

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

MEMORANDUM

DATE: February 23, 2017

TO: Interested Persons and Entities

FROM: Barry A. Currier, Managing Director of Accreditation and Legal Education

SUBJECT: Adoption and Implementation of Revised ABA Standards and Rules of Procedure for Approval of Law Schools

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At its meeting in October 2016, the Council approved changes to the *ABA Standards and Rules of Procedure for Approval of Law Schools*. The changes had been circulated for Notice and Comment and a public hearing was held on August 6, 2016. The following amended Standards and Rules of Procedure became effective upon concurrence by the ABA House of Delegates at its meeting on February 6, 2017:

- Standard 204: Self Study
- Standard 303(a)(1): Curriculum
- Interpretation 303-1
- Standard 311(d): Academic Program and Academic Calendar
- Standard 501: Admissions
- Rules 35, 37, 38, 39, 40, and 41: Appeals Panel

Attached are an explanation of the changes and a redlined version of the amended Standards and Rules of Procedure.

## Standard 204. SELF STUDY

Following the changes made to Standard 204 during the comprehensive review, several law schools commented that the Standard was confusing in that some of the requests for information to be included in the self study were duplicative. The revised Standard more closely tracks the U.S. Department of Education requirement that an accrediting body require a self study comprising information regarding the educational quality of the program and efforts to improve the program. In addition to the site evaluation questionnaire, the self study would include the following: a statement of the law school's mission and of its educational objectives in support of that mission; an evaluation of the educational quality of the law school's program, including a description of the program's strengths and weaknesses; and a description of the school's continuing efforts to improve the educational quality of its program. The Interpretation referring to the availability of funds is deleted as being duplicative of the information requested in Standard 202.

### Standard 204. SELF STUDY

Before each site evaluation visit the law school shall prepare a ~~self study~~ self study comprising ~~ed of~~ (a) a completed site evaluation questionnaire, and (b) a law school self assessment that includes (1) a statement of the law school's mission and of its educational objectives in support of that mission, (2) an assessment evaluation of the educational quality of the law school's program of legal education, including a description of the program's strengths and weaknesses, and (3) an assessment description of the school's continuing efforts to improve the educational quality of its program, (c) ~~an evaluation of the school's effectiveness in achieving its stated educational objectives,~~ and (f) ~~a description of the strengths and weaknesses of the law school's program of legal education.~~

### Interpretation 204-1

*The evaluation of the school's effectiveness and description of its strengths and weaknesses should include a statement of the availability of sufficient resources to achieve the school's mission and its educational objectives.*

## Standard 303. CURRICULUM

Standard 301 requires that a law school maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession. The Standards provide each law school with a great deal of discretion concerning which courses to include in its curriculum to meet these goals, and the Standards do not dictate the specific content of those courses. One exception to this approach is current Standard 303(a)(1), which requires a course of at least two credit hours in professional responsibility. This revised Standard reflects the fact that professional responsibility instruction in law schools has evolved to focus on the rules of professional conduct and the values and responsibilities of the legal profession. Understanding rules of professional conduct and the values and responsibilities of the legal profession and its members is essential to meet the objectives of Standard 301. On the other hand, requiring instruction in the history, goals, and structure of the legal profession is not as directly related to preparing students to be admitted to the bar and to become effective, ethical members of the legal profession. The revised Standard

provides guidance to site teams, some of which have asked law schools to explain how their courses in professional responsibility provide information on the history of the legal profession.

### **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 ~~the history, goals, structure, rules of professional conduct, and the values,~~ and responsibilities of the legal profession and its members;

#### **Interpretation 303-1**

The revised Interpretation makes clear that, so long as the requirements for each of the two Standards are met, an upper division writing course can be used to meet the requirement of Standard 303(a)(2) for a writing experience after the first year, or the requirements under Standard 303(a)(3) and 304(a) as a simulation course. The revision also makes it clear that such a course can be used to satisfy only one of the requirements of the Standard.

#### **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)] 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.*

### **Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR**

This revision explains the interaction between Standard 311(d), which states that credit can be given only for course work taken after a student has matriculated, and Standard 505, which states the circumstances under which credit can be granted to J.D. students for prior law studies. The revised Standard clarifies the matter by confirming that matriculation refers to a student's entry into the J.D. program, and that credit for prior law study can be granted pursuant to Standard 505.

### **Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR**

- (d) Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school's J.D. program of study, except for credit that may be granted pursuant to Standard 505. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

## Standard 501. ADMISSIONS

The revised Standard includes the following changes:

1. Changing 501(a), from “maintain,” to the language found in other Standards of “adopt, publish, and adhere to.”
2. Making 501(b) a positive statement – from “a law school shall not admit...” to “a law school shall admit only....”
3. Adding the following sentence to Interpretation 501-1: Compliance with Standard 316 is not alone sufficient to comply with the Standard.

These changes clarify that a law school must adopt written admission policies that are consistent with the Standards, including the Standard regarding the admission of qualified applicants. The changes also clarify that the assessment of compliance involves all of the factors listed in Interpretation 501-1, that compliance with the Standard on bar passage is not alone sufficient to demonstrate compliance, and that the Council and Accreditation Committee need not wait for bar passage outcomes required by Standard 316 to inquire about a school’s admissions practices and policies in appropriate cases.

The revisions also offer the Council a method of enforcing the Standard through an examination of the non-transfer attrition rate of a law school as a means of assessing whether the school has admitted only applicants who appear capable of satisfactorily completing its program of legal education. A law school having non-transfer attrition above 20 percent bears the burden of demonstrating that it is in compliance with this Standard.

### Standard 501. ADMISSIONS

- (a) A law school shall ~~maintain~~ adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.
- (b) A law school shall ~~not admit an~~ only applicants who ~~does not~~ appear capable of satisfactorily completing its program of legal education and being admitted to the bar.
- (c) 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 501-2***

*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.*

***Interpretation 501-3***

*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.*

**Rules 35, 37, 38, 39, 40, and 41: APPEALS PANEL**

In the U.S. Department of Education's Final Staff Report on our Petition for Continued Recognition as the accreditor for programs in legal education that lead to the first professional degree in law, the Department staff concluded that the Standards and Rules of Procedure did not comply with Section 602.15(a)(3) of the recognition criteria, which requires, among other things, that the Appeals Panel have both "academic" and "administrative" personnel because the Council is an "institutional" accreditor. The revised Rules address this finding and bring the Council into compliance with that provision.

**Rule 35: Appeals Panel**

- (a) The Appeals Panel shall consist of at least ~~three~~ five persons appointed by the Chair of the Council. Members shall serve a one-year term beginning at the end of the Annual Meeting of the Section and continuing to the end of the next Annual Meeting of the Section or until replaced. Appeals Panel members ~~and alternates~~ are eligible to serve consecutive terms or non-consecutive multiple terms.
  - (1) ~~The Chair of the Council shall designate one member of the Appeals Panel to serve as its chair.~~
  - (2) ~~The Chair of the Council shall also appoint, at the same time as appointing members of the Appeals Panel and for the same term, an equal number of alternates to the Appeals Panel.~~
- (b) Every member of the Appeals Panel ~~and alternate~~ shall be:
  - (1) A former member of the Council or Accreditation Committee; or
  - (2) An experienced site evaluator.

- (c) Members of the Appeals Panel ~~and alternates~~ shall be:
- (1) Experienced in and knowledgeable about the Standards, Interpretations, and Rules of Procedure;
  - (2) Trained in the Standards, Interpretations, and Rules of Procedure at a retreat or workshop or by other appropriate methods within the 3 years prior to appointment; and
  - (3) Subject to the Section's Conflicts of Interest Policy, as provided in IOP 139.

(d) The Appeals Panel, ~~and the group of alternates~~, shall each include:

- (1) an academic;
- (2) an administrator;
- (3) a legal educators;
- (4) a practitioners or, members of the judiciary; and
- (5) a representatives of the public.

~~(d)~~(e) No more than fifty percent of the members may be persons whose primary professional employment is as a law school dean, faculty, or staff member. Public members shall have qualifications and representation consistent with the regulations of the United States Department of Education applicable to the accreditation of professional schools.

### **Rule 37: Membership of the Appeals Panel for the Proceeding**

- (a) Within 30 days of receipt of a written appeal within the scope of authority of the Appeals Panel, the Managing Director shall ~~ensure that the Appeals Panel or the Appeals Panel with alternates is authorized and available to decide the appeal.~~ appoint three members of the Appeals Panel to hear the particular matter and make the decision. The appointed members shall be known as the Proceeding Panel. The Managing Director shall designate one member of the Proceeding Panel as chair.
- (b) ~~In the event a member of the Appeals Panel cannot participate in the appeal, the Managing Director shall appoint one of the alternates to the panel hearing the matter and making the decision, and shall ensure that the panel includes one legal educator, one judge or practitioner, and one public member. For law schools for which the Council is the institutional accreditor, the Managing Director shall appoint an academic, an administrator, and a representative of the public to serve on the Proceeding Panel. For law schools for which the Council is the programmatic accreditor, the Managing Director shall appoint a legal educator, a practitioner or member of the judiciary, and a representative of the public to serve on the Proceeding Panel.~~

- (c) In the event ~~an alternate~~ a member of the Appeals Panel cannot be appointed to participate in a decision on appeal so as to ensure that the Proceeding p~~Panel~~ ~~includes one legal educator, one judge or practitioner, and one public member~~ meets the requirements of Rules 35 and 37, the Managing Director shall appoint to the Proceeding p~~Panel~~ another person who meets those requirements.:
- (1) ~~Wholly or substantially meets the criteria of Rule 35(b) and (c); and~~
  - (2) ~~Whose appointment to the panel ensures that the panel includes one legal educator, one judge or practitioner, and one public member.~~
- (d) ~~In the event the Chair of the Appeals Panel is unable to participate in the appeal, the Managing Director shall appoint a Chair Pro Tempore, where possible from among the members of the Appeals Panel appointed by the Chair of the Council.~~

### **Rule 38: Scheduling of Appeals Panel Hearings**

- (a) Within 30 days of receipt of a written appeal within the scope of authority of the Appeals Panel, the Managing Director shall refer the appeal to the Appeals Proceeding Panel. In referring the appeal, the Managing Director shall provide the ~~members of the Appeals or alternates hearing the appeal~~ Proceeding Panel with copies of:
- (1) The written appeal;
  - (2) The decision of the Council; and
  - (3) The record before the Council, including any transcript of hearing.
- (b) The Managing Director, in consultation with the Chair ~~or Chair Pro Tempore~~ of the Appeals Proceeding Panel, shall set the date, time, and place of the hearing.
- (1) The hearing shall be scheduled within 45 days of the Managing Director's referral of the appeal to the Appeals Proceeding Panel.
  - (2) The Managing Director shall inform the law school of the date, time, and place of the hearing at least 30 days in advance of the hearing, unless the law school agrees to the hearing on less than 30 days' notice.

### **Rule 39: Burdens and Evidence in Appeals Panel Proceedings**

- (a) The law school appealing to the Appeals Panel has the burden of demonstrating that the Council's decision was arbitrary and capricious and not supported by the evidence on record, or inconsistent with the Rules of Procedure and that inconsistency prejudiced its decision.

- (b) The appeal shall be decided based on the record before the Committee and the Council, the decision letters of those bodies and any documents cited in those decision letters, and transcripts of hearings before the Committee and the Council. Except as provided in Rule 41(e), no new evidence shall be considered by the ~~Appeals-Proceeding~~ Panel.

**Rule 40: Procedure in Hearings before the ~~Appeals-Proceeding~~ Panel**

- (a) The hearing will be a closed proceeding and not open to the public.
- (b) The law school shall have a right to have representatives, including legal counsel, appear at the hearing.
- (c) The Council shall be represented at the hearing through the Chair, other members of the Council as the Chair of the Council deems appropriate, and legal representation for the Council.
- (d) The Managing Director or designee shall be present at the hearing. The Managing Director may designate additional staff to be present at the hearing.
- (e) The hearing shall be transcribed by a court reporter and a transcript of the hearing shall be provided to the ~~Appeals-Proceeding~~ Panel, the Council, and the law school.

**Rule 41: Action by the ~~Appeals-Proceeding~~ Panel**

- (a) Within 30 days of the hearing, the ~~Appeals-Proceeding~~ Panel shall provide the Council and the law school with a written statement of the ~~Appeals-Proceeding~~ Panel's decision and the basis for that decision.
- (b) The ~~Appeals-Proceeding~~ Panel, following a hearing, has the authority to:
  - (1) Affirm the decision of the Council;
  - (2) Reverse the decision of the Council and enter a new decision;
  - (3) Amend the decision of the Council; or
  - (4) Remand the decision of the Council for further consideration.
- (c) The decision of the ~~Appeals-Proceeding~~ Panel shall be effective upon issuance. If the ~~Appeals-Proceeding~~ Panel remands a decision for further consideration or action by the Council, the ~~Appeals-Proceeding~~ Panel shall identify specific issues that the Council must address.
- (d) Decisions by the ~~Appeals-Proceeding~~ Panel under (b)(1), (2) and (3) are final and not appealable.



- (e) When the only remaining deficiency cited by the Council in support of an adverse decision is a law school's failure to meet the Standards dealing with financial resources for a law school, the law school may request a review of new financial information that was not part of the record before the Council at the time of the adverse decision if all of the following conditions are met:
  - (1) A written request for review is filed with the Office of the Managing Director within 30 days after the date of the letter reporting the adverse decision of the Council to the law school;
  - (2) The financial information was unavailable to the law school until after the adverse decision subject to the appeal was made; and
  - (3) The financial information is significant and bears materially on the financial deficiencies that were the basis of the adverse decision by the Council.
- (f) The request to review new financial information will be considered by the Council at its next meeting occurring at least 30 days after receipt of the request.
- (g) A law school may request review of new financial information only once and a decision made by the Council with respect to that review does not provide a basis for appeal.