

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

THOMAS M. COOLEY LAW)	
SCHOOL, a Michigan non-profit)	
corporation,)	Case No. 17-cv-13708
)	
Plaintiff,)	Hon. Arthur Tarnow
)	
v.)	Assigned to Magistrate Judge David
)	R. Grand
THE AMERICAN BAR)	
ASSOCIATION, an Illinois non-profit)	Filed Under Seal
corporation,)	
)	
Defendant.)	
<hr/>		

**DECLARATION OF TACY F. FLINT IN SUPPORT OF ABA'S
OPPOSITION TO PLAINTIFF THOMAS M. COOLEY LAW SCHOOL'S
MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

I, Tacy F. Flint, declare as follows:

1. My name is Tacy F. Flint. I am an attorney with Sidley Austin LLP, counsel for the American Bar Association (“ABA”). I have personal knowledge of the matters set forth herein. I submit this declaration in support of ABA’s Opposition to Plaintiff Thomas M. Cooley Law School’s Motion for Temporary Restraining Order and Preliminary Injunction.

2. Attached hereto as **Exhibit A** is a true and correct copy of excerpts from the ABA’s Standards and Rules of Procedures for Approval of Law Schools.

3. Attached hereto as **Exhibit B** is a true and correct copy of a November 17, 2016 document published by the Department of Education titled “Clarification of Terminology and Requirements for Accrediting Agency Reporting to the U.S. Department of Education.”

4. Attached hereto as **Exhibit C** is a true and correct copy of a May 19, 2016 letter from Barry Currier to Don LeDuc.

5. Attached hereto as **Exhibit D** is a true and correct copy of an October 4, 2017 letter and Accreditation Decision addressed to Don LeDuc.

6. Attached hereto as **Exhibit E** is a true and correct copy of a transcript of the November 4, 2017 Closed Session Council Meeting In Re: Appeal of Accreditation Committee’s September 2017 Decision Letter.

7. Attached hereto as **Exhibit F** is a true and correct copy of a November 13, 2017 email from Barry Currier to Don LeDuc.
8. Attached hereto as **Exhibit G** is a true and correct copy of a November 14, 2017 email from Barry Currier to Don LeDuc.
9. Attached hereto as **Exhibit H** is a true and correct copy of a November 13, 2017 email from Don LeDuc to Barry Currier.
10. Attached hereto as **Exhibit I** is a true and correct copy of a November 16, 2017 email from Reginald Turner to Michael Coakley.
11. Attached hereto as **Exhibit J** is a true and correct copy of an article dated November 16, 2017 and published by Law360 titled “Don’t Let ABA Post Letter About Cooley, Law School Urges.”

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 17, 2017

s/ Tacy F. Flint

Tacy F. Flint

EXHIBIT A

ABA STANDARDS
and
RULES OF
PROCEDURE
for
APPROVAL OF
LAW SCHOOLS

2017–2018

The ABA Standards and Rules of Procedure for Approval of Law Schools are promulgated by the Council of the ABA Section of Legal Education and Admissions to the Bar and concurred in by the ABA House of Delegates.

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This publication is also available in its entirety at the Section's Web page: www.americanbar.org/legaled.

Printed in the United States of America.

Cataloging-in-Publication Data is on file with the Library of Congress ISBN: 978-1-63425-991-0

Discounts are available for books ordered in bulk. Special consideration is given to state bars, CLE programs, and other bar-related organizations. Inquire at Book Publishing, ABA Publishing, American Bar Association, 321 N. Clark Street, Chicago, Illinois 60654-7598.

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Preface

Scope of Accrediting Authority

All jurisdictions have set minimal educational requirements to qualify a person for eligibility to sit for the bar examination. Almost all rely exclusively on ABA approval of a law school to determine whether the jurisdiction's legal education requirement for admission to the bar is satisfied. In all states, graduation from an ABA-approved law school is sufficient to meet these requirements although a small number of states have now added requirements in addition to the ABA requirements. Whether a jurisdiction requires education at an ABA-approved law school is a decision made by a jurisdiction's highest court and its bar admission authority and not by the Council or the ABA. The Council and the ABA believe, however, that every candidate for admission to the bar should have graduated from a law school approved by the ABA and that every candidate for admission should be examined by public authority to determine fitness for admission.

Since 1952, the Council of the Section of Legal Education and Admissions to the Bar (the Council) of the American Bar Association (the ABA) has been approved by the United States Department of Education as the recognized national agency for the accreditation of programs leading to the J.D. degree. United States Department of Education rules require an accrediting agency within a professional association to operate separately and independently from the association of which it is part. Therefore, it is the Council and its Accreditation Committee not the ABA that are the recognized accreditor. Nonetheless, for ease of reference, law schools accredited by the Council are referred to as "ABA-approved."

In its role as the accrediting agency for legal education, the Council has promulgated the Standards and Rules of Procedure for Approval of Law Schools. The Standards contain the requirements a law school must meet to obtain and retain ABA approval. Interpretations that follow the Standards provide additional guidance concerning the implementation of a particular Standard. The Rules of Procedure govern the accreditation process and the process through which decisions concerning the status of individual schools are made. The Rules also contain provisions related to the operation of the Office of the Managing Director.

History

The ABA in 1879 established the Standing Committee on Legal Education and Admissions to the Bar as one of the ABA's first committees. In 1893, the Section of Legal Education and Admissions to the Bar was established as the Association's first section. Recognizing the need to take further steps to improve legal education, the Section leadership played the major role in creating the Association of American Law Schools (AALS) in 1900. Today, the AALS is a law school membership organization with membership requirements different from the Standards. The AALS is not an accrediting agency.

In 1921 the American Bar Association promulgated its first *Standards for Legal Education*. At the same time, the ABA began to publish a list of ABA-approved law schools that met the ABA Standards.

Revisions of the Standards, Interpretations and Rules of Procedure through 1996

The Revisions of the Early 1970s

A major revision of the 1921 Standards was undertaken in the early 1970s. After an extensive comment process, the revised Standards and the Rules of Procedure were adopted by the Section of Legal Education and Admissions to the Bar in August, 1972, and were approved by the ABA House of Delegates in February, 1973.

Ramsey Commission

In 1988 Judge Henry Ramsey, Jr., of the Alameda County, California, Superior Court and Chair-Elect of the Section, was asked to chair a study of the accreditation process. As a result of the work of the Ramsey Commission, a number of revisions to the Rules of Procedure were adopted in 1989.

Department of Justice Consent Decree

In June 1995, the United States Department of Justice filed a civil antitrust suit against the ABA, alleging violations of antitrust laws in the accreditation program. The civil suit was concluded by a final Consent Decree that was approved in June 1996. It included a number of requirements concerning the Standards, which the Council subsequently approved. The Consent Decree was in force for a period of ten years and expired by its own terms on June 25, 2006. The Council has determined, however, that after the expiration of the Consent Decree, accreditation processes and procedures will continue to observe the substantive provisions of the Consent Decree.

The Wahl Commission and the 1996 Revisions of the Standards

In 1992, the Council launched a formal revision of the Standards and their Interpretations. In the midst of that review, in April 1994, the Council established the Commission to Study the Substance and Process of the American Bar Association's Accreditation of American Law Schools. Justice Rosalie E. Wahl of the Supreme Court of Minnesota, and a former chair of the Section, accepted appointment as Commission chair. The Wahl Commission's mandate was to conduct a thorough, independent examination of all aspects of law school accreditation by the ABA. On the basis of hearings, solicited written comments, and surveys, the Commission prepared a report for submission at the 1995 annual meeting of the ABA.

The Consent Decree, however, required that the ABA establish a special commission to determine whether the Standards, Interpretations, and Rules of Procedure should be revised in some respects. It was agreed by the Department of Justice and the ABA that the Wahl Commission's mandate would be enlarged to include these matters and that the Commission's tenure would be continued. In response to this additional mandate, in November 1995 the Wahl Commission submitted a supplement to its August 1995 report.

The four-year revision process that began in 1992 and culminated with the work of the Wahl Commission focused both on the form and the substance of the Standards and Interpretations. After extensive opportunity for comment, the revised Standards were approved by the Council and adopted by the House of Delegates in August, 1996.

Review of the Standards, Interpretations and Rules of Procedure Since 1996

Proposed revisions to the Standards, Interpretations and Rules of Procedure are subject to an extensive public comment process. Proposed revisions are widely distributed for comment, and comment is solicited by letter and e-mail, and at public hearings. Proposed revisions are then carefully considered in light of the comment received before any final action is taken.

The Council, with the assistance of the Standards Review Committee, regularly reviews and revises the Standards and Interpretations to ensure that they are appropriate requirements for current legal education programs and that they focus on matters that are central to the provision of quality legal education. A

comprehensive review of the Standards and Interpretations was undertaken during 1996-2000. Another such comprehensive review was undertaken from 2003 through 2006. The most recent comprehensive review commenced in fall 2008. The Council approved the revisions in June 2014 and they were concurred in by the House of Delegates in August 2014.

In the summer of 2004, the Council appointed a Rules Revision Committee, chaired by Provost E. Thomas Sullivan of the University of Minnesota (a former chair of the Section), to undertake and recommend a comprehensive revision of the Rules. In June 2005 the Council accepted the Committee's report and shortly thereafter distributed for comment a proposed comprehensive revision of the Rules. The Council adopted the comprehensive revision of the Rules of Procedure in December 2005 and the House of Delegates concurred in those revisions in February 2006. The Rules of Procedure have undergone a thorough review as part of the most recent comprehensive review of the Standards (2008-2014) and were concurred in by the House of Delegates in August 2014.

The Section's website (www.americanbar.org/legaled) contains considerable history of the Standards and the Standards review process. Visit the following pages for more information:

www.americanbar.org/groups/legal_education/resources/standards/standards_archives.html

www.americanbar.org/groups/legal_education/committees/standards_review/comp_review_archive.html

Council Responsibility

The Council grants provisional and full ABA approval to law schools located in the United States, its territories, and possessions. **It also adopts the Standards for Approval of Law Schools and the Interpretations of those Standards, and the Rules of Procedure that govern the law school accreditation process.** The Council also must grant prior acquiescence in any major changes that are proposed by an approved law school and may impose sanctions for noncompliance with the Standards.

ABA House of Delegates Responsibility

In August 2010, the role of the ABA House of Delegates in accreditation matters was revised in order to comply with new Department of Education requirements regarding appeals. Prior to August 2010, a school that was denied provisional or full approval by the Council was able to file an appeal to the House of Delegates. The House of Delegates could either concur in the Council's decision or refer that decision back to the Council for further consideration. A decision of the Council was final after referral from the House of Delegates a maximum of two times in the case of decisions denying provisional or full approval, or once in the case of decisions to withdraw approval from a school. As a result of the changes in August 2010, the House of Delegates no longer has a role in the appeals process. (See Rule 57 and IOP 19.)

Any decision of the Council to adopt any revisions to the Standards, Interpretations or Rules of Procedure must be reviewed by the House of Delegates. The House either concurs in those revisions or refers them back to the Council for further consideration. The Council's decision after the second referral back is final.

This Book Includes:

- **The 2017-2018 Standards and Rules of Procedure**

These are the current criteria that law schools must meet to obtain and retain ABA approval. The 2017-2018 edition reflects all changes approved by the Section's Council and concurred in by the ABA House of Delegates through February 2017.

- **Criteria for Approval of Foreign Programs**

Under its authority to adopt rules implementing the Standards, the Council has adopted criteria for the approval of studies or activities leading to credit for the J.D. degree that are undertaken outside the United States. Those Criteria include the Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States, the Criteria for Approval of Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools, and the Criteria for Accepting Credit for Student Study at a Foreign Institution. The Council has delegated to the Accreditation Committee the authority to approve programs under the Criteria.

The Criteria for Accepting Credit for Student Study at a Foreign Institution were revised in 2014/2015. The Criteria for Approval Foreign Summer and Intersession Programs were revised for this 2016-2017 edition

- **Internal Operating Practices (IOPs)**

The IOPs provide direction concerning the operation of accreditation functions and other activities of the Office of the Managing Director.

- **Additional Information and Guidelines**

(Available online at: http://www.americanbar.org/groups/legal_education/resources/standards.html)
Council Statements are positions that the Council has taken on various matters that do not have the force of a mandatory Standard or Interpretation. Guidance Memos are issued periodically to assist schools in coming into compliance with the Standards.

2017-2018 Standards for Approval of Law Schools

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CHAPTER 5

Admissions and Student Services

Standard 501. ADMISSIONS

- (a) A law school shall adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.
- (b) **A law school shall only admit applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar.**
- (c) A law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee's file.

Interpretation 501-1

Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school's entering students, the academic attrition rate of the law school's students, the bar passage rate of its graduates, and the effectiveness of the law school's academic support program. Compliance with Standard 316 is not alone sufficient to comply with the Standard.

Interpretation 501-2

Sound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome.

Interpretation 501-3

A law school having a cumulative non-transfer attrition rate above 20 percent for a class creates a rebuttable presumption that the law school is not in compliance with the Standard.

Standard 502: EDUCATIONAL REQUIREMENTS

- (a) **A law school shall require for admission to its J.D. degree program a bachelor's degree that has been awarded by an institution that is accredited by an accrediting agency recognized by the United States Department of Education.**
- (b) **Notwithstanding subsection (a), a law school may also admit to its J.D. degree program:**
 - (1) **an applicant who has completed three-fourths of the credits leading to a bachelor's degree as part of a bachelor's degree/J.D. degree program if the institution is accredited by an accrediting agency recognized by the United States Department of Education; and**
 - (2) **a graduate of an institution outside the United States if the law school assures that the quality of the program of education of that institution is equivalent to that of institutions accredited by an accrediting agency recognized by the United States Department of Education.**
- (c) **In an extraordinary case, a law school may admit to its J.D. degree program an applicant who does not satisfy the requirements of subsections (a) or (b) if the applicant's experience, ability, and other qualifications clearly demonstrate an aptitude for the study of law. For every such admission, a statement of the considerations that led to the decision shall be placed in the admittee's file.**
- (d) **Within a reasonable time after a student registers, a law school shall have on file the student's official transcripts verifying all academic credits undertaken and degree(s) conferred.**

Interpretation 502-1

Official transcript means: 1) a paper or electronic transcript certified by the issuing institution and delivered directly to the law school; or 2) a paper or electronic transcript verified by a third-party credential assembly service and delivered directly to the law school. With respect to electronic copies, it is sufficient for transcripts to be maintained at the law school or off-site by a third-party provider as long as the law school has access to the documents on demand.

Interpretation 502-2

The official transcripts for any student admitted as a transfer student shall include verification of any academic credits undertaken at any other law school attended.

Rules of Procedure for Approval of Law Schools

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I. Scope and Authority

Rule 1: Scope and Purpose

These Rules of Procedure govern the accreditation process as carried out by the Council, Accreditation Committee, Managing Director, and Appeals Panel. They establish processes relating to accreditation that further the purposes of the Standards and promote consistency, fairness, and transparency.

Rule 2: Council Responsibility and Authority with Regard to Accreditation Status

The Council has primary authority to determine compliance with the Standards. It has delegated certain authority to the Accreditation Committee as stated in Rule 3. The Council has authority to:

- (a) grant or deny an application of a law school for provisional approval or full approval;
- (b) withdraw provisional or full approval;
- (c) grant or deny applications for acquiescence in a major change, as provided in the Standards;
- (d) grant or deny applications for variances;
- (e) approve or deny approval of a teach-out plan;
- (f) impose sanctions and/or direct specific remedial action;
- (g) consider appeals from decisions of the Accreditation Committee; and
- (h) set fees for services and activities related to accreditation.

Rule 3: Accreditation Committee Responsibility and Authority

The responsibility and authority of the Accreditation Committee is delegated to it by the Council.

- (a) The Committee has jurisdiction to make recommendations to the Council concerning:
 - (1) an application for provisional or full approval;
 - (2) withdrawal of provisional or full approval;

- (3) an application for acquiescence in a major change under Rules 29(a)(1) through 29(a)(13);
 - (4) an application for a variance; and
 - (5) approval or denial of a teach-out plan.
- (b) The Committee has jurisdiction to make decisions concerning all matters other than those specified in Rule 3(a), including:
- (1) determining compliance with the Standards of any provisionally or fully approved law school in connection with a site evaluation, a complaint, a response to a request for information, a fact-finding report, interim monitoring of accreditation status, or any other circumstances as provided in these Rules;
 - (2) granting or denying an application for approval of a foreign programs, and the continuance of a foreign program as set forth in the Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States; the Criteria for Approval of Foreign Semester and Year-Long Programs; and the Criteria for Accepting Credit for Student Study at a Foreign Institution; and
 - (3) granting or denying an application for acquiescence in a major change under Rule 29(a)(14) through 29(a)(17).
- (c) The Committee has jurisdiction to impose sanctions and/or direct specific remedial action, or to recommend to the Council that it impose sanctions and/or direct specific remedial action, in accordance with Rules 16 to 18.
- (d) The Committee has the authority to create subcommittees and task forces as it deems appropriate. Subcommittees do not have the authority to take action on behalf of the Accreditation Committee but have the authority to make recommendations where appropriate.

Rule 4: Appeals Panel Authority

An Appeals Panel has authority to consider appeals of the following decisions of the Council:

- (a) Denial of provisional approval;
- (b) Denial of full approval; or
- (c) Withdrawal of provisional or full approval.

II. Information

Rule 5: Site Evaluations

- (a) A site evaluation of a law school or of a program is a comprehensive examination of the law school or program conducted by one or more persons qualified to conduct site evaluations who:
 - (1) Review documents relating to the law school or program;
 - (2) Perform an on-site evaluation of the law school or program; and
 - (3) Prepare a factual report to be used by the Committee for purposes of making decisions or recommendations relating to accreditation status of the law school or program.
- (b) Site evaluations of law schools shall be conducted according to the following schedule:
 - (1) A site evaluation of a fully approved law school shall be conducted in the third year following the granting of full approval and every seventh year thereafter.
 - (2) A site evaluation of a provisionally approved law school shall be conducted in accordance with subsection (g) below.
 - (3) A site evaluation shall be conducted upon application by a law school for provisional approval.
- (c) The Council or Committee may order additional site evaluations of a law school when special circumstances warrant.
- (d) In extraordinary circumstances, a site evaluation of a law school may be postponed upon the request of the law school. In such cases, the postponement shall be at the discretion of the Managing Director in consultation with the chair of the Committee and shall not exceed one year.
- (e) When a site evaluation of a law school is required under the Standards or these Rules, the Managing Director shall make the following arrangements:
 - (1) Schedule the site evaluation during the regular academic year, at a time when classes in the program of legal education are being conducted.
 - (2) Appoint a qualified site evaluation team of sufficient size to accomplish the purposes of the site evaluation, and appoint a chair of the site evaluation team;
 - (3) Provide the site evaluation team all relevant documents relating to Accreditation Committee and Council action regarding the law school;
 - (4) Provide the site evaluation team with any third-party comments received by the Managing Director's Office regarding the law school's compliance with the Standards;
 - (5) Provide the site evaluation team all complaints received under Rule 43 and not dismissed by the Managing Director or the Accreditation Committee; and
 - (6) Provide the site evaluation team with any necessary or appropriate directions or instructions.

- (f) In connection with a site evaluation of a law school, the Managing Director shall direct the law school to provide the following documents to the site evaluation team before the site evaluation:
- (1) All completed forms and questionnaires, as adopted by the Council; and
 - (2) In the case of a law school applying for provisional or full approval, the completed application for provisional or full approval.
- (g) Site evaluations for provisionally approved law schools shall be conducted as follows:
- (1) In years two and four, and upon application for full approval, the law school shall be inspected in accordance with the rules for site evaluation of fully approved law schools.
 - (2) The Accreditation Committee has the discretion to order a site evaluation in any other year. The Accreditation Committee may direct that the additional site evaluation be limited in scope.
- (h) Following a site evaluation, the site evaluation team shall prepare a written report on facts and observations that will enable the Committee to determine compliance with the Standards or other issues relating to the accreditation status of the law school. A site evaluation report shall not contain conclusions regarding compliance with Standards or make recommendations for action by the Committee or the Council.
- (i) The Managing Director shall review the report submitted by a site evaluation team and ensure that it complies with (h). The Managing Director shall then transmit the report to the president and the dean in order to provide an opportunity to make factual corrections and comments. The law school shall be given at least 30 days to prepare its response to the report, unless the law school consents to a shorter time period. The 30 day period shall run from the date on which the Managing Director transmits the report to the law school.
- (j) Following receipt of the law school's response to the site evaluation report, the Managing Director shall forward a copy of the report with the law school's response to members of the Accreditation Committee and the site evaluation team.
- (k) Site evaluations regarding foreign programs shall be conducted as provided under the:
- (1) Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States;
 - (2) Criteria for Approval of Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools.

Rule 6: Interim Monitoring of Accreditation Status

- (a) The Accreditation Committee shall monitor the accreditation status of law schools on an interim basis between site evaluations. In its interim monitoring of a law school's accreditation status, the Committee shall use a law school's annual questionnaire submissions, other information requested by the Committee, and information otherwise deemed reliable by the Committee for its review.
- (b) In conducting interim monitoring of law schools, the Committee shall consider at a minimum:
- (1) Resources available to the law school;
 - (2) Efforts and effectiveness in facilitating student career placement;

- (3) Bar passage; and
- (4) Student admissions including student credentials, size of enrollment, and academic attrition.

Rule 7: Acquisition of Additional Information by the Accreditation Committee and Council

At any time in carrying out their responsibilities under the Standards and Rules, the Committee, the Council, or the Managing Director in consultation with the Chair of the Committee or the Council, may require a law school to provide information or respond to an inquiry.

Rule 8: Submission of Information

In any case in which the Committee, the Council, or the Managing Director requests information from a law school pursuant to Rule 7, the law school shall be given a date certain to provide the information.

Rule 9: Appointment of a Fact Finder

- (a) One or more qualified persons may be appointed as fact finders for the specific purpose of gathering information to enable the Committee or the Council to determine a law school's compliance with a Standard. A fact finder may be required at any time at the direction of the Council, Committee, or Managing Director, and may be required under Rules 29(c) and 30(e) in connection with a law school's application for acquiescence in a major change; under Rule 29(d) to assess compliance subsequent to the effective date of acquiescence in a major change; under Rule 33(b) in connection with a request for a variance; and under Rule 44(b) in connection with a complaint.
- (b) The appointment of a fact finder shall include the following:
 - (1) A statement of the Standards, Rules, or other requirements to which the appointment relates;
 - (2) A statement of questions or issues for determination by the fact finder;
 - (3) A statement of relevant documents or information provided to the fact finder; and
 - (4) A date by which the fact finding report shall be submitted.
- (c) The fact finder shall prepare a written report on facts and observations that will enable the Committee to determine compliance with a Standard or any other issue before the Committee, or determine appropriate action in response to an actual or potential violation of a Standard. A fact-finding report shall not contain conclusions regarding compliance with the Standards or make recommendations for action by the Committee.
- (d) The Managing Director shall review the report submitted by a fact finder and ensure that it complies with (c). The Managing Director shall then transmit the report to the dean in order to provide an opportunity for the law school to make factual corrections and comments. The law school shall be given at least 30 days to prepare its response to the report, unless the law school consents to a shorter time period. The 30 day period shall run from the date on which the Managing Director transmits the report to the law school.

III. Action on Information

Rule 12: Proceedings to Determine Compliance with Standards in General

- (a) In a proceeding to determine accreditation status or compliance with the Standards within the jurisdiction of the Committee under Rule 3, the Committee may:
 - (1) Conclude that the law school is in compliance with a Standard or all of the Standards;
 - (2) Request or gather further information that will enable the Committee to determine compliance with one or more Standards;
 - (3) Conclude that the Committee has reason to believe that a law school has not demonstrated compliance with the Standards;
 - (4) Conclude that the law school is not in compliance with a Standard; or
 - (5) Appoint a fact-finder.
- (b) In the event the Committee requests or gathers further information or appoints a fact finder in accordance with 12(a) upon receipt of the law school's response or any fact-finding report, the Committee must find the law school in compliance or not in compliance with the Standards for which information was requested or gathered, absent clearly articulated special circumstances. In the event of such special circumstances, the Committee may request or gather further information pursuant to 12(a)(2), 12(a)(3), or 12(a)(5).

Rule 13: Determinations of Compliance

- (a) A determination that the law school is in compliance with all of the Standards means that the law school remains an approved law school.
- (b) In finding a law school in compliance with a Standard, the Committee may couple the finding with a statement calling the law school's attention to the requirements of that Standard when the Committee has reason to believe that the law school might, at some time before the next scheduled site evaluation, no longer be in compliance with the Standard in question.
- (c) The approval status of a law school is not affected while an appeal from, or review of, a decision or recommendation of the Committee or Council is pending.

Rule 14: Actions on Determinations of Noncompliance with a Standard

- (a) Following a determination by the Committee of non-compliance with a Standard in accord with Rule 12(a)(4), the Committee shall:
 - (1) Require the law school to bring itself into compliance and submit information by a specific date to demonstrate that it has come into compliance with the Standard; and

- (2) Direct that representatives of the law school, including any person specifically designated by the Committee, appear at a hearing to determine whether to impose sanctions in connection with the law school's non-compliance with the Standard.
- (b) The period of time by which a law school is required to demonstrate compliance with a Standard shall not exceed two years from the date of determination of noncompliance, except as provided for in subsection (c).
- (c) Upon request of the law school and for good cause shown, the Committee may extend the date of compliance or may recommend that the Council extend the date of compliance.

Rule 15: Reconsideration; Right to Appeal

- (a) A law school does not have the right to request reconsideration of a decision or recommendation made by the Accreditation Committee or to request reconsideration of a decision made by the Council.
- (b) A law school has a right to appeal a decision of the Accreditation Committee as provided in Rule 23.
- (c) A law school has a right to appeal a decision of the Council as provided in Rule 36.

IV. Sanctions

Rule 16: Sanctions for Noncompliance with a Standard

- (a) Conduct for which sanctions may be imposed upon a law school includes, without limitation:
 - (1) Substantial or persistent noncompliance with one or more of the Standards;
 - (2) Failure to present a reliable plan to bring the law school into compliance with the Standards;
 - (3) Failure to provide information or to cooperate in a site evaluation as required by the Standards;
 - (4) Making misrepresentations or engaging in misleading conduct in connection with consideration of the law school's status by the Committee or the Council, or in public statements concerning the law school's approval status;
 - (5) Initiating a major change or implementing a new program without having obtained the prior approval or acquiescence required by the Standards; or
 - (6) Provision of incomplete, inaccurate or misleading consumer information in violation of Standard 509.

- (d) A law school must submit the “Teach-Out Plan Approval Form,” as adopted by the Council, and address each item in the form.
- (e) If a law school voluntarily enters into a teach-out agreement or if the Managing Director requires a law school to submit a teach-out agreement as part of a teach-out plan, the law school must submit the “Teach-Out Agreement Approval Form,” as adopted by the Council, and address each criterion in the form.
- (f) The Accreditation Committee will promptly review a teach-out plan submitted in accordance with (b) and (c) and shall recommend approval or denial of the plan by the Council.
 - (1) Approval of the teach-out plan may be conditioned on specified changes to the plan.
 - (2) If the teach-out plan is denied, the law school must revise the plan to meet the deficiencies identified and resubmit the plan no later than 30 days after receiving notice of the decision.
- (g) Upon approval of a teach-out plan of a law school or branch that is also accredited by another recognized accrediting agency, the Managing Director’s Office shall notify that accrediting agency within 30 days of its approval.
- (h) Upon approval of a teach-out plan, the Managing Director shall within 30 days notify all recognized agencies that accredit other programs offered by the institution of which the law school is a part.
- (i) In the event a law school closes without an approved teach-out plan or agreement, the Managing Director’s office will work with the United States Department of Education and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

VIII. Appeals Panel Procedure

Rule 35: Appeals Panel

- (a) The Appeals Panel shall consist of at least five persons appointed by the Chair of the Council. Members shall serve a one-year term beginning at the end of the Annual Meeting of the Section and continuing to the end of the next Annual Meeting of the Section or until replaced. Appeals Panel members are eligible to serve consecutive terms or non-consecutive multiple terms.
- (b) Every member of the Appeals Panel shall be:
 - (1) A former member of the Council or Accreditation Committee; or

-
- (2) An experienced site evaluator.
 - (c) Members of the Appeals Panel shall be:
 - (1) Experienced in and knowledgeable about the Standards, Interpretations and Rules of Procedure;
 - (2) Trained in the Standards, Interpretations and Rules of Procedure at a retreat or workshop or by other appropriate methods within the 3 years prior to appointment; and
 - (3) Subject to the Section's Conflicts of Interest Policy, as provided in IOP 13.
 - (d) 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
 - (e) No more than fifty percent of the members may be persons whose primary professional employment is as a law school, dean, faculty, or staff member. Public members shall have qualifications and representation consistent with the regulations of the United States Department of Education applicable to the accreditation of professional schools.

Rule 36: Form and Content of Appeals to the Appeals Panel

- (a) A law school may appeal decisions of the Council specified in Rule 4 by filing a written appeal with the Managing Director within 30 days after the date of the letter to the law school reporting the decision of the Council.
- (b) The written appeal must include:
 - (1) A statement of the grounds for appeal; and
 - (2) Documentation in support of the appeal.
- (c) The grounds for an appeal are limited to the following:
 - (1) That the decision of the Council was arbitrary and capricious; or
 - (2) That the Council failed to follow the applicable Rules of Procedure and the procedural error prejudiced its decision.
- (d) The written appeal and supporting documentation may not contain or refer to any evidence that was not in the record before the Council.

Rule 37: Membership of the Appeals Panel for the Proceeding

- (a) Within 30 days of receipt of a written appeal within the scope of authority of the Appeals Panel, the Managing Director shall appoint three members of the Appeals Panel to hear the particular matter

Internal Operating Practices

Accreditation Project: Internal Operating Practices

The Section of Legal Education and Admissions to the Bar is both a section of the American Bar Association and the recognized national agency for the accreditation of law schools. The following Internal Operating Practices apply to the Accreditation Project of the Section.

1. Accreditation Entities

The following entities are part of the Accreditation Project: the Council; the Appeals Panel; the Accreditation Committee; the Standards Review Committee; and the Data Policy and Collection Committee. As stated in Rule 49 of the Rules of Procedure, all matters relating to the accreditation of a law school are confidential. All proceedings of the Accreditation Committee and the Appeals Panel are closed. All proceedings of the Council when considering matters relating to the accreditation of a law school are closed. Meetings of the Council when not considering matters relating to the accreditation of a law school and meetings of the Standards Review Committee and the Data Policy and Collection Committee are generally open and shall be open whenever any final action will be taken.

2. Site Team Evaluators

- (a) **Qualifications** – The Council seeks to appoint site evaluators who are competent and knowledgeable concerning legal education and the legal system. Site evaluation teams shall include, as appropriate, educators, practitioners, administrative personnel, and judges. Site evaluation teams must be of sufficient size to accomplish the purposes of the site evaluation.
- (b) **Evaluation** – The Managing Director should seek to evaluate the quality of work done by individual site evaluators. This may be accomplished by corresponding with the chair of the team and the dean of the school visited. The objective of this process should be the development of a pool of competent and experienced site evaluators.
- (c) **Training** – The Managing Director shall conduct, each year, workshops to train evaluators (particularly new or relatively new ones), and chairpersons of site evaluation teams. These workshops should cover the Standards, Interpretations and Rules of Procedure, current matters of accreditation policy, process considerations for the conduct of an on-site inspection, and the drafting of the site

team report. Current instructions concerning the conduct of a site evaluation visit and the content of a site evaluation report should be supplied to each site evaluator.

3. Notice of Schools and Programs to be Accredited, and Preparation of Schools for Site Evaluation Visits

- (a) The Managing Director shall publish on the Section website a list of all law schools that are scheduled to be visited during the upcoming academic year for sabbatical, provisional or full approval site evaluation visits, or a visit in connection with an application for acquiescence in a major change of organizational structure. The notice should also state that interested persons may submit written comments regarding the school by a date certain determined by the Managing Director.
- (b) The Managing Director shall conduct, each year, one or more workshops to prepare schools for undergoing site evaluation visits. Such workshops may be, but need not be, held in conjunction with the workshops for training new site evaluators. These workshops should cover the Standards, Interpretations and Rules of Procedure, current matters of accreditation policy, preparation for a site evaluation visit, the conduct of a site evaluation visit, and the expected content of a site evaluation report. Current instructions concerning the conduct of a site evaluation visit and the expected content of a site evaluation report should be provided to each school well in advance of the scheduled site evaluation visit.

4. Notification of Council or Accreditation Committee Decisions

The Managing Director shall:

- (a) Provide written notification to the Secretary of the Department of Education, the appropriate state licensing agency, and the appropriate accrediting agency, at the same time the Managing Director notifies the law school in writing of any final decision to deny, withdraw, suspend or remove the approval or provisional approval of the law school, to place a law school on probation, to direct specific remedial action, or to find a law school significantly out of compliance with one or more Standards under Rule 12(a)(4), but no later than thirty (30) days after the Council reaches the decision.
- (b) Provide written notification to the Secretary of the Department of Education, the appropriate state licensing agency, the appropriate accrediting agency, and the public, within thirty (30) days, of:
 - (i) a final decision to grant provisional approval or full approval to a law school;
 - (ii) a decision by an approved or provisionally approved law school to withdraw from approved or provisionally approved status; and
 - (iii) a decision by a law school to allow its approval or provisional approval to lapse.
- (c) Provide written notification to the public within 24 hours of the time the Managing Director notifies the law school in writing of any final decision to deny, withdraw, suspend or remove the approval or provisional approval of the law school, to place a law school on probation, to direct specific remedial action, or to find a law school significantly out of compliance with one or more Standards under rule 12(a)(4).
- (d) Make available to the Secretary of the Department of Education, the appropriate state licensing agency, the appropriate accrediting agency, and the public within 60 days after final decision, a brief

statement summarizing the reasons for the decision to deny, withdraw, suspend or remove the approval or provisional approval of a law school, and the comments, if any, which the affected law school may wish to make with regard to that decision or evidence that the law school was offered but declined to provide any comments.

5. Submission of Information to Secretary of Education

The Council shall submit to the Department of Education:

- (a) the Section's *Annual Report*;
- (b) the name of any school for which the Council serves as an institutional accreditor that the Council has reason to believe is failing to meet its Title IV program responsibilities or is engaged in fraud or abuse, and the reason for the Council's concern;
- (c) annually, revisions to the Standards, Interpretations or Rules of Procedure;
- (d) annually, a list of approved law schools;
- (e) upon request by the Department of Education, or an office within the Department of Education under the Secretary's control, information regarding an approved law school's compliance with the Standards or its Title IV, HEA responsibilities, including requests for decision letters, site reports, transcripts or related correspondence; and
- (f) upon request by the Secretary of Education, a summary of the Council's major accrediting activities during the previous year.

6. Maintenance of Records

The Managing Director shall maintain a complete set of records for a sufficient period of time to cover at least the last two reviews of a law school or a law school's programs. The records shall include site evaluation and fact finder reports, law school responses to site evaluation and fact finder reports, the law school's most recent self-study, and any other reports and responses related to the review of a law school. Periodic review reports, including the law school's completed annual questionnaire, shall be retained for a period of one accreditation review.

The Managing Director shall maintain the following records indefinitely: Accreditation Committee decision letters, Council decision letters, Appeals Panel decision letters, the law school's responses to such decision letters, and all other correspondence significantly related to those decisions.

7. Response to Department of Education Information Regarding Law School Compliance with Standards

In the event that the Managing Director should receive information from the Department of Education that raises issues about a law school's ability to comply with the Standards for the Approval of Law Schools and Interpretations, the Managing Director will submit such information to the Accreditation Committee for consideration under the Rules of Procedure, and for any subsequent action by the Committee as it may deem appropriate.

EXHIBIT B

November 17, 2016

Subject: Clarification of Terminology and Requirements for Accrediting Agency Reporting to the U.S. Department of Education

Summary: This letter outlines categories of terminology used by accrediting agencies to describe actions and statuses, and provides guidance to federally recognized accrediting agencies on the information to be reported to the Department under 34 CFR 602.26 and 602.27(a)(6) and (a)(7). Some of the reporting discussed is required; some is requested. This letter specifies which is which. It also discusses the channel for reporting this information, whether requested or required, and for reporting information the accrediting agency may wish to submit voluntarily to ensure that the Department's Database of Accredited Postsecondary Institutions and Programs (DAPIP) is accurate and comprehensive.¹

Dear Federally Recognized Accrediting Agencies:

Students, families, employers, and taxpayers depend on accreditation as a critical marker of educational quality. In November 2015, the Department announced a series of executive actions and legislative proposals "to improve accreditors' and the Department's oversight activities and move toward a new focus on student outcomes and transparency." In a January 20, 2016, memorandum, the Department outlined a number of areas for further action, including the need to clarify terminology used by accreditors and to provide additional guidance to accreditors on information to report to the Department. This letter provides that clarification.

Sections 496(a)(7), (a)(8), (c)(7), and (c)(8) of the Higher Education Act (HEA), and federal regulations at 34 CFR 602.26 and 602.27(a)(6) and (a)(7) contain certain requirements for reporting by recognized accrediting agencies to the Department on the institutions and programs the agencies accredit. This document clarifies the Department's expectations as to specific information that must be submitted for purposes of compliance with those regulations (e.g., final decision letters regarding probation or withdrawal of accreditation); and specific information the Department is requesting agencies to submit pertinent to academic quality. This memorandum does not change regulatory timelines for submission of information under those regulations, but describes how submissions should be made both in circumstances in which an immediate reporting² is required, as well as in cases where the applicable regulatory timelines permit submission of a consolidated report that includes more than one category of information. Please note that this guidance regarding reporting by accreditors does not replace or reduce the circumstances in which recognized accrediting agencies must report information to the

¹ The Department's database of accredited institutions and programs is available at <http://ope.ed.gov/accreditation/Index.aspx>.

² In particular, compliance with 34 CFR 602.27(a)(6) and (a)(7) requires prompt submissions. It is not acceptable for an agency to delay such submissions in order to consolidate them with reporting required under other provisions of those regulations.

Department. Nor does it pertain to any reporting requirements existing outside the Department's recognition regulations (i.e., 34 CFR Part 602), nor to any specific information requests from the Department, nor to information required to be submitted in a recognition proceeding or on a complaint against an agency.

The required reporting outlined in sections 1 and 2 of this letter is mandatory for all federally recognized accrediting agencies, and the required reporting in section 3 of this letter is mandatory with respect to information about institutions and programs participating in the Title IV, HEA, programs. The Department encourages all accrediting agencies recognized for Title IV purposes to follow the reporting requested in section 4 of this letter with respect to institutions and programs participating in the federal student aid programs. This reporting is explained in more detail within each section of the document.

Section 5 and Appendix 1 describe the online collection portal – accessible at <https://surveys.ope.ed.gov/accreditation/> – which recognized agencies should use to submit all actions/reporting to the Department described in Sections 1, 2, and 4 of this guidance (in lieu of submission by email or by the previously proposed Excel spreadsheet). The portal should also be used to report other actions or information about an institution that the accrediting agencies would like to accurately and comprehensively reflect in the Department's Database of Accredited Postsecondary Institutions and Programs (available at <http://ope.ed.gov/accreditation/Index.aspx>).

Background

The Department of Education, in its work both with institutions of higher education and with accrediting agencies, has noted significant variation in the terminology of accrediting actions taken and statuses applied to various institutions and programs. Differences in the terms used make it difficult for the Department and the public to understand the seriousness of concerns, implications of actions taken, and thus their meaning in terms of the quality of an institution or program and the education it offers. These differences also create challenges as the Department works to protect students and hold institutions, programs and agencies accountable for complying with federal laws and regulations. Under HEA Section 487(a)(15), the Department has a statutory responsibility to obtain from recognized accreditors information pertinent to oversight of institutions participating the HEA, Title IV programs.

In accordance with federal regulations (34 CFR 602.26), all recognized accrediting agencies must report on probation or its equivalent (or more severe action); actions to deny, withdraw, suspend, revoke, or terminate accreditation or preaccreditation; and any other adverse action. However, accrediting agencies frequently use a variety of terms within those categories. Furthermore, even where the terms two accrediting agencies use are different, the definitions are frequently overlapping; or the same term may carry distinct definitions across two agencies. Given the challenges of understanding the actions taken with particular institutions for the purposes of enforcing compliance with federal Title IV, HEA regulations, and in the

Department's work to consider accrediting agencies' efforts to evaluate academic quality and hold schools and programs accountable when they fail to meet the agencies' standards, the U.S. Department of Education recommended in November 2015 that Congress require a single federal vocabulary for all major actions and terms, including sanctions and key outcomes.³

In the meantime, the Department has reviewed the terminology used by federally recognized accreditors. The Department is applying information from this review toward two purposes: categorizing terms with similar or related meaning based on their implications for institutions and programs (see terms in boldface in "meaning of terms" sections in this document); and clarifying which actions accreditors are required or requested to report, based on those categories, regardless of the specific label the accreditor may use. This document represents a part of the Department's efforts to ensure greater transparency around accrediting agencies' use of actions against institutions and programs and provide the Department with key pieces of information for protecting students and safeguarding taxpayer dollars.

The following sections outline categories of statuses and actions that agencies are expected to report under 34 CFR 602.26 and 602.27(a)(6) and (a)(7) or are requested to report under this guidance; the sets of common terms in that category; and additional information about required and requested reporting to the Department. They also describe the Department's online reporting portal and when it should be used.

1. Required Reporting on Loss of Accreditation

A. Meaning of Terms on Loss of Accreditation

Based on our analysis of agency terminology, "loss of accreditation" means that an institution does not meet the agency standards for accreditation, and the agency is ceasing to accredit the institution. Access to federal Title IV, HEA student financial assistance is terminated accordingly.

In our review, we found that agencies used a multitude of terms to reflect variations on this basic status, including **denial, withdrawal, suspension, revocation, or termination** of the accreditation or preaccreditation of an institution or program.

B. Required Reporting to the Department on Loss of Accreditation

Pursuant to 34 CFR 602.26(b), an accrediting agency "[p]rovides written notice . . . to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time it notifies the institution or program" of "[a] final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or preaccreditation of an institution or

³ "Department of Education Advances Transparency Agenda for Accreditation." U.S. Department of Education. Fact Sheet: November 2015. Available at www.ed.gov/accreditation.

program; [and a] final decision to take any other adverse action, as defined by the agency,” no later than 30 days after it reaches the decision; and provides written notice to the public of those decisions within 24 hours of its notice to the institution or program. Within 60 days, agencies must also provide a brief statement summarizing the reasons for the decision and any official comments the affected institution or program may wish to make or evidence for which the affected institution or program has been offered an opportunity to provide official comment (34 CFR 602.26(d)). For Title IV, HEA institutions accredited by accrediting agencies recognized by the Department for Title IV purposes, the Department regards a copy of the final decision provided to the institution as constituting the summary required.⁴

Consequently, for schools or programs that receive a final decision about any of these statuses, accrediting agencies must notify the Secretary within 30 days. Within 60 days of making a final decision with respect to a Title IV institution, agencies recognized for Title IV purposes must submit to the Secretary the final decision letter, and for other agencies the final decision letter or other summary, describing the basis for the action against the institution or program as provided in 34 CFR 602.25(e), or 602.25(g), as applicable, together with any official comments from the institution or program (or evidence that the institution has been provided with an opportunity to submit such comments). The requirement applies in the event of withdrawal of accreditation by a Title IV (institutional) accreditor with respect to a specific program or programs housed within an institution it accredits. Accreditors must use the online collection portal to share decision letters with the Department’s Accreditation Group. Unless notified otherwise, accreditors are required to make these documents available to the Department by using the online collection portal to submit the web address (i.e., URL) to the decision letter, with appropriate redactions (described below in Section 5).

Pursuant to 34 CFR § 602.26(d), recognized agencies must notify the Secretary, the appropriate State licensing or authorizing agency, the appropriate accrediting agencies, and, upon request, the public if an accredited or preaccredited institution or program decides to withdraw voluntarily from accreditation or preaccreditation, or lets its accreditation or preaccreditation lapse. These notices are due within 30 days of the agency’s receipt of the notice of withdrawal or of the date the accreditation or preaccreditation lapses, as applicable. Accreditors must use the online collection portal to timely notify the Secretary of these events.

2. Required Reporting on Probation or Equivalent or More Severe Agency Actions

A. Meaning of Terms on Probation or Equivalent or More Severe Agency Actions

⁴ For purposes of this guidance, a Title IV accreditor is responsible for reporting on all of the Title IV institutions it accredits, regardless of whether one or more of those institutions, if dually accredited, may have designated another agency as its Title IV accreditor for purposes of 34 CFR § 600.11(b)(3).

Based on our analysis of agency terminology, **probation** is typically defined as significant noncompliance with accrediting agency standards, but not loss of accreditation. Accordingly, and in light of the existing regulatory scheme, the Department regards the following as actions constituting “probation or an equivalent status”:

An action or assessment that indicates an institution or program is significantly out of compliance with one or more of the accrediting agency’s standards, but it is possible that the noncompliance could be remedied by the institution or program within a period allowed by the agency and the regulations.⁵

The above definition includes any sanction indicating significant non-compliance, regardless of the term used by an agency to describe such sanction. For example when an agency uses the term **warning** to indicate significant non-compliance, such a warning should be categorized as probation and reported as such. For at least some accrediting agencies, this category would include **show cause** orders: serious compliance issues that must be addressed by an institution in order to retain its accreditation. Any status that is not a loss of accreditation but is more severe than probation (as described in this letter), in terms of the risk of loss of accreditation, also falls within this category.

B. Required Reporting to the Department on Probation or Equivalent or More Severe Agency Actions

Pursuant to 34 CFR 602.26(b), an accrediting agency “[p]rovides written notice to the Secretary, the appropriate State licensing or authorizing agency, and the appropriate accrediting agencies at the same time in notifies the institution or program” of “[a] final decision to place an institution or program on probation or an equivalent status,” no later than 30 days after it reaches the decision; and provides written notice to the public of those decisions within 24 hours of its notice to the institution or program. Accrediting agencies whose definition of probation does not include all actions described above must include those additional actions in their reporting to satisfy the regulatory reporting requirements concerning probation. Pursuant to HEA Section

⁵ The Department notes that when an institution or program is out of compliance with any of the agency’s accrediting standards, the timelines under 34 CFR 602.20 begin to run, with adverse action required in the event compliance is not achieved within those timeframes (as extended, if applicable, based on good cause shown in accordance with the agency’s published policies), regardless of whether the agency initially regarded the institution’s or program’s noncompliance as not significant enough to require the public sanction of probation.

Based on the practices common to recognized agencies and on the statutory and regulatory requirements that recognized accreditors perform effectively, at a minimum, **noncompliance is viewed as significant if, notwithstanding the agency’s best judgment that the institution or program will achieve compliance within the permissible timeframe, the area of non-compliance implicates institutional integrity;** or, for example, the number of areas of noncompliance, institutional finances, or other circumstances cast reasonable doubt on whether compliance can be achieved in the time permitted; or the institution or its affiliates demonstrate recurrent noncompliance with one particular standard or standards; or **the area of noncompliance is one for which notice to the public is required in order to serve the best interests of students and prospective students.**

487(a)(15), the Department has determined that for purposes of effective oversight of institutions participating in the federal student aid programs, it also needs an explanation of the reasons why a Title IV institution was placed on probation or an equivalent or more severe status.

Based on our analysis of the timeline of agency actions, the decision to place an institution or program on probation or an equivalent or a more severe status as a result of noncompliance with the agency's standards is not typically made at the time the agency staff or site visitation team observes the issues of concern, but rather when the agency's decision-making body meets, with the reason for that decision then expressed in the agency's decision letter under 602.25(e) or 602.25(g), as applicable. **At the meeting of the agency's decision-making body, if it determines that at least one of the issues of concern results in significant noncompliance with the agency standards, such assessment constitutes probation or its equivalent or a more severe status, as defined by this letter, and must be reported to the Department.** Conversely, if the decision-making body determines that none of the issues of concern indicates that the institution or program is significantly out of compliance with the agency standards and the institution or program is not placed on probation, then the requirement for reporting on probation is not applicable.

Accordingly, for schools or programs placed on probation or its equivalent or a more severe status, as described above, accrediting agencies must notify the Secretary, and agencies recognized for Title IV purposes must submit to the Secretary the final decision letter for Title IV institutions, describing the basis for the action as provided in 34 CFR 602.25(e), within the required time period. Accreditors must use the online collection system (<https://surveys.ope.ed.gov/accreditation/>) to notify the Department of the action, the justification for the action, and the web address (URL) of the decision letter. Similarly, agencies should also use the online collection system to notify the Department of its decision to take an institution off of probation or an equivalent or more severe sanction.

3. Required Reporting on Title IV Issues

A. Meaning of Terms on Title IV Issues

Each federally recognized accrediting agency is required by 34 CFR 602.27(a)(6) to report “[t]he name of any institution or program it accredits that the agency has reason to believe is failing to meet its Title IV, HEA program responsibilities or is engaged in fraud or abuse, along with the agency’s reasons for concern about the institution or program.”

34 CFR 602.27(a)(7) requires each federally recognized accrediting agency to report, “[i]f the Secretary requests, information that may bear upon an accredited or preaccredited institution’s compliance with its Title IV, HEA program responsibilities, including the eligibility of the institution or program to participate in Title IV, HEA programs.”

B. Required Reporting to the Department on Title IV Issues

The Department expects prompt compliance with these reporting requirements.

Through this guidance, the Secretary is also instituting a standing request for purposes of 34 CFR 602.27(a)(7) -- that whenever an agency makes a report under 34 CFR 602.27(a)(6), the agency should also submit all information that prompted the agency's concern. Information must be shared with the Department of Education's Accreditation Group in accordance with the current procedures, including the requirement that such information be reported immediately. Agencies should submit notifications under 34 CFR 602.27(a)(6) and (a)(7) directly to the Department using both of the following email addresses: CaseTeams@ed.gov and Aslrecordsmanager@ed.gov.

4. Requested Reporting on Other Factors That Affect Academic Quality at Title IV Institutions

A. Meaning of Terms on Factors that Affect Academic Quality

The Department has a strong interest in understanding the nature of certain other accreditor actions, where they indicate potential issues with the academic quality of the institution, for the purpose of monitoring accredited institutions participating in the Title IV, HEA programs. In particular, the Department is interested in accreditors' concerns about Title IV institutions that, while not on probation or an equivalent or a more severe status as described above, are in noncompliance with or at risk of failing to comply with the following accreditation standards, as outlined in 34 CFR 602.16(a)(1):

- (i) Success with respect to student achievement in relation to the institution's mission, which may include different standards for different institutions or programs, as established by the institution, including, as appropriate, consideration of state licensing examinations, course completion, and job placement rates.
...
- (v) Fiscal and administrative capacity as appropriate to the specified scale of operations.
- (vi) Student support services.
...
- (vii) Recruiting and admissions practices, academic calendars, catalogs, publications, grading, and advertising.
...
- (viii) Measures of program length and the objectives of the degrees or credentials offered.
- (ix) Record of student complaints received by, or available to, the agency.

Such issues may arise in the form of an action, not listed above, that is taken by the accrediting agency. Those actions may include **warnings, notations, and admonitions or conditions, contingencies, or stipulations**, among others.

B. Requested Reporting to the Department on Factors that Affect Academic Quality

The Department requests information about cases in which accreditors have relayed concerns to Title IV institutions that, while not on probation or an equivalent or a more severe status, are in noncompliance with or at risk of failing to comply with accreditation standards as described in Section 4.A. of this guidance. Except where 34 CFR § 602.27(a)(6) or (a)(7) apply, such reporting is voluntary and failure by agencies to provide it warrants no negative action by the Department. However, the Department strongly encourages all federally recognized accrediting agencies to report this information as it may contribute to the ongoing monitoring of the Title IV, HEA federal financial aid programs. For 34 CFR 602.16(a)(1)(i), the Department is particularly interested in issues related to retention and completion of course, program, and certificate or degree; job placement; licensure exam participation and passage; student debt repayment and default; and student satisfaction.

When reporting information requested under 34 CFR 602.16(a)(1), agencies should utilize the online reporting portal described in section 5 and Appendix 1 of this guidance to notify the Department of the action being taken, the justification for the action, and the web address (URL) of the associated document. Agencies should use this system to report both the factors affecting academic quality and the resolution of these concerns.

5. Submission of Information to the Department Through the Integrated Online Reporting Portal

In order to improve accreditors' reporting and enable the Department to monitor institutions and their accrediting agencies more effectively, and to better protect students, families, and taxpayers, the Department requires accrediting agencies submitting information and decision letters required under 34 CFR § 602.26 and Sections 1 and 2 of this guidance to do so via the online collection portal at <https://surveys.ope.ed.gov/accreditation/>. Accrediting agencies electing to submit information and decision letters requested under 34 CFR § 602.16 and Section 4 of this guidance must also use this portal for those submissions. The portal will replace the existing multiple reporting channels (such as email and the previously proposed Excel spreadsheet) used in complying with 34 CFR 602.26. The Department will contact each accrediting agency to provide them a unique log-in to access the portal. In addition to submitting the required and requested information outlined in this guidance letter, accreditors should also use the portal to report any other actions that they deem appropriate in the interests of the comprehensiveness and accuracy of the information about their accredited institutions appearing on the Department's accreditation database.

However, reporting under 34 CFR 602.27(a)(1) – 602.27(a)(7), 602.19(e) and 602.28(c), should be submitted directly to the Department through both of the following email addresses: CaseTeams@ed.gov and Aslrecordsmanager@ed.gov. They should not be submitted through the portal. The Department would like to highlight that in accordance with the current procedures and regulatory requirements, such information must be reported immediately. Likewise, agencies reporting other agency actions that are neither required to be made public, nor appropriate for public posting, should be submitted directly to the Department via these two email addresses rather than submitted through the portal.

The Department would also like to clarify that the portal is not designed for the filing of information and documents as part of recognition proceedings (for example, agency submissions under 34 CFR 602.30 and 602.31 should be submitted to the Department's Accreditation Group at <https://opeweb.ed.gov/aslweb/> as in the past, or directly to the Accreditation Group analyst if so requested (for purposes of complaints against the agency, etc.).

The portal contains fields for updating an institution's accreditation status and information, as well as a menu of agency actions and justification for those actions from which accreditors can make selections by selecting the appropriate options (see Appendix 1 of this guidance). It also provides a field for agencies to enter the web address (URL) of the relevant supporting document (e.g., decision letter).

Agencies should note that unless notified otherwise, submission of decision letters to the Department's Accreditation Group should be done by entering the web address (URL) to the letter in the online portal (see Appendix 1).

The Department would like to emphasize that agency confidentiality rules do not govern obligations to report to the Department. Before posting URLs for decision letters as described above, an agency may redact information that would identify individuals, or any other confidential commercial or financial business information it believes in good faith would qualify as non-public under 34 CFR 5.11. If the Department nonetheless concludes it needs this information for oversight purposes, or that redactions made in reliance on 34 CFR 5.11 are not made in good faith, it will require the agency to provide a non-redacted copy, and specify how that submission is to be made.

The Department continues to explore opportunities to improve information submission processes to enhance all parties' ability to utilize the information quickly and effectively. We will continue to partner with accrediting agencies to better streamline and improve reporting procedures.

Accrediting agencies and the Department share an interest in ensuring a high-quality education for all students at accredited institutions. The steps outlined in this memo will increased our collective ability to ensure that quality. The Department appreciates the partnership of accrediting agencies in this effort.

Sincerely,

Ted Mitchell
Under Secretary
U.S. Department of Education

Appendix 1: Mock-up of Online Reporting Portal

- A. To update an institution's accreditation status, click on the drop-down menu for *Select Accredited Status*, then select the appropriate status.

U.S. DEPARTMENT OF EDUCATION
Office of Postsecondary Education
Agency: Specialized Accrediting Agency(ID: 76) Garner Creek School User: A10762

[INSTITUTION](#) [ACCREDITATION](#) [REPORTS/TOOLS](#) [HELP](#) [LOGOUT](#)

Insert Internship/Residency

School Name OPE ID: 99000009
School Address
City, State
Phone Number

1. Internship/Residency Agency
Specialized Accrediting Agency

1-1. Select Internship/Residency:
Internship Program

2. Select Accredited Status:
Pre-Accredited
Accredited
Denied Accreditation

2-1. Enter the Accredited Date: * (M/DD/YYYY) Actual Estimated

2-2. Enter the Review Date: (MM/DD/YYYY)

2-3. Enter the Department which houses the program:

- C. To submit the reason for the agency's action, use the drop-down menu for **Justification for Action** to select the reason for the action. If the justification is not among the options listed or if there are multiple reasons for a single action, then click **Other—Provide unlisted or multiple justifications**.

U.S. DEPARTMENT OF EDUCATION

Thereof the seat of Trustees are hereinafter
 by the Board of Trustees, two thousand six
 the 19th day of December, two thousand six
 the OFFICE OF POSTSECONDARY EDUCATION
 W. L. Roper, Secretary

Agency: Specialized Accrediting Agency(ID: 76) Garner Creek School User: A10762

[INSTITUTION](#) [ACCREDITATION](#) [REPORTS/TOOLS](#) [HELP](#) [LOGOUT](#)

Update Specialized Accreditation

School Name OPE ID: 99000009
School Address
City, State
Phone Number

1. Specialized Accrediting Agency
 Specialized Accrediting Agency

1-1. Select Specialized Accrediting Body:
 Specialized Program

2. The Accredited Status: Accredited

2-1. The Accredited Date: 01/01/2016 (MM/DD/YYYY) (Actual)

2-2. Enter the Review Date: 1/1/2020 (MM/DD/YYYY)

2-3. Enter the Department which houses the program: Specialized Department

3. Select Current Action
 Show Cause

4. Justification for Action

5. Enter website URL for documentation

Update

Fails to meet agency standards for initial or renewed accreditation
 Fails to meet agency standards for initial or renewed accreditation
 Significantly out of compliance -- student achievement
 Significantly out of compliance -- fiscal and administrative capacity
 Significantly out of compliance -- title IV, HEA responsibilities
 Significantly out of compliance -- recruiting and admissions practices
 Additional oversight is required to ensure a resolution of compliance issues
 Concerns about title IV, HEA responsibilities/ potential fraud or abuse
 Concerns about issues affecting academic quality
 Has satisfactorily addressed all compliance concerns from previous actions
 Is in compliance with all of the agency's accreditation standards
 Other - Provide unlisted or multiple justifications

- D. After clicking *Other—Provide unlisted or multiple justifications*, a text box will appear. Use this text box to report multiple or unlisted justifications.

U.S. DEPARTMENT OF EDUCATION
Thereof the sou...
ed by the Board of Trustees are her...
the 14th day of December, two thousand six
OFFICE OF POSTSECONDARY EDUCATION
V. Linda Moulton

Agency: Specialized Accrediting Agency(ID: 76) Garner Creek School User: A10762

[INSTITUTION](#) [ACCREDITATION](#) [REPORTS/TOOLS](#) [HELP](#) [LOGOUT](#)

Update Specialized Accreditation

School Name OPE ID: 99000009
School Address
City, State
Phone Number

1. Specialized Accrediting Agency
Specialized Accrediting Agency

1-1. Select Specialized Accrediting Body:
Specialized Program

2. The Accredited Status: Accredited

2-1. The Accredited Date: 01/01/2016 (MM/DD/YYYY) (Actual)

2-2. Enter the Review Date: 1/1/2020 (MM/DD/YYYY)

2-3. Enter the Department which houses the program: Specialized Department

3. Select Current Action Show Cause

4. Justification for Action Other (explain below)

300 character limit

5. Enter website URL for documentation

- E. Use the field titled Enter website URL for documentation to provide the location of the decision letter.

U.S. DEPARTMENT OF EDUCATION
Thereof the seat of
ed by the Board of Trustees are heretofore
19th day of December, two thousand six
the OFFICE OF POSTSECONDARY EDUCATION
V. Linda M. Moulton

Agency: Specialized Accrediting Agency(ID: 76) Garner Creek School User: A10762

INSTITUTION **ACCREDITATION** REPORTS/TOOLS HELP LOGOUT

Update Specialized Accreditation

School Name OPE ID: 99000009
School Address
City, State
Phone Number

1. Specialized Accrediting Agency
Specialized Accrediting Agency

1-1. Select Specialized Accrediting Body:
Specialized Program

2. The Accredited Status: Accredited

2-1. The Accredited Date: 01/01/2016 (MM/DD/YYYY) (Actual)

2-2. Enter the Review Date: (MM/DD/YYYY)

2-3. Enter the Department which houses the program:

3. Select Current Action

4. Justification for Action

5. Enter website URL for documentation

Appendix 2: Glossary of Terms for Accreditation Agency Actions

Term	Definition
Deny accreditation	Agency refuses to accredit an institution seeking initial accreditation
Loss of accreditation or of pre-accreditation	Agency terminates or refused to renew an institution's accreditation.
Probation or equivalent or a more severe status	An action or assessment that indicates an institution or program is significantly out of compliance with one or more of the accrediting agency's standards, but it is possible that the noncompliance could be remedied by the institution or program within a period allowed by the agency and the regulations. (Please refer to Section 2 of the guidance letter for further clarification).
Show Cause	Any serious compliance issue that must be addressed by an institution in order to retain its accreditation. If as defined or applied by the agency the status is equivalent to or more severe than probation as described above, Show Cause should be reported as "Probation or equivalent or more severe status: Show Cause"
Heightened Monitoring or Focused Review	Agency subjects an institution to additional oversight for a variety of compliance issues. If as defined or applied by the agency the status is equivalent to or more severe than probation as described above, Heightened Monitoring should be reported as "Probation or equivalent or more severe status: Other"
Preaccreditation	Agency grants preliminary accreditation to institution; institution needs to meet certain additional requirements to earn fully accredited status.
Initial accreditation	Agency grants accreditation to an institution for the first time
Accreditation granted -- full	Agency grants full accreditation to institution; institution has met all requirements for fully accredited status.
Renewal of accreditation	Agency reaffirms institution's accreditation after periodic review of compliance with accrediting standards.
Accreditation reaffirmed -- probation removed	Agency reaffirms institution's accreditation after the institution successfully addressed all requirements for removing probation status.
Accreditation reaffirmed -- warning removed	Agency reaffirms institution's accreditation after institution successfully addressed all requirements for removing warning status.
Accreditation reinstated -- termination overturned	Agency reaffirms institution's accreditation after institution successfully appealed termination decision.
Removal of show cause	Agency determines that an institution has satisfactorily addressed serious compliance issues for it to retain its accreditation status.

Warning or equivalent -- Factors Affecting Academic Quality	Agency's concern about an institution's potential noncompliance that could result in probation if not addressed. Such actions may include warnings, notations, or admonitions regarding issues that may affect academic quality. If the Warning status as defined or applied by the agency is less severe than probation as defined above, agencies are not required but highly encouraged to report such actions. If the Warning status as defined or applied by the agency is equivalent to or more severe than probation, Warning should be reported as "Probation or equivalent or more severe status: Other"
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Appendix 3: Public Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1840-NEW. Public reporting burden for this collection of information is estimated to average 20 minutes per response, including time for reading instructions, completing online forms, and creating and posting URL to decision letters. The obligation to respond to this collection is required to obtain or retain benefits (34 CFR 602.26). If you have comments or concerns regarding the status of your individual submission of this form, application, or survey, please email Herman Bounds, Director of Accreditation Group (OPE) at Herman.Bounds@ed.gov. [Note: Please do not return the completed instrument, form, application or survey to this address.]

EXHIBIT C
(FILED UNDER SEAL)

EXHIBIT D
(FILED UNDER SEAL)

EXHIBIT E
(FILED UNDER SEAL)

EXHIBIT F
(FILED UNDER SEAL)

EXHIBIT G
(FILED UNDER SEAL)

EXHIBIT H
(FILED UNDER SEAL)

EXHIBIT I

From: Turner, Reginald M., Jr. <RTurner@ClarkHill.com>
Sent: Thursday, November 16, 2017 8:57 PM
To: Coakley, Michael P.
Cc: Rea, Anne E.; Aaron, Mikyia S.; Horowitz, Steven
Subject: RE: WMU-Cooley v ABA - Follow Up On Joint PR

Importance: High

Mike,

Pursuant to Judge Tarnow's direction that the parties confer regarding a mutually agreed statement, the ABA will agree to the statement set forth below conditioned upon Cooley agreeing in writing to withdraw its motion for TRO/preliminary injunction by noon ET tomorrow.

Statement for Joint Release/Alternative Posting:

"On November 13, the Council of the Section of Legal Education and Admissions to the Bar notified Western Michigan University Thomas M. Cooley Law School that the Law School is not in compliance with an ABA standard governing law school admissions policies and practices. The Law School remains an ABA-approved school and no sanction has been imposed. The Law School has the opportunity to demonstrate compliance and report its progress to the ABA in February 2018."

Please respond with your position on the proposed statement. I have a morning meeting as well, so let's plan to talk at 10:00 a.m.

Thank you.

Reggie

Reginald M. Turner

CLARK HILL PLC
500 Woodward Ave | Suite 3500 | Detroit, Michigan 48226
313.965.8318 (direct) | 313.309.6818 (fax) | 313.300.6285 (cell)
rturner@clarkhill.com | www.clarkhill.com

From: Coakley, Michael P. [mailto:Coakley@MillerCanfield.com]
Sent: Thursday, November 16, 2017 9:44 PM
To: Turner, Reginald M., Jr.
Cc: Rea, Anne E.
Subject: RE: WMU-Cooley v ABA - Follow Up On Joint PR

Reggie, I have an appointment out of the office early, but should be in the office by 9:30 or 10:00 and can talk then.
Regards, Mike

Michael P. Coakley
Miller, Canfield, Paddock and Stone, PLC
Phone: (313) 963-6420
Direct: (313) 496-7531

Fax: (313) 496-8454

E-Mail: <<mailto:coakley@millercanfield.com>>

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From: Turner, Reginald M., Jr. [<mailto:RTurner@ClarkHill.com>]

Sent: Thursday, November 16, 2017 2:53 PM

To: Coakley, Michael P.

Cc: Rea, Anne E.

Subject: WMU-Cooley v ABA - Follow Up On Joint PR

Mike,

Just left you a voice message.

The ABA is reviewing a draft statement from Anne and me.

We would like to speak with you in the morning if possible. Please let us know your availability.

Thank you.

RT

Reginald M. Turner

CLARK HILL PLC

500 Woodward Ave | Suite 3500 | Detroit, Michigan 48226
313.965.8318 (direct) | 313.309.6818 (fax) | 313.300.6285 (cell)
rturner@clarkhill.com | www.clarkhill.com

From: Coakley, Michael P. [<mailto:Coakley@MillerCanfield.com>]

Sent: Thursday, November 16, 2017 4:36 PM

To: Rea, Anne E.; Turner, Reginald M., Jr.

Subject: Follow Up On Joint PR

Anne and Reggie, We left things indefinite as to when we would get back together. When would you like to do so?

Thanks, Mike

Michael P. Coakley

Miller, Canfield, Paddock and Stone, PLC

Phone: (313) 963-6420

Direct: (313) 496-7531

Fax: (313) 496-8454

E-Mail: <<mailto:coakley@millercanfield.com>>

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EXHIBIT J



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Don't Let ABA Post Letter About Cooley, Law School Urges

By **Lauraann Wood**

Law360, Chicago (November 16, 2017, 6:30 PM EST) -- Western Michigan University's Thomas M. Cooley Law School has asked a Michigan federal judge to make the American Bar Association remove a letter from its website raising questions about Cooley student qualifications, saying continued publication would hurt the school's reputation and violate its due process rights to appeal.

In its request Tuesday for a temporary restraining order and preliminary injunction, the school argued that allowing the accreditation compliance letter, which is not yet final, to remain on the ABA's website would violate a Higher Education Act provision. That provision requires the ABA's Section of Legal Education and Admissions Council to sufficiently specify "requirements and deficiencies" at the program under examination.

Cooley said the letter was wrongly vague and that its continued publication would ruin the school's chances for appeal and deter prospective students ahead of Cooley's February deadline to submit additional information regarding ABA compliance concerns.

"Cooley risks losing scores of potential students not because of an actual final 'adverse action' taken by the ABA, but because of the potential for adverse action two years down the road which the ABA has given Cooley an open invitation to rectify," the motion's supporting brief said. "A court cannot order law students to retroactively reconsider their decision not to attend Cooley."

The admission council's Nov. 13 letter — which was filed under seal in the suit but was still available Thursday on the ABA's website — found the law school complies with standards governing financial resources, offering a "rigorous legal program," adequate academic support and adoption and adherence to "sound admission policies."

But the council found the school out of compliance with Standard 501(b), which requires an approved law school to admit only those applicants who "appear capable of satisfactorily completing its program of legal instruction and being admitted to the bar." The letter asks the school to submit extra information such as overall class size, a percentile breakdown of Law School Admission Test scores and undergraduate GPAs for the entering 2017 class, and bar-exam pass data for initial and repeat test-takers during the school's examinations in February 2016 and in February and July of 2017.

James Robb, Cooley's general counsel and associate dean of external affairs, told Law360 on Thursday that Cooley believes the ABA's "appear capable" standard is unlawfully arbitrary because that phrase isn't defined.

"It's unfillable. We don't know what they're saying," Robb said. "They never give you any

definition. We have it in the record what it means, but they never discuss it and they never define it. They simply act without reference to a real standard."

Cooley's redacted complaint, also filed Tuesday, also blasted the council's letter, saying the ABA's conduct violates common law due process because the ABA "acted without reason" and its letter didn't cite "specific underlying, basic facts, and failed to state ultimate facts" regarding its findings.

Cooley says the Department of Education regulation the ABA cites as requiring it to publish its reasons for action when a law school is found to be "significantly out of compliance" with approval standards does not apply, saying nothing in the letter indicates the council made any such finding.

Publishing the letter would also ruin Cooley's right to appeal the council's decision because "once publication is made, it cannot be undone," the school said.

"The public interest would be served by issuance of the injunction because enjoining publication of the letter will protect the public from receiving misinformation about the law school's legal education program," Cooley's lawsuit said.

Counsel for Cooley Law declined to comment Thursday.

Representatives for the ABA on Thursday did not return requests for comment. Counsel for the ABA could not be determined Thursday.

Cooley Law is represented in the ABA matter by Michael Coakley of Miller Canfield Paddock and Stone PLC.

The case is Thomas M. Cooley Law School v. American Bar Association, case number 2:17-cv-13708, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Richard McVay and Jill Coffey.