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December 8, 2008

To: Standards Review Committee
From: Board of Directors of ALDA
Re: Interpretations 402-1 and 402-2

The following is a statement of the Board of Directors of the American Law Deans Association:

The American Law Dean's Association ("ALDA") is an association of the deans from over 130 law schools in the United States. This letter, however, expresses the views of the Board of Directors of ALDA (the "ALDA Board") alone, and has not been reviewed or agreed to by the entire membership of ALDA.

The Standards Review Committee has proposed to the Council on Legal Education and Admissions to the Bar the deletion of Interpretations 402-1 and 402-2 to Standard 402. The ALDA Board wholeheartedly supports this revision to the Standards for the reasons stated in the Explanation of Deletion of Interpretations 402-1 and 402-2 transmitted by the Memorandum dated November 2008 from Hulett H. Askew, Consultant on Legal Education, and Donald J. Polden, Chair, Standards Review Committee and the additional reasons stated below.

The ALDA Board has consistently urged the Council to revise the Standards and their implementation so that the focus is on whether or not a law school meets the minimal standards necessary to provide a sound legal education. In particular, the ALDA Board has asked the Council to remove from the Standards all requirements of specific terms and conditions of employment. The terms and conditions of employment of people working in a law school have no bearing on whether or not students receive a sound legal education.

Interpretation 402-1

In prior submissions to the Council, the Task Force on Accreditation, and the Council on the report of the Security of Position Committee, the ALDA Board expressly identified Interpretation 402-1 as one of four sets of Standards and Interpretations related to terms and conditions of employment that should be removed.

Interpretation 402-1 purports to interpret the requirement in Standard 402(a) that requires a law school to "have a sufficient number of full-time faculty to fulfill the requirements of the Standards and meet the goals of its educational program." Interpretation 402-1(A), however, states that, for the purposes of computing a student-faculty ratio, a faculty member counts as one full-time faculty member only if that person is employed "on tenure-track or its equivalent." For other faculty members who meet the requirements of Standard 402(b), but who are not employed "on tenure-track or its equivalent," the Interpretation counts each of them as less than a whole person. In particular, it counts "clinicians and legal writing instructors not on tenure-track or its equivalent who teach a full load" as 0.7 of a person.

There is most likely an implicit policy goal that is being furthered by this unequal treatment of faculty members who are full-time, but no such goal is stated by Standard 402 or the Interpretations interpreting Standard 402. Standard 402(b) clearly defines a “full-time faculty member” in terms of the time devoted to supporting the law school’s educational program and not in terms of the person’s security of position. Thus, Interpretation 402-1 is inconsistent with the stated goals of Standard 402.

If the implicit goal is to provide applicants with good consumer information about the educational program of a law school, then Interpretation 402-1 does not do that because it provides a student-faculty ratio that is skewed by a consideration that is irrelevant to what level of contact with faculty members an applicant can expect at that law school. If the implicit goal of Interpretation 402-1 is to try to disadvantage a law school that does not provide tenure or its equivalent to all faculty members by lowering its student-faculty ratio, which is considered in deciding whether a law school complies with Standard 402(a), the ALDA Board is strongly opposed to such a goal.¹ The Council should adopt the Standards Review Committee’s proposal to delete Interpretation 402-1 both to resolve the internal inconsistency between Standard 402(b) and the Interpretation and to focus the Standards and their Interpretation on whether a law school provides a sound legal education.

Interpretation 402-2

The ALDA Board also supports the deletion of Interpretation 402-2, which requires the accreditation process to consider a law school’s student-faculty ratio (as determined pursuant to Interpretation 402-1) in determining whether a law school complies with the Standards. The Interpretation sets up a system that concludes that: a law school is presumptively (i) in compliance if its student-faculty ratio is 20:1 or less, (ii) not in compliance if its student-faculty ratio is 30:1 or more.

First, as noted above in note 1, the student-faculty ratio as calculated pursuant to Interpretation 402-1 is an inaccurate measure of the teaching resources a law school actually devotes to its educational program. By not counting faculty members as one person if they are not on “tenure-track or its equivalent”, the Interpretation 402-2 causes the student-faculty ratio of two schools with an equal number of faculty members and students to differ even though their teaching resources are identical.

More importantly, and even if Interpretation 402-1 did not exist and the student-faculty ratio was calculated in a fashion more consistent with the words and policy behind Standard 402(b), it is not clear why a law school must have a student-faculty ratio that is 20:1 or less or any specific student-faculty ratio to provide a sound legal education. Such a requirement is a type of input measure that the ALDA Board has consistently opposed and that the Council by its actions of September 9, 2008, in charging the Outcomes Committee clearly indicated should be considered for removal. While one law school may certainly believe that a low student-faculty ratio is a requirement of providing a sound legal education, it is certainly very possible that a law school can provide a sound legal education with a student-faculty ratio that is substantially higher. The attempt to set specific ratios as effectively required severely limits the way in which a sound legal education can be provided and adds to the cost of providing a legal education. Again, the focus should be on whether a law school provides a sound legal education and not on whether a law school has a certain student-faculty ratio.

¹ If the Council were to insist that a law school meet a specific student-faculty ratio requirement, the ALDA Board believes that faculty resources expended should be calculated by considering the percentage of full-time work that each faculty member devotes to the educational programs of the law school. The ALDA Board for similar reasons questions whether Standard 402 should require that a law school have any number of full-time faculty members. The Standard should require only that a law school have a faculty that can effectively provide the minimum necessary for a sound legal education regardless of the terms and conditions of the employment of the individual members of its faculty.

Conclusion

For the reasons stated above, the ALDA Board believes that the recommendations of the Standards Review Committee on Interpretation 402-1 and Interpretation 402-2 are an excellent step forward in revising the Standards. We congratulate the Committee on, and are encouraged by, its recent efforts to remove some of the more inappropriate Standards and Interpretations. The ALDA Board recommends that the recommendations of the Standards Review Committee that Interpretations 402-1 and 402-2 be deleted be adopted by the Council.