

## AMERICAN BAR ASSOCIATION'S STANDARDS FOR THE ACCREDITATION OF LAW SCHOOLS

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In most of the world, legal education at universities is undergraduate and academically focused. The legal profession then provides post-baccalaureate education before one is eligible to be considered to be a member of the bar. In the United States, law school education is post-baccalaureate and both academic and professional.

The Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association (the "Section") is recognized by the U.S. Department of Education as the "nationally recognized accrediting agency for schools of law." Moreover, every jurisdiction in the United States has determined that graduates of ABA-approved law schools are able to sit for the bar examination in their respective jurisdictions. It is in this context that the ABA Standards For Approval of Law Schools have been developed.

In 1921, the ABA promulgated its first standards for legal education. A major revision of these standards was completed in 1973. While the Section Standards Review Committee and Council had an ongoing process to revise individual standards, the ABA did not engage in a pervasive study and revision of the standards again until 1992. The product of that process was circulated for comment and extensive hearings were held on the proposal. The recodified standards were approved by the Council and overwhelmingly adopted by the House of Delegates of the ABA in 1996. Since that time, the ABA has engaged in another review of the standards for validity and reliability with the last phase of this new three-year process to end in the summer of 2000.

The process used to revise and promulgate the standards is a consensus validation model. The Council refers issues concerning the standards to the Standards Review Committee of the Section. This committee, like the Council itself, is made up of legal educators, judges, and practicing attorneys. The Standards Review Committee sends drafts of proposed standards to the Council, which revises them and then sends proposed changes out for written comment and holds public hearings. The comments and hearing testimony goes back to the Standards Review Committee which revises the draft proposals and makes recommendations to the Council for final language. The Council then adopts, revises, amends, or repeals standards and reports its action to the House of Delegates of the American Bar Association. The House can either agree with the Council's decision or refer the matter back to the Council. If the House refers a Council decision back to the Council twice, the decision of the Council following the second referral is final.

As part of the 1996 recodification, a preamble to the standards was added. A previous Section commission had heard much testimony indicating that those regulated could find no guiding purpose in the standards, no "mission statement." The preamble

provides that mission statement. Although it is not itself a standard, it is the touchstone for the standards. If a standard does not relate to the purposes stated in the preamble, either the preamble is incomplete or the standard is inappropriate. The preamble states:

The Standards for Approval of Law Schools of the American Bar Association are founded primarily on the fact that law schools are the gateway to the legal profession. They are minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education. The graduates of approved law schools can become members of the bar in all United States jurisdictions, representing all members of the public in important interests. Therefore, an approved law school must provide an opportunity for its students to study in a diverse educational environment, and in order to protect the interests of the public, law students, and the profession, it must provide an educational program that ensures that its graduates:

- (1) understand their ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice;
- (2) receive basic education through a curriculum that develops:
  - (i) understanding of the theory, philosophy, role, and ramifications of the law and its institutions;
  - (ii) skills of legal analysis, reasoning, and problem solving; oral and written communication; legal research; and other fundamental skills necessary to participate effectively in the legal profession;
  - (iii) understanding of the basic principles of public and private law; and
- (3) understand the law as a public profession calling for performance of pro bono legal services.

There are eight chapters of the standards. Some of the important areas covered are the program, faculty, admissions, financial resources, physical facilities, and library.

The standards leave most curricular decisions to the faculty at the individual schools and provide leeway for experimentation. The educational program of a law school shall prepare “its graduates for admission to the bar and to participate effectively and responsibly in the legal profession.” This objective is judged in outputs by the bar passage rate of the school’s graduates.

As to curriculum, the prime regulations are in Standards 302 (a), (b), and (d):

(a) A law school shall offer to all students in its J.D. Program:

(1) instruction in the substantive law, values and skills (including legal analysis and reasoning, legal research, problem solving and oral and written communication) generally regarded as necessary to effective and responsible participation in the legal profession;

(2) at least one rigorous writing experience; and

(3) adequate opportunities for instruction in professional skills.

(b) A law school shall require of all students in the J.D. degree program instruction in the history, goals, structure, duties, values, and responsibilities of the legal professional and its members, including instruction in the Model Rules of Professional conduct of the American Bar Association.

(d) A law school shall offer live-client or other real-life practice experiences. This might be accomplished through clinics or externships. A law school need not offer this experience to all students.

By and large, the focus of the standards is strictly the J.D. degree, since it is universally used to sit for bar examinations. The ABA looks at LL.M. and other advanced degrees to determine whether or not they will detract from the law school's ability to maintain a J.D. degree program that meets the requirements of the standards.

The standards require that a law school establish policies with respect to a faculty member's responsibilities in teaching, scholarship, and service. The law school must show that it has conditions to attract and retain a competent faculty and to ensure academic freedom.

The standards also speak to the size of the faculty. In my opinion, the greatest contribution of the accreditation process over the last two decades to the improvement of the quality of American legal education is the improvement of student-faculty ratios. The student-faculty ratio formula in the standards is not a talismanic number that decides whether a faculty size is acceptable or not. Rather, it recognizes that a school is usually inspected for four days every seven years and that, therefore, it is appropriate to have a red flag for inspection teams as to whether they need to devote special focus to the sufficiency of faculty resources for the educational program. The number of full-time faculty members is important not just for class size, but to student-faculty contact outside of class, faculty scholarship, and faculty governance responsibility in improving the program.

With respect to admissions, the law school shall not admit applicants who do not appear capable of satisfactorily completing the educational program and be admitted to the bar. The standards mandate certain educational requirements for students and a satisfactory test, such as the LSAT, for purpose of assessing an applicant's capability. Law schools may admit applicants from foreign law schools with advanced standing up to one-third of the total credits required for the J.D. degree.

The 1996 recodification of the standards made perhaps its greatest changes in the library standards, recognizing advancing technology in focusing on the need to provide useful information in various formats. Changes were also made in the standards with respect to financial resources and physical facilities. In both sets of standards adequacy for the current program and for future anticipated growth is looked at to the extent there is “a negative and material effect on the education students receive.”

In recognizing that lawyers serve the public and should, therefore, be educated in a diverse classroom environment, the ABA has both an anti-discrimination standard and a standard requiring schools to demonstrate by concrete action a commitment to providing opportunities for minorities to study law.

One area of controversy over the last two decades is whether the minimum standards for accreditation of law schools should mandate status of certain types of teachers. There is currently a standard affording “to full-time clinical faculty members a form of security” and status “reasonably similar” to those provided tenure track faculty. In the current year’s review of the standards, there has been a great deal of testimony with respect to whether the standards should regulate the status of legal writing instructors.

In the accompany article by James P. White, the ABA Consultant on Legal Education, he describes the ABA accreditation process in more detail. One of the most important standards to enhance the quality of legal education in the United States is Standard 202:

The dean and faculty of a law school shall develop and periodically revise a written self study, which shall include a mission statement. The self study shall describe the program of legal education, evaluate the strengths and weaknesses of the program in light of the school’s mission, set goals to improve the program, and identify the means to accomplish the law school’s unrealized goals.

Both the constant process of revision of the standards and the required process for individual schools to engage in self studies combine to keep American legal education vibrant.