

MEMORANDUM

July 14, 2010

To: Bucky Askew

From: Evan Caminker
Mike Fitts
Rick Matasar
David VanZandt

On Behalf of the ALDA Board of Directors

Re: Comments on Standards 301-307 – Student Learning Outcomes

For over 15 years, the Board of Directors of ALDA has been exploring ways to improve the quality of legal education. In our view, one of the great strengths of the American academic system, which is generally viewed as the most successful in the world, has been its ability to foster diversity as well as innovation. In support of these goals in the legal context, we have consistently argued for three principles: (1) that Accreditation Standards should shift their focus from narrower input measures to broader student learning outcomes, which would thereby support the ability of institutions to pursue more innovative and diverse pedagogical approaches in furtherance of agreed-upon ends; (2) at the same time, the Standards must accommodate widely different institutional missions; and (3) in pursuing these ends, the Standards should not unduly hamper institutional experimentation and autonomy. Simply put, our position has been that the primary purpose of the accreditation process should be to assess whether schools have produced graduates who are prepared to enter the legal profession in all its diversity and complexity. This approach sets the minimum requirements for all law schools. Schools should be free to reach for more, but when they exceed what is minimally required for accreditation they should not face higher barriers. Requiring them to do so would inhibit innovation and experimentation at the school level which, now more than ever, is increasingly important. The proposed revisions to Chapter 3, “Program of Legal Education,” are, as a philosophical matter, a positive step forward in moving the Standards generally from input measures to outcome measures, though we believe changes should be made to further ensure that they do not unintentionally stifle innovation. In this Memorandum, we make several suggestions to further focus the proposed Standards on outcomes, to preserve institutional diversity, and to encourage experimentation. We begin with a short explanation of why we believe the proposed Standards must permit broad-based experimentation and follow with detailed textual suggestions.

Underlying Concerns

Accreditation standards by their very nature must be applied neutrally over an extended period of time. That is one reason that change comes slowly and so many standards are quite general and non-prescriptive. Where specific requirements are set forward, they often reflect the broad consensus of the academy or the profession. However, where that consensus is lacking, there is reason to be cautious in too firmly establishing a particular requirement on schools until there is greater experience and learning.

Even in calm economic times, making changes as significant as those proposed to measure student learning outcomes would be exceedingly complicated. Those institutions that have made the most significant attempts to measure such results over the years—the Boards of Bar Examiners and large private and public employers—have not reached any consensus on the best comprehensive approach. But this effort has been made even more difficult of late due to the unprecedented turmoil in the structure of the profession as well as its financing. The legal profession, if it was ever a unitary profession, has become significantly more fragmented. The skills and knowledge necessary to enter the profession vary widely depending on whether the new lawyer joins a large or small law firm, becomes a government attorney, practices civil or criminal law, or uses his or her education in a business setting. Moreover, even within these practice settings, settled notions of the skills necessary to become a lawyer are being questioned as employers develop new “competencies” that they will be demanding. Finally, with all these changes in the profession, there have been increased financial pressures on law schools. This increases the need for schools, which are likely to have fewer resources going forward, to be able to experiment and pursue innovative legal strategies.

All of these concerns do not lead us to oppose establishing Standards requiring schools (1) to describe the learning outcomes they seek to produce, (2) to offer a curriculum designed to produce such outcomes, and (3) to assess whether sufficient outcomes have been produced for minimum competence in the profession. Rather they lead us to recommend that whatever Standards are adopted should be provisional and subject to review within the next several years and that the Standards avoid requiring quantitative measures as the sole means of evaluating institutional effectiveness, especially of those outcomes a school seeks that greatly exceed whatever minimal requirements are necessary to enter the legal profession. Secondly, they lead us to recommend that the proposed Standards promote institutional experimentation and that they avoid forcing schools to abandon ambitious goals in favor of those that are simple to measure. Finally, they lead us to recommend that some of the proposed requirements for every school instead become safe harbors, but not the exclusive means by which schools can comply with the Standards.

Comment on Overall Structure and Interaction between Standards 302 and 305

As we read the current draft, Standard 302 requires each law school to list a potentially breathtakingly large number of learning outcomes, which Standard 305 then requires it to assess. Standard 302(a) requires a school to list “*each* of the learning outcomes it seeks for its graduating students and its program of legal education” (emphasis added). Standard 302(b) identifies an array of such learning outcomes, including some specifically listed items, a more

general reference to a “depth and breadth of other professional skills” (302(b)(2)(iii)), and an incredibly broad catch-all of “*any other outcomes* the school identifies as necessary *or important* to meet the needs of its students and to accomplish the school’s *mission and goals*” (302(b)(4)). In the abstract, the injunction to list “*each*” of the learning outcomes a school seeks for its students, including *any* that is even *important* to accomplishing its *goals* might lead a school to list many tens and perhaps hundreds of specific learning outcomes (the mandatory list in Standard 302 alone already numbers 14, counting conservatively). At the same time, Standard 305 establishes an elaborate and seemingly rigorous assessment process that each law school must apply to “*its learning outcomes*” (305(a)), a phrase which appears to encompass every single learning outcome listed in Standard 302(a).

We believe that this conjunction of obligations, perhaps inadvertently, sets up a tremendous administrative burden that is inconsistent both with the general values of diversity, innovation and experimentation and the specific goal of establishing minimum rather than maximum accreditation standards. If a school lists many tens of desired learning outcomes it will necessarily spend a tremendous amount of time and resources assessing its progress. And to the extent many of those learning outcomes might not be reasonably susceptible to evidentiary measurement (such as “grace under fire” and “dedication to public service” and “emotional supportiveness for colleagues” and “tact and diplomacy in client relations” and “service to the bar,” the school courts accreditation difficulties due to an inability to satisfy Standard 305 with respect to each and every desired outcome. The only way for a school to avoid this potentially huge burden and ultimate failure is to identify under Standard 302(a) *only* those learning outcomes that are mandated throughout 302(b) (including the bare minimum of “other professional skills” guessed to satisfy 302(b)(2)(iii)) and to refrain from listing *optional* outcomes pursuant to 302(b)(4). This approach would make 305’s assessment less burdensome; and yet at the same time, it would undermine the goal of encouraging schools to provide a candid list of their aspirations for matriculated students.

We would encourage the Committee to modify the interrelated structure of Standards 302 and 305 to make more clear that, while schools are encouraged to identify the learning outcomes to which their students should aspire (including diverse and innovative goals), accreditation hinges on demonstrating success with respect to achieving a minimum set of learning outcomes sufficient to produce competency in entry-level positions. The Committee could also apply a much less onerous “truth in advertising” test to articulated student goals that go beyond that necessary for minimum competency. This disjunction would better avoid either potentially mass failures of Standard 305 or unduly stingy articulations of learning goals under Standard 302.

There are many plausible ways of accomplishing this modification. Here are three approaches:

- (1) Amend Standard 305(a) to refer to “competency in the learning outcomes included within Standards 302(b)(1) and 302(b)(2). That would exclude from the assessment requirement other optional desired outcomes listed pursuant to 302(b)(4) such as “resolve in the face of adversity.” [Note this phrasing also excludes an assessment requirement for the mandatory outcomes listed in 302(b)(3), because we do not believe many of those outcomes will likely prove susceptible to a meaningful evidence-based assessment.]
- (2) Make the aforementioned change, and also add a new Standard 305(d) as follows: “If a law school identifies and advertises learning outcomes pursuant to Standard 302(b)(4), it

must in good faith attempt to achieve those outcomes and must fairly and honestly provide information on the success of these efforts if it chooses to report on these outcomes.”

(3) Eliminate Standard 302(b)(4) outright.

Proposed Line Edits with Explanatory Commentary

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

**Student Learning Outcomes Subcommittee
May 5, 2010 Draft**

CHAPTER 3 PROGRAM OF LEGAL EDUCATION

Standard 301. OBJECTIVES

A law school shall maintain a rigorous educational program that prepares its students for admission to the bar and effective, ethical and responsible participation in the legal profession.

[Delete all interpretations, except for Interpretation 301-6. No changes to this Interpretation are recommended at this time]

Standard 302. LEARNING OUTCOMES

(a) A law school shall identify, define, and disseminate learning outcomes it seeks for its graduating students and for its program of legal education.

(b) The learning outcomes shall include competency in entry-level positions within the legal profession in the following areas:

(1) knowledge and understanding of substantive law and procedure, including the capability of passing a bar exam;

(2) competency in the following skills:

(i) legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communication in a legal context;

**(ii) the ability to recognize and resolve ethical and other professional dilemmas;
and**

(iii) a depth and breadth of other professional skills sufficient for effective, responsible and ethical participation in the legal profession.

(3) knowledge and understanding of the following values:

(i) ethical responsibilities as representatives of clients and officers of the courts for the quality and availability of justice;

- (ii) the legal profession’s values of justice, fairness, candor, honesty, integrity, professionalism, respect for people from different backgrounds , respect for the rule of law, and responsibility to ensure that adequate legal services are provided to those who cannot afford to pay for them.
- (4) any other learning outcomes the school identifies as necessary to meet the needs of its students and to accomplish the school’s mission and goals.

Interpretation 302-1

Training with respect to individual skills can be delivered in a variety of ways and the Standard does not require individual classes with respect to individual professional skills.

Interpretation 302-2

For the purposes of Standard 302(b)(2)(iii), a law school shall determine in which other professional skills its graduating students shall have competency, in a way that fulfills the mission of and uses effectively the strengths and resources available to the law school. Interviewing, counseling, negotiation, fact development and analysis, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation are among the professional skills that could fulfill Standard 302(b)(2)(iii), but none is specifically required to fulfill the Standard if other appropriate alternatives are proffered.

Interpretation 302-3

A law school may determine tracks for students, such that graduates from different tracks have proficiency in differing bundles of professional skills.

Interpretation 302-4

The level of competency of an entry-level practitioner may take into account the particular practice settings for which the law school prepares its students.

Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that is designed to produce graduates who have attained competency in the learning outcomes identified in Standard 302 and which, in addition, requires every student to complete satisfactorily at least:

- (1) one course or other pedagogical experience that instructs students in professional responsibilities of a lawyer;**
- (2) one appropriately supervised, rigorous writing experience in the first year and at least one additional rigorous writing experience after the first year; and**
- (3) one appropriately supervised learning experience after the first year that engages students in performances of professional skills involving a type of case or problem that practitioners encounter.**

(b) A law school shall provide substantial opportunities to students for:

- (1) live-client clinics, externships, or other real-life practice experiences; and**
- (2) participation in pro bono legal services or law-related public service activities.**

Interpretation 303-1

Factors to be considered in evaluating the rigor of writing instruction for the first-year writing experience include: the number and nature of writing projects assigned to students; the opportunities a student has to meet with an appropriate instructor for purposes of individualized assessment of the student's written products; the number of drafts that a student must produce of any writing project; and the form of assessment used by the instructor.

Interpretation 303-2

The learning experience described in 303(a)(3) should ordinarily have the following characteristics: development of concepts and theories underlying the skills being taught; opportunity for students to perform tasks with appropriate feedback and self-evaluation; and reflective evaluation of the students' performance by a qualified assessor. An appropriately supervised simulation course, live client clinic, or field placement complying with Standard 305(e) shall satisfy 303(a)(3), and schools may demonstrate compliance through other satisfactory avenues as well.

Interpretation 303-3

Pro bono opportunities 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. Pro bono and public service opportunities need not be structured to accomplish any of the 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 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.

Interpretation 303-4

A law school's curriculum should encourage reflection by students on their values and experiences and on the values and responsibilities of the legal profession, as well as the development of one's ability to assess his or her performance, professionalism and level of competence.

Standard 304. ASSESSMENT OF STUDENT LEARNING

A law school shall develop assessment methods across the curriculum to provide meaningful feedback to students.

Interpretation 304-1

Interpretation 304-2

A law school shall develop f assessment methods and activities over the course of a student’s education. Assessment methods are likely to be different from school to school and law schools are not required by Standard 304 to use any particular activities or tools.

Standard 305. INSTITUTIONAL EFFECTIVENESS

In measuring its institutional effectiveness pursuant to Standards 202 and the rigor of its education program pursuant to Standard 301, a law school shall:

- (a) develop evidence, as appropriate, to assess the degree to which its students, by the time of graduation, have attained competency in its learning outcomes identified in Standard 302(b)(1)-(2);**
- (b) periodically review whether its learning outcomes, curriculum and delivery, assessment methods and the degree of student attainment of competency in the learning outcomes are sufficient to ensure that its students are prepared to participate effectively, ethically, and responsibly in entry level positions in the legal profession; and**
- (c) use the results of the review in subsection (b) to improve its curriculum and co-curricular programs and their delivery with the goal that all students attain competency in the learning outcomes.**

Interpretation 305-1

The following methods, when properly applied and given proper weight, are among the e methods that might be used to measure the degree to which students have attained competency in the school’s student learning outcomes: review of the records the law school’s maintains to measure individual student achievement pursuant to Standard 304, evaluation of student learning portfolios, student evaluation of the sufficiency of their education, student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge, 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. The methods to measure the degree of student achievement of learning outcomes are likely to be different from school to school and law schools are not required by this standard to use any particular methods.

Interpretation 305-2

Satisfying the requirements of Interpretation 301-6 is not, alone, sufficient to satisfy Standard 305.

Standard 306. ACADEMIC STANDARDS AND ACHIEVEMENTS

- (a) A law school shall publicize and adhere to sound academic standards, including clearly defined standards for good standing, graduation and dismissal.
- (b) A law school shall publicize and adhere to a fair process for taking any action that adversely affects the good standing or graduation of a student.
- (c) A law school shall provide a system of academic advising to students that communicates effectively the school's academic standards and graduation requirements, and that provides guidance regarding course selection and sequencing. Academic advising shall provide students with opportunities to plan a program of study consistent with that student's goals.
- (d) 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.
- (e) A law school shall not continue the enrollment of a student whose inability to do satisfactory work is sufficiently manifest such that it is not probable that the student will successfully complete the course of study at the law school and be admitted to the bar.

Standard 307. REASONABLY COMPARABLE OPPORTUNITIES

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.

Interpretation 307-1

Among the factors to consider in assessing compliance with Standard 307 are whether students have reasonably comparable opportunities to benefit from regular interaction with full-time faculty and other students, from such co-curricular programs as journals and competition teams, and from special events such as lecture series and short-time visitors.

Interpretation 307-2

For schools providing more than one enrollment or scheduling option, the opportunities to take advantage of the school's educational program, co-curricular activities, student services and other educational benefits for students enrolled under one option shall be deemed reasonably comparable to the opportunities of students enrolled under other options if the opportunities are roughly proportional based upon the relative number of students enrolled in various options.

The following standards were not within the general scope of the subcommittee's charge: Standard 304 (Course of Study and Academic Calendar); Standard 305 (Study Outside of the

Classroom); Standard 306 (Distance Education); Standard 307 (Participation in Studies or Activities in a Foreign Country; or Standards 308 (Degree Programs in Additional to J.D.)

Recommendation relating to the phase-in of the proposed standards:

A Consultant's Memo should be provided to describe a transition period between the current standards and the new standards, if adopted. The transition should include workshops concerning assessment methods, both for measuring student learning and for measuring institutional effectiveness. The memo should provide a beginning date for which schools will be reviewed under the proposed standards, with a delay from the date of adoption of the new standards. The start date for reviews of compliance with Standard 305 could be later than start date for reviews of the other learning outcomes standards.