

**American Bar Association
Section of Legal Education and Admissions to the Bar
March 17, 2011**

At its meeting on February 14, 2011, the ABA House of Delegates concurred in changes to the ABA Standards and Rules of Procedure for Approval of Law Schools. The changes became effective immediately.

Standards for Approval of Law Schools

Standard 509. BASIC CONSUMER INFORMATION

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

(b) A law school must publicly disclose on its website, in a readable and comprehensive manner, its policies regarding the transfer of credit earned at another institution of higher education. The law school's transfer of credit policies must include, at a minimum:

(i) A statement of the criteria established by the law school regarding the transfer of credit earned at another institution; and

(ii) A list of institutions, if any, with which the law school has established an articulation agreement.

Rule of Procedure for Approval of Law Schools

Rule 10. Appeal of an Adverse Decision of the Council ~~Review by the House of a Council Decision to Grant or Deny Provisional or Full Approval or to Withdraw Approval~~

(a) A law school may appeal the following adverse decisions of the Council:

1. Denial of provisional approval;
2. Denial of full approval; or
3. Removal from list of approved law schools

(b) A law school may appeal the adverse decisions specified in Section (a) of this Rule, by filing with the Consultant a written appeal within 30 days after the date of the letter reporting the adverse decision of the Council to the law school.

(c) A written appeal must include:

1. Grounds for appeal; and
2. Documentation to support the appeal. The written appeal may not contain, nor may it refer to, any evidence that is not in the record before the Council.

(d) The grounds for an appeal must be based upon at least one of the following:

1. The decision was arbitrary and capricious; or
 2. The Council failed to follow the applicable Rules of Procedure and the procedural error prejudiced its decision.
- (e) On appeal, the law school has the burden of demonstrating that the Council's decision was arbitrary and capricious and not supported by the evidence on record, or inconsistent with the Rules of Procedure and that inconsistency prejudiced its decision.
- (f) Within 30 days of receipt of a written appeal, the Consultant will refer the appeal to the Appeals Panel.
- (g) The Appeals Panel shall consist of three people appointed by the Chair of the Council to serve a one year term beginning at the end of the Annual Meeting of the Section and continuing to the end of the next Annual Meeting of the Section. The Chair of the Council shall also appoint, at the same time and for the same term, three alternates to the Appeals Panel. All members of the Appeals Panel and alternates shall be (1) former members of the Council or Accreditation Committee or (2) experienced site team evaluators. The Appeals Panel and the panel of alternates will each include one legal educator, one judge or practitioner, and one public member. The Chair of the Council shall designate one member of the Appeals Panel to serve as its chair. Members of the Appeals Panel and alternates shall be:
1. Experienced and knowledgeable in the Standards, Interpretations and Rules of Procedure;
 2. Trained in the current Standards, Interpretations and Rules of Procedure at a retreat or workshop or by other appropriate methods within the last 3 years;
 3. Subject to the Section's Conflicts of Interest Policy, as provided in IOP 19; and
 4. Appointed for a one-year term and eligible to serve consecutive terms.

In the event that any member of the Appeals Panel is disqualified under IOP 19 or is otherwise unable to serve on a particular Appeal, that member of the Appeals Panel shall be replaced for that Appeal by the alternate from the same occupational category. In the event that neither the member nor designated alternate in the same occupational category is able to serve on a particular Appeal, the Chair of the Council shall appoint a second alternate, from the same occupational category, for that Appeal.

- (h) The Consultant shall inform the law school of the time, date, and place of the hearing at least thirty days in advance. The law school shall have a right to have representatives of the school, including legal counsel, appear and present written and/or oral statements to the Appeals Panel, subject to Sections (c) and (i) of this Rule. The hearing shall be transcribed by a court reporter and a transcript of the hearing shall be provided to the Council and the law school. The hearing will be held in closed session and not open to the public. The Council may establish additional rules of procedure for the hearing of appeals.

(i) The Appeals Panel shall consider the appeal at a hearing within forty-five days of having received its charge from the Consultant. The appeal shall be decided based on the record before the Accreditation Committee and the Council, the decision letters of those bodies and the documents cited therein, and transcripts from appearances by the law school. No new evidence shall be considered by the Appeals Panel. The Appeals Panel can take one of the following actions:

1. Affirm the adverse decision of the Council;
2. Reverse the adverse decision of the Council;
3. Amend the adverse decision of the Council; or
4. Remand the adverse decision of the Council for further consideration.

Within 30 days after the conclusion of the hearing, the Appeals Panel shall provide the Council and the law school with a written statement of the Appeals Panel's decision and the basis for that decision.

The decision of the Appeals Panel shall be effective upon issuance. If the Appeals Panel remands the adverse decision of the Council for further consideration by the Council, the Appeals Panel shall identify specific issues that the Council must address. The Council shall act in a manner consistent with the Appeal's panel decisions or instructions.

In implementing the decision of the Appeals Panel, the Council may impose any monitoring, reporting or other requirements on the law school consistent with the Appeals Panel decision and the Rules of Procedure.

(j) The Consultant shall give written notice to the president and dean of the law school of the Council's adoption and implementation of the Appeal Panel's decision.

(k) When the only remaining deficiency cited by the Council in support of an adverse decision is a law school's failure to meet the standards dealing with financial resources for a law school, the law school may request a review of new financial information that was not part of the record before the Council at the time of the adverse decision if all of the following conditions are met:

1. A written request for review is filed with the Consultant within 30 days after the date of the letter reporting the adverse decision of the Council to the law school;
2. The financial information was unavailable to the law school until after the adverse decision subject to the appeal was made; and
3. The financial information is significant and bears materially on the financial deficiencies that were the basis of the adverse decision by the Council.

(l) The request to review new financial information will be considered by the Council at its next meeting occurring at least 30 days after receipt of the request.

(m) The Consultant shall inform the president and dean of the law school of the Council's decision in writing.

(n) A law school may request review of new financial information only once and a decision made by the Council with respect to that review does not provide a basis for appeal.

Review by the House of a Council Decision to Grant or Deny Provisional or Full Approval or to Withdraw Approval

~~(a) A decision by the Council to grant or deny provisional or full approval, or to withdraw approval from a law school, becomes effective upon the decision of the Council unless the law school files with the House, in accordance with the provisions of House of Delegates Rule 45.9, a timely appeal from a Council decision to deny approval. After the meeting of the Council at which it decides to grant or deny provisional or full approval or withdraw approval, the Chairperson of the Council shall furnish a written statement of the Council action to the House. No action of the House is required unless the law school appeals the decision of the Council pursuant to House Rule 45.9. A decision of the Council to grant provisional or full approval is effective upon the action of the Council. A decision of the Council to deny or withdraw approval is effective upon the expiration of the period provided for filing a notice of appeal under Section 45.9(b)(1) if the law school fails to file a timely notice of appeal, or, if a timely notice of appeal is filed, upon concurrence by the House in the decision of the Council.~~

~~(b) An appeal to the House of a Council decision to deny provisional or full approval, or to withdraw approval from a law school, shall be conducted in accordance with the provisions of this Rule and the Rules of Procedure of the House. Filing an appeal with the House constitutes a waiver by the law school of any confidentiality of the record.~~

~~(c) A decision of the Council denying provisional or full approval may be referred back to the Council a maximum of two times. The decision of the Council following the second referral shall be final. A decision by the Council to withdraw approval from a law school is subject to a maximum of one referral back to the Council. The decision of the Council following that referral shall be final.~~

Rule 22. Teach-out Plan and Agreement and Law School Closure of a Law School

(a) A provisional or fully approved school must submit a teach-out plan for approval by the Accreditation Committee and Council upon occurrence of any of the following events:

1) The school notifies the consultant's office that it intends to cease operations entirely or close a separate location in which a student can earn all of the necessary credits to earn the J.D. degree;

2) The Accreditation Committee recommends or the Council acts to withdraw, terminate, or suspend the accreditation of the school;

3) The U.S. Secretary of Education notifies the Consultant's Office that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required;

4) A State licensing or authorizing agency notifies the Consultant's Office that an institution's license or legal authorization to provide an educational program has been or will be revoked.

(b) To be approved by the Accreditation Committee and Council, the teach-out plan must be in writing and must provide for the equitable treatment of its own students, specify additional charges that may apply, and provide for notification to the students of any additional charges.

(c) The Consultant's Office, in consultation with the Accreditation Committee leadership, may require a school to enter into a teach-out agreement as part of its teach-out plan.

(d) If the school enters into a teach-out agreement, either on its own accord or as required by the Consultant's Office, the agreement must be recommended by the Accreditation Committee and approved by the Council and must comply with all federal and state laws, including regulations of the United States Department of Education. At a minimum, the agreement must be with a law school approved by the Accreditation Committee and Council for this purpose, must provide students access to the program and services without requiring them to move or travel substantial distances, and must provide students with information about additional charges, if any.

(e) The teach-out institution must have the necessary experience, resources and support services to provide a program of legal education that is reasonably similar in content, structure and scheduling to that provided by the institution that is subject to any of the occurrences that are set out in (a)(1-4) above. Additionally, the teach-out institution must be financially stable and able to carry out its mission and meet all of its obligations to its students and must demonstrate that it can provide students access to its program and services without requiring them to move or travel substantial distances and that it will provide re-located students with information about additional charges, if any.

(f) If the Accreditation Committee recommends and the Council approve a teach-out plan that includes a program that is accredited by another recognized accrediting agency, the Consultant's Office must notify that accrediting agency of its approval.

(a) (g) In the event of closure or cessation of operation, An approved law school and its parent institution, if any, must agree to provide, in the event of closure or cessation of operation, an opportunity for currently enrolled students to complete their degrees under the terms of a closure plan which meets at least the conditions set out below and is found acceptable by the Accreditation Committee and the Council. As soon as the decision to close an approved law school is made, the institution shall make a public announcement of the decision and shall notify the Consultant, the appropriate State licensing authority and the U.S. Department of Education of its decision.

~~(b)~~ (h) Upon deciding or being required to close or cease operations, ~~T~~the law school shall promptly submit a closure plan, which shall be reviewed by the Accreditation Committee and must be approved by the Council.

~~(e)~~ (i) The conditions to be met by a closure plan shall include the following:

(1) The law school shall not thereafter admit or enroll any student (including transfer or non-degree candidates) who was not a student at the time when the decision to close is announced.

(2) The governing body of the institution shall take all necessary steps to retain degree-granting authority for sufficient time to allow completion of degrees by those students who are degree candidates at the time the decision to close is announced and who complete degree requirements either at the law school or at another ABA-approved law school in the normal period of time required for that student's course of study.

(3) The law school shall use its best efforts to assist students in transferring to, or acquiring visiting status at, another ABA-approved law school for completion of their degree requirements.

(4) Until the date of closing the law school shall maintain:

(i) an educational program that is designed to qualify its graduates for admission to the bar;

(ii) a library collection and services adequate to support the curriculum, either on-site or through arrangements with other law libraries in the immediate vicinity;

(iii) a faculty adequate to maintain a sound educational program;

(iv) an adequate administrative staff to handle student needs and recordkeeping along with support of the academic program; and

(v) ~~the law school shall maintain~~ its existing physical facilities unless prior approval of the Accreditation Committee is obtained.

~~(5) In the event that the school enters into a teach-out agreement with another law school, the school shall submit the teach-out agreement to the Accreditation Committee for its approval. As a condition for approval of the closure plan, the teach-out agreement must comply with applicable regulations of the Department of Education.~~

~~(d)~~ (j) If the school discontinues instruction or makes a decision to do so prior to the end of the normal period for completion of degrees by current students, then:

(1) The school shall take all reasonable steps to avoid closing during an academic year. If the closing occurs during an academic year, then the school shall make adequate arrangements for students to enroll in other law schools for that current year at no additional cost to the student.

(2) The school shall permit currently enrolled students to complete their degree requirements at other ABA-approved law schools by entering into “teach out” agreements with other law schools. Credit earned at other law schools shall be received as transfer credit toward the degree of the closing school.

(3) Students transferring credit back to the law school shall not be charged fees beyond a reasonable administrative fee for processing of records.

(4) The Consultant shall notify the Council of the school’s decision and the date at which the school intends to cease operations.

~~(e)~~ (k) The law school or the governing body of the institution shall make satisfactory arrangements for the continuation of legal representation undertaken during the operation of a law school skills training program.

~~(f)~~ (l) The governing body of the institution shall make arrangements for permanent retention and availability of student records.

(m) In the event a School closes without an approved teach-out plan or agreement, the Consultant’s office will work with the U.S. Department of Education and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

Rule 24. Complaints Reports Concerning Law School Non-Compliance with the Standards

(a) The United States Department of Education procedures and rules for the recognition of accrediting agencies require a recognized accrediting agency to have a process for the reporting of complaints against accredited institutions that might be out of compliance with the agency’s accreditation standards. This is the process for the Council of the Section of Legal Education and Admissions to the Bar and law schools with Juris Doctor programs approved by the Council.

(i) This process aims to bring to the attention of the Council, the Accreditation Committee, and the Consultant on Legal Education facts and allegations that may indicate that an approved law school is operating its program of legal education out of compliance with the Standards for the Approval of Law Schools.

(ii) This process is not available to serve as a mediating or dispute-resolving process for persons with complaints about the policies or actions of an approved law school. The Council, Accreditation Committee and the Consultant on Legal Education will not intervene with an approved law school on behalf of an individual with a complaint against or concern about action taken by a law school that adversely affects that

individual. The outcome of this process will not be the ordering of any individual relief for any person or specific action by a law school with respect to any individual.

(iii) If a law school that is the subject of a complaint is due to receive a regularly scheduled sabbatical site visit within a reasonable amount of time after the complaint is received, usually within one year, the complaint may be handled as part of the sabbatical site visit.

(b) Any person may file with the Consultant on Legal Education a written complaint report alleging non-compliance with the Standards for the Approval of Law Schools by an approved law school.

(i) Except in extraordinary circumstances, the complaint ~~This report~~ must be filed within one calendar year ~~of the person's learning~~ of the facts on which the allegation is based. Pursuit of other remedies does not toll this one calendar year limit.

(ii) ~~Reports-Complaints~~ must be in writing using the form "Complaint Against an ABA-Approved Law School" and must be signed. The form is available online and from the Office of the Consultant on Legal Education.

(iii) Anonymous ~~reports~~ complaints will not be considered.

(iv) A ~~report~~ complaint that has been resolved will not be subject to further review or reconsideration unless subsequent ~~reports~~ complaints about the school raise new issues or suggest a pattern of significant noncompliance with the Standards not evident from the consideration of the previously resolved ~~report~~ complaint.

(v) The Consultant or designee may, with the concurrence of the chairperson of the Accreditation Committee, defer the complaint proceedings if a party to the proceedings files or has filed a claim in another forum.

(c) ~~The report should contain as much information and detail as possible about the circumstances that led to the report. The report should cite the relevant Standards and Interpretations that are implicated by the report.~~ The Complaint form requests the following information:

(i) A clear and concise description of the nature of the complaint and any evidence upon which the allegation is based, with relevant supporting documentation. The description and supporting evidence should include relevant facts that support the allegation that the law school is out of compliance with the Standards referenced in the complaint.

(ii) The section(s) of the Standards alleged to have been violated and the time frame in which the lack of compliance is alleged to have occurred.

(iii) A description of the steps taken to exhaust the law school's grievance process and the actions taken by the law school in response to the complaint as a result of prescribed procedures.

(iv) Disclosure of any other channels the complainant is pursuing, including legal action.

(v) A release authorizing the Consultant's Office to send a copy of the complaint to the dean of the law school.

(d) ~~The report must include the following release language: "I authorize the Consultant on Legal Education to disclose this report and my identity to the law school discussed in the report."~~ If the person filing the ~~report~~ complaint is not willing to sign ~~such~~ a release authorizing the Consultant's Office to send a copy of the complaint to the dean of the law school, the matter will be closed. If the Consultant or designee concludes that extraordinary circumstances so require, the name of the person filing the ~~report~~ complaint may be withheld from the school.

(e) Process

(i) The Consultant or the Consultant's designee shall acknowledge receipt of the ~~report~~ complaint within 14 days of its receipt.

(ii) The Consultant or designee shall determine whether the ~~report~~ complaint alleges facts that raise issues relating to an approved law school's compliance with the Standards. This determination shall be made within six weeks of receiving the ~~report~~ complaint. If the Consultant or designee concludes that the ~~report~~ complaint does not raise issues relating to an approved school's compliance with the Standards, the matter will be closed.

(iii) If the Consultant or designee determines that the ~~report~~ complaint ~~does~~ may raise such issues, the ~~report~~ complaint shall be sent to the school and a response requested. The Consultant or designee ordinarily will request the dean of the school to respond within 30 days.

(iv) If the school is asked for a response to the ~~report~~ complaint, the Consultant or designee will review that response within 45 days of receiving it. If the response establishes that the school is not out of compliance with respect to the matters raised in the ~~report~~ complaint, the Consultant or designee will close the matter.

(v) If the school's response does not establish that it is operating in compliance with the Standards on the matters raised by the ~~report~~ complaint, the Consultant or designee, with the concurrence of the chairperson of the Accreditation Committee, ~~will~~ may appoint a fact finder to visit the school to investigate the issues raised by the ~~report~~ complaint and the school's response. The ~~report~~ complaint, school response, and fact-finder's report, if any, shall be referred to the Accreditation Committee and considered in the same manner as ~~reports~~ complaints and reviews that fall under Rule 13(a) of the Rules of Procedure.

(vi) The person making the ~~report~~ complaint will be notified promptly whether the matter was concluded under (ii), (iv) or (v) above. The person filing the ~~report~~ complaint will not be provided with a copy of the school's response, if any, and will not receive any further report on the matter.

(f) There is no appeal to the Council or the Accreditation Committee, or elsewhere in the American Bar Association, in connection with a conclusion by the Consultant or designee that a ~~report~~ complaint does not raise issues under the Standards.

(g) To ensure the proper administration of the Standards and this ~~report~~ complaint process, a subcommittee of the Accreditation Committee shall periodically review the written ~~reports~~ complaints received in the Consultant's Office and their disposition. The subcommittee shall periodically report to the Committee on this process. The Consultant's Office shall keep a record of these ~~reports~~ complaints for a period of ten years.

Commentary

At its meeting on February 14, 2011, the ABA House of Delegates concurred in changes to Standard 509 and Rules 10, 22, and 24 of the *Standards and Rules of Procedure for Approval of Law Schools*. These changes, with the exception of those to Rule 24, are required to bring the Section into compliance with United States Department of Education ("DOE") regulations. The changes to Standard 509 and Rules 10 and 24 were circulated for Notice and Comment on June 22, 2010 and were approved by the Council at its meeting in August 2010. The changes to Rule 22 were circulated for Notice and Comment on September 9, 2010 and were approved by the Council at its meeting of December 3 - 4, 2010.

1. Standard 509 Basic Consumer Information

The amendments to the Higher Education Opportunity Act include a requirement that accrediting agencies recognized by DOE, such as the Council of the Section of Legal Education, confirm that institutions accredited by the agency have transfer of credit policies. These policies, adopted by the school, must be publicly disclosed and must include a statement of the criteria established by the school regarding the transfer of credit earned at another institution of higher education.

2. Rule 10 Appeal of an Adverse Decision of the Council

In August 2010, the House of Delegates approved changes to House Rule 45.9 that were mandated by a new DOE regulation affecting appeals from decisions of the Council denying provisional or full approval of a law school or removing a school from the list of approved law schools. The proposed changes to Rule 10 establish an appeals process that complies with the new DOE regulations and comports with House Rule 45.9 as amended by the House of Delegates.

3. Rule 22 Teach Out Plan and Agreement and Closure of a Law School

Under the new DOE regulations, if a school loses its accreditation, loses its Title IV lending authority, ceases operation on its own accord, or if its state license to operate is revoked, the school must develop a teach-out plan and may be required to enter into a teach-out agreement. A teach-out plan is a written plan developed by the school that provides for the equitable treatment of its own students in the event it is subject to one or more of the four "triggers" listed above. A

teach-out agreement is a written agreement between institutions that provides for equitable treatment of students in the event that one of the institutions is subject to one or more of the triggers listed above. The amendments to Rule 22 comply with the new DOE regulations.

4. Rule 24 Complaints Concerning Law School Non-Compliance with the Standards

In 2009, the chair of the Accreditation Committee appointed a Rule 24 Subcommittee to assist in its responsibility to periodically review complaints received in the Consultant's Office and to review the procedures for filing said complaints. The Subcommittee, led by Professor Peter Joy of Washington University School of Law, proposed revisions to Rule 24, which were approved by the full Accreditation Committee and submitted to the Council for approval. The changes clarify the procedures for filing complaints with the Consultant's office—a process required by the Department of Education.