

MEMORANDUM

To: ABA Standards Review Committee
From: Kyle P. McEntee, Executive Director of Law School Transparency¹
Re: Subcommittee on Standard 509's Draft Proposal

July 6, 2011

This Memorandum is a response to the ABA Standard Review Committee's Subcommittee on Standard 509's recent draft proposal for the revision of Standard 509. This Memorandum suggests that, despite the proposal's inadequacies, the Standards Review Committee should **approve** the proposal after minor changes.

I. Standard 509(c)

The new Standard 509(c) will help prospective students and drastically cut down on misleading statistics. At the same time, the proposal provides mostly superficial benefit because it does not satisfactorily help students find the schools that best meet their career objectives. We strongly urge the Committee to reconsider the LST Proposal, which we submitted on April 2, 2011, as a supplement to the Subcommittee's proposal. At the very least, it is worth requiring law schools to provide these data that they *already* collect to the ABA so that the Committee can study their value, rather than assuming students would not use them. This system would put additional pressure on schools to report truthfully, even if the data merely gathered dust. Nevertheless, the Committee should accept the Subcommittee's proposal with the revisions we suggest below.

It is important to emphasize that **the Committee should not move away from requiring law schools to provide school-specific salary data**, although the utility of school-specific data has rightfully been called into question. School-specific data are less representative than the state-specific datasets. Moreover, when only ~50% of graduates report a salary, granular categories like "Employed in a Law Firm of 2-10 Attorneys" are unlikely to have sufficient school-specific data to meet the five salary minimum. These concerns motivated the Questionnaire Committee to partner with NALP to leverage, for at least this year, its wealth of salary data that it publishes annually in the aggregate by city and state for various employment sectors. It also motivated the LST Proposal and our suggestion that schools provide graduate-specific data to make optimal use of the aggregated salary data.

¹ Law School Transparency ("LST") is a Tennessee non-profit founded in July of 2009 by Kyle P. McEntee, Executive Director, and Patrick J. Lynch, Policy Director. LST is dedicated to encouraging and facilitating the transparent flow of law school consumer information. We are a small but dedicated staff and advisory board made up of recent law school graduates, current law students, and attorneys.

Nevertheless, the fact that school-specific data may be opaque at times does not mean that the Committee should choose not to require schools to produce these statistics. These statistics add an element to a prospective's understanding that the state-level statistics do not. This is why the LST Proposal supplements, rather than supersedes, the Subcommittee's proposal.

The decision not to include school-specific data as basic consumer information would be an enormous step backwards. In the absence of school-specific data, the best indicator of a school's value would be the private sector salary quartiles and public sector median salary provided by *U.S. News*. Additionally, it would reduce the incentive schools have to collect salary data from their graduates, a necessary task, as the state salary information relies upon graduates' data.

Unfortunately, the Subcommittee has already taken one step back since its initial draft in April. Standard 509(c)(2) requires that schools post the latest information by August 31st each year. This date is too late, after many prospective students have chosen where to submit applications. By August 31st, the underlying data will have been available for six months. Although NALP returns the data, cleansed and neatly organized, in early June, it makes little sense to base the requirement on NALP's timeline. It is a school's responsibility to collect data and provide them to external parties. Still, the NALP reports play an important role, and this is especially true (at least) this year. As such, June 30th is a fair compromise because it allows June LSAT takers to use the new information in their application decisions while allowing time for schools to receive their reports from NALP.

Additional Standard 509(c) Suggestions

(1) Unknowns

The Subcommittee's method of disaggregation creates gaps in the information and creates an incentive for creative accounting. One of the purposes of disaggregating the nine-month employment rate is to limit how easily schools can hide unattractive employment outcomes. Unnecessary gaps undermine this purpose.

The total number of graduates in each subcategory, taken together, should equal the total number in the parent category. For example, the total number of graduates who are employed, unemployed, pursuing a graduate degree, or whose employment statuses are unknown should equal the total number of graduates in the graduating class because the categories are exhaustive.

The unknown status category is very important for identifying gaps in the employment status data. However, an unknown category is missing from most of the exhaustive groups. The employment type category, required credentials subcategory, judicial clerkships subcategory, and the full time and part time (and corresponding long and short term) subcategories each need an unknown field to alleviate this opportunity for creative accounting. Helping prospectives understand where data gaps exist encourages them to ask the right questions and serves to limit false impressions that follow from extrapolating outcomes from unrepresentative segments of the

graduating class. Unfortunately, allowing schools to report graduates as “unknown” incentivizes schools to avoid learning or researching employment outcomes. However, it is more important that the gaps be readily identifiable.

(2) “Academia”

The term “academia” is very misleading. It implies that graduates are working as academics at colleges and universities, or as law professors, when in reality it most often means working as a research assistant, in the library, or even in the admissions office. We suggest that the Committee eliminate this category or coin a new term, and that the Committee work with the Questionnaire Committee, NALP, *U.S. News*, and LST to discontinue its use. If eliminated, many outcomes fall into “public interest,” while the rest naturally qualify as “business & industry.”

(3) Language Alterations

Standard 509(c)(2) should say, “The most recently available employment information” instead of “information.” The original language is impliedly clear, but reducing ambiguity would benefit the Accreditation Committee and Council as they evaluate whether a school meets the Standards.

Standard 509(c)(5) should say, “Any school-specific salary statistic must clearly and unambiguously identify the number of graduates and the percentage of all graduating students that the statistic reflects.”

(4) Additional Limitations

The Committee should also include the following as Standard 509(c)(6): Any “rate,” such as a nine-month employment rate, must clearly and unambiguously identify how it was calculated.

II. Standard 509(d)

Please see our recent proposal for Standard 509(d). We submitted this proposal in May, including an accompanying chart, to the Committee and Questionnaire Committee.

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I want to thank the Standards Review Committee for the opportunity to submit this Memorandum. As an organization that will follow these developments closely, Law School Transparency is committed to helping in any way possible.

Kyle P. McEntee
Law School Transparency
July 6, 2011