

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

MEMORANDUM

TO: Interested Persons and Entities

FROM: The Hon. Rebecca White Berch, Council Chairperson
Barry A. Currier, Managing Director of Accreditation and Legal Education

DATE: March 25, 2016

SUBJECT: ABA Standards for Approval of Law Schools Matters for Notice and Comment

At its meeting held on March 11-12, 2016, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment the following proposed revisions to the *ABA Standards and Rules of Procedure for Approval of Law Schools*:

- Interpretation 303-1
- Standard 311
- Standard 316
- Standard 501

The proposed revisions and accompanying explanations are attached and published on the Section's website:

http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html.

We solicit and encourage written comments on the proposed changes by letter or e-mail. Written comments should be submitted no later than Friday, July 29, 2016.

A hearing on these proposed changes is scheduled for Saturday, August 6, 2016, at 12:30 p.m., during the ABA Annual Meeting in San Francisco, California. Additional details will be posted on the Section's website prior to the Annual Meeting.

Please address written comments on the proposals and requests to speak at the hearing to JR Clark, jr.clark@americanbar.org, by Friday, July 29, 2016.

Interpretation 303-1

The proposal makes clear that, so long as the requirements for each 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 proposal also makes it clear that such a course can be used to satisfy only one of the requirements of the Standard.

Redlined to Existing 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.

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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(d)

This proposal 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 proposal 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.

Redlined to Existing Standard:

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.

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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 316

The proposal moves to a clear and straightforward statement of the bar passage rate required of a law school for the purposes of accreditation. It looks to an ultimate pass rate for each graduating class of a law school after a period of two years following that class' graduation. While first-time pass rate is important for consumers and is (and will continue to be) disclosed under Standard 509 (Required Disclosures), the proposal provides that, for the purposes of accreditation, an ultimate pass rate within the two-year period is the more appropriate measure of whether a school is operating a sound program of legal education. Further, this ultimate pass rate measure is not subject to the idiosyncrasies that can exist if the Standard allows compliance on the basis of a first-time pass rate in relation to the overall bar exam outcomes of ABA-approved law school graduates.

It should be understood that the proposal makes no attempt to place a limit on the number of times that an individual may sit for a bar exam. That is a matter for each state to determine as part of its lawyer licensing process. The Standard speaks only to the ultimate bar passage rate expected of a law school for accreditation purposes.

The features of the proposal are:

1. The requirement of an ultimate passage rate of 75% remains unchanged from the requirement of current Standard 316(a)(1), at least for the present time. Further work would need to be done to gather and analyze data and to gather the views of various constituencies before it would be appropriate to recommend a change to what the current Standard requires in this regard.
2. The period of time within which a school must show that it has achieved a 75% passage rate is reduced from 5 calendar years to 2 years from the date of graduation, and the option of a school to show that the classes in 3 out of 5 of those years achieved a 75% passage rate is eliminated. The data available to the Council and the Standards Review Committee shows that the number of non-passers who persist in taking the MBE drops dramatically after the second attempt, with only about 5% taking it more than twice and a negligible number attempting the exam after four attempts. The data the Council and Committee had showed that the fall-off in persistence in re-taking the bar examination does not vary substantially on the basis of gender, race, or ethnicity. For the purposes of a notice and comment period, therefore, the Council and the Committee believe that two years is an appropriate period of time within which to require that 75% of graduates of each law school taking a bar exam should have passed it for purposes of accreditation. That time frame provides a period during which almost all of a school's bar outcomes for a graduating class will be determined; the ultimate pass rate for a class will not be significantly improved by allowing a longer period. The two-year period to achieve compliance with the Standard has the advantage of providing a shorter timeline for the Council and the Accreditation Committee to initiate action against a school based on concerns that the law school may be admitting students who are not capable

of passing a bar exam or is offering a program that is not sufficiently rigorous to prepare its students for the exam.

3. The ability of a law school to report its ultimate pass rate based on only 70% of its graduates is eliminated. The proposal does not require a law school to account for 100% of its graduates. It does, however, require them to account for as many as possible and, for accreditation purposes, to demonstrate that 75% of the members of the class who sat for a bar exam passed it within the two-year period. In situations where law schools are not able to obtain information on graduates, they will be asked to explain the circumstances to the Accreditation Committee. A goal of this effort is that statistics for all schools, including those who are able to meet the Standard after just one year, will be maintained so that uniform information regarding ultimate passage rate is available for all schools.
4. The opportunity for a school to satisfy its obligations under Standard 316 on the basis of its bar pass rate for first-time takers is eliminated for a number of reasons. The reliance on the results in these instances for accreditation purposes, based as it is on a comparison with state-wide results, has many flaws. As a starting point, the question of accreditation should be based on the performance of the graduates of a law school without comparison to the graduates of any other law school. The Standards have moved away from comparisons between law schools in all other areas of evaluation (expenditures, volume count, etc.) and it should do so in this area as well. The value of using a state-wide average as a baseline also has been questioned since it includes the pass rate of the school being evaluated. The use of this information also is of questionable value when there is only one law school in a jurisdiction.
5. The recitation of reasons in 316(b) for which a law school may request an extension of the period within which it may come into compliance beyond the two years set out in Rule of Procedure 14(b) is felt to be unnecessary, and the proposal recommends that it be removed from the Standards. Rule 14(b) adequately describes the process for seeking an extension and, indeed, reasons that show good cause for an extension are not set out for any other Standard. If additional guidelines are believed to be warranted, it is recommended that they be provided through a Guidance Memo instead of the Standard.

The Council acknowledges that some law schools will see the requirement that information be maintained and reported for a period of two years as an unnecessary burden if they regularly achieve a bar pass rate exceeding 75% for first-time takers. The Council believes, however, that this type of information has been kept regularly by the schools who have had to rely on ultimate bar pass rate to meet the Standard and that it is not overly burdensome.

The Council also acknowledges that some law schools will report that it is impossible to achieve a goal of locating all graduates and determining their status. However, as noted above, the Standard does not require the reporting of 100% of graduates to demonstrate compliance. The proposal merely requires that a school provide enough information to demonstrate that 75% of its graduates who sat for a bar exam passed one within two years following graduation. A chart is attached to the end of this report illustrating one possible method through which information

might be relayed to the Accreditation Committee. It is a separate question whether requiring schools to maintain ultimate bar pass information, even if they satisfy Standard 316 after one administration of the bar exam, is an appropriate requirement under Standard 509. The Council believes that the goal of having uniform information available for all schools justifies the effort.

Finally, the Council understands that there are some who might believe that it would take seven years, the length of time between sabbatical visits, for the Accreditation Committee to become aware of the failure by a school to meet this Standard. However, the interim monitoring system currently being used by the Accreditation Committee has proven to be very successful in tracking schools that might be experiencing difficulty meeting the Standards and should be equally successful with this requirement.

Redlined to Existing Standard:

Standard 316. BAR PASSAGE

At least 75 percent of a law school's graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.

~~(a) A law school's bar passage rate shall be sufficient, for purposes of Standard 301(a), if the school demonstrates that it meets any one of the following tests:~~

~~(1) That for students who graduated from the law school within the five most recently completed calendar years:~~

- ~~(i) 75 percent or more of these graduates who sat for the bar passed a bar examination; or~~
- ~~(ii) In at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination.~~

~~In demonstrating compliance under sections (1)(i) and (ii), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.~~

~~(2) That in three or more of the five most recently completed calendar years, the school's annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions.~~

~~In demonstrating compliance under section (2), the school must report first-time bar passage data from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance.~~

- (b) ~~A school shall be out of compliance with this Standard if it is unable to demonstrate that it meets the requirements of paragraph (a)(1) or (2).~~
- (c) ~~A school found out of compliance under paragraph (b) and that has not been able to come into compliance within the two year period specified in Rule 13(b) of the Rules of Procedure for Approval of Law Schools, may seek to demonstrate good cause for extending the period the law school has to demonstrate compliance by submitting evidence of:~~
- ~~(1) The law school's trend in bar passage rates for both first time and subsequent takers: a clear trend of improvement will be considered in the school's favor, a declining or flat trend against it.~~
 - ~~(2) The length of time the law school's bar passage rates have been below the first time and ultimate rates established in paragraph A: a shorter time period will be considered in the school's favor, a longer period against it.~~
 - ~~(3) Actions by the law school to address bar passage, particularly the law school's academic rigor and the demonstrated value and effectiveness of its academic support and bar preparation programs; value added, effective, sustained and pervasive actions to address bar passage problems will be considered in the law school's favor; ineffective or only marginally effective programs or limited action by the law school against it.~~
 - ~~(4) Efforts by the law school to facilitate bar passage for its graduates who did not pass the bar on prior attempts: effective and sustained efforts by the law school will be considered in the school's favor; ineffective or limited efforts by the law school against it.~~
 - ~~(5) Efforts by the law school to provide broader access to legal education while maintaining academic rigor; sustained meaningful efforts will be viewed in the law school's favor intermittent or limited efforts by the law school against it.~~
 - ~~(6) The demonstrated likelihood that the law school's students who transfer to other ABA-approved schools will pass the bar examination: transfers by students with a strong likelihood of passing the bar will be considered in the school's favor, providing the law school has undertaken counseling and other appropriate efforts to retain its well-performing students.~~
 - ~~(7) Temporary circumstances beyond the control of the law school, but which the law school is addressing: for example, a natural disaster that disrupts operations or a significant increase in the standard for passing the relevant bar examination(s).~~
 - ~~(8) Other factors, consistent with a law school's demonstrated and sustained mission, which the school considers relevant in explaining its deficient bar passage results and in explaining the school's efforts to improve them.~~

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Standard 316. BAR PASSAGE

At least 75 percent of a law school's graduates in a calendar year who sat for a bar examination must have passed a bar examination administered within two years of their date of graduation.

Standard 501

The proposal 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 make available, to a site team and to the Accreditation Committee, its admission policies and practices and that they be 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 and 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 proposal also offers 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.

Redlined to Existing 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~~ admit 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 non-transfer attrition rate above 20% percent bears the burden of demonstrating that it is in compliance with the Standard.

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Standard 501. ADMISSIONS

- (a) A law school shall 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 admit only applicants who 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.

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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 non-transfer attrition rate above 20% percent bears the burden of demonstrating that it is in compliance with the Standard.

Ultimate Bar Passage – School A

Calendar year of graduation	Number of graduates in calendar year	Number of graduates with no information	Number of graduates who did not take a bar examination within two years of their date of graduation	Graduates who sat for a bar examination within two years of their date of graduation		
				Total # of takers	Total # who passed	Percentage that passed
2016 (Jan & May)	100 (20 in Jan, 80 in May)	2	3	95	82	86%*
2017 (Jan & May)	100 (15 in Jan, 85 in May)	3	1	96	85	88%**

* Jan 2016 grads could take exam in winter 2016, summer 2016, winter 2017, and summer 2017.
May 2016 grads could take exam in summer 2016, winter 2017, summer 2017, and winter 2018.
Percent would be calculated following results of winter 2018 exam.

** Jan 2017 grads could take exam in winter 2017, summer 2017, winter 2018, and summer 2018.
May 2017 grads could take exam in summer 2017, winter 2018, summer 2018, and winter 2019.
Percent would be calculated following results of winter 2019 exam.

Ultimate Bar Passage – School B

Calendar year of graduation	Number of graduates in calendar year	Number of graduates with no information	Number of graduates who did not take a bar examination within two years of their date of graduation	Graduates who sat for a bar examination within two years of their date of graduation		
				Total # of takers	Total # who passed	Percentage that passed
2016 (May & Dec)	100 (80 in May, 20 in Dec)	2	3	95	82	86%*
2017 (May & Dec)	100 (85 in May, 15 in Dec)	3	1	96	85	88%**

* May 2016 grads could take exam in summer 2016, winter 2017, summer 2017, and winter 2018.
Dec 2016 grads could take exam in winter 2017, summer 2017, winter 2018, and summer 2018.
Percent would be calculated following results of summer 2018 exam.

** May 2017 grads could take exam in summer 2017, winter 2018, summer 2018, and winter 2019.
Dec 2017 grads could take exam in winter 2018, summer 2018, winter 2019, and summer 2019.
Percent would be calculated following results of summer 2019 exam.