

MEMORANDUM

To: Dean Maureen O'Rourke, Chair
Council of the Section of Legal Education and Admissions to the Bar

From: Pamela Lysaght, Chair
Standards Review Committee

Date: April 23, 2018

Re: Reports and Recommendations—*Global Review of the Standards and Transparency*

This is the last of four memoranda setting forth the Standards Review Committee's recommendations following its April 2018 meeting. The Committee was tasked with making recommendations to address reviewing the Standards going forward under a merged Council and updating the 2008 Transparency Report. Two working groups were charged with developing recommendations—*Global Review of the Standards* and *Transparency*. Both working groups presented their reports and recommendations for consideration by the Committee. The approved reports, with recommendations, are attached.

Global Review of the Standards Report

TO: The Council of the Section of Legal Education and Admissions to the Bar

FROM: Standards Review Committee

RE: Recommendations for Standards Review Procedures and Actions

The Standards Review Committee (SRC) offers the following recommendations to the Council in the event that it assumes the responsibility for accreditation Standards review. The recommendations are categorized under three topics that the SRC has identified as important to the review process: (1) the kind of Standards review cycle that would be most efficient for the review and revision of Standards that raise immediate concerns in the accreditation process and a review cycle for comprehensive reviews of Standards; (2) the identification of “unsettled” Standards (*i.e., Standards that generated the most comments within the SRC, the Accreditation Committee, from other individuals and groups submitting comments; and Standards that have become dormant or unenforceable*); and (3) guiding principles for discussions and decision-making about new Standards or revisions to existing Standards.

1. Standards Review Cycle

Recent and past practice of the SRC in conducting Standards review has been primarily to conduct periodic comprehensive reviews of the entire body of Standards to address concerns such as consistency and relevancy. These comprehensive reviews have been lengthy processes and have taken anywhere from 3 to 6 years for completion. This has proven to be inefficient and frustrating in making changes to the Standards in response to urgent concerns and ensuring that such changes will remain relevant by the time they are approved.

Accordingly, the SRC recommends that the Council adopt a combined practice of “continuous” review of problematic Standards for efficiency and relevancy. That is, the Council should propose changes on an “as-needed” basis for problematic Standards. This approach would enable the Council to be nimble in assessing Standards and to operate in a proactive manner. In addition, to ensure overall consistency among Standards, the SRC recommends that some limited “comprehensive” review be conducted annually. This might entail, for example, a practice of reviewing only one Chapter of the Standards each year.

We also suggest that the Council consider appointing a task force or ad hoc committee to undertake and manage the annual comprehensive review. The task force/ad hoc committee would be responsible for overseeing and conducting the review to completion. The task force or ad hoc members might include individuals who are not members of the Council to provide different perspectives regarding the

impact of Standards, and members should have limited and staggered terms to ensure some membership continuity.

2. “Unsettled” Standards

- a. *Standards 102 (Provisional Approval) and 103 (Full Approval)* – The time frames for eligibility for provisional approval and full approval need to be reviewed for adjustment.
- b. *Standards 105 (Acquiescence for Major Change) and 313 (Degree Programs in Addition to the JD)* – These Standards have been identified as requiring review for issues of consistency pertaining to ABA acquiescence for non-JD programs, with some consideration as to whether certificate programs should also require acquiescence.
- c. *Standards 106 (Separate Locations and Branch Campuses; 304 (Simulation Courses, Law Clinics, and Field Placements); 307 (Studies, Activities, and Field Placements Outside of the United States); 505 (Granting of J.D. Degree Credit for Prior Study of Law); and Standard Interpretation 311-1 (Academic Program and Academic Calendar)* – These Standards have been identified as requiring review for issues of consistency regarding studies outside of the United States and whether they should be considered field placements or studies occurring at separate locations. Questions remain as to whether credits earned through such studies are considered earned in regularly scheduled classes; and whether the credits can be granted because they are from prior studies of law. Related to these concerns are the definitions and distinctions between separate locations and branch campuses.
- d. *Standard 107 (Variances)* – Clarification needs to be provided to better define the circumstances under which requests for a variance from a Standard will be considered by the Council.
- e. *Standard 204 (Self Study)* – This Standard is one that should be reviewed for refining or clarification.
- f. *Standards 205 (Non-Discrimination and Equality of Opportunity) and 206 (Diversity and Inclusion)* – These Standards remain the subject of debate on meaning and protected groups. In addition, there is concern that these Standards may unintentionally imply there is some *cause of action* that can be addressed through the accreditation process.
- g. *Standard 302 (Learning Outcomes)* – There has been some debate as to whether this Standard should prescribe the learning outcomes that all law schools must

comply with or whether learning outcomes should be left to the discretion of each law school.

- h. *Standard 303(a)(3) (Curriculum) and 304 (Simulation Courses, Law Clinics, and Field Placements)* – These Standards require review for issues of consistency regarding field placements, simulation courses, and law clinics. (Proposed changes to Standards 303 and 304 are currently before the Council and, if approved in August, will address these issues.)
- i. *Standards 309 (Academic Advising and Support) and 508 (Student Support Services)* – These Standards have been identified as requiring review for issues of consistency and repetition concerning academic advising.
- j. *Standards 311 (Academic Program and Academic Calendar) and 505 (Granting J.D. Credit for Prior Law Study)* – These Standards have been identified as requiring review for issues of consistency regarding prior law study.
- k. *Standard 316 (Bar Passage)* – This Standard continues to raise unresolved issues as to what is the acceptable successful bar passage rates for compliance with this outcome.
- l. *Chapter 4 (The Faculty)* – The Chapter on “The Faculty” continues to raise unsettled questions relating to “security of position” (i.e., Standard 405. Professional Environment) and whether this should be part of accreditation standards (often included on the grounds it is necessary to protect “academic freedom”). Part of this discussion implicates the Council’s relationships with sister accrediting/membership organizations in higher education and legal education that may be better suited to address issues regarding security of position and academic freedom.

In addition, Standard 403 (Instructional Role of Faculty) remains problematic in terms of determining compliance and enforceability. For example, the Standard provides that full-time faculty shall teach more than half of credit hours actually offered by the law school, or 2/3 of contact hours generated by student enrollment at the law school. The problem in enforcement is that the ABA only obtains data on the courses that are in the law school curriculum, which may not take into account courses students may take outside of the law school J.D. curriculum (i.e., courses from the LL.M curriculum of the law school). With the proliferation of LL.M courses and J.D. student enrollment in these courses, some clarification is needed. Moreover, the definition of “full-time faculty member” may need to be reviewed, as well as including the distinctions between full-time faculty, adjunct faculty, and non-full-time faculty.

- m. *Standard 503 (Admissions Test)* – This is another Standard that is unsettled and needs to be addressed.
- n. *Standard 509 (Required Disclosures)* – This Standard is not problematic as written but there is some concern that more consumer information may be useful in terms of tracking students by LSAT score, attrition status, bar passage results, and job placement.
- o. *Chapter 6 (Library and Information Services)* – This entire Chapter remains too prescriptive, according to many stakeholders.

3. Guiding Principles for Revisions and Adoptions to Standards

- a. Rigorous and Comprehensive Program of Legal Education – Ensuring that law schools maintain rigorous and comprehensive programs in preparing individuals for admission to the bar and for practice of law.
- b. Transparency – It is recommended that the process for Standards review, revision, and adoption continue to include opportunities for input and comment from all stakeholders.
- c. Consumer Protection – In ensuring consumer protection, Standards should include a range of measures and methods to inform the general public about the overall status of accredited law schools' compliance and non-compliance with Standards.
- d. Compliance with Department of Education (DOE) Regulations – Ensure continued recognition of the ABA's status as the entity responsible for the accreditation of law schools by the DOE.
- e. Sustaining Uniform Recognition of Bar Admission Eligibility by State Supreme Courts – Ensure ABA accreditation is a sufficient qualifier for eligibility to sit for a bar exam by the various state supreme courts without additional educational requirements imposed by individual states.
- f. Flexibility – Standards should be drafted in a manner that supports flexibility and innovation in terms of curriculum development and program management.

Transparency Report

TO: The Council

FROM: Standards Review Committee

RE: Recommendations Updating the 2008 Transparency Report

DATE: April 14, 2018

At the April 13, 2018, Standards Review Committee (SRC) meeting, the SRC considered updating its work on transparency, which involved reviewing the 2008 Transparency Report (Appendix A). Based on that review, the SRC makes the following report and recommendations to the Council.

As is explained below, the SRC believes that the following recommendations in the 2008 Transparency Report have been resolved, and recommends that no additional action is required.

Recommendations Resolved:

2008 Report, Recommendation 3:

The Committee recommended that the website should be more accessible, user-friendly, and interactive and that meeting dates, agendas, minutes, and committee membership lists be posted on the website.

Comments:

More information is being posted on the website, including meeting dates, agendas for the open portions of meetings, and background information on committee members. A summary of actions taken at each Council meeting is also posted.

2008 Report, Recommendation 4: Staff Member on Site Teams

The Committee recommended further consideration of placing a staff member on site evaluation teams to enhance consistency as an alternative to selecting six super volunteers to serve in this role.

Comments:

The use of the templates has led to more consistency in the site reports. In addition, three of the four senior staff do participate on site teams each year, either handling fact-finding visits, or serving as practitioners on teams. There is also more internal review of site reports before they are finalized.

2008 Report, Recommendation 7: Assistance in Preparing Self-Studies and Strategic Plans

The Committee recommended the SRC review and clarify the Standards on these topics.

Comments: The SRC and Section Staff have made great strides on clarifying these standards and what is required, including an update in language and an explanation of what is required.

2008 Report, Recommendation 8: Expanding Consumer Information

The Committee recommended the reporting of bar passage information and other data in the areas of employment, tuition, and financial aid.

Comments: The data is now available on a broader scale.

Recommendations that May Need Additional Action

2008 Report, Recommendation 2:

The Committee recommended that a description of the accreditation process from start to finish be posted on the website without restriction. The Committee recommended that a summary be posted on the website that highlights the Standards and Interpretations that schools have difficulty with. The Committee proposed that “Consultant’s Memos” be prepared to assist schools with compliance.

Comments:

The process for obtaining initial accreditation and procedures for a site visit are currently on the ABA Section website. The Section staff have significantly increased the number of “Guidance Memos” posted on the website to assist schools with compliance. This practice includes sending notice on the dean’s and associate dean’s listservs.

Recommendation: The SRC recommends the continued use of more “Guidance Memos” when necessary. The SRC also recommends that the Council consider publicizing which Standards are more frequently the subject of compliance issues at law schools.

2008 Report, Recommendation 5: Educational/Training Sessions

The Committee recommended that the Section consider additional ways in which accreditation information can be shared with deans, schools and the public, including seminars, podcasts, and webinars.

Comments:

The Section has done all of these things at some point but only workshops have been continued consistently. May want to suggest webinars.

Recommendation: The Working Group recommends supplementing some of the current workshops by some combination of videotaping the workshops, podcasts, and webinars.

2008 Report, Recommendation 9: Student Involvement

The Committee observed that the current method of involving students (at lunch or at an open meeting) has not been effective in generating very much student input.

Comments: Perhaps a survey could be created for site teams to send to students prior to the visit.

Recommendation: The SRC recommends that a student survey be developed that would cover the questions that site teams usually have for students. The survey should then be sent to students at each law school prior to their site visits for their input in an anonymous fashion, through Survey Monkey or some other online format. The results from a school would then be given to the site team visiting the school prior to the visit to help identify possible issues to be investigated during the visit. Site teams should also be asked to evaluate the usefulness of the surveys to determine if the surveys should be continued beyond a one-year test period.

Bigger Issues and Recommendations

2008 Report, Recommendation 1: Availability of Documents

The Committee recommended that unredacted accreditation decision letters be made available on the Section's website, password-protected, to deans.

Comments: We are now posting a short letter for AC findings of significant non-compliance on our website. Upon a move to the "radical decision letter," should we consider making all letters available?

Recommendation: The SRC recommends that even radical decision letters for each law school should not be made available to any group or the general public. The SRC believes that making letters available when there are no issues of significant non-compliance would not serve a consumer protection interest, which the SRC believes should be the rationale for making letters public.

2008 Report, Recommendation 6: Best Practices Memorandum

The Committee recommended that further consideration be given on a best practices memorandum in accreditation. It was suggested that possible topics might include: (1) discussion of whether (and, if so, how) a school should make available to the full faculty the team report and decision letter resulting from a

recent on-campus site evaluation; and (2) whether (and, if so, how) students should be involved in the process.

Comments:

Like the original Committee, the SRC is concerned that such "best practices" might be interpreted by some deans as requirements and, in any event, might be controversial. Reaching agreement would likely be difficult.

Recommendation: The SRC recommends against developing a so-called "best practices" memorandum for the reasons contained in the comments.

Thank you.