements and the nuances and give examples of what will comply and what will not.

1. Standard 302(a)(4)- Other Professional Skills
2. Standard 304- Course of Study and Academic Calendar
3. Standard 504- Character and Fitness
4. Standard 509- Basic Consumer Information

1. Standard 302(a)(4) – Other Professional Skills

(a) A law school shall require that each student receive substantial instruction in:

(4) other professional skills generally regarded as necessary for effective and responsible participation in the legal profession; and

Interpretation 302-2 Each law school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet, using the strengths and resources available to the school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the areas of instruction in professional skills that fulfill Standard 302 (a)(4).

Interpretation 302-3 A school may satisfy the requirement for substantial instruction in professional skills in various ways, including, for example, requiring students to take one or more courses having substantial professional skills components. To be “substantial,” instruction in professional skills must engage each student in skills performances that are assessed by the instructor.

GUIDANCE: Standard 302(a)(4) has several components that must be met:

1) Every student must be *required* to receive substantial instruction in other professional skills generally regarded as necessary for effective and responsible participation in the legal profession. Thus, the fact that 98% of the student body takes a skills course is not sufficient; *every* student, as a requirement of graduation, must receive substantial skills instruction.

2) What is “*substantial instruction*” in other professional skills? Interpretation 302-3 includes a helpful explanation here: to be “substantial,” instruction in (other) professional skills must engage *each* student in skills *performances* that are *assessed* by the instructor. Thus, merely reading about and taking an exam on counseling and negotiation will not suffice; engaging in counseling and negotiation sessions by each student that are then assessed by the professor may. At least one solid credit (or the equivalent) of skills training is necessary. This can be accomplished through a class devoted specifically to skills (e.g., trial advocacy, advanced legal research, live client clinic) or a substantive course that includes substantial skills instruction (e.g., a corporations class where each student is required to draft substantial legal documents that are assessed by the instructor). Note that merely adding a few sessions (i.e., less than the equivalent of one or more credit hours) to what is otherwise a non-skills course is not sufficient.

3) No “*double dipping*,” e.g., a seminar paper used to satisfy the upper-class writing requirement [see 302(a)(3)] cannot also be used to satisfy the other professional skills requirement of 302(a)(4). The Accreditation Committee has interpreted “other” professional skills to mean in addition to the skills requirements set out in Standard 302(a). Thus, the typical first-year research and writing program will not satisfy 302(a)(4); however, the typical first-year research and writing program, with the addition of a substantial counseling and negotiation module, *may* satisfy 302(a)(4) through the additional module.

4) Schools have flexibility in determining what skills instruction to provide and are encouraged to be creative in developing programs of instruction in professional skills. (See Interpretation 302-2 for some examples.) What is required are skills that are generally regarded as necessary for effective participation in the profession, that can be “performed” by students and “assessed” by the instructor; so the options for schools are reasonably broad. Note that any one of the skills listed in 302-2 would suffice (assuming no double dipping). Interpretation 302-2 does *not* require instruction in each of the skills listed.

5) Schools have adopted a variety of formats to require substantial skills instruction, including: (1) a “cafeteria” plan—a list of courses that meet the skills requirement of 302(a)(4) and require each student to take at least one of the courses; or (2) requiring each student to take a specific skills course (or courses). To make certain students are on notice, schools should consider adding this to the posted list of graduation requirements.

2. Standard 304. COURSE OF STUDY AND ACADEMIC CALENDAR

(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.

Interpretation 304-6

A law school shall demonstrate that it has adopted and enforces policies insuring that individual students satisfy the requirements of this Standard, including the implementation of policies relating to class scheduling, attendance, and limitation on employment.

GUIDANCE: There are three distinct areas covered in Standard 304 -- class attendance, credit hour enrollment limitations and limitations on student employment -- that schools sometimes fail to address sufficiently and therefore may fall short of compliance with the Standard. Note that with each of these items, the School must demonstrate that it has *adopted* policies AND must provide evidence of their *enforcement*. (Interpretation 304-6.)

Standard 304(d). Schools establish minimum attendance requirements and generally publish them in the student academic handbook or similar publication. Enforcement of regular and punctual class attendance can be accomplished in a variety of ways such as sign-in sheets or seating charts (which the professor checks) or leaving it up to individual faculty to establish enforcement rules as long as these rules are communicated to students in the class *and* the rules are not inconsistent with the requirement of regular and punctual attendance. The burden is on the school to provide an attendance policy *and* demonstrate enforcement by some appropriate means. Site teams are instructed to report on both the school's attendance policies and how they are enforced.

Standard 304(e) is sometimes referred to as the "20 percent rule." Basically, what this Standard requires is that in any semester a student cannot enroll in coursework that, if successfully completed, would exceed 20 percent of the total coursework required for graduation. Thus, if a school required 85 hours of course credit for graduation, a student could not enroll in more than 17 course hours (20%) in any semester. As with attendance, the burden is on the school to demonstrate that it properly enforces the 20 percent rule. **IMPORTANT NOTE:** The Accreditation Committee has interpreted this as a strict limit; thus if a school required 88 course hours for graduation, 20 percent is 17.6 hours *not* 18 hours. In other words, "rounding up" is not permitted so, functionally, the limit in this example would be 17 credit hours per semester. Also, some schools have policies that meet the Standard. (e.g., "Students cannot enroll in more than 20 percent of the course hours needed for graduation. . . .") but then include a statement such as ". . . except as authorized by the associate dean." This exception, even under extraordinary circumstances, is treated by the Accreditation Committee as a violation of Standard 304(e).

Standard 304(f) limits student employment to no more than 20 hours per week for full-time students. Schools must demonstrate that they have adopted policies and enforcement mechanisms to limit employment as required by the Standard. Schools frequently accomplish this by asking full-time students to sign a statement (often as part of the registration process) attesting that they will not work more than 20 hours per week and by scheduling classes throughout the day, Monday through Friday. (Note that this requirement applies to full-time students only.)

3. Standard 504. CHARACTER AND FITNESS

(a) A law school shall advise each applicant that there are character, fitness and other qualifications for admission to the bar and encourage the applicant, prior to matriculation, to determine what those requirements are in the state(s) in which the applicant intends to practice. The law school should, as soon after matriculation as is practicable, take additional steps to apprise entering students of the importance of determining the applicable character, fitness and other qualifications.

GUIDANCE: Note that Standard 504 requires that the school advise each *applicant* that there are character and fitness qualifications for admission to the bar. In addition the school must encourage applicants, *prior to matriculation*, to determine what those fitness requirements are in the state(s) in which the applicant intends to practice. Since the Standard requires notifying each *applicant*, notifying only admitted students or each matriculant is *not* sufficient. Also, simply asking an applicant to answer various character and fitness questions or simply describing character and fitness requirements without *also* encouraging applicants to determine what the character and fitness requirements are for the state(s) in which they intend to practice is not sufficient to meet the requirements of Standard 504. The school must advise each applicant that there are character and fitness requirements *and* encourage each applicant to determine, prior to matriculation, what those requirements are in the state(s) in which the applicant intends to practice.

Schools tend to meet this requirement in a variety of ways: by including appropriate language on their application and/or by prominently and clearly posting this information on the admissions section of the school's Web site.

The following are examples, from Accreditation Committee Decision Letters, which describe how two schools have met the requirements of Standard 504:

“Applicants who intend to practice law should be aware that admission to the bar in all states involves character, fitness and other qualifications. Applicants are encouraged to determine what those requirements are in the state(s) in which they intend to practice by consulting the website of the National Conference of Bar Examiners at <http://www.ncbex.org/>.”

AND

“Law school graduates must become admitted to the bar of the State or Territory in order to practice law there. All jurisdictions have standards of character and fitness the candidates are required to meet in order to become admitted to the bar. Applicants therefore should consult the website of the bar examiners of the jurisdictions in which they wish to become admitted--[a link is provided to a resource for bar examiners' contact information and links to bar examiners' websites]--and [applicants] should also try to consult with an official of the bar as necessary to discover whether any past

conduct could keep them from becoming admitted to the bar upon graduation from law school.”

4. Standard 509. BASIC CONSUMER INFORMATION

A law school shall publish basic consumer information. The information shall be published in a fair and accurate manner reflective of actual practice.

Interpretation 509-1

The following categories of consumer information are considered basic:

(5) curricular offerings;

Interpretation 509-7

A law school that lists in its course offerings a significant number of courses that have not been offered during the past two academic years and that are not being offered in the current academic year is not in compliance with this Standard.

GUIDANCE: Schools are advised to check their Web sites and other areas where they list course offerings on a regular basis and remove listed courses that are not to be offered in the current year and have not been offered in the previous two academic year. Site teams are to report on the number of courses listed by the school and indicate how many of those (if any) are not being offered in the current year and have not been offered in either of the previous two years.