

AMERICAN BAR ASSOCIATION

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

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American Bar Association**

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MEMORANDUM

TO: Deans of ABA-Approved Law Schools
University Presidents
Chief Justices of State Supreme Courts
Bar Admission Authorities
Deans of Unapproved Law Schools
Leaders of Other Organizations Interested in ABA Standards

FROM: Hulett H. Askew, Consultant on Legal Education
Richard J. Morgan, Chair, Standards Review Committee

SUBJECT: Proposed Revisions to the ABA Standards for the Approval of Law
Schools – Standard 801(a) and Interpretation 301-6

At its February 10, 2007 meeting the Council considered the report of the Standards Review Committee with respect to Standard 801(a) and Interpretation 301-6. After discussion, the Council agreed to publish for notice and comment a change to Standard 801(a) and a new Interpretation 301-6. All of these proposals are published on the Section's website, www.abanet.org/legaled.

We solicit your comments on these proposed changes.

Standard 801(a).

The Council proposes restating this Standard in order to make it conform to the language of Rule 10 of the Rules of Procedure for the Approval of Law Schools. The Standard now makes it clear that a decision of the Council to grant or deny provisional approval or to deny or remove approval is final upon the action of the Council unless there is an appeal to the House of Delegates. This conforms the Standard with the provisions of Rule 10.

New Interpretation 301-6.

Standard 301(a) states that "a law school shall maintain an educational program that prepares its students for admission to the bar...". Interpretation 301-3 in part states: "Among the factors to be considered in assessing the extent to which a law school complies with this Standard are ... the bar passage rates of its graduates." In addition, Standard 501(b) states that "a law school shall not admit applicants who do not appear capable of ... being admitted to the bar". The Standards Review Committee

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at its November 2006 meeting began consideration of a new Interpretation that would codify the practices of the Accreditation Committee regarding the utilization of bar passage data. This new Interpretation is intended to formalize and clarify the approach taken by the Accreditation Committee in reviewing bar passage data from law schools. The Council considered the attached draft Interpretation at its February 10, 2007 meeting and approved it to be published for notice and comment.

This new Interpretation is intended to give notice as to how the Accreditation Committee will handle bar passage information in determining compliance with Standard 301. In that regard, the language makes it clear that when a school's bar pass rates "frequently" fall below 70%, the Committee will likely conclude under Rule 13(a) that there is reason to believe that the school does not comply with Standards 301(a) and 501. A request will then be made for additional information from the school to substantiate its belief that it is indeed in compliance or to describe the steps the school will be taking to demonstrate compliance. A Rule 13(a) conclusion is not a finding at that stage that the school is out of compliance with either Standard, but is an indication that further inquiry is required.

A few matters in the Interpretation should be highlighted:

- The first sentence states that the Accreditation Committee initially examines first-time bar passage rates for the most recent three years in the three jurisdictions in which the school's graduates most frequently take the bar. This is what site teams are asked to report (see Format Memo, p. 13) and the Council considers this to be the minimum necessary for a comprehensive first review of a school's bar passage success.
- The "trigger" of 70% or below is the benchmark that the Accreditation Committee has most frequently used in recent years.
- In the second sentence, the "trigger" is described as passage rates "frequently" below the line, thereby leaving to the Accreditation Committee the discretion as to when to ask a school to report back. Once again, the "trigger" is not a finding of noncompliance; it is simply a flag to the Committee that typically leads to further inquiry as to the rigor of the academic program, the academic support program, attrition, bar preparation programs, entering credentials of students and so on. The school will be given sufficient opportunity to address all issues in the continuum of programs, decisions or events that ultimately lead to a bar passage percentage.

The last sentence is a description of the additional bar passage

information that the Accreditation Committee and Council most frequently consider, but it is expressly stated as being without limitation, thus permitting the Committee or Council to ask for, or the school to provide, additional or different information. The school is encouraged to gather and provide more extensive bar passage data, such as bar passage data for those of its graduates who have taken a bar examination more than once, and first-time, second time and ultimate bar passage data for the school's graduates in any jurisdictions in which a substantial number of its graduates sit for a bar examination beyond the three reported. Since such data may be obtained only by tracking the bar passage success of individual graduates, however, the school must take responsibility for gathering and presenting those data. The Accreditation Committee and the Council are more likely to give significant weight to "repeat-taker" bar passage data if those data are comprehensive, reporting results for a large portion of a school's graduates over a significant number of years. It also should be noted that, even if the data show that the school's bar passage performance is improved by the "ultimate" passage of a number of its graduates, those graduates still will have experienced significant delay before gaining admission to practice; in such circumstances, there may be valid questions as to the extent to which the law school's programs, rather than post-graduation experiences, have contributed to those graduates' ultimate success in passing the bar exam.

The goal of the Council in proposing and ultimately adopting an Interpretation on bar passage is to provide a "measurable benchmark" that establishes a consistent and transparent methodology for reviewing a school's compliance with Standards 301 and 501. This builds upon and clarifies further the December 2005 memo from former Consultant John Sebert explaining how the Committee has historically treated bar passage data.

We solicit comments on the amended Standard 801(a) and new Interpretation 301-6 by letter, e-mail or through an appearance at a hearing that will be conducted by the Standards Review Committee during the Annual Meeting of the American Law Institute in May. Please address written comments to Dan Freehling, Deputy Consultant, at our Chicago office or at FreehliD@staff.abanet.org.

All comments will be provided to and reviewed by the Standards Review Committee when it meets following the May hearing to finalize its recommendations to the Council on these matters. We expect that final Council action on these matters will occur at the Council meeting scheduled for June 8-9, 2007 in Charlottesville, VA.

Thank you.

cc: William Rakes, Council Chairperson
Dan Freehling, Deputy Consultant

Draft Interpretation Concerning Use of Bar Passage Data

Interpretation 301-6

In considering bar passage rates when determining a school's compliance with Standards 301(a) and 501(b), the first-time bar passage rates of a school's graduates for the most recent three years in the three jurisdictions in which the largest number of the school's graduates take the bar examination are initially reviewed. If data demonstrate to the Accreditation Committee that the school's first-time bar passage rates frequently are seventy percent or below, the school shall be asked to provide additional information in order to demonstrate compliance with the Standards. Such additional information may include, without limitation, first-time bar passage rates for a number of years in other jurisdictions in which a substantial number of the school's graduates take the bar examination, second-time taker bar passage rates of the school's graduates for a number of years, and ultimate bar passage rates of all of the school's graduates over a period of years; and, for the previous three years, information on academic support, attrition rates, bar preparation programs, and the entering credentials of students.

Commentary: The purpose of the proposed revision to Standard 801(a) is to make it consistent with Rule 10 of the *Rules of Procedure for Approval of Law Schools*. Standard 801(a) and Rule 10 both speak to when a decision of the Council becomes final with respect to granting or denying provisional or full approval; or withdrawing provisional or full approval.

Standard 801 Council Authority (current language)

(a) The Council shall have the authority to grant or deny a law school's application for provisional or full approval or to withdraw provisional or full approval from a law school. A decision of the Council to grant or withdraw provisional or full approval shall not become effective until it has been reviewed by the House. Review of such a decision by the House shall be conducted pursuant to the procedures set forth in the Rules of Procedure of the House and the Rules of Procedure for Approval of Law Schools.

PROPOSED Standard 801(a) language (to conform to Rule 10 of the Rules of Procedure for Approval of Law Schools):

(a) The Council shall have the authority to grant or deny a law school's application for provisional or full approval or to withdraw provisional or full approval from a law school. A decision of the Council to grant provisional or full approval is effective upon the action of the Council. A decision of the Council to deny or withdraw approval is effective as follows: (i) if no timely notice of appeal is filed, upon the expiration of the period provided for filing notice of appeal under Rules of Procedure of the House; (ii) if the school files a timely notice of appeal and the House concurs in the decision of the Council, upon such concurrence; (iii) or, if a timely notice of appeal is filed, and the House refers the decision back to the Council, upon the decision of the Council following the final referral from the House. Review of decisions appealed to the House shall be conducted pursuant to the procedures set forth in the Rules of Procedure of the House and the Rules of Procedure for Approval of Law Schools.