

Shifting to an Outcomes Measure Approach for Accreditation Standards for Law Schools

Presented by: Steve Bahls, President of Augustana College, Rock Island, Illinois and Chair of the Student Learning Outcomes Subcommittee of the American Bar Association Section of Legal Education and Admission to the Bar's Standards Review Committee

I. The Charge to the Subcommittee

The Subcommittee is guided by ABA's *Report of the Outcome Measures Committee*, which challenges the "Standards Reviews Committee to re-examine the existing Standards and Interpretations for the purposes of moving toward a greater emphasis on outcome measures."

<http://www.abanet.org/legaled/committees/subcomm/Outcome%20Measures%20Final%20Report.pdf>

In addition, the ABA's Section of Legal Education and Admission to the Bar, in its *Statement of Principles of Accreditation and Fundamental Goals of Legal Education* states:

Applying the lessons learned and practiced in other disciplines' accreditation review processes, legal education programs and institutions should be measured both by essential program quality indicators (e.g. sufficiency of faculty and adequacy of faculty in light of missions and student body) and by learning achieved by their students. In the past, most accreditation measures have been on "input" factors and very little attention has been given to "output" factors. Accreditation review in law, like other disciplines, must move law schools toward articulation and assessment of student learning goals and achievement levels.

II. The Goals Guiding the Subcommittee's Work

The Subcommittee determined that the following goals should guide its work:

- Standards should enhance how law schools "prepare its students for admission to the bar, and effective and responsible participation in the legal profession", by identifying the requisite knowledge, skills and values in which law students should have proficiency. The standards should require law school to develop meaningful outcomes measures for the knowledge base, skills and values required of lawyers.
- Standards should allow law schools to designate some or all of the outcomes and measures that related to their respective missions.
- Standards should not dramatically increase the cost of legal education to its students. The standards should not be unduly difficult to administer and should not be inconsistent with the standards of regional accreditation.
- Standards should be implemented in a way to build a consensus as to the importance of the standards, in a way that maximizes buy-in and the probability that the standards will not be "gamed".

III. Key Issues Addressed by the Subcommittee

During the course of Subcommittee’s work, it became clear that several key questions must be answered by the Standards. Those **key questions** are:

1. Should the Standards specify key learning outcomes that each law school must measure or should the Standards leave it to law schools to determine which learning outcomes they seek to measure?
2. If the Standards specify key learning outcomes, how specific should those specifications be with respect to lawyer skills? Must all law students master all lawyer skills? At what level?
3. Should the Standards address measurement of whether students possess the values of a good lawyer?
4. How much guidance should the interpretations give about how to assess growth in knowledge, skills and values? How should those measures be validated? May outcome measures be internal to the law school (e.g., 5 classes have a significant legal writing requirement), as opposed to external (e.g., placement rates, bar pass rates, etc.)?
5. As part of the new outcome measures regime, should law schools be required to evaluate their own outcomes, in addition to student learning outcomes? That is, should law schools be required to analyze outcomes measures and results for systemic improvement of the curriculum and its delivery?
6. Should the bar passage standards be deleted?
7. Should the Standards continue any specific curricular requirements, such as the current requirement of “at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year?” Should the requirements that law schools offer opportunities in “live-client or other real-life experiences”, “pro bono activities” or “small group work” remain? Should the Standards tighten these provisions?
8. Given the magnitude of change contemplated by these standards, should the ABA postpone the effective date? Should there be an interim period where schools undergoing sabbatical inspections might elect to be evaluated under either the old standards or the new standards?

IV. *Members of the Student Learning Outcomes Committee:*

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**DISCUSSION DRAFT PREPARED BY THE STUDENT LEARNING OUTCOMES
SUBCOMMITTEE OF THE AMERICAN BAR ASSOCIATION SECTION OF LEGAL
EDUCATION AND ADMISSIONS TO THE BAR'S STANDARDS REVIEW COMMITTEE**

This is an initial discussion draft and has not been discussed or recommended by the Standards Review Committee.

Standard 301. OBJECTIVES

- (a) A law school shall maintain an educational program that prepares its students for admission to the bar, and effective, ethical¹ and responsible participation in the legal profession.
- (b) A law school shall ensure that all students have reasonably comparable opportunities to take advantage of the school's educational program, co-curricular programs, and other educational benefits.

No changes proposed to Standard 301 interpretations.

Standard 302. LEARNING OUTCOMES AND CURRICULUM

- (a) A law school shall require that each student receive substantial instruction in identify the learning and other outcomes it seeks for its graduates and for its program of legal education to enable its students to participate effectively, responsibly and ethically in the legal profession. The learning outcomes shall be consistent with and support the stated mission of the law school and shall include these outcomes:
- (1) knowledge and understanding of the substantive law generally regarded as necessary to effective and responsible participation in the legal profession;²
 - (2) proficiency in professional skills including:
 - (i) legal analysis and reasoning, legal research, problem solving, written and oral communication in a legal context;³ and
 - (ii) a sufficient number of other professional skills generally regarded that the law school identifies as necessary for effective, responsible and ethical participation as an entry-level lawyer in the legal profession⁴; and
 - (3) knowledge and understanding of a lawyer's ethical responsibilities as representatives of clients, officers of the courts, and public citizens responsible for the quality and availability of justice.⁵

¹ Suggested by the ABA Standing Committee on Professionalism.

² From current Standard 302(a)(1).

³ From current Standard 302(a)(2) and (3).

⁴ From current Standard 302(a)(4).

(b) A law school shall offer a curriculum that:

- (1) affords each student the opportunity to achieve the learning outcomes identified in section (a);**
 - (2) requires at least one rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year;**
 - (3) requires substantial instruction in the history, goals, structure, values and responsibilities of the legal profession and its members; and**
 - (4) offers opportunities for small group work through seminars, directed research, small classes, or collaborative work.**
- (c) A law school shall offer/require⁶ every student ~~substantial opportunities for~~ at least one learning experience in live-client clinics, field placements, simulations or other real-life practice experiences, appropriately supervised and designed to encourage reflection by students on their experiences and on the values and responsibilities of the legal profession, and the development of one's ability to assess his or her performance and level of competence.**

Interpretation 302-1

In addition to the learning outcomes required in Standard 302(a)(1) – (3), a law school may choose to identify and articulate other outcomes that are related to its mission.

Interpretation 302-2

Each school is encouraged to be creative in developing programs of instruction in professional skills related to the various responsibilities which lawyers are called upon to meet. For the purposes of Standard 302(a)(2)(ii), a law school shall determine in which other professional skills its students shall have proficiency, in a way that fulfills the mission of and uses effectively the strengths and resources available to the law school. Trial and appellate advocacy, alternative methods of dispute resolution, counseling, interviewing, negotiating, problem solving, factual investigation, organization and management of legal work, and drafting are among the professional skills that could fulfill Standard 302(a)(2)(ii).

Interpretation 302-3

For the purposes of Standard 302(a)(2) (ii), it is not necessary that each law student is proficient in the same set of professional skills.

Interpretation 302-4

Factors to be considered in evaluating the rigor of writing instruction include: the number and nature of writing projects assigned to students; the opportunities a student has to meet with a writing instructor for purposes of individualized assessment of the student's written products; the number of

⁵ From Preamble to the Standards and Rules of Procedure for Approval of Law Schools.

⁶ The subcommittee believes that the full committee should discuss whether the word “offer” or the word “require” is the most appropriate.

drafts that a student must produce of any writing project; and the form of assessment used by the writing instructor.

Interpretation 302-5

The substantial instruction in the history, structure, values, rules, and responsibilities of the legal profession and its members required by Standard 302(d)(2) includes instruction in matters such as the law of lawyering and the Model Rules of Professional Conduct of the American Bar Association.

Note that these interpretations have been deleted:

Interpretation 302-3

A school may satisfy the requirement for substantial instruction in professional skills in various ways, including, for example, requiring students to take one or more courses having substantial professional skills components. To be “substantial,” instruction in professional skills must engage each student in skills performances that are assessed by the instructor.

Interpretation 302-4

A law school need not accommodate every student requesting enrollment in a particular professional skills course.

–Interpretation 302-5

The offering of live client or real life experience may be accomplished through clinics or field placements. A law school need not offer these experiences to every student nor must a law school accommodate every student requesting enrollment in any particular live-client or other real-life practice experience.

Interpretation 302-6

A law school should involve members of the bench and bar in the instruction required by Standard 302(d)(2).

Interpretation 302-8 (concepts now part of Standard 303)

A law school shall engage in periodic review of its curriculum to ensure that it prepares the school’s graduates to participate effectively and responsibly in the legal profession.

Standard 303. ASSESSMENT OF LEARNING OUTCOMES⁷

- (a) **A law school shall develop and carry out assessment activities to measure achievement of the identified learning and other outcomes and shall gather data demonstrating that its students have, by the time of graduation, achieved those outcomes. Consistent with sound pedagogy, the assessment activities must employ a variety of valid and reliable measures systematically and sequentially throughout the course of the students’ studies.⁸ A law school shall provide feedback⁹ to students periodically and throughout their studies as to their progress in achieving learning outcomes with a view towards encouraging proficiency**

⁷ Existing Standard 303 would now be Standard 304

⁸ Adapted from Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree.

⁹ The subcommittee is aware that some committee members would prefer using a word other than feedback. The subcommittee prefers to use the word “feedback”, though recognizes that more committee discussion is desirable.

in each student. There shall be broad-based involvement of the faculty of the law school in developing and carrying out assessment activities.¹⁰

- (b) A law school shall periodically and systematically evaluate its curricular structure, content, organizations and outcomes. As part of the review, a law school shall review whether the outcomes it has selected and the assessment tools it has selected are sufficient to ensure that its students are prepared to participate effectively, ethically and responsibly in the legal profession. The law school shall use the analysis of outcome measures and results for systematic improvement of the curriculum and its delivery.**¹¹

Interpretation 303-1

Assessment activities and tools are likely to be different from school to school and law schools are not required by Standard 303 to use any particular tools.

Learning and other outcomes should be assessed using tools both internal to the law school and external to the law school. The following internal tools, when properly applied and given proper weight, are among the tools generally regarded to be valid and reliable to assess student performance: completion of courses with appropriate assessment mechanisms, performance in clinical programs, performance in simulations, preparation of in-depth research papers, preparations of pleading and briefs, performance in internships, peer (student to student) assessment, compliance with an honor code, achievement in co-curricular programming, evaluation of student learning portfolios, student evaluation of the sufficiency of their education and performance in capstone courses or other courses that appropriately assess a variety of skill and knowledge. The following external tools, when properly applied and given proper weight, are among the tools generally regarded to be valid and reliable: bar exam passage rates, placement rates, surveys of attorneys, judges, and alumni, and assessment of student performance by judges, attorneys or law professors from other schools.

Standard 304. ACADEMIC STANDARDS AND ACHIEVEMENTS¹²

- (a) A law school shall have and adhere to sound academic standards, including clearly defined standards for good standing and graduation.**
- (b) ~~A law school shall monitor students' academic progress and achievement from the beginning of and periodically throughout their studies.~~**
- (c) A law school shall not continue the enrollment of a student whose inability to do satisfactory work is sufficiently manifest so that the student's continuation in school would inculcate false hopes, constitute economic exploitation, or detrimentally affect the education of other students.**

Interpretation 303-1

Scholastic achievement of students shall be evaluated by examinations of suitable length and complexity, papers, projects, or by assessment of performances of students in the role of lawyers.

¹⁰ Adapted from Commission on Dental Accreditation, Outcomes Assessment.

¹¹ Adapted from Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree.

¹² Existing Standard 304 would be retained and renumbered.

Interpretation 303-2

A law school shall provide academic advising to students to communicate effectively to them the school's academic standards and graduation requirements, and guidance regarding course selection and sequencing. Academic advising should include assisting each student with planning a program of study consistent with that student's goals.

Interpretation 303-3

A law school shall provide the academic support necessary to assure each student a satisfactory opportunity to complete the program, graduate, and become a member of the legal profession. This obligation may require a school to create and maintain a formal academic support program.

Standard 305. PRO BONO AND PUBLIC SERVICE OPPORTUNITIES¹³

Law schools shall develop ways to ensure that law students understand the law as a public profession calling for performance of pro bono legal services¹⁴ and law-related public service activities. Law schools shall provide for substantial opportunities for student participation in pro bono legal services¹⁵ or law-related public service activities.

Interpretation 305-1

Each law school is encouraged to be creative in developing substantial opportunities for student participation in pro bono activities. Pro bono opportunities should, at a minimum, involve the rendering of meaningful law-related service to persons of limited means, organizations that serve such persons or other public service organizations not able to afford legal representation. Law-related service includes, among other things, activities providing information about justice, the law or the legal system to those who might not otherwise have such information and activities enhancing the capacity of the law and legal institutions to do justice.¹⁶ Volunteer programs that involve meaningful services that are not law-related also may be included within the law school's overall program. Law-related Pro bono and public service opportunities need not be structured to accomplish any of the professional skills training outcomes required by Standard 302(a). While most existing law school law-related pro bono programs include only activities for which students do not receive academic credit, this Standard 302(e)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

The Subcommittee recommends a delay effective date or a phase-in period for these changes, given the time that will be necessary for many law schools to develop ways to comply with the proposed standards.¹⁷

¹³ Existing Standard 305 would be retained and renumbered.

¹⁴ From the Preamble to the Standards and Rules of Procedure for Approval of Law Schools.

¹⁵ From current Standard 302 (b) (2).

¹⁶ From the *MacCrate* report, page 213

¹⁷ A phase-in period might entail a period of time when law schools undergoing sabbatical reviews may elect to be reviewed under either the new standards or the current standards.