Managing Director’s Guidance Memo

Information about Teach-Out Plans
and Teach-Out Agreements and Law School Closures
(May 2017)

Introduction

The closure of a law school is a very important event in the life of the school, its university or governing board, students, graduates, faculty, staff, the community in which it is located, the legal education community generally, and the public. When an ABA approved law school announces that it is closing, and throughout that closure process, the Managing Director’s Office, the Council, and the Accreditation Committee have specific roles to play. We are concerned for the law school community, of course, but it is important to understand that role; the limits of our authority; and, practically, what we can do.

This document spells out the role of the Managing Director’s office and the ABA accreditation process in school closures and answers the questions that generally arise. The relevant rules and regulations are Rule 34 of the ABA Rules of Procedure for Approval of Law Schools and 34 CFR 602.24, which is the applicable United States Department of Education regulation.

Circumstances Requiring a Teach-Out Plan

A law school that is fully or provisionally approved by the Council for the Section of Legal Education and Admissions to the Bar of the American Bar Association ("Council") that elects or is required to cease operations must promptly make a public announcement of that decision. Thereafter, it must formally notify the Managing Director’s Office of its intent. Other than the closure of a school, the applicable rules require the filing of a Teach-Out Plan on the occurrence of certain other events that are often, but not necessarily, connected to the closure of the law school.

Pursuant to Rule of Procedure 34, a 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.

Definition of Teach-Out Plan and Teach-Out Agreement

“Teach-Out Plan” means a written plan developed by a law school that provides for the equitable treatment of students if the law school ceases to operate before all students have completed their program of study, and may include, if required, a teach-out agreement between law schools.

“Teach-Out Agreement” means a written agreement between law schools that provides for the equitable treatment of students as part of a Teach-Out Plan that offers a reasonable opportunity for students to complete their program of study if the law school ceases to operate before all enrolled students have completed their program of study.

When to include a Teach-Out Agreement with the Teach-Out Plan

A law school must include a Teach-Out Agreement with the Teach-Out Plan when the law school will not be able to teach out its own students prior to its closure, or elects not to do so because the agreement provides equal or superior options for students. This agreement sets out an arrangement with one or more law schools to provide courses to those students who can, thereby, reasonably complete their legal education through the participation of another law school. The arrangement may involve the teaching being done at the campus of the law school being closed or on the campus of the law school entering into the Teach-Out Agreement.

Law School and University Preparation of a Teach-Out Plan

Following the law school’s report to the Managing Director’s Office that it intends to close (or is otherwise required to file a Teach-Out Plan), the Managing Director will set a date for the school to file its Teach-Out Plan. A Teach-Out Plan Approval Form is provided to facilitate the school’s development of a plan. 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, the law school is required to submit that agreement by completing and submitting the Teach-Out Agreement Approval Form posted on the Section’s website. The forms can be found at:

Accreditation Committee and Council Review of Teach-Out Plans and Teach-Out Agreements

A teach-out plan must be formally approved by the Council before it can be implemented. The Accreditation Committee may evaluate the plan to determine whether it provides for the equitable treatment of students, and make a recommendation for approval or denial to the Council.

A teach-out agreement is subject to the same approval process.

The Accreditation Committee and the Council will review plans at the next regularly scheduled meeting of the body. The meeting schedule is posted HERE.

Outline of the Rules and Practices on Transfer

When a law school announces that it is closing, some students will likely want to transfer to another law school. The law school that is closing should make every effort to assist such students in transferring and should include information on how that assistance will be provided within the Teach-Out Plan, including information on prompt access to student records before and after closure.

Standard 505(a) provides that an ABA-approved law school may admit a student as a transfer student and grant credit for that student’s prior law study at another ABA-approved law school without limitation on the number of transfer credits allowed.

The decision to accept a transfer student is, of course, vested in the transferee law school. Most law schools have a school-specific rule that limits the number of credits that it may accept for a transfer student. Law schools that are members of the Association of American Law Schools (AALS) are subject to AALS Executive Committee Regulation Section 6-7.5(a) to limit the amount of transfer credit that may be accepted to no more than one-third of the credits that the transferee school requires for graduation.

When an ABA-approved law school accepts a student as a transfer student, the student belongs to the transferee law school for all additional Standards and reporting purposes. The transfer student will earn the J.D. degree from the transferee school, must meet that school’s graduation requirements, and will be reported by the transferee school for purposes of employment outcomes and bar passage.

Law schools from time-to-time allow students to visit as a guest or “transient” student. This means that the host school permits a student to take classes at the school, but will report the work done there back to the home school of the student. The home school agrees that the student may visit at the other school, but also agrees to accept the credit earned there as counting toward its own graduation requirements. In that situation, the student will earn the J.D. of the home school, not the host school, and the student remains on the records of the home school for matters such as bar passage and employment outcomes reporting.

Over the years, “transient” student arrangements have, almost always, been for third-year students who have personal/family reasons to need to be away from the home school (e.g., student’s partner or spouse is a medical student who gets a residency at a medical school some distance from the home
school’s campus, or the student has a parent needing care who resides some distance from the student’s home school).

The ABA Standards leave these types of arrangements to the law schools involved. For it to work, however, there must be a home law school that can receive the credits and grant the degree. While it not clear how that could happen in a school closure situation, the Standards do not prohibit it, if the closing school proposes such an arrangement in a Teach-Out Plan the Council approves.

Students should address questions about transfer, first, to their school which is closing and, then, to schools where they might wish to transfer. Again, an important part of a Teach-Out Plan will be the closing school’s description of how it will deal with students desiring to transfer.

Outline of Issues Relating to Financial Aid

The Managing Director’s Office and the ABA accreditation process have limited roles, responsibilities, and authority with respect to the operation of the student loan process. Accreditation may be a foundation or a condition precedent to a school’s ability to allow students to borrow student loans, but the operation of that student loan process is governed by federal rules and regulations and managed by the federal government, not the ABA accreditation process. Questions relating to these matters are best addressed, first, to the law school, and, thereafter to the United States Department of Education. A law school that is closing should make available to students the contact information they need to ask questions of the United States Department of Education about their student loans.

From the perspective of the Council, the Managing Director’s Office, and the ABA law school accreditation process, until a law school (1) closes, effectively resigning its ABA approval, or (2) has its approval formally withdrawn by the Council, pursuant to the process established by Rules of Procedure 12-17, the law school remains “ABA-approved.” A law school on probation remains ABA-approved through the period of that probation and until, again, the Council formally withdraws approval. That is the position that is consistently communicated to all who inquire.

What is Public and What is Confidential about Closures and Teach-Out Plans under the Rules of Procedure

Generally, the Rules of Procedure provide that all matters relating to the accreditation of a law school are confidential. See Rule 49. Nothing in the Teach-Out rule (Rule 34) or Rules 51-53, which deal with exceptions to the general rule of confidentiality, provide any exceptions for Teach-Out Plans. Consequently, the Managing Director’s Office cannot make public a plan filed by a school, cannot comment on whether or when a plan will be considered by the Accreditation Committee or Council, and cannot comment on any conversations that may be taking place with the law school.

Nothing in the Rules of Procedure, however, bars or blocks the law school from making documents public and in other ways keeping students, in particular, informed through the process of closure. The only restriction on the law school is the requirement of Standard 509 that any information a law school reports, publicizes, or distributes shall be complete, accurate, and not misleading.
Some of the issues involved in closing a law school no doubt require discretion and discussion outside the public eye. Given the impact of the closing of a law school on many groups, however, the school is encouraged to be as open and transparent as it can be.

The Managing Director’s Office will issue Guidance memoranda from time-to-time when new Standards or Interpretations have been adopted or when, in the course of the Office’s dealings with schools about compliance with the Standards, a number of schools are asking for clarification or direction regarding a particular Standard, Interpretation or reporting requirement. The Office does its best to provide helpful guidance, but we remind schools that we do not have the authority to bind either the Council or the Accreditation Committee. That said, the Council and the Accreditation Committee understand the necessity of providing guidance and will take that guidance into account in any determination about a school’s operating in compliance with the Standards.