Key Issues Considered by the Student Learning Outcomes Subcommittee
Steve Bahls, Chair of the Subcommittee
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The Student Learning Outcomes Subcommittee of the ABA Standards Review Committee has completed its work on the third draft of student learning outcomes revisions to the Standards and Interpretations. It should be noted that this third draft is only a proposal and has not been considered or approved by the Standards Review Committee.

This report describes the subcommittee’s work and the key issues it considered.

I. The Charge to the Subcommittee

The Subcommittee is guided by ABA’s Report of the Outcome Measures Committee, which challenges the “Standards Review Committee to re-examine the existing Standards and Interpretations for the purposes of moving toward a greater emphasis on outcome measures.”


In addition, the Standards Review Committee, 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 following goals guided the Subcommittee’s work:

• Standards should enhance how law schools “prepare 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 have proficiency. The Standards should require law schools to develop meaningful outcomes measures for the knowledge base, skills and values required of lawyers. As well, law schools should assess their progress toward ensuring that students are proficient 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 outcomes and measures that relate to their respective missions.

• Standards should not significantly increase the cost of legal education to students. The standards should not be unduly difficult to administer and should not be inconsistent with the standards of regional accreditation.
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 such that schools will work in good faith to comply with the letter and spirit of the standards.

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

III. Summary of the Proposed Standards

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

1. Proposed Standard 302 provides that law schools **identify desired learning outcomes**. It provides substantial flexibility for law schools, consistent with each law school’s mission. Most of the learning outcomes required in proposed Standard 302 are found in current Standard 302 as curriculum requirements.

2. Proposed 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 its curriculum.

3. Proposed Standard 304(a) provides that law schools **assess whether students are achieving the identified learning outcomes**. The determination of how to assess learning outcomes is left to the dean and the faculty of the law school, though the proposed interpretations provide examples of what types of assessment tools that law schools might choose to use.

4. Proposed Standard 304(b) provides that law schools review the pedagogical effectiveness of their curricula and **improve their curricula 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 identifies.

IV. Key Issues Considered by the Subcommittee

Those issues indentified as key issues by the Subcommittee include:

1. **Which is most appropriate as it relates to identifying professional skills outcomes – Alternative One or Alternative Two?**

Both proposed alternatives require law schools to adopt legal analysis and reasoning, legal research, problem solving, written and oral communication and the ability to resolve ethical and professional dilemmas as learning outcomes related to professional skills. Alternative One leaves it to the law school to identify other professional skills, while Alternative Two would mandate the following additional professional skills: trial and appellate advocacy, alternative dispute resolution, counseling, interviewing, negotiation, factual investigation, organization and management of legal work, and drafting.
The argument advanced for Alternative One is that it provides more flexibility to law schools and is potentially less costly. Those advocating for Alternative One believe that it is reasonable for a law school to determine that graduates need to be proficient in only some of the skills listed in Alternative Two. A student, for example, in a “transactions track” might not need to master the skills of trial and appellate advocacy. They argue that legal education is a continuum from law school through the early years of practice and that it is unrealistic to expect students to master all of these skills during the three years of law school.

The argument advanced for Alternative Two is that the legal profession has identified the additional skills as basic skills required of lawyers. They argue that admission to the bar entitles students full rights to practice in any practice setting (not just in a specific niche) and that it is in the public interest for all law school graduates to have mastered all of these skills.

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 that provides 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. Depending on whether Alternative One or Alternative Two is adopted, law schools may have significant flexibility to identify which professional skills they will measure. Learning outcomes are stated in general terms, giving law schools significant flexibility to define the specifics of outcomes to be measured.

- Except for a required course with writing experience, a professional responsibility course and a course involving a clinical or simulation experience, the proposed standards provide that the law school will determine the curriculum to produce graduates who have attained the learning outcomes.

- The proposed standards do not require law schools to apply any specific assessment tools. Law schools determine which assessment tools are the most appropriate.

- The proposed standards require law schools to assess their institutional effectiveness by determining whether students are, in fact, achieving proficiency in the learning outcomes. The method of this institutional assessment is not prescribed but is determined by the law school.

The Subcommittee was concerned, however, that too much flexibility could allow law schools to water down desired outcomes or assessment in a way that is not in the public interest. The Subcommittee believes that standards along the lines proposed properly balance the interest of accountability with the interest of institutional flexibility.

3. *Are outcomes measures sufficiently developed to allow law schools to comply with these standards?*

There are a substantial number of schools that have developed outcomes measures, many of which have been well documented through publications; however, most assessment measures within legal

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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.
education have not been demonstrated to be valid and reliable in the way that many standardized tests have.

The proposed standards do not require law schools to prove that assessment measures are “valid and reliable” as psychometricians might define it. Instead, the proposed standards leave it to the dean and faculty of a law school to determine which measurements and tools are “pedagogically effective.” Proposed Interpretations 304-1 identifies “tools” that are “generally regarded to be pedagogically effective to assess student performance.” These tools might be useful as a starting point for law school to consider when determining how to assess outcomes. For law schools wanting more certainty, this Interpretation also provides assurance about what tools will be considered pedagogically effective; however, the proposed standards and interpretations do not require law schools to use any specific tools.

The Subcommittee is also recommending a delayed effective date or a phase-in period, in order that the legal academy and individual law schools have time to develop meaningful assessment tools.

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. But as the standards move to more emphasis on outcomes, it is important to consider whether the standards should modify certain input-based requirements.

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 in professional responsibility, which many believe is implicit in the existing standards. The proposed standards also add requirement that all students complete one “real case” experience involving a clinic, field placement or simulation. The proposed standards delete the current requirement of “small group work through seminars, directed research, small classes or collaborative work.” The proposals also delete the prohibition against giving credit for paid field placements.

These specific curricular input requirements for all students, which amount to four courses, are the only specific curricular requirements. Law schools are free to design whatever other curriculum they think is 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 Subcommittee was concerned about the relatively high cost of legal education and how new requirements might increase the cost to students. As a result, 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.

The proposed standards have the following provisions that are designed to facilitate law schools identifying and measuring outcomes in a cost-effective way:

- As discussed, the proposed standards allow law schools substantial flexibility in determining outcomes and how to measure student performance, such that law schools can identify cost-effective methods within their budgets.
The proposed standards do not require a law school to establish that the outcome assessment measures it uses are “valid and reliable” (as defined by psychometricians), because of the high cost to do so. Instead, the dean and faculty determine whether measures are “pedagogically sound”, which is a lower standard than “valid and reliable.” To aid law schools in determining pedagogical soundness of measures in cost effective ways, the proposed interpretations establish what are effectively “safe harbor” measures to rely upon.

The proposed standards allow law schools to use simulations, in addition to clinical and field placement experiences, 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.

The proposed 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.

In addition, the proposed revisions would eliminate the prohibition found in current Interpretation 305-3, which prohibits law schools from giving credit to a student for participation in field placements for which the student receives compensation.

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

The Subcommittee supports a phase-in period. The phase-in period could be a delayed effective day, an interim period when law schools could elect to be evaluated under the old rules or new rules, 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 regimen.

The Subcommittee recognizes that its proposals would represent a significant change that should not be implemented without considerable discussion and debate. Though the Subcommittee has prepared a third draft of the student learning outcomes revisions, it welcomes comments and suggestions. The Subcommittee also encourages those schools that have found ways to assess learning outcomes to share those methodologies with the broader legal education community in order that all law schools better understand how to most effectively move to a greater reliance on outcomes measures.

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Student Learning Outcomes Subcommittee is made up of the following members:

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