

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

MEMORANDUM

TO: Interested Persons and Entities

FROM: Gregory G. Murphy, Council Chairperson  
Barry A. Currier, Managing Director of Accreditation and Legal Education

DATE: March 24, 2017

SUBJECT: ABA Standards for Approval of Law Schools Matters for Notice and Comment

---

At its meeting held on March 9-11, 2017, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment the following proposed revisions to the *ABA Standards and Rules of Procedure for Approval of Law Schools*:

- Standard 403(a)
- Standard 503

The proposed revisions and accompanying explanations are attached and published on the Section's website:

[http://www.americanbar.org/groups/legal\\_education/resources/notice\\_and\\_comment.html](http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html).

We solicit and encourage written comments on the proposed changes listed above by e-mail. Written comments should be submitted no later than Monday, July 10, 2017.

A hearing on the proposed changes is scheduled for Thursday, July 13, 2017, at 1 p.m. The hearing will be held at American Bar Association (321 N. Clark St.).

Please address written comments on the proposals and requests to speak at or attend the hearing to JR Clark, [jr.clark@americanbar.org](mailto:jr.clark@americanbar.org), by Monday, July 10, 2017.

## Standard 403. Instructional Role of Faculty

Based on a proposal from the Standards Review Committee, the Council agreed to circulate for notice and comment proposed changes to Standard 403(a) that restate a law school's obligations with respect to the teaching done by full-time faculty.<sup>1</sup> The current Standard was adopted in 2014.<sup>2</sup>

Currently, the Standard requires that the full-time faculty do two things: (1) teach substantially all the first-year (or one-third) of the course of study; and (2) teach more than one-half of the total credit hours offered by the law school in a year or more than two-thirds of student contact hours generated in that year.

The proposal would retain the first requirement—that substantially all the first third of the course of study be taught by full-time faculty—but would eliminate the second requirement.

The proposal would give schools more flexibility to develop class schedules that serve the students' interests and fit well with the variety of full-time and part-time teaching resources available to the school.

Current Standard 403(b) remains unchanged and requires that law schools take appropriate steps to ensure that teaching at the law school is effective.

The Council accepts the continuing need for the requirement relating to the first-year experience.

<sup>1</sup> A "full-time faculty member" is defined in the Definitions section of the Standards and provides that "[f]ull-time faculty member" means an individual whose primary professional employment is with the law school, who is designated by the law school as a full-time faculty member, who devotes substantially all working time during the academic year to responsibilities described in Standard 404(a), and whose outside professional activities, other than those described in Standard 404(a), if any, do not unduly interfere with his or her responsibilities as a full-time faculty member."

<sup>2</sup> The Standard prior to the one adopted in 2014 provided as follows:

### Standard 403. Instructional Role of Faculty

- (a) The full-time faculty shall teach the major portion of the law school's curriculum, including substantially all of the first one-third of each student's coursework.
- (b) A law school shall ensure effective teaching by all persons providing instruction to students.
- (c) A law school should include experienced practicing lawyers and judges as teaching resources to enrich the educational program. Appropriate use of practicing lawyers and judges as faculty requires that a law school shall provide them with orientation, guidance, monitoring, and evaluation.

### Interpretation 403-1

The full-time faculty's teaching responsibility will usually be determined by the proportion of student credit hours taught by full-time faculty in each of the law school's programs or divisions (such as full-time, part-time evening study, and part-time weekend study). For purposes of Standard 403(a), a faculty member is considered full-time if that person's primary professional employment is with the law school.

### Interpretation 403-2

Efforts to ensure teaching effectiveness may include: a faculty committee on effective teaching, class visitations, critiques of videotaped teaching, institutional review of student evaluation of teaching, colloquia on effective teaching, and recognition of creative scholarship in law school teaching methodology. A law school shall provide all new faculty members with orientation, guidance, mentoring, and periodic evaluation.

That year is important in creating a sense of academic community among students and the faculty. The role of full-time faculty in creating that community is critical and the interaction between law students and full-time faculty that should take place during that year is significant in providing a foundation for future learning.

Moreover, the Council appreciates the link between the input requirement of the amount of teaching done by full-time faculty and the more substantive requirements in Standard 404(a)(1)-(2) that call on the full-time faculty to be available to students outside of class, advise students about their law studies, and create a vibrant and meaningful atmosphere for the study of law, the legal system, and the role of law in our society. As such, the full-time faculty is particularly critical in the first year as the culture and relationships between students and their professors are being established.

The elimination of the second sentence in current Standard 403(a), however, enables schools to have more opportunity to innovate and be creative in how instruction is delivered outside of the first-year, provided that a law school satisfies the performance standard of ensuring effective teaching called for in Standard 403(b). A law school could very well decide that having full-time faculty teach most, or even substantially all, of the last two-thirds of law school is the most desirable course. But, on the other hand, schools may also decide, through innovative methods or otherwise, that the full-time faculty can carry out its responsibilities for the curriculum and for the effectiveness of teaching without themselves having to do the teaching. Interpretation 403-1 offers a non-exclusive list of ways that can be done.

Insuring effective teaching is much more consistent with the outcome measures approach being integrated into the Standards. Counting courses or credit hours taught by full-time faculty, while not irrelevant to the quality of a law school's program and the student experience, is much more of an input measure. Many law schools are creatively bringing into their communities and curricula members of the profession, the judiciary, and colleagues from elsewhere in the university who can add to the richness of the student experience. This proposal acknowledges that giving schools more flexibility can improve the quality of the law school's program, so long as the full-time faculty, together with the law school administration, properly manage and oversee the curriculum and teaching in the law school.

#### Redlined to Current Standard

### **Standard 403. INSTRUCTIONAL ROLE OF FACULTY**

- (a) The full-time faculty shall teach substantially all of the first one-third of each student's coursework. ~~The full-time faculty shall also teach during the academic year either (1) more than half of all of the credit hours actually offered by the law school, or (2) two-thirds of the student contact hours generated by student enrollment at the law school.~~
- (b) A law school shall ensure effective teaching by all persons providing instruction to its students.

***Interpretation 403-1***

*Efforts to ensure teaching effectiveness may include: orientation, guidance and mentoring for new faculty members; a faculty committee on effective teaching; class visits; critiques of videotaped teaching; institutional review of student course evaluations; colloquia on effective teaching; and recognition and use of creative scholarship in law school teaching methodology.*

Clean Copy

**Standard 403. INSTRUCTIONAL ROLE OF FACULTY**

- (a) The full-time faculty shall teach substantially all of the first one-third of each student's coursework.
- (b) A law school shall ensure effective teaching by all persons providing instruction to its students.

***Interpretation 403-1***

*Efforts to ensure teaching effectiveness may include: orientation, guidance and mentoring for new faculty members; a faculty committee on effective teaching; class visits; critiques of videotaped teaching; institutional review of student course evaluations; colloquia on effective teaching; and recognition and use of creative scholarship in law school teaching methodology.*

## **Standard 503. Admission Test**

The Council is circulating for notice and comment changes to Standard 503 that would result in the following changes to the current standard: [1] establish a process by which law school admission tests other than the Law School Admission Test (LSAT) offered by the Law School Admissions Council (LSAC) can be certified as valid and reliable law school admission tests that all law schools can use to meet the requirements of Standard 503; [2] eliminate Interpretation 503-1, which currently allows a law school to demonstrate that a test other than the LSAT (or presumably any other test that would be certified by the Council under the proposed new approach) is a valid and reliable law school admission test for that school; [3] reconfirm the Council's prior action to eliminate the "safe harbor" provision of current Interpretation 503-3; and [4] make clear that every law school will have to require at least the LSAT or another certified test as part of its admissions process and that no variances will be granted to this requirement.

The matter of whether a law school admission test should be required by the Standards and, if so, which test or tests should be allowable has proved to be a particularly difficult matter for the Council. The Council has considered the range of possibilities: [1] require every applicant to have an LSAT score; [2] remove Standard 503 from the Standards and allow schools to develop an admission process that works for them, so long as it results in an acceptable rate of attrition and bar passage; and [3] something between these two extremes.

The Council is circulating for notice and comment a proposal that retains the requirement of a law school admission test in the Standards. This requirement is important in enforcing the requirement of Standard 501 that a "law school shall not admit an applicant who does not appear capable of satisfactorily completing its program of legal education and being admitted to the bar." Further, an admission test is helpful to schools in evaluating applicants and most schools, even if the admission test requirement was removed from the Standards, would continue to require such a test. Finally, the requirement of a test score and requiring schools to publish information about the test score profile of their entering classes is a helpful data point for students considering the study of law and where to apply/attend.

The Council further concluded that the prospect of retaining current Interpretation 503-1 and allowing schools to do their own studies of the validity and reliability of law school admission tests other than the LSAT was unworkable. It would impose costs and burdens on schools and on the accreditation process that can be avoided by the creation of a national certification process run by the Council. While it removes some flexibility and opportunity to innovate from individual law schools, it also is likely to expand the number of tests that all law schools will be able to use as admission tools.

On balance, the Council concluded that the proposal that it is circulating for notice and comment is, perhaps, the optimal way to work through a difficult issue. The Council encourages comments on this proposal and the general issue that has been outlined here.

Redlined to Current Standard

**Standard 503. ADMISSION TEST**

- (a) A law school shall require each applicant for admission as a first-year J.D. degree student to take ~~an valid and reliable~~ admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's program of legal education. In making admissions decisions, a law school shall use the test results in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test.
- (b) A law school shall not use an admission test other than the Law School Admission Test sponsored by the Law School Admission Council unless the test has been determined by the Council to be a valid and reliable test, pursuant to a process that the Council shall adopt and publish, and to which it shall adhere. The process adopted by the Council shall be the only method through which admission tests shall be determined to be valid and reliable and variances may not be sought by law schools under Rule 33 that are inconsistent with this Standard.
- (c) A law school shall publish information regarding which tests are used in assessing an applicant's capability of satisfactorily completing the school's program of legal education.

*Interpretation 503-1*

~~A law school that uses an admission test other than the Law School Admission Test sponsored by the Law School Admission Council shall demonstrate 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 program of legal education.~~

*Interpretation 503-2*

~~This Standard does not prescribe the particular weight that a law school should give to an applicant's admission test score in deciding whether to admit or deny admission to the applicant.~~

*Interpretation 503-3*

- (a) ~~It is not a violation of this Standard for a law school to admit no more than 10% of an entering class without requiring the LSAT from:~~
- ~~(1) Students in an undergraduate program of the same institution as the J.D. program; and/or~~
  - ~~(2) Students seeking the J.D. degree in combination with a degree in a different discipline.~~
- (b) ~~Applicants admitted under subsection (a) must meet the following conditions:~~
- ~~(1) Scored at or above the 85<sup>th</sup> percentile on the ACT or SAT for purposes of subsection (a)(1) or for purposes of subsection (a)(2), scored at or above the 85<sup>th</sup> percentile on the GRE or GMAT; and~~
  - ~~(2) Ranked in the top 10% of their undergraduate class through six semesters of academic work, or achieved a cumulative GPA of 3.5 or above through six semesters of academic work.~~

Clean Copy

**Standard 503. ADMISSION TEST**

- (a) A law school shall require each applicant for admission as a first-year J.D. degree student to take an admission test to assist the school and the applicant in assessing the applicant's capability of satisfactorily completing the school's program of legal education. In making admissions decisions, a law school shall use the test results in a manner that is consistent with the current guidelines regarding proper use of the test results provided by the agency that developed the test.
- (b) A law school shall not use an admission test other than the Law School Admission Test sponsored by the Law School Admission Council unless the test has been determined by the Council to be a valid and reliable test, pursuant to a process that the Council shall adopt and publish, and to which it shall adhere. The process adopted by the Council shall be the only method through which admission tests shall be determined to be valid and reliable and variances may not be sought by law schools under Rule 33 that are inconsistent with this Standard.
- (c) A law school shall publish information regarding which tests are used in assessing an applicant's capability of satisfactorily completing the school's program of legal education.