

## 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:** Compliance Report
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:** Same as above
5. **Date of Advisory Committee Meeting:** 05/22/2018
6. **Staff Recommendation:** Renew the agency's recognition for three years
7. **Issues or Problems:** None

### 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. The Department received one third party comment, which is addressed in the third party comment section of this compliance report.

#### Recognition History

The then-Commissioner of Education initially recognized the Council in 1952, and the agency has been recognized since that time. The agency was last reviewed for continued recognition at the June 2016 NACIQI Meeting, when the Senior Department Official issued a decision in September 2016 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 as cited in the decision letter. The agency's compliance report 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;**

Previous Issue: The agency did not provide 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.

Discussion: The agency is now compliant with this criterion. It has provided a 2017-18 Legal Education Staff list along with the resumes or curriculum vitas (CVs) of its members. The resumes and CVs provide evidence that each of the staff members have sufficient credentials and qualifications to administer its accreditation activities in an effective manner within its scope of recognition (See Exhibit #s 1 & 2).

**(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;**

Previous Issue: The agency had not provided the resumes of all of its Council members and members of its Data Policy & Collection Committee, causing noncompliance with this criterion.

Discussion: The agency is now compliant with this criterion. On March 11, 2016, the agency decided to combine the Data Policy & Collection Committee with the Standards Review Committee (See Exhibit #5, ABA Council Meeting, Open Session), allowing the one committee (Standards Review Committee) to focus on accreditation-related issues. The Council agreed to execute formal action at a future meeting, if necessary (See Exhibit #5). The Standards Review Committee is formally described within a section of the agency's bylaws (Article X, Section 1(b)) (See Exhibit #6). Consequently, the agency has now provided its 2017-18 Standards Review Committee roster along with each member's resume (See Exhibit #3).

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

Previous Issues: (1) 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, was 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. (2) 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.

Discussion: The agency is now compliant with this criterion. It has provided a roster of its five Appeals Panel members with their specific titles and current places of employment (See Exhibit #16, Appeals Panel Roster 2017-18); and it has provided their resumes or bios, indicating that there is a mix of academicians and practitioners who serve on the panel (See Exhibit #17). The agency's Rule 35 (d) is now explicit about the composition of the Appeals Panel. Specifically, the rule reads that the Appeals Panel shall include 1) an academic; 2) an administrator; 3) a legal educator; 4) a practitioner or member of the judiciary; and 5) a representative of the public (See Exhibits #9-15). Each member of the Appeals Panel serves in one designated capacity of the five roles described.

Also, the agency amended its Rule 37(b), which now explicitly describes the types of panelists and alternates who should participate in its institutional or programmatic reviews, respectively, for those it accredits (See Exhibits #10-15). Specifically, the rule now states that:

(b) For law schools for which the Council is the institutional accreditor, the Managing Director shall appoint an academic, an administrator, and a representative of the public to serve on the Proceeding Panel. For law schools for which the Council is the programmatic accreditor, the Managing Director shall appoint a legal educator, a practitioner or member of the judiciary, and a representative of the public to serve on the Proceeding Panel.

(c) In the event a member of the Appeals Panel cannot be appointed to participate in a decision on appeal so as to ensure that the Proceeding Panel meets the requirements of Rules 35 and 37, the Managing Director shall appoint to the Proceeding Panel another person who meets those requirements.

---

### **602.16 Accreditation and preaccreditation standards**

Previous Issue: The agency required 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).

It should be noted that the agency's noncompliance with this criterion was related to documentation submitted in the 2016 petition to demonstrate the full cycle of review of the agency's application of its program length standards; specifically, the lack of written standards regarding the self-study and the site evaluation questionnaire.

Discussion: The agency is now compliant with this criterion. It has formally revised and republished its description of Standard 204 to reflect that the Site Evaluation Questionnaire is one of two distinct parts of the full Self-Study, and not as separate entities. The Self-Study's two clear parts are the Site Evaluation Questionnaire (Part I); and the Law School Assessment (Part II).

Part I: The Site Evaluation Questionnaire (SEQ)—[Standard 204(a)]—includes Narrative Responses and Required Supplementary Materials. The narrative responses have six parts: Organization, Administration, Institutional Planning, and Finances (Questions 1-10); Program of Legal Education (Questions 11-38); Faculty (Questions 39-56); Students (Questions 57-75); Library and Information Resources (Questions 76-86); and Facilities, Equipment, and Technology (Questions 87-90) (See Exhibits #s 26 & 27). The Required Supplementary Materials include various attachments, distinct reports, and materials that are provided on-site (See Exhibit #25).

Part II: The Law School Assessment—[Standard 204(b)(1)-(b)(3)]—includes: (1) a statement of the law school's mission and its educational objectives in support of the mission; (2) an evaluation of the educational quality of the law school's program of legal education, including a description of the program's strengths and weaknesses; and (3) a description of the school's continuing efforts to improve the educational quality of its program (See Exhibit #22).

At its June 3, 2016 Meeting (See Exhibit #19), the agency's Council reviewed the Standards Review Committee (SRC)'s recommended changes to Standard 204, Self-Study. The Council approved to move forward with a Notice and Comments solicitation (See Exhibit #19) about the proposed change. After the Notice and Comment period (See Exhibit #20), the SRC forwarded revised standards to the Council for approval (See Exhibit #21). The Council approved the revised Standard 204 at its October 21, 2016 Meeting (See Exhibit #12); and the agency's House of Delegates concurred on February 6, 2017 (See Exhibit #s 15 & 23).

To institutionalize the changes to Standard 204, the agency took a number of actions. It revised and republished the Managing Director's Guidance Memo on Standard 204 in March 2017 (see Director's Guidance Memo); created instructions for completing the Self-Study for the 2017-18 site visit cycle (See Exhibit #25); and revised the Site Evaluation Questionnaire for 2017-18 (See Exhibits #s 26 & 27, Supplementary Materials; and Exhibit #28, Self-Study Dean's Signature Page).

At its March 10, 2017 meeting, the Council approved the 2017-2018 Self-Study with the understanding that some final work is being done on the reports (See Exhibit #29).

In addition to the revision and republication of the Director's Guidance Memo, the agency composed and forwarded a comprehensive email notice to all Deans of ABA accredited law schools (See Exhibit #30), which described the Self-Study documents and included information regarding upcoming trainings, specifically the Questionnaire Training Self Study Excerpts, July 11, 2017 (See Exhibit #32); the Questionnaire Training PowerPoint on Self Study (See Exhibit #33); the Chairs' Training, August 26, 2017 (See Exhibit #34); and the New Site Evaluators Training and School Representatives on Self Study and at Site Visit Workshops, October 21, 2017 (See Exhibit #35).

---

### **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;**

Previous Issue: The agency required 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.

Discussion: Although the agency has made great progress, it is not compliant with this criterion still. The agency has formally

revised and republished its description of Standard 204 to reflect that the Site Evaluation Questionnaire is one of two distinct parts of the full Self-Study, and not as separate entities. The Self-Study's two clear parts are the Site Evaluation Questionnaire (Part I); and the Law School Assessment (Part II).

Part I: The Site Evaluation Questionnaire (SEQ)—[Standard 204(a)]—includes Narrative Responses and Required Supplementary Materials. The narrative responses have six parts: Organization, Administration, Institutional Planning, and Finances (Questions 1-10); Program of Legal Education (Questions 11-38); Faculty (Questions 39-56); Students (Questions 57-75); Library and Information Resources (Questions 76-86); and Facilities, Equipment, and Technology (Questions 87-90) (See Exhibits #s 26 & 27). The Required Supplementary Materials include various attachments, distinct reports, and materials that are provided on-site (See Exhibit #25).

Part II: The Law School Assessment—[Standard 204(b)(1)-(b)(3)]—includes: (1) a statement of the law school's mission and its educational objectives in support of the mission; (2) an evaluation of the educational quality of the law school's program of legal education, including a description of the program's strengths and weaknesses; and (3) a description of the school's continuing efforts to improve the educational quality of its program (See Exhibit #22).

At its June 3, 2016 Meeting (See Exhibit #19), the agency's Council reviewed the Standards Review Committee (SRC)'s recommended changes to Standard 204, Self-Study. The Council approved to move forward with a Notice and Comments solicitation (See Exhibit #19) about the proposed change. After the Notice and Comment period (See Exhibit #20), the SRC forwarded revised standards to the Council for approval (See Exhibit #21). The Council approved the revised Standard 204 at its October 21, 2016 Meeting (See Exhibit #12); and the agency's House of Delegates concurred on February 6, 2017 (See Exhibit #s 15 & 23).

To institutionalize the changes to Standard 204, the agency took a number of actions. It revised and republished the Managing Director's Guidance Memo on Standard 204 in March 2017 (see Director's Guidance Memo); created instructions for completing the Self-Study for the 2017-18 site visit cycle (See Exhibit #25); and revised the Site Evaluation Questionnaire for 2017-18 (See Exhibits #s 26 & 27, Supplementary Materials; and Exhibit #28, Self-Study Dean's Signature Page).

At its March 10, 2017 meeting, the Council approved the 2017-2018 Self-Study with the understanding that some final work is being done on the reports (See Exhibit #29).

In addition to the revision and republication of the Director's Guidance Memo, the agency composed and forwarded a comprehensive email notice to all Deans of ABA accredited law schools (See Exhibit #30), which described the Self-Study documents and included information regarding upcoming trainings, specifically the Questionnaire Training Self Study Excerpts, July 11, 2017 (See Exhibit #32); the Questionnaire Training PowerPoint on Self Study (See Exhibit #33); the Chairs' Training, August 26, 2017 (See Exhibit #34); and the New Site Evaluators Training and School Representatives on Self Study and at Site Visit Workshops, October 21, 2017 (See Exhibit #35).

To further illustrate the implementation of the Standard 204 revision and how its accredited schools are complying with the changes, the agency provided two Self-Studies from 2017-18 site visits as evidence of compliance with the new self-study requirements. These two Self-Studies were from the University of California at Davis School of Law (See Exhibit #36) and the University of Louisville's Brandeis School of Law (See Exhibit #37). Although both institutions provided information that support an understanding of the two distinct parts of the Self Study as required by the revised standard, both institutions noted that required reports 1-23 of the Site Evaluation Questionnaire (Part I) could not be generated at the time of the submission due to an ABA system update that precluded them from doing so. Providing these required reports would bring the agency into compliance with this criterion.

#### **Analyst Remarks to Response:**

Issue: The agency must provide required reports 1-23 of the Site Evaluation Questionnaire (Part I) for the University of California at Davis School of Law and the University of Louisville's Brandeis School of Law. [§602.17(b)] Discussion: The agency has now provided evidence that indicates Required Reports 1-23 of the Site Evaluation Questionnaire (Part 1)—for both the University of California at Davis School of Law (See Exhibit #38) and the University of Louisville's Brandeis School of Law (See Exhibit #39)—have been entered, electronically, into the ABA system. The agency is now compliant with this criterion.

---

### **PART III: THIRD PARTY COMMENTS**

#### **Staff Analysis of 3rd Party Written Comments**

There was one written comment regarding this agency, which acknowledged the efforts that the agency has made to become compliant with what they described as three personnel issues and two quality control issues; however, the commenter still has

concerns.

As it relates to 602.15(a)(1), 602.15(a)(2), and 602.15(a)(3), the commenter pointed out that redactions in the resumes and biographical materials contained in Exhibits 4, 8, and 17 make it difficult for public assessment of staff qualifications. The commenter also had concerns about one specific employee (i.e., Barry Arthur Currier, Managing Director, Legal Education and Accreditation) who held various leadership roles at a non-ABA approved online law school affiliated with Kaplan Legal Education from 2004 to 2010. The commenter emphasized that during such time, a Senate investigation of Kaplan uncovered problematic practices, including Kaplan's provision of online programs. Further, the commenter pointed out that law enforcement actions suggest that Kaplan misrepresented the availability of post-graduation opportunities to students of another non-approved professional program, raising concerns about Mr. Currier's qualification to hold a leadership role on ABA's legal accreditation staff.

Although the commenter acknowledged the agency's efforts with its self study revisions [602.16(a)(1)(viii); 602.17(b)], they emphasized that "it is not clear that the ABA has...demonstrated sufficiently aggressive implementation of the standard [and that it] remains to be seen whether ABA's revised self study policies are sufficiently aggressive to combat noncompliant practices at problematic law schools". The commenter also asserted that the agency's recent actions on finding 23 programs noncompliant are "promising signals" for improved focus on compliance, but suggests that the agency ignored early warning signs from these institutions, including their low bar passage rates, high volume of student complaints, and high debt-to-earnings ratios.

Citing the Senior Department Official's September 22, 2016 letter to the agency, the commenter raised concerns about whether distance education was within the agency's scope of recognition and urged the Department to ensure that the agency has the capacity to properly oversee online programs if it has not done so already.

Department Response: In accordance with 34 CFR 602.31(f) the agency is allowed to redact information. The Department has found the agency compliant with 602.15(a)(1), 602.15(a)(2), and 602.15(a)(3) based on the review of all provided documentation. In addition, the agency has been found compliant with 602.16(a)(1)(viii), but needs to provide additional documentation to demonstrate compliance with 602.17(b). Department staff notes that distance education is not included in the agency's scope of recognition. Should the agency request to have distance education included in its scope of recognition, it would be added in accordance with 34 CFR § 602.27(a)(5). Finally, the Department has noted the commenter's concerns with a specific agency staff member; however, the Department does not have the authority to intervene in such human resource matters.

### **Agency Response to 3rd Party Written Comments**

The Council thanks the commenter for acknowledging its efforts to become compliant with the criteria. The Council agrees with the Department's comments that it is allowed to redact information under 34 CFR 602.31(f). In response to the comments on the self-study efforts, please note that the Council has implemented the revisions to Standard 204 for all site visits beginning in the fall of 2017. Moving forward, all schools are required to meet those requirements. In response to the comments on distance education, as the Department staff noted, distance education is not included in the Council's current scope of recognition.