MEMORANDUM

To: Greg Murphy, Chair
   Council of the Section of Legal Education and Admissions to the Bar

From: Pamela Lysaght, Chair
   Standards Review Committee

Date: February 24, 2017

Re: Standards Review Committee Recommendations

I am writing to report on the actions taken by the Standards Review Committee at its February 10-11, 2017, meeting. The Committee makes the following recommendations to the Council. Detailed explanations follow the recommendations:

1. **Standard 312:** The Committee recommends that no changes be made at this time.

2. **Standard 403(a):** The Committee recommends that this Standard be modified to require that only a student’s first third of instruction be substantially delivered by full-time faculty. The requirement that full-time faculty also deliver (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 would be deleted under this proposal.

3. **Standard 503:** The Committee recommends minor revisions to Standard 503 so that the wording and format are consistent with the drafting principles adopted during the comprehensive review process. The general language and policy of the proposed Standard are based on the Council’s actions at its October 2016 meeting.

**Standard 312. Reasonably Comparable Opportunities**

Consideration of this Standard began in 2016 in response to the Guidance Memo indicating that law schools may allow students to take part-time loads and advertise those options without having a part-time program in which the Council had acquiesced. Some members of the SRC were concerned that the Standard might be read as addressing only with schools that “officially” provided more than one enrollment or scheduling option, and that those schools permitting a few students to enroll in a part-time course of study without an official program might believe that they did not need to adhere to the Standard. The group assigned to the Standard offered prepared a draft in which the phrase “providing more than one enrollment or scheduling option” was deleted and the phrase “regardless of their schedules or number of credits being taken” was added. That draft is provided below. At the April 2016 meeting, some Committee members expressed that this change was unnecessary and added an extra layer of bureaucracy. The Committee then considered whether Standard 312 was even necessary in light of 403 (Instructional Role of Faculty), 508 (Student Support Services), and 301 (Objectives of Program of Legal Education). So the Committee voted to propose to the Council that 312 be eliminated and that a new interpretation be added to 301 to cover co-curricular programs. That proposal also is included below.
At the Council meeting, the former Committee Chair asked that the Council return the proposal to the Committee for further consideration because it seemed that the drafting had been rushed and the consequences not completely discussed. The Council agreed. A working group was assigned to reconsider the Standard and report back to the Committee at its February 2017 meeting.

The working group recommended that no changes be made to Standard 312. After considerable discussion, the Committee viewed the Standard as written to be sufficiently broad so as to apply to any situation involving part-time coursework. The Committee also viewed that such a Standard is useful in providing institutions with a clear reminder that they need to provide part-time students with reasonably comparable opportunities and should be retained.

**Current Standard**

**Standard 312. REASONABLY COMPARABLE OPPORTUNITIES**
A law school providing more than one enrollment or scheduling option shall ensure that all students have reasonably comparable opportunities for access to the law school’s program of legal education, courses taught by full-time faculty, student services, co-curricular programs, and other educational benefits. Identical opportunities are not required.

Proposal discussed by SRC in April 2016 (not adopted)

**Standard 312. REASONABLY COMPARABLE OPPORTUNITIES**
A law school providing more than one enrollment or scheduling option shall ensure that all students, regardless of their schedules or number of credits being taken, have reasonably comparable opportunities for access to the law school’s program of legal education, courses taught by full-time faculty, student services, co-curricular programs, and other educational benefits. Identical opportunities are not required.

Proposal sent to Council in June 2016 (not adopted)

**Standard 312. REASONABLY COMPARABLE OPPORTUNITIES**
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**Interpretation 301-1**
All students should have reasonable opportunities to take advantage of the school’s educational program, co-curricular programs, and other educational benefits.
Standard 403. Instructional Role of Faculty

The Council referred Standard 403 to the Committee to consider possible changes. Specifically, the Committee considered whether the Standards should require that (a) a student’s first third of instruction be substantially delivered by full-time faculty and (b) whether the full-time faculty should 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.

As noted above in the recommendations, the Committee proposes eliminating the second sentence of Standard 403(a) to remove the requirement that the full-time faculty be required to teach 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. The current Standard was adopted in 2014.2

The Committee recognizes the continuing need for the first sentence in Standard 403(a) that the “full-time faculty shall teach substantially all of the first one-third of each student’s coursework.” The first year creates a sense of academic community and the interaction between law students and full-time faculty is essential in providing a foundation for future learning.

1 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.”

2 The prior Standard 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, mentoring, 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.
Moreover, the Committee recognizes that there exists a link between Standard 403(a) and Standard 404(a) and that effective teaching is based not only on classroom learning but learning and instruction that exists outside the classroom environment. As such, the full-time faculty is an indispensable part of the first year and, while adjunct professors can be extraordinary teachers, few will have the presence to provide the outside-the-classroom instruction and the support for learning provided by a professional full-time faculty. As a result, the full-time faculty is typically more available for student consultation, academic advising, creating an intellectual environment for discourse among and between faculty and students, and assessing student learning.

The continued necessity of the first sentence of 403(a) will also assist law schools in satisfying other Standards such as Standard 402 that requires a robust full-time faculty to provide opportunities to meet with students, participate in the governance of the law school, and provide service to the legal profession and to the public.

The Committee does not believe, however, that the second sentence of Standard 403(a) continues to be necessary. The first sentence in Standard 403(a) ensures that the full-time faculty provide foundational instruction by teaching substantially all of the first one-third of each student’s coursework but transforming the remainder of the law school experience into a performance-based standard through the lens Standard 403(b) by requiring that “a law school shall ensure effective teaching by all persons providing instruction to its students.”

The elimination of the second sentence in Standard 403(a) will invite law schools to have an opportunity to innovate and be creative in how instruction is delivered, provided that a law school satisfies the performance standard of ensuring effective teaching. A law school could very well decide that full-time faculty members would ensure effective teaching in the second and third years of law school but may also decide, through innovative methods or otherwise, that teaching effectiveness can be ensured through ways other than through delivery by full-time faculty members. This is especially true when many students pursue experiential opportunities in their second and third years and the elimination of the second sentence provides further opportunities for law schools to structure a curriculum that recognizes the growing need for experiential learning that could be accomplished by judges and practicing lawyers. Importantly, the outcome measure of Standard 403(b) is consistent with how Standard 302 is constructed regarding learning outcomes.

The Committee recognizes that the legal education landscape continues to change and the accreditation standards should create room for innovation with broad outcome measures but flexibility in how those outcomes are reached. Moreover, this recommendation also recognizes the substantial budgetary implications of current Standard 403. The current Standard mandates that law schools incur substantial costs because the full-time faculty is required to teach substantially all of the first one-third of the curriculum as well as one-half of the credit hours or two-thirds of student contact hours. The effect of this proposal is to reduce the requirement of teaching necessary by full-time faculty from one-half of the credit hours in law school to one-third of the credit hours in law school. The proposed Standard provides an appropriate balance of full-time faculty members necessary to carry out the objectives of other Standards as well as budgetary considerations that face many law schools. Importantly, the adoption of this proposal does not change the requirements of Standard 404(a) and the responsibilities of the full-time faculty.
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.

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Standard 503. Admission Test

The Council voted at its October 2016 meeting to adopt an approach to Standard 503 that would place with the Council the authority to determine the criteria by which any test other than the Law School Admissions Test be considered a valid and reliable test for law school admissions. The Council approved the basic approach and language, but it sent the draft back to the Committee for further review to essentially go over the wording and format. The Council’s draft is provided below.

After discussion of various approaches to wording and structure, the Committee proposes the following, which provides consistency with the drafting principles established during the comprehensive review but maintains the intent of the Council.

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 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.

(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 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.

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Standard 503. ADMISSION TEST

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(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.

Discussion Draft at October 2016 Council Meeting

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 law school admission test. 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 valid and reliable law school admissions test is a test that the Council has determined to be such a test, pursuant to a process that the Council shall adopt and publish, and to which it shall adhere.

Interpretation 503-1 [**alternative Interpretation discussed at meeting**]

A law school may 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.

Interpretation 503-2

Although the 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, a law school must demonstrate that test scores play a role in its admissions decisions.