

U.S. Department of Education Staff Report

to the

Senior Department Official on Recognition Compliance Issues

Recommendation Page

1. **Agency:** American Bar Association (1952 / 2016)
(The dates provided are the date of initial listing as a recognized agency and the date of the agency's last grant of recognition.)
2. **Action Item:** Petition for Continued Recognition
3. **Current Scope of Recognition:** The accreditation throughout the United States of programs in legal education that lead to the first professional degree in law as well as freestanding law schools offering such programs. This recognition also extends to the Accreditation Committee of the Section of Legal Education (Accreditation Committee) for decisions involving continued accreditation (referred to by the agency as "approval") of law schools.
4. **Requested Scope of Recognition:** The accreditation throughout the United States of programs in legal education that lead to the first professional degree in law as well as freestanding law schools offering such programs. This recognition also extends to the Accreditation Committee of the Section of Legal Education (Accreditation Committee) for decisions involving continued accreditation (referred to by the agency as "approval") of law schools.
5. **Date of Advisory Committee Meeting:** 06/23/2016
6. **Staff Recommendation:** Continue the agency's recognition as a nationally recognized accrediting agency at this time, and require the agency to come into compliance within 12 months with the criteria listed below , and submit a compliance report due 30 days thereafter that demonstrates the agency's compliance.
7. **Issues or Problems:** It does not appear that the agency meets the following sections of the Secretary's Criteria for Recognition. These issues are summarized below and discussed in detail under the Summary of Findings section.
 - The agency must provide the twelve resumes of staff with responsibilities for accreditation activities, as listed on the submitted organizational chart but not included as evidence, to be assessed for this criterion. [§602.15(a)(1)]
 - The agency must provide the resumes for the four Council members and the one Data Policy & Collection Committee member not included in the documents provided for this criterion. [§602.15(a)(2)]
 - The agency must amend its standards, policies and procedures to include an academic and an administrative member in its composition of the Appeals Panel and provide evidence that an academic and administrative member serves on the Appeals Panel in the one defined role to demonstrate compliance with this criterion. [§602.15(a)(3)]
 - The agency standards, policies and procedures must be amended to clarify the requirements of the site evaluation questionnaire in lieu of the self-study. The agency must also provide evidence of these approved changes from the decision making bodies. [§602.16(a)(1)(viii)]
 - The agency standards, policies and procedures must be amended to clarify the requirements of the self-study and the site evaluation questionnaire. The agency must also provide evidence of these approved changes from the decision making bodies. [§602.17(b)]

Executive Summary

PART I: GENERAL INFORMATION ABOUT THE AGENCY

The American Bar Association established the Section of Legal Education and Admissions to the Bar (Council) in 1893, and the Council began to conduct accrediting activities in 1923. The Council is both an institutional and a programmatic accrediting agency. The Council currently accredits 199 legal education programs. Of the legal education programs accredited/approved by the agency, 19 are freestanding law schools and maintain independent status as institutions of higher education with no affiliation with a college or university. These law schools may use the agency's accreditation to establish eligibility to participate in HEA programs. Since the agency is a Title IV gatekeeper, it must meet the Department's separate and independent criteria or seek a

waiver of those requirements. During this recognition period, the Department received 11 third party comments and one complaint for the American Bar Association on May 31, 2016. This complaint has not been reviewed by the Department at this time.

Recognition History

The then-Commissioner of Education initially recognized the Council in 1952. The agency has been recognized since that time. The agency was last reviewed for continued recognition in 2011, when the Assistant Secretary issued a decision in July 2011 that required the agency to come into compliance with several areas of the Secretary's criteria within twelve months, and submit a compliance report 30 days thereafter demonstrating the agency's compliance with the criteria cited in the decision letter. The agency was found compliant with the cited recognition criteria as noted in the July 23, 2013, decision letter. The agency submitted its petition for renewal of its recognition which is the subject of this analysis.

PART II: SUMMARY OF FINDINGS

602.15 Administrative and fiscal responsibilities

The agency meets this requirement if the agency demonstrates that--

(a) The agency has--

(1) Adequate administrative staff and financial resources to carry out its accrediting responsibilities;

The agency demonstrates it has adequate administrative staff to carry out its accrediting responsibilities through a full-time staff of 18 persons with 2 vacant positions and a part-time staff of one that perform the accreditation responsibilities of the Council. The agency attests that the above mentioned staff is sufficient to serve the 203 law schools they accredit. A description of duties and bios were supplied for 17 of the 18 person staff. However, curriculum vitae's of the staff were not provided to assess whether their qualifications meet the duties of their outlined positions. In addition the agency must provide the job description of the one staff member that was not provided. The agency must also provide resumes or curriculum vitae's for the Accreditation Committee, Council, appeal panel members, and administrative staff in order to demonstrate these individuals area qualified to serve in their assigned positions

The agency states that the annual accreditation budget is developed by the Council's Finance Committee, Managing Director and staff and then presented to the full Council for final approval. In addition to the development of the accreditation budget, the Finance Committee recommends annual fees that accredited law schools are assessed to the Council as well. However, the agency did not provide documentation regarding the qualifications of the members of the finance committee to demonstrate they are qualified to sever in that capacity.

The funds for the agency's budget is comprised of legal education accreditation fees evidenced by the scheduled of fees submitted by the agency; the American Bar Association Fund for Justice and Education (FJE) evidenced by the ABA Board of Governors Resolution, April of 1999; and surplus funds from the reserve fund balance evidenced in the narrative and the 2016 budget. The ABA FJE also states that the accreditation activities will be supported by the ABA, and that the budget "will not be subject to review by or in consultation with the Board of Governors or any other entity outside the Section."

Department staff has not received any complaints regarding the agencies inability to carry out its accreditation activities because of any issues relative to the criteria.

Analyst Remarks to Response:

In response to the draft analysis, the agency provided additional information and documentation to address the previous staffing concerns as evidenced in Exhibits A-F and QQ. Specifically, the agency has provided staff bios and organizational charts from its website defining the job descriptions and responsibilities of its staff (exhibits A-1 and QQ). However, the agency has still not provided resumes for twelve of its staff members responsible for accreditation activities for the 203 law schools it accredits for Department staff to assess the sufficiency of the staff credentials and qualifications to administer its accreditation activities in an effective manner within its scope of recognition. The agency has also provided resumes and bios for the Accreditation Committee members and resumes for the Appeals Panel members (exhibits C-F). However, the agency included the Council members bios, and all but four of the resumes of the Council for analysis as noted in 602.15(a)(2) Competency of Representatives. Lastly, the agency provided additional clarification on the qualifications of the Finance Review Committee for the Department to assess. The agency attests that members of the Finance Committee have various backgrounds that support their role on the committee, including the professional background of the Chair as a CPA and partner in a significant regional accounting firm and others who

have managed budgets in their professional work. The agency also provided a roster and resumes of all of the Finance Committee members to demonstrate their qualifications and credentials to sever in this capacity (exhibits D-E).

(2) Competent and knowledgeable individuals, qualified by education and experience in their own right and trained by the agency on their responsibilities, as appropriate for their roles, regarding the agency's standards, policies, and procedures, to conduct its on-site evaluations, apply or establish its policies, and make its accrediting and preaccrediting decisions, including, if applicable to the agency's scope, their responsibilities regarding distance education and correspondence education;

The agency states that the accreditation processes are performed by the council, accreditation committee, managing director, and appeals panel. The council has primary authority to determine compliance with agency standards; the accreditation committee makes recommendations to the council on various issues; the managing director oversees and reports all accreditation matters to the council and assures legal requirements are followed for law school accreditation; and the appeals panel considers appeals on denial or withdrawal of accreditation.

The agency's bylaws, standards, and rules of procedure for approval of law schools describe the criteria and composition of the Accreditation Committee, Council, appeals panel members, on-site evaluators, and team chairs. The rosters included as evidence identify the selection of qualified evaluators and decision makers as described in the written policies and procedures, however no curriculum vitae have been included demonstrating the qualifications via education and experience for the decision making bodies (which include the Accreditation Committee, Council, and appeals panel) for Department staff to review to ensure compliance with this criteria. The agency needs to provide documentation that would attest to the qualifications of site team members to serve in their respective roles.

The site evaluation teams consist of legal educators, practitioners, and a judge as demonstrated during the site visit observed by Department staff in February 2016 and within agency policies. The agency provided the internal operating practices as evidence which specifically outlines the qualifications needed for and the training of site team members, as well as the evaluation of site team reports by the managing director.

The agency provided training materials for the aforementioned groups as evidence. The materials are created to ensure understanding of the standards, policies, procedures in their perspective roles as a decision and policy-makers as well as the evaluators reviewing the application of standards, policies and procedures during site visits.

The site evaluators training materials include distance education. However, formal training on distance education was not evident in the meeting agenda or materials. In accordance with 602.27(a) (5) the agency notified the Department on June 16, 2014, requesting that the accreditation of distance education programs be included in its scope of recognition. As noted in aforementioned criterion such an expansion of scope is effective on the date the Department receives the notification. At the next full recognition review the Department expects the agency to demonstrate its ability to evaluate distance education. The agency has not provided evidence of such a review. The Department also expects that all of the personnel involved in accreditation activities will have received training regarding the accreditation and evaluation of distance education programs. As noted previously the agency provided no evidence of those involved in accreditation activities regarding distance education.

Also, the Data Policy & Collection Committee is introduced as part of the accreditation internal operating practices for legal education and admission to the bar. The role of the Data Policy & Collection Committee is not defined within the bylaws or standards and rules of procedure for approval of law schools, yet internal operating practices submitted as evidence by the agency states that the committee operate under the accreditation domain. The qualifications and the definition of the Data Policy and Collection Committee must be explained as it relates to accreditation

Analyst Remarks to Response:

In response to the draft analysis, the agency withdrew distance education from their scope of recognition and provided additional information and documentation to address the previous concerns related to competency of representatives as evidenced in Exhibits B-C and F-G in addition to further explanation of exhibits 10-11, 15, 17-19 and 21. Specifically, the agency included in the response resumes of the members of the Appeals Panel and Accreditation Committee but only some of the resumes for the Council and Data Policy & Collection Committee members (exhibits B-C and F-G). The agency also provided additional detail on the training of all entities involved in accreditation activities outlining the focus of these training workshops. Finally, the agency clarified the role of the Data Policy & Collection Committee as it relates to the accreditation process of the agency. The agency attest s that the Data Policy & Collection Committee role is to continue a dialogue between the schools and the Council on the most effective and efficient ways to collect and report the data that is required to operate the agency's accreditation process which falls under the Special Committees of Article X, section 2 within the agency Bylaws (exhibit 15). The agency provided the roster for the Data Policy & Collection Committee members and all but one of the resumes for the members (exhibits 21 and G). However, the exclusion of the resumes causes the agency to remain out of compliance with the criteria.

(3) Academic and administrative personnel on its evaluation, policy, and decision-making bodies, if the agency accredits institutions;

The agency provided evidence to demonstrate that its evaluation and decision-making bodies, which include its appeals panel, contain academic and administrative personnel. For example, the bylaws state that the Council shall include legal educators, practitioners, members of the judiciary, and representatives of the public; the internal operating practices state site team evaluator teams shall include, as appropriate, educators, practitioners, administrative personnel, and judges; and the appeals panel, and the group of alternates, shall include legal educators, practitioners, members of the judiciary, and representatives of the public as stated in the rules of procedure for approval of law schools. However, the agency standards do not distinguish the composition of its appeals panel when acting in the capacity of institution accreditor for freestanding institutions for Department staff to review and assess for compliance. The composition requirements differ depending on whether the agency is accrediting a program or a free-standing law school. For institutions, academic and administrator participation is required and for programs educator and practitioner participation is required on appeals panels.

The agency provided documentation of the written policies, identifying the required qualifications and experience of the members of the site team evaluators and the decision making bodies (Accreditation Committee, Council, and appeals panel), but did not provide curriculum vitae's demonstrating the members' credentials. The agency's composition of site visit evaluation teams, as well as the internal and external policy and decision-making bodies for accreditation are described and represent academic and administrative personnel. However, the agency must provide a site visit report to demonstrate that academic and administrative personnel serve on site visit teams when accrediting free-standing law schools.

Analyst Remarks to Response:

In response to the draft analysis, the agency provided additional information and documentation to address the previous concerns related to academic and administrative representatives as evidenced in exhibits B-C, F and H-I and further explanation of exhibits 11-14 and 16. Specifically, the agency included in the response the roaster and resumes of the Accreditation Committee (exhibits 13 and C) along with the roaster and some of the resumes (exhibits 12 and B) for the Council as noted in 602.15(a)(2)

Competency of Representatives. The agency provided the resumes and roaster of the Appeals Panel members (exhibits 14 and F). The agency states in its narrative that in practice the Appeals Panel contains an educator and academic who is a former law school dean and an academic and educator who is a very experienced site evaluator. However, it is unclear to the Department if the educator/academic Appeals Panel member serves the one or dual role when making accreditation decisions since the criteria require that a single individual fulfill one defined category/role at a time. Also, the agency's Rules of procedure, Rule 35 (d) states that the Appeals Panel, and the group of alternates, shall each include legal educators, practitioners, members of the judiciary, and representatives of the public (exhibit 16). Yet, this composition of members does not designate an academic and administrative member as a requirement. Lastly, the agency provided additional documentation on the composition of the on-site team evaluators to demonstrate the inclusion of academic and administrative personnel. In particular, the agency provided an on-site team chart listing on-site evaluators names and role on a site visit (exhibit 11); an excerpt from a site visit report identifying the on-site team evaluators; along with resumes citing the qualifications of the evaluators for the visit (exhibits H-I).

602.16 Accreditation and preaccreditation standards

The agency's measures of program length and the objectives of the degrees or credentials offered are found in standards 301 and 311. Standard 301 requires law schools to establish and publish learning outcomes while maintaining a rigorous program of legal education that prepares its students for admission to the bar and effective, ethical, and responsible participation as members of the legal profession. A description of learning outcomes is also required for distance education. Standard 311 requires not fewer than 83 credit hours for graduation of which 64 of these credit hours require attendance in regularly scheduled classroom sessions or direct faculty instruction; completion no earlier than 24 months and no later than 84 months; do not permit a student to be enrolled at any time in coursework that exceeds 20 percent of the total credit hours required by that school for graduation; and credit for a J.D. degree is only given for course work taken after the student has matriculated in a law school. Description of learning outcomes is also required for distance education.

The agency submitted documentation on standard 204-self study, which is submitted six weeks prior to the on-site review. The agency has adopted the site evaluation questionnaire to serve as a form of the self study. The agency submitted as evidence a guidance memo regarding compliance with Standard 204 and site evaluation workshop training materials on the self-study requirements.

The agency provided SEQs and site visit reports demonstrating the review of these criteria in addition to Department staff's observation of an on-site evaluation. The agency has not provided a self-study demonstrating the changes mentioned in standard 204. In section 602.16(a)(1)(i), the agency narrative states that each law school is required to complete the SEQ (which now serves as the self-study), six weeks before its site visit. However, the agency's standards and rules of procedure for approval of

law school standard 204 states that a self-study is comprised of (a) a completed site evaluation questionnaire, (b) a statement of the law school's mission and of its educational objectives in support of that mission, (c) an assessment of the educational quality of the law school's program, (d) an assessment of the school's continuing efforts to improve educational quality, (e) an evaluation of the school's effectiveness in achieving its stated educational objectives, and (f) a description of the strengths and weaknesses of the law school's program of legal education. The agency indicates distance education as part of their scope of recognition, but has not provided evidence of a review of distance education program for Department staff to assess. Also, the agency narrative indicates the inclusion of decision letters A and B (exhibit 31 and 32) demonstrating the results of this standards review, but is not included as evidence.

As noted previously, in accordance with 602.27(a) (5), the agency notified the Department on June 16, 2014, requesting that the accreditation of distance education programs be included in its scope of recognition. As noted in aforementioned criterion such an expansion of scope is effective on the date the Department receives the notification. At the next full recognition review the Department expects the agency to demonstrate its ability to evaluate distance education. The agency has not provided evidence of such a review. The agency needs to inform the Department if it still has a need or desire to accredit programs via distance. The agency also needs to inform the Department when it will be able to demonstrate to the Department (through its evaluation of a distance education program) that it has the ability to evaluate such programs and that all entities involved in accreditation activities have been trained in the accreditation and evaluation of distance education programs.

Analyst Remarks to Response:

In response to the draft analysis, the agency withdrew distance education from their scope of recognition and provided additional information and documentation to address the previous concerns related to the criteria as evidenced in the submitted exhibits. Specifically, the agency has updated standard 204 for law schools when submitting a self-study as evidenced in the agency memo (exhibit 73) announcing new interpretations for the standard as to rid the agency of duplication of efforts by the law school. The agency now requires law schools to submit a comprehensive site evaluation questionnaire in lieu of the separate self-study document, which must include all of the parts of standard 204. The agency has provided a site evaluation questionnaire, now entitled self-study (exhibits S, T and U) as part of the full cycle of review for this criterion. However, the agency standards do not reflect this new requirement. Standard 204 and the subsequent sections of the agency standards still identify the self-study and site evaluation questionnaire as separate requirements with separate definitions as sited in 602.17(b). Initially, the agency submitted decision letters 31 and 32 to the Department a month after the renewal petition submission. The Analyst discovered discrepancies within the documents that were submitted late, thus finding the agency out of compliance with the criteria, which was discussed with the agency during follow up communication. The original agency documents were heavily redacted which made it unclear to the Department the connection between the documents to assess them for compliance with the criteria. The agency response has now included a table outlining the documents submitted as they relate to the redacted name of the schools designating all documents affiliated with schools A, B, and C. The documents submitted now contain full cycles of review for these schools, including a decision letter from April 2016 for school C, to demonstrate compliance with the criteria.

602.17 Application of standards in reaching an accrediting decision.

The agency must have effective mechanisms for evaluating an institution's or program's compliance with the agency's standards before reaching a decision to accredit or preaccredit the institution or program. The agency meets this requirement if the agency demonstrates that it--

(b) Requires the institution or program to prepare, following guidance provided by the agency, an in-depth self-study that includes the assessment of educational quality and the institution's or program's continuing efforts to improve educational quality;

The agency provided a guidance memo and site evaluator workshop training materials in 602.16(a)(1)(viii) outlining clarity to standard 204, but has not reflected these updates in the self-study section 602.17(b) of the petition.

Analyst Remarks to Response:

As mentioned in 602.16(a)(1)(viii), the agency has updated standard 204 for law schools when submitting a self-study as evidenced in the agency memo (exhibit 73) announcing new interpretations for standard 204 to rid the agency of duplication of efforts by the law school. The agency now requires law schools to submit a comprehensive site evaluation questionnaire in lieu of the separate self-study document. The agency has provided a site evaluation questionnaire, now entitled self-study (exhibits S, T and U) as part of the full cycle of review for this criterion. However, the agency standards do not reflect this new requirement. Standard 204 and the subsequent sections of the agency standards states that a self-study is comprised of a completed site evaluation questionnaire and five other components. The agency also does not provide approvals of this change by the decision making bodies.

Staff Analysis of 3rd Party Written Comments

The Department received eleven comments recommending the continued recognition of the agency. The commenters were all external constituents of the agency. The comments support the agency's rigorous standards that measure the quality of law schools in all areas of 602.16.