

From the Chair: Transparency and its Limits



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In 2008, the Section of Legal Education and Admissions to the Bar's Special Committee on Transparency made a number of recommendations to the Section's Council regarding "how the accreditation process should be structured and administered to assure appropriate transparency while also safeguarding confidentiality for any information and aspects of the process that should be confidential." Special Committee Report, at 1. This year, the Standards Review Committee (SRC) reviewed the 2008 Report, considered the accreditation project's progress toward implementing the Report's recommendations, and suggested additional steps. Also this year, Law School Transparency prepared a report entitled "A Way Forward: Transparency in 2018" (LST Report) for the Iowa State Bar Association's Young Lawyers Division. In this column, I discuss briefly just a few of the highlights of these reports and the evolution of the Council's approach to providing more information on the accreditation process to schools and more relevant data to prospective students. The Council has made great strides in transparency. Because, however, the law school market as well as the employment market have changed dramatically over the years, it may be time for it to identify a systematic analytical method for considering how to evaluate more requests for transparency, whatever their source (within or without the ABA). This will help it provide the most robust and useful public disclosure while also guarding against transparency for its own sake.

The Special Committee Report focused, *inter alia*, on recommending steps to educate both the public and law schools by placing more information on a revamped Section website. It suggested the website feature an explanation of the accreditation process, including a summary of frequent issues noted by site visit teams. It recommended that that the Managing Director's Office (then the Consultant's Office) issue Guidance Memos to schools in appropriate circumstances and hold educational sessions to help schools understand and comply with the Standards for accreditation. It also determined that recommending changes to the consumer data schools must publish was outside of its charge, but noted, "The reporting of bar passage data . . . should be reviewed [and] concerns have also been raised about the adequacy of data reporting in the areas of financial aid, employment, and tuition among others." Special Committee Report, at 10-11.

In its review of the Special Committee Report, the SRC noted the many enhancements the Section has made in providing information on the accreditation process. For example, the Section now has a more robust website, containing a great deal of information on the accreditation process as well as meetings of Committees and the Council. The SRC Report also highlighted the Managing Director's increasing use of Guidance Memos distributed to deans and available on the website. It recognized the Section's continuing use of workshops as an educational tool, recommending that it give consideration to increasing the number of webinars. Regarding consumer data, the SRC recommended no further action given the volume of data that is now broadly available.

Indeed, over the last 10 years, the Council has used Section 509 of the Standards to require broad disclosures. They include, *inter alia*: "tuition and fees, living costs, and financial aid . . . employment outcomes; and bar passage data." Schools are required to report information according to a Council-approved questionnaire. Section software takes the data provided and formats it into what we call the "509 Report." Each school is required to post its Standard 509 Report on its website, thus making it easier for prospective students to compare schools. Further, the Council has adopted a quite fine-grained employment outcomes report that categorizes jobs in a number of ways, including whether they are school funded. Schools are required to post their employment outcomes using the form generated by the Section's software (thus again enabling comparability), and these results are published far earlier than 10 years ago.

The LST Report focuses much less than the Special Committee Report on transparency in the accreditation process and much more on consumer information, advocating in contrast to the SRC, *inter alia*, for more disclosure of financial aid, tuition data, completion rates, and bar pass results than that which is currently required. It emphasizes the utility of disaggregating data by race, ethnicity, and gender, and proposes a simplified employment form that decreases the number of reporting categories.

Generally, in evaluating suggestions for enhanced consumer disclosures, the Council should begin by ensuring that it thoroughly understands current requirements and what has changed to raise the question whether those requirements should be adjusted. If convinced that new practices justify revisiting existing disclosures, the Council should next consider whether it can obtain and present data in a way that would be accurate and useful to prospective students. In so doing, it should not ignore administrative costs – changing requirements often, if not always, results in schools having to report more information or the same information differently, adjusting software systems, and designing new forms. The Council should ask whether the benefits of a particular data collection and presentation effort is worth the costs. Here, I will consider just one of the LST Report's proposals – disaggregation of financial aid – using this rubric.

Currently, schools report the number of students receiving grants and categorize those grants into less than ½ tuition, ½ tuition to full tuition, full tuition, and more than full tuition. Additionally, schools must publish the 75%, 50%, and 25% grant amounts. Schools must disclose whether they offer conditional scholarships – ones that may be reduced or eliminated altogether if a student fails to meet certain requirements.

Much has changed in the financial aid world in the last 10 years. Many schools have moved away from a primarily need-based financial aid strategy to a primarily merit-based one. Additionally, as law school applications declined, schools began to increase their discount rates substantially, making the actual tuition paid less (sometimes substantially less) than "sticker price." LST recommends that the Council require ". . . disaggregated data on the amount of tuition paid by class year . . . race, and gender; [and] data on applicants and scholarships by gender [and] race/ethnicity. . . ." LST Report, at 11. LST's hope is that the availability of this information would help students understand the true cost of attendance and

their relative bargaining position, and assist the Council in, for example, its enforcement of Standards requiring concrete action to enroll a diverse class (i.e., to the extent that diverse students score less well on the LSAT and schools are using the majority of their financial aid budgets to reward merit in the form of LSAT scores, schools may not be meeting their diversity obligations). Disaggregation by year would also help students understand that their costs may change over time.

The aforementioned market changes seem reason enough to revisit financial aid disclosures. Before adopting the LST proposal or some other data collection and disclosure requirement, though, the Council should consider administrative challenges. While schools know to whom they are making awards and at what level, they may need to update their systems to enable sorting that data by, for example, race, ethnicity, and gender. The Section too would need to update its systems and forms to take account of different data fields and develop a new form to present the information clearly. One would think that in 2018, system updates should not be prohibitively expensive, but many schools and the Section itself are running on antiquated systems. Any new requirements should be thoughtfully designed with the goal of forward compatibility should those mandates change again.

Another important question to consider is whether the data could be presented in a way more likely to educate than to mislead. Financial aid can be tricky to put into context because awarding strategy changes as the admissions season unfolds and the class begins to take shape. The exact same student may receive a different financial aid offer solely because of a difference in the time of admission not because of discriminatory intent. Perhaps then, any disclosure should be accompanied by admissions date ranges, which, in turn, would further complicate system updates and presentation to prospective students.

Although generally irrelevant to the Council's consideration of disclosure requirements, schools do seem likely to oppose enhanced financial aid disclosures because they view awarding strategy as analogous to a trade secret. Although prospective students, through various social media channels, compare financial aid offers, they (and other law schools) would find it quite difficult to reverse engineer a particular school's strategy. At the same time, though, students who are not savvy enough to use social media to compare offers and attempt to entice schools into bidding wars, are disadvantaged by the relative opacity of those awards.

The Council might consider, as it has sometimes (e.g., in the case of transfer information), whether it should collect the data and review it internally before making it public. This would give it time to consider how to address any anomalies, and how to present it publicly in the most useful way.

Moreover, the Council would be well-advised to avoid making piecemeal changes to its data collection and presentation because of the cost concerns noted above. Ultimately, the best consumer information might be an informational grid that describes the school's entering class across a number of categories and tracks that class from entry through graduation to bar pass and first employment. An applicant then could assess chances of admission as well as what the initial part of a career would look like, both professionally and financially. We are a long way from such an approach, however, so we may have no choice but to address disclosure issue by issue. As the Council does so, it should employ a consistent analytical approach to help ensure public confidence in its decisions.

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