

To: Standards Review Committee
From: Steve Bahls, Chair of Student Learning Outcomes Committee
Date: April 17, 2010
RE: Key Issues Considered by the Subcommittee

The Student Learning Outcomes Committee has completed its work on the fourth draft of Standards and Interpretations that move toward a greater emphasis on student learning outcomes.

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 a law school will "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 be competent. The standards should require a law school to improve curriculum so students might better achieve competency in the learning outcomes it identifies.
- Standards should accommodate differing law school missions and should avoid a "one-size fits all" mentality.
- Standards should allow law schools to designate some or all of the outcomes and measures that relate 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. The standards should not create what some have called the "blizzard of paperwork" necessary to comply with regional accreditation standards.
- Standards should be implemented in a way that builds 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.

- Standards should not modify the recently approved standards concerning the bar exam. These standards were a result of a lengthy process that considered the positions of the U.S. Department of Education, the practicing bar and the legal academy. At some point these standards could be revisited, but it is not part of this process.

III. Summary of the Proposed Standards

It is important, when considering the proposed standards, to consider the how the four major parts of the standards relate to each other:

1. Standard 302 provides that law schools identify desired learning outcomes. It provides substantial flexibility for law schools, consistent with each law schools mission.
2. Standard 303 provides that law schools offer a curriculum that is designed to produce graduates that have attained the identified learning outcomes. The proposed standard, with a few exceptions (e.g. required course in professional responsibility) leaves it to each law school to determine what that curriculum will be.
3. Standard 304 provides that law apply a variety of formative and summative assessment methods across the curriculum to provide meaningful feedback to students. The determination of how to assess learning outcomes is left to the law school. Schools are not required to measure the level of achievement of each student in each learning outcome.
4. Standard 305 provides that law schools review the pedagogical effectiveness of its curriculum and improve its curriculum with the goal that all students are likely to achieve proficiency in the identified learning outcomes.

These Standards do not require that law schools determine that each and every law student, as a condition of graduation, be proficient in each and every outcome that the law school determines pursuant to Standard 302.

IV. Key Issues Considered by the Subcommittee

As the subcommittee is reviewing the proposed standards, particular attention was given to the issues identified below. The subcommittee invites comments about whether it has identified all of the key issues and whether it has properly analyzed the key issues. Those issues indentified by the committee include:

1. *Explain the reason for the shift from assessing curriculum to assessing student learning. What's broken in legal education?*

In the view of members of the subcommittee, U.S. legal education is among the strongest types of professional education in the world. But that does not mean there is no room for improvement. Few would argue that effective student learning shouldn't be a primary goal of law schools, yet little emphasis on student learning is found in accreditation standards.

The current ABA accreditation standards focus on preparing students for "effective and responsible participation in the legal profession." While preparing students for effective and responsible participation in the legal profession is an outcomes standard, the more detailed standards tend to be inputs standards (e.g. regulation of curriculum). To prepare students to participate effectively in the profession, it is important that the law schools work to enhance the level of student learning, meaning

more of a focus on identifying and assessing the level of achievement of student learning outcomes. Similarly, Association of American Law Schools (AALS) bylaws have what seems to be a curricular focus, as opposed to a student learning focus. By Law 6-1 states that a core value of the AALS is a “rigorous academic program built upon strong *teaching* in the context of a dynamic *curriculum* that is both broad and deep.” Many argue that the ABA and AALS emphasis on teaching and curriculum, as opposed to student learning, needs to be reexamined. Few law professors believe that if they teach it, students will necessarily learn it. While it is true that excellent teaching is necessary for student learning, most would agree that it is not sufficient to guarantee student learning. In addition to strong teaching, student learning requires that students are motivated and that students have adequate feedback to improve their skills.

Recognizing the student learning is about more than good teaching, virtually all other agencies that provide accreditation to professional schools put more emphasis on student learning outcomes than the ABA does. Other agencies focus on learning outcomes related to knowledge, skills and values. The proposed standards, though more still more modest in scope than most other agencies, move the ABA accreditation process to a greater emphasis on student learning.

2. *Are the standards sufficiently flexible to respect the individual missions of law schools? Is a “one size fits all” scheme sufficiently avoided?*

The standards are drafted in a way to provide significant flexibility to law schools, including:

- The standards identify critical basic learning outcomes that law schools must measure, but allow law schools to adopt other outcomes consistent with their missions. For learning outcomes related to skills, law schools have the flexibility to identify those skills in which it believes its students should be competent.
- Except for a required course with writing experience, a professional responsibility course and a course involving a clinical, field placement or simulation experience¹, the standards provide that the law school will design the curriculum to produce graduates who have attained the learning outcomes.
- There are no required assessment schemes. Law schools determine which assessment tools are the most appropriate, so long as schools apply formative and summative assessment tools across the curriculum.
- Law schools would be required to assess whether students are attaining the learning outcomes. The method of the assessment is not prescribed, but is determined by the law school itself.
- Law schools would be required to work to improve curriculum with the goal that all students achieve competency in the skills it identifies. The emphasis is on schools improving delivery of curriculum and not on certifying that each student is competent in the student learning outcomes.

3. *Do the standards require each law school to measure the level of competency of each student?*

¹ The proposed standards would also continue the requirement of providing substantial opportunities to students for clinical courses and pro bono (or public service) opportunities

The proposed standards do not require each law school to assess whether each student has achieved competency in student learning outcomes. Instead, the proposed standards simply require that law schools use both formative and summative assessment tools during the course of their students' education.

Likewise, instead of requiring assessment of whether each and every student is competent in the learning outcomes, the proposed standards require that law schools gather a variety of types of evidence (qualitative or quantitative) to measure the general degree to which its students, as a whole, have achieved the learning outcomes. The standards suggest a number of methods to do so, including a sampling of student learning records, assessment by alumni, bar passage rates and placement rates. The purpose of this assessment is to enable the law school to improve its curriculum.

4. *Do the standards strike the correct balance between inputs and outputs?*

Though the proposed standards move from an inputs-based regime to an outputs-based regime, the proposed standards recognize that outputs are related to inputs.

The proposed standards continue two input requirements: law schools must offer two rigorous writing courses and substantial opportunities for clinical programs. The proposed standards add the requirement that students must complete a course of professional responsibility, which many believe is implicit in the existing standards. The proposed standards add the requirement that all students complete one supervised experience involving a clinic, field placement or simulation course. The proposed standards delete the requirement of small group work through seminars, directed research, small classes or collaborative work.

These specific curricular input requirements, which amount to four courses, are the only specific curricular requirements. Law schools are free to design whatever curriculum they think in best to assure that students achieve the learning outcomes that they identify.

5. *Are the standards likely to impose unnecessary costs on law schools?*

The proposed standards have the following provisions that are designed to help law schools identify and measure outcomes in a cost-effective way:

- The subcommittee rejected the idea that law schools certify that each and every graduate has achieved each and every outcome, for the reason that doing so would be cost-prohibitive.
- Unlike other professional school accreditation standards, the proposed standards do not require burdensome assessment regimes of individual student achievement for each learning outcome. Instead, the proposed standards simply require that law schools use both formative and summative assessment methods across the curriculum, in a way that the law school determines most appropriate. It is not required that schools establish that assessment measures are valid and reliable (as defined by psychometricians).
- The proposed standards allow law schools to use simulations, in addition to clinical experience, to meet the requirement that every student complete one supervised "real case" learning experience.
- Recognizing that the proposed standards add a requirement for a supervised "real case" learning experience, the proposed standards delete the requirement for substantial

opportunities for small group work. Likewise, the standards make the requirement for substantial opportunities for pro bono activities more flexible (and perhaps more cost-effective) by allowing law schools to provide opportunities for **either** pro bono **or** law-related public service activities.

It is also important to consider the proposed changes in context with other changes the ABA may make in conjunction with its comprehensive review of the standards, which *may* reduce input requirement in areas such as libraries, limits on paid field placements and limits on work out of the law school.

6. *What sort of phase-in period should there be?*

The subcommittee believes that the committee should go on record as supporting a phase-in period. The phase-in period could be a delayed effective day or a consultant's memo, or a combination of all three. A consultant's memo might state (a) that for law schools evaluated before a certain date, identification of the outcomes is sufficient, (b) by a later date, schools must assess whether students are achieving the outcomes; and (c) by an even later date, schools must also assess their assessment regime.