

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

MEMORANDUM

TO: Interested Persons and Entities

FROM: Maureen A. O'Rourke, Council Chair
Barry A. Currier, Managing Director of Accreditation and Legal Education

DATE: November 17, 2017

SUBJECT: ABA Standards and Rules of Procedure – Matters for Notice and Comment

At its meeting held on November 3-4, 2017, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to the following Standards and Rules of Procedure of the *ABA Standards and Rules of Procedure for Approval of Law Schools*:

- Standard 205. Non-Discrimination and Equality of Opportunity
- Standard 206. Diversity and Inclusion
- Standard 303. Curriculum
- Standard 304. Simulation Courses, Clinics, and Field Placements
- Standard 503. Admissions Test
- Standard 601. Library and Information Resources, General Provisions
- Rule 3: Accreditation Committee Responsibility and Authority
- Rule 5: Site Evaluations
- Rule 10: Notice of Accreditation Decision by Other Agency
- Rule 14: Actions on Determinations of Noncompliance with a Standard
- Rule 22: Council Consideration of Recommendation of Accreditation Committee
- Rule 23: Council Consideration of Appeal from Accreditation Committee Decision
- Rule 24: Evidence and Record for Decision
- Rule 25: Decisions by the Council
- Rule 34: Teach-Out Plan
- Rule 52: Disclosure of Decision Letters

The Council also approved for Notice and Comment Standard 306 (Distance Education) and proposed revisions to the Standards and Rules of Procedure necessary for the reorganization of the Accreditation Project. These items will be circulated for Notice and Comment separately.

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.

We solicit and encourage written comments on the proposed changes listed above by e-mail. A hearing on the proposed changes is scheduled for Thursday, April 12, at 1 p.m. The hearing will be held at The Westin Georgetown (2350 M Street NW, Washington, DC 20037).

Please address written comments on the proposals and requests to speak at or attend the hearing to JR Clark, jr.clark@americanbar.org, by Monday, April 2, 2018.

Requests to speak at the hearing received after April 2, 2018, will be accommodated if possible. Written comments received after April 2, 2018, may not be included in the materials considered by the Standards Review Committee at their April 13-14, 2018 meeting.

Standard 205. Non-Discrimination and Equality of Opportunity

Explanation of Changes:

On February 13, 2015, the Standards Review Committee conducted an Information Session at which individuals concerned with Standard 205 provided statements. In response to the statements offered at that session and comments received during the Comprehensive Review of the Standards, the Standards Review Committee proposed to the Council at its June 2015 meeting that the category of “gender identity” be added to the list of groups for which a law school shall not use admission policies or other action to preclude admission, and for which a law school shall not discriminate against students, faculty, or staff. In addition, in June the Committee recommended adding the phrase “or any other characteristic not relevant to the applicant’s ability to satisfactorily complete the school’s program of legal education” to 205(a) and the phrase “or any other characteristic not relevant to the law school’s capability to operate in compliance with the Standards and carry out its program of education.”

The feedback received from the Council indicated that the phrases expanding the Standard beyond any groups specifically named were vague and would be difficult for law schools to implement. They were removed from the recommendation and a new proposal was offered to the Council in October 2015 that simply added “gender identity” to the list of groups. The proposal was approved by the Council for Notice and Comment. A hearing was held on January 29, 2016, and only favorable comments were received. The Council accepted the proposal, but no further action was taken pending changes proposed to Standard 206.

In preparing Standard 206 for presentation to the Council, the Committee has taken a new look at Standard 205 to ascertain if any additional changes were needed. It was noted that the term “ethnicity” appeared in Standard 206 but not in Standard 205. It has been added. It also was noted that, while the Standard is called “Non-Discrimination and Equality of Opportunity,” the term “non-discrimination” does not appear in 205(a). The phrase “equality of opportunity” does appear in 205(b). Standard 205(a) has been re-worded to use the phrase “a policy of non-discrimination.”

It also was observed that, while the Standard requires that a law school adheres to a policy of non-discrimination and a policy to foster and maintain equality of opportunity, it did not require that a law school make those policies available to potential students, faculty, or staff. Both Standards 205(a) and 205(b) have been amended to require that law schools “adopt, publish, and adhere to” such policies. An interpretation has been added stating that a law school meets this requirement if the parent institution adopts and publishes appropriate policies.

Redlined Draft:

Standard 205. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY

(a) A law school shall ~~not adopt, publish, and adhere to a policy of non-discrimination that prohibits the use of~~ admission policies or ~~take other actions~~ to preclude admission of applicants or

retention of students on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability.

(b) A law school shall adopt, publish, and adhere to policies that foster and maintain equality of opportunity for students, faculty, and staff, without discrimination or segregation on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability.

(c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (1) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (2) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but may not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.

(d) Non-discrimination and equality of opportunity in legal education includes equal employment opportunity. A law school shall communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement services the school's firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, and disability in regard to hiring, promotion, retention, and conditions of employment.

Interpretation 205-1

A law school may not require applicants, students, faculty or employees to disclose their sexual orientation, although they may provide opportunities for them to do so voluntarily.

Interpretation 205-2

So long as a school complies with Standard 205(c), the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs. For example, Standard 205(c) does not require a school to recognize or support organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school.

Interpretation 205-3

Standard 205(d) applies to all employers, including government agencies, to which a school furnishes assistance and facilities for interviewing and other placement services. However, this Standard does not require a law school to implement its terms by excluding any employer unless that employer discriminates unlawfully.

Interpretation 205-4

The denial by a law school of admission to a qualified applicant is treated as made upon the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability if the basis of denial relied upon is an admission qualification of the school that is intended to prevent the admission of applicants on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability though not purporting to do so.

Interpretation 205-5

The denial by a law school of employment to a qualified individual is treated as made upon the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability if the basis of denial relied upon is an employment policy of the school that is intended to prevent the employment of individuals on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability though not purporting to do so.

Interpretation 205-6

The requirements stated in Standards 205(a) and 205(b) that a law school adopt and publish policies regarding non-discrimination and equality of opportunity may be satisfied through the adoption and publication of appropriate policies by a parent institution.

Standard 206. Diversity and Inclusion

Explanation of Changes:

On February 13, 2015, the Standards Review Committee conducted an information session at which individuals concerned with Standard 206 provided statements. In response to the statements offered at that session, and comments received during the Comprehensive Review of the Standards, the Committee recommended two changes to the Standard for the Council to consider at its June 2015 meeting. First, the Committee recommended that Standard 206 itself not include a list of those groups to which it applied, but focus on the broader purpose of the Standard, which is to promote cross-cultural understanding, help break down stereotypes, and enable students to understand persons of different backgrounds. The specific categories were placed in Interpretation 206-2 and changed from “gender, race, and ethnicity” to “race, color, religion, national origin, gender, sexual orientation, age, disability, and gender identity.” The Interpretation also listed the groups “without limitation” so that law schools would not consider that they should be limited to the stated groups in applying the Standard.

The feedback received from the Council was twofold. First, members were concerned about the removal of the phrase “providing full opportunities for the study of law and entry into the profession by member of underrepresented group, particularly racial and ethnic minorities,” and the phrase “a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.” Second, the Council was concerned that the phrase “without limitation” was vague and would be difficult for law schools to implement.

In response to these concerns, the Committee offered a new proposal to the Council in December 2015. The revision restored the wording deleted in the previous proposal, while still setting the stage for providing a list of groups that should be considered by a school when creating an environment that welcomes diversity. The revised proposal required a school to demonstrate by concrete action (1) a commitment to providing an environment in which diversity and inclusion are welcomed and embraced; (2) a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities; and (3) a commitment to having a faculty, staff, and student body that is diverse with respect to gender, race, and ethnicity. Interpretation 206-1 was unchanged. Interpretation 206-2 provided a list of the specific groups that must be considered by a law school when creating an environment that is welcoming. Interpretation 206-3 took the language of the former Interpretation 206-2 in setting out how a school demonstrated compliance. For members of underrepresented groups, the methods remain the same (the admission process, special recruitment efforts, and programs that assist in meeting the special academic and financial needs of many of these students). For an overall commitment to diversity and inclusion, there were no required methods listed, though it was noted that they might include periodic assessments, etc. This proposal was approved by the Council for Notice and Comment. A hearing was held on January 29, 2016. Some of the groups offering comments believed that the proposed language did not require concrete action by law schools since the list of groups was contained in an Interpretation.

While the Committee believed that the inclusion of the list of categories in an Interpretation would be as effective as including them in the Standard, it recognized the concern of those offering comments and recommended moving them into the Standard. The revised Standard offered to the Council called for a law school to demonstrate by concrete action a commitment to (a) providing an environment that is diverse and inclusive with respect to characteristics that include race, color, religion, national origin, gender, gender identity, sexual orientation, age and disability; and (b) providing full opportunities for the study of law and entry into the profession by members of members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity. The Council decided that no action should be taken on the Standard 206 until additional consideration was made.

In 2017, the Council asked the Committee to again consider changes to Standard 206. The Committee now offers a proposal that it believes will satisfy those who are concerned with retaining important parts of the current Standard 206, while speaking to the interests of those groups who seek to be included in the Standard.

The current proposal retains the wording of the Standard calling for a commitment to providing full opportunities for the study of law and entry to the profession by members of underrepresented groups. It then calls for a commitment to having a student body, faculty, and staff that are diverse with respect to gender, race, and ethnicity. Finally, it calls for a commitment to providing an environment that is inclusive with respect to race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, and disability. Interpretation 2016-1 is unchanged. Interpretation 206-2 speaks to diversity and is unchanged. Interpretation 206-3 is added to define

inclusive as intending to “connote an environment that is welcoming” to individuals in the named groups. It also offers possible ways that the commitment could be demonstrated.

Redlined Draft:

Standard 206. DIVERSITY AND INCLUSION

A law school shall demonstrate by concrete action a commitment to:

- (a) ~~Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by p~~Providing full opportunities for the study of law and entry to the profession by members of underrepresented groups, particularly racial and ethnic minorities; ~~and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.~~
- (b) ~~Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by h~~Having a student body, faculty, and staff that are diverse with respect to gender, race, and ethnicity; ~~and-~~
- (c) Providing an environment that is inclusive with respect to race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, and disability.

Interpretation 206-1

The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity, or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 206. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 206 by means other than those prohibited by the applicable constitutional or statutory provisions.

Interpretation 206-2

In addition to providing full opportunities for the study of law and the entry into the legal profession by members of underrepresented groups, the enrollment of a diverse student body promotes cross-cultural understanding, helps break down racial, ethnic, and gender stereotypes, and enables students to better understand persons of different backgrounds. The forms of concrete action required by a law school to satisfy the obligations of this Standard are not specified. If consistent with applicable law, a law school may use race and ethnicity in its admissions process to promote diversity ~~and inclusion~~. The determination of a law school's satisfaction of such obligations is based on the totality of the law school's actions and the results achieved. The commitment to providing full educational opportunities for members of underrepresented groups typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, and programs that assist in meeting the academic and financial needs of many of these students and that create a favorable environment for students from underrepresented groups.

Interpretation 206-3

As used in Standard 206(c), an inclusive environment is intended to connote an environment that is welcoming with respect to individuals regardless of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability. While the forms of concrete action required to demonstrate a law school's commitment to an inclusive environment under this Standard are not specified, they may include periodic assessment of progress towards having an inclusive environment; the portrayal of the law school as inclusive to potential students, faculty, and staff; support of affinity groups; provision of mentoring opportunities; and support of pro bono and externship opportunities that reflect a commitment to an inclusive environment. The determination of a law school's satisfaction of such obligations is based on the totality of the law school's actions.

Standard 303. Curriculum

Standard 304. Simulation Courses, Clinics, and Field Placements

Explanation of Changes:

The proposed changes move the general definition of what an experiential course must contain from Standard 303(a)(3) to Standard 304(a). Next, the duplicative language defining simulation, clinic, and field placement in Standard 304 is deleted. Finally, the cross references to the Standards in the Interpretations are changed to reflect the recommended changes.

Redlined Draft:

Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

- (1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;
- (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and
- (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement, as defined in Standard 304. To satisfy this requirement, a course must be primarily experiential in nature and must:
 - (i) ~~integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;~~

- ~~(ii) — develop the concepts underlying the professional skills being taught;~~
- ~~(iii) — provide multiple opportunities for performance; and~~
- ~~(iv) — provide opportunities for self evaluation.~~

(b) A law school shall provide substantial opportunities to students for:

- (1) law clinics or field placement(s); and
- (2) student participation in pro bono legal services, including law-related public service activities.

Interpretation 303-1

A law school may not permit a student to use a course to satisfy more than one requirement under this Standard. For example, a course that includes a writing experience used to satisfy the upper-class writing requirement [see 303(a)(2)] cannot be counted as one of the experiential courses required in Standard 303(a)(3). This does not preclude a law school from offering a course that may count either as an upper-class writing requirement [see 303(a)(2)] or as a simulation course [see ~~303(a)(3) and 304(a) and 304(b)]~~ provided the course meets all of the requirements of both types of courses and the law school permits a student to use the course to satisfy only one requirement under this Standard.

Interpretation 303-2

Factors to be considered in evaluating the rigor of a writing experience include the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student's written products, and the number of drafts that a student must produce for any writing experience.

Interpretation 303-3

Rule 6.1 of the ABA Model Rules of Professional Conduct encourages lawyers to provide pro bono legal services primarily to persons of limited means or to organizations that serve such persons. In addition, lawyers are encouraged to provide pro bono law-related public service. In meeting the requirement of Standard 303(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporate the priorities established in Model Rule 6.1. In addition, law schools are encouraged to promote opportunities for law students to provide over their law school career at least 50 hours of pro bono service that complies with Standard 303(b)(2). Pro bono and public service opportunities need not be structured to accomplish any of the outcomes required by Standard 302. Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

Interpretation 303-4

Law-related public service activities include (i) helping groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights; (ii) helping charitable, religious, civic, community, governmental, and educational organizations not able to afford legal representation; (iii) participating in activities providing information about justice, the law or the legal system to those who might not otherwise have such information; and (iv) engaging in activities to enhance the capacity of the law and legal institutions to do justice.

Standard 304. EXPERIENTIAL COURSES: SIMULATION COURSES, LAW CLINICS, AND FIELD PLACEMENTS

(a) Experiential courses satisfying Standard 303(a)(3) are simulation courses, law clinics, and field placements, and must:

- (1) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
- (2) develop the concepts underlying the professional skills being taught;
- (3) provide multiple opportunities for performance;
- (4) provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor; and
- (5) include a classroom instructional component; or, for a field placement, a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection.

~~(b) (a)~~—A simulation course provides substantial experience not involving an actual client, that ~~(1)~~ is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member,; and ~~(2)~~ includes the following:

- ~~(i) direct supervision of the student's performance by the faculty member;~~
- ~~(ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and~~
- ~~(iii) a classroom instructional component.~~

~~(c) (b)~~—A law clinic provides substantial lawyering experience that ~~(1)~~ involves advising or representing one or more actual clients or serving as a third-party neutral,; and ~~(2)~~ includes the following:

- ~~(i) direct supervision of the student's performance by a faculty member;~~
- ~~(ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and~~
- ~~(iii) a classroom instructional component.~~

~~(d) (e)~~—A field placement course provides substantial lawyering experience that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and (2) includes the following:

~~(i) direct supervision of the student’s performance by a faculty member or site supervisor;~~
~~(ii) opportunities for performance, feedback from either a faculty member or a site supervisor, and self-evaluation;~~

~~(i) (iii)~~—a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student’s academic performance;

~~(ii) (iv)~~—a method for selecting, training, evaluating and communicating with site supervisors, including regular contact between the faculty and site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience. When appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program;

~~(v) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty guided reflection; and~~

~~(iii) (vi)~~—evaluation of each student’s educational achievement by a faculty member.; and

~~(iv) (vii)~~—sufficient control of the student experience to ensure that the requirements of the Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard, which shall include, but is not necessarily limited to, the written understandings described in Standard 304(c)(iii).

~~(e) (d)~~—Credit granted for such a simulation, law clinic, or field placement course shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.

~~(f) (e)~~—Each student in such a simulation, law clinic, or field placement course shall have successfully completed sufficient prerequisites or shall receive sufficient contemporaneous training to assure the quality of the student educational experience.

Interpretation 304-1

To qualify as an experiential course under Standard 303, a simulation, law clinic, or field placement must also comply with the requirements set out in Standard 303(a)(3). When

appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program.

Standard 305. OTHER ACADEMIC STUDY

(a) A law school may grant credit toward the J.D. degree for courses that involve student participation in studies or activities in a format that does not involve attendance at regularly scheduled class sessions, including, but not limited to, moot court, law review, and directed research.

(b) Credit granted for such a course shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.

(c) Each student's educational achievement in such a course shall be evaluated by a faculty member.

Interpretation 305-1

To qualify as a writing experience under Standard 303, other academic study must also comply with the requirement set out in Standard 303(a)(2). To qualify as an experiential course under Standard 303, other academic study must also comply with the requirements set out in Standard ~~303(a)(3)~~304.

Standard 503. Admissions Test

Explanation of Changes:

In March 2017, the Council circulated for Notice and Comment a proposal that would result in the following changes to the Standard 503: [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.

After discussion and reviewing the comments received, the Standards Review Committee recommended that the Council reject the proposal that had been circulated and offered three options to the Council. The Council decided to circulate for Notice and Comment the option that would (a) eliminate Standard 503 and (b) revise Standard 501 by moving Interpretation 501-1 (factors to consider in assessing compliance with Standard 501) into the black letter of the Standard.

The result of these changes would be that the requirement of a valid and reliable admissions test would be removed from the Standards, but an admissions test would be one of the factors relevant to determining whether a law school complies with Standard 501. While this proposal eliminates the requirement of an admission test in the Standards, a law school may still require an admission test, which the Council expects will remain the norm, and it may decide which test(s) it accepts.

In its recommendation to the Council, the Committee stated that it believes that Standard 501 sets out sufficiently strong statements that a law school must adopt, publish, and adhere to sound admission policies, and that a law school shall admit only applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar, so that the requirement of an admission test is not needed. The factors to be considered in assessing compliance with the Standard have been moved from an Interpretation into the body of Standard 501. The factor of “academic and admission test credentials” has been changed to “academic and admission credentials.” The Committee believes that the many factors listed in Standard 501 should be sufficient for the Accreditation Committee and the Council to determine whether a law school is in compliance. It also believes that in order to demonstrate whether only capable individuals are being admitted to a law school more focus should be placed on outcomes, assessed through bar passage and attrition rates.

Indeed, current Standard 503 does not prescribe a minimum score in the requirement for a test and a minimum score cannot even be prescribed by the Accreditation Committee when requiring remedial action by a law school to correct problems. The Committee is of the view, however, that the Accreditation Committee has the authority to mandate that a law school require a specific test to remedy a determination of non-compliance under Standard 501. The Standard also is revised to include, in the Interpretation, a requirement that any law school requiring an admission test publish information informing potential students which tests are accepted.

Redlined Draft:

Standard 501. ADMISSIONS

(a) A law school shall adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, ~~its~~ the law school's mission, and the objectives of its program of legal education.

(b) A law school shall ~~only~~ only admit applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar.

(c) Among the factors to consider in assessing compliance with this Standard are the academic and admission credentials of the law school's entering students, the academic attrition rate of the law school's students, the bar passage rate of its graduates, and the effectiveness of the law school's academic support program. Compliance with Standard 316 is not alone sufficient to comply with the Standard.

~~(d) (e)~~—A law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee’s file.

Interpretation 501-1

~~Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school’s entering students, the academic attrition rate of the law school’s students, the bar passage rate of its graduates, and the effectiveness of the law school’s academic support program. Compliance with Standard 316 is not alone sufficient to comply with the Standard.~~

Interpretation 501-21

~~Sound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome. If a law schools requires an admission test, it shall publish information regarding which tests are accepted.~~

Interpretation 501-32

~~A law school having a cumulative non-transfer attrition rate above 20 percent for a class creates a rebuttable presumption that the law school is not in compliance with the Standard.~~

Standard 503. ADMISSION TEST

~~A law school shall require each applicant for admission as a first-year J.D. degree 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 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.~~

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 85th percentile on the ACT or SAT for purposes of subsection (a)(1) or for purposes of subsection (a)(2), scored at or above the 85th 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.~~

Standard 601. Library and Information Resources, General Provisions

Explanation of Changes:

The current version of Standard 601(3)(a) was developed during the Comprehensive Review as a method of involving a law library in the process of strategic planning required of a law school. It was envisioned that the planning and assessment taking place for a law school (under what was then Standard 203) would incorporate the work done by the library under this new Standard. To ensure that incorporation, it was decided that a written assessment should be completed by the library. However, when the requirement for strategic planning for a law school was removed during a later phase of the Comprehensive Review, no change was made to the new Standard 601. As a result, the library community has been left confused as to what is required to comply with 601(a)(3). For example: Does a written assessment require an annual report? Must a survey of user satisfaction be conducted to develop an assessment? How often must the written report be prepared?

It is appropriate for a law library to engage in the process of planning and assessment. This process helps the staff to achieve the goals set out in the rest of Standard 601. However, the requirement that the assessment be written is excessive, not required of any other unit of the law school, and has led to confusion for both library directors and the Accreditation Committee. This can be resolved simply by removing the requirement that the assessment be “written.” By making this change, a law library and a law school can determine how best to develop a method of assessment that meets the needs of the institution.

Redlined Draft:

Standard 601. GENERAL PROVISIONS

- (a) A law school shall maintain a law library that:
 - (1) provides support through expertise, resources, and services adequate to enable the law school to carry out its program of legal education, accomplish its mission, and support scholarship and research;

- (2) develops and maintains a direct, informed, and responsive relationship with the faculty, students, and administration of the law school;
- (3) working with the dean and faculty, engages in a regular planning and assessment process, including ~~written~~ assessment of the effectiveness of the library in achieving its mission and realizing its established goals; and
- (4) remains informed on and implements, as appropriate, technological and other developments affecting the library's support for the law school's program of legal education.

(b) A law school shall provide on a consistent basis sufficient financial resources to the law library to enable it to fulfill its responsibilities of support to the law school and realize its established goals.

Rule 3: Accreditation Committee Responsibility and Authority

Explanation of Changes:

Rule 3(a) (5) currently provides that the Accreditation Committee ("AC") has jurisdiction to make recommendations about teach-out plans. The proposed amendment deletes AC and replaces it with the Council so that the authority to approve a teach-out remains solely with the Council and approval is not delayed by requiring review and a recommendation by the AC.

Redlined Draft:

Rule 3: Accreditation Committee Responsibility and Authority

- (a) The responsibility and authority of the Accreditation Committee is delegated to it by the Council.
- (b) The Committee has jurisdiction to make recommendations to the Council concerning:
 - (1) an application for provisional or full approval;
 - (2) withdrawal of provisional or full approval;
 - (3) an application for acquiescence in a major change under Rules 29(a)(1) through 29(a)(13); and
 - (4) an application for a variance; ~~and~~
 - (5) ~~approval or denial of a teach-out plan.~~

- (c) The Committee has jurisdiction to make decisions concerning all matters other than those specified in Rule 3(a), including:
 - (1) determining compliance with the Standards of any provisionally or fully approved law school in connection with a site evaluation, a complaint, a response to a request for information, a fact-finding report, interim monitoring of accreditation status, or any other circumstances as provided in these Rules;
 - (2) granting or denying an application for approval of a foreign programs, and the continuance of a foreign program as set forth in the Criteria for Foreign Summer and Intersession Programs Offerered by ABA-Approved Law Schools in a Location Outside the United States; the Criteria for Approval of Foreign Semester and Year-Long Programs; and the Criteria for Accepting Credit for Student Study at a Foreign Institution; and
 - (3) granting or denying an application for acquiescence in a major change under Rule 29(a)(14) through 29(a)(17).
- (d) The Committee has jurisdiction to impose sanctions and/or direct specific remedial action, or to recommend to the Council that it impose sanctions and/or direct specific remedial action, in accordance with Rules 16 to 18.
- (e) The Committee has the authority to create subcommittees and task forces as it deems appropriate. Subcommittees do not have the authority to take action on behalf of the Accreditation Committee but have the authority to make recommendations where appropriate.

Rule 5: Site Evaluations

Explanation of Changes:

Rule 5(d) currently provides that in extraordinary circumstances, a site evaluation of a law school may be postponed upon the request of the law school. The proposed amendment removes “upon the request of the law school,” so that the Managing Director has authority to postpone a visit.

Redlined Draft:

Rule 5: Site Evaluations

- (a) A site evaluation of a law school or of a program is a comprehensive examination of the law school or program conducted by one or more persons qualified to conduct site evaluations who:
 - (1) Review documents relating to the law school or program;

- (2) Perform an on-site evaluation of the law school or program; and
 - (3) Prepare a factual report to be used by the Committee for purposes of making decisions or recommendations relating to accreditation status of the law school or program.
- (b) Site evaluations of law schools shall be conducted according to the following schedule:
- (1) A site evaluation of a fully approved law school shall be conducted in the third year following the granting of full approval and every seventh year thereafter.
 - (2) A site evaluation of a provisionally approved law school shall be conducted in accordance with subsection (g) below.
 - (3) A site evaluation shall be conducted upon application by a law school for provisional approval.
- (c) The Council or Committee may order additional site evaluations of a law school when special circumstances warrant.
- (d) In extraordinary circumstances, a site evaluation of a law school may be postponed ~~upon the request of the law school~~. In such cases, the postponement shall be at the discretion of the Managing Director in consultation with the chair of the Committee and shall not exceed one year.
- (e) When a site evaluation of a law school is required under the Standards or these Rules, the Managing Director shall make the following arrangements:
- (1) Schedule the site evaluation during the regular academic year, at a time when classes in the program of legal education are being conducted.
 - (2) Appoint a qualified site evaluation team of sufficient size to accomplish the purposes of the site evaluation, and appoint a chair of the site evaluation team;
 - (3) Provide the site evaluation team all relevant documents relating to Accreditation Committee and Council action regarding the law school;
 - (4) Provide the site evaluation team with any third-party comments received by the Managing Director's Office regarding the law school's compliance with the Standards;
 - (5) Provide the site evaluation team all complaints received under Rule 43 and not dismissed by the Managing Director or the Accreditation Committee; and
 - (6) Provide the site evaluation team with any necessary or appropriate directions or instructions.
- (f) In connection with a site evaluation of a law school, the Managing Director shall direct the law school to provide the following documents to the site evaluation team before the site evaluation:

- (1) All completed forms and questionnaires, as adopted by the Council; and
 - (2) In the case of a law school applying for provisional or full approval, the completed application for provisional or full approval.
- (g) Site evaluations for provisionally approved law schools shall be conducted as follows:
- (1) In years two and four, and upon application for full approval, the law school shall be inspected in accordance with the rules for site evaluation of fully approved law schools.
 - (2) The Accreditation Committee has the discretion to order a site evaluation in any other year. The Accreditation Committee may direct that the additional site evaluation be limited in scope.
- (h) Following a site evaluation, the site evaluation team shall prepare a written report on facts and observations that will enable the Committee to determine compliance with the Standards or other issues relating to the accreditation status of the law school. A site evaluation report shall not contain conclusions regarding compliance with Standards or make recommendations for action by the Committee or the Council.
- (i) The Managing Director shall review the report submitted by a site evaluation team and ensure that it complies with (h). The Managing Director shall then transmit the report to the president and the dean in order to provide an opportunity to make factual corrections and comments. The law school shall be given at least 30 days to prepare its response to the report, unless the law school consents to a shorter time period. The 30 day period shall run from the date on which the Managing Director transmits the report to the law school.
- (j) Following receipt of the law school's response to the site evaluation report, the Managing Director shall forward a copy of the report with the law school's response to members of the Accreditation Committee and the site evaluation team.
- (k) Site evaluations regarding foreign programs shall be conducted as provided under the:
- (1) Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States;
 - (2) Criteria for Approval of Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools.

Rule 10: Notice of Accreditation Decision by Other Agency

Explanation of Changes:

Rule 10(c) currently provides that a law school must complete and submit the Notice of State or Other Recognized Agency Action Form. This form does not exist so the proposed amendment deletes this provision.

Redlined Draft:

Rule 10: Notice of Accreditation Decision by Other Agency

- (a) An approved law school shall promptly inform the Managing Director of the following actions with respect to the law school:
 - (1) Pending or final action by State agency to suspend, revoke, withdraw, or terminate legal authority to provide post-secondary education;
 - (2) Decision by recognized agency to deny accreditation or pre-accreditation;
 - (3) Pending or final action by recognized agency to suspend, revoke, withdraw, or terminate accreditation or pre-accreditation; or
 - (4) Probation or equivalent status imposed by recognized agency.
- (b) If the law school is part of a university, then the law school shall promptly inform the Managing Director of the above actions with respect to the university or any program offered by the university.
- ~~(c) A law school must complete and submit the Notice of State or Other Recognized Agency Action Form.~~
- ~~(c) (d)~~ The Council will not grant approval to a law school if the Council knows, or has reasonable cause to know, that the law school is subject to the actions in subsection (a), unless the Council can provide a thorough and reasonable explanation, consistent with the Standards, why the action of the other body does not preclude the Council's grant of approval. Such explanation will be provided to the Secretary of the Department of Education.
- ~~(d) (e)~~ If the Council learns that an approved law school is the subject of an adverse action by another recognized accrediting agency or has been placed on probation or an equivalent status by another recognized agency, the Council will promptly review its approval of the law school to determine if it should also take adverse action or place the law school on probation.
- ~~(e) (f)~~ The Council will, upon request, share with other appropriate recognized accrediting agencies and recognized State approval agencies information about the accreditation status of a law school and any adverse actions it has taken against a law school.

Rule 14: Actions on Determinations of Noncompliance with a Standard

Explanation of Changes:

Rule 14(a)(2) currently provides that the Committee can direct a law school representative to appear at a hearing to determine whether to impose sanctions. However, Rule 21 provides that at the hearing, the Committee may impose sanctions or direct specific remedial action. The proposed amendment adds “specific remedial action to Rule 14(a)(2) to be consistent with Rule 21.

Redlined Draft:

Rule 14: Actions on Determinations of Noncompliance with a Standard

- (a) Following a determination by the Committee of non-compliance with a Standard in accord with Rule 12(a)(4), the Committee shall:
 - (1) Require the law school to bring itself into compliance and submit information by a specific date to demonstrate that it has come into compliance with the Standard; and
 - (2) Direct that representatives of the law school, including any person specifically designated by the Committee, appear at a hearing to determine whether to impose sanctions or direct specific remedial action in connection with the law school’s non-compliance with the Standard.
- (b) The period of time by which a law school is required to demonstrate compliance with a Standard shall not exceed two years from the date of determination of noncompliance, except as provided for in subsection (c).
- (c) Upon request of the law school and for good cause shown, the Committee may extend the date of compliance or may recommend that the Council extend the date of compliance.

Rule 22: Council Consideration of Recommendation of Accreditation Committee

Explanation of Changes:

Rule 22 currently provides that a law school has a right to have representatives, including legal counsel, appear before the Council following a Committee recommendation to impose sanctions. The proposed amendment adds “specific remedial action” so that a law school has a right to have representatives appear on a Committee recommendation to direct specific remedial action since such action is proposed to be added to Rule to Rule 14(a)(2).

Redlined Draft:

Rule 22: Council Consideration of Recommendation of Accreditation Committee

- (a) A law school has a right to have representatives of the law school, including legal counsel, appear before the Council at a Council hearing following a Committee recommendation regarding (i) the law school's application for provisional approval, (ii) the law school's application for full approval, (iii) the law school's application for acquiescence in a major change under Rule 29(a)(1) – 29(a)(13), ~~and~~ (iv) the Committee's recommendation to impose sanctions following a hearing held in accordance with Rules 11(b) or 14(a)(2), and (v) the Committee's recommendation of specific remedial action.
- (b) The Managing Director in consultation with the Chair of the Council may set reasonable limitations on the number of law school representatives that may appear at a meeting and on the amount of time allotted for the appearance.
- (c) Except as permitted in subsection (a), a law school does not have a right to appear at a Council meeting, hearing or proceeding on any matter related to the accreditation of a law school.
- (d) The Chair of the Council may invite the Chair of the Accreditation Committee to appear at the hearing, if the Chair determines that such person could reasonably be expected to provide information helpful to the Committee. The Chair of the Accreditation Committee may not present new evidence unless the law school has the opportunity to respond to that new evidence.
- (e) The Managing Director or designee and any additional staff designated by the Managing Director shall be present at Accreditation Committee meetings and hearings. Legal Counsel for the Section may also be present at Accreditation Committee meetings and hearings.

Rule 23: Council Consideration of Appeal from Accreditation Committee Decision

Explanation of Changes:

Rule 23 currently provides that a law school may appeal a decision of the Accreditation Committee by filing a written appeal within 30 days after the date of the letter reporting the decision. If a law school does not file an appeal, the Committee's decision becomes final after the expiration of the 30-day appeal period. The proposed amendment would shorten the appeal period to 15 days so that the Council can comply with Department of Education requirements and IOP 4, requiring the Council to post a final decision to find a law school significantly out of compliance with one or more Standards under Rule 12(a)(4) no later than thirty days after the Committee reaches the decision. This change is necessary only if the reorganization of the Council does not move forward or is delayed as there would be no right to appeal a Rule 12(a)(4) decision of the Council.

Redlined Draft:

Rule 23: Council Consideration of Appeal from Accreditation Committee Decision

- (a) A law school may appeal a decision of the Committee by filing with the Managing Director a written appeal within 15 ~~30~~-days after the date of the letter reporting the Committee's decision.
- (b) The Council shall consider the appeal promptly and, when feasible, at its next regularly scheduled meeting.
- (c) A law school shall not have a right to appear before the Council in connection with the appeal.

Rule 24: Evidence and Record for Decision

Explanation of Changes:

The proposed amendment requires a law school to submit new evidence at least 30 days before the Council meeting, giving the Executive Committee sufficient time to review the evidence and make a determination whether the evidence will be accepted. Experience has shown that this decision is sometimes not made until the Council meeting.

Redlined Draft:

Rule 24: Evidence and Record for Decision

- (a) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the Council shall adopt the Committee's findings of fact unless the Council determines that the findings are not supported by substantial evidence in the record.
- (b) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the record on which the Council shall make its decision shall be the following:
 - (1) The record before the Committee on which the Committee based its decision or recommendation;
 - (2) The letter setting forth the Committee's decision or recommendation;
 - (3) The written appeal by the law school, if applicable;
 - (4) Any written submission by the Committee in response to an appeal, if applicable;
 - (5) Any testimony of the law school in a hearing or an appearance before the Council.

- (c) Except as specifically provided otherwise in these Rules, the law school shall not present any evidence to the Council that was not before the Committee at the time of the Committee's decision or recommendation.
- (d) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the Council will accept new evidence submitted by the law school only if the Executive Committee of the Council determines that:
 - (1) The evidence was not presented to the Committee;
 - (2) The evidence could not reasonably have been presented to the Committee;
 - (3) A reference back to the Committee to consider the evidence would, under the circumstances, present a serious hardship to the law school;
 - (4) The evidence was submitted at least 30~~4~~ days in advance of the Council meeting; and
 - (5) The evidence was appropriately verified at the time of submission.

Rule 25: Decisions by the Council

Explanation of Changes:

Rule 25 does not specify when the decision of the Council will be effective. The proposed amendment adds a section that provides the decision of the Council will be effective upon issuance.

Redlined Draft:

Rule 25: Decisions by the Council

- (a) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the Council shall give substantial deference to the conclusions, decisions, and recommendations of the Committee.
- (b) In any action on a recommendation of the Committee or in any appeal from a Committee decision, the Council may, as appropriate:
 - (1) Affirm the Committee's decision or recommendation;
 - (2) Amend the Committee's decision or recommendation, including imposing any sanction regardless of whether the Committee has imposed or recommended any sanction;
 - (3) Reverse the Committee's decision or recommendation; or

- (4) Remand the matter to the Committee for further proceedings.
- (c) If the Council remands a decision for further consideration or action by the Committee, the Council shall identify specific issues that the Committee must address.
- (d) The decision of the Council shall be effective upon issuance.

Rule 34: Teach-Out Plan

Explanation of Changes:

The proposed amendment requires review of a teach-out plan by the Council instead of the AC and Council. This will allow for a quicker review of the plan given the time sensitive nature of the process.

Redlined Draft:

Rule 34: Teach-Out Plan

- (a) If a provisional or fully approved law school decides to cease operations or close a branch campus, the law school shall promptly make a public announcement of the decision and shall notify the Managing Director, the appropriate state licensing authority, and the United States Department of Education of the decision.
- (b) A provisional or fully approved law school must submit a teach-out plan for approval upon occurrence of any of the following events:
 - (1) The law school notifies the Managing Director's Office that it intends to cease operations or close a branch campus;
 - (2) The Accreditation Committee recommends, or the Council acts to withdraw, terminate, or suspend, the accreditation of the law school;
 - (3) The United States Secretary of Education notifies the Managing Director'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 Managing Director's Office that an institution's license or legal authorization to provide an educational program has been or will be revoked.
- (c) The law school shall submit the teach-out plan for the law school or branch being closed as required by paragraph (b) to the Managing Director's Office within the time specified

by the Managing Director. The Managing Director's Office, in consultation with the Chair of the ~~Accreditation Committee~~ Council, may require a law school to enter into a teach-out agreement as part of its teach-out plan.

- (d) A law school must submit the "Teach-Out Plan Approval Form," as adopted by the Council, and address each item in the form.
- (e) If a law school voluntarily enters into a teach-out agreement or if the Managing Director requires a law school to submit a teach-out agreement as part of a teach-out plan, the law school must submit the "Teach-Out Agreement Approval Form," as adopted by the Council, and address each criterion in the form.
- (f) The ~~Accreditation Committee~~ Council will promptly review a teach-out plan submitted in accordance with (b) and (c) and shall ~~recommend approval or denial of the plan by the Council.~~
 - (1) Approval of the teach-out plan may be conditioned on specified changes to the plan.
 - (2) If the teach-out plan is denied, the law school must revise the plan to meet the deficiencies identified and resubmit the plan no later than 30 days after receiving notice of the decision.
- (g) Upon approval of a teach-out plan of a law school or branch that is also accredited by another recognized accrediting agency, the Managing Director's Office shall notify that accrediting agency within 30 days of its approval.
- (h) Upon approval of a teach-out plan, the Managing Director shall within 30 days notify all recognized agencies that accredit other programs offered by the institution of which the law school is a part.
- (i) In the event a law school closes without an approved teach-out plan or agreement, the Managing Director's office will work with the United States 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 52: Disclosure of Decision Letters

Explanation of Changes:

The proposed amendment deletes Rule 52(a) because it is already addressed in Rule 49.

Redlined Draft:

Rule 52: Disclosure of Decision Letters

- ~~(a)~~ ~~Except as provided in Rule 53, decisions and recommendations of the Committee and Council shall be confidential.~~

- ~~(b)~~(a) If the law school makes public a decision or recommendation of the Committee or Council, the law school must make public the entire decision or recommendation.
 - (1) If the law school makes public a decision or recommendation of the Committee or Council, the law school must notify the Managing Director at or before the time of the disclosure.
 - (i) The Managing Director, in consultation with the Chair of the Council, may subsequently correct any inaccurate or misleading information released or published by the law school in connection with the disclosure or the decision or recommendation.
 - (ii) A corrective communication by the Managing Director may include the disclosure of portions of the site evaluation report or the entire site evaluation report.
 - (2) Discussion of the contents of a decision or recommendation with, or release of the report to, the faculty, the university, or the governing board of the university or law school, does not constitute release of the decision or recommendation to the public within the meaning of this Rule.