

Tuesday, March 8, 2016

Comments on Proposed Revisions to Standard 501

By Jerry Organ

Standard 501 requires law schools to have sound admissions policies and to refrain from admitting applicants who are not capable of being successful in law school and on the bar exam. For many years, Standard 501 has received little attention, while Standard 316 – the bar passage standard – has received more attention. Accreditors focused more on outcomes – bar passage results – than inputs – the academic abilities of students admitted to law school. With the decline in the number of applicants to law school and [the corresponding erosion of entering class credentials at many law schools](#), however, Standard 501 has begun to receive more attention. Specifically, due to concerns that some law schools might be admitting students whose entering credentials suggest that they are not likely to be successful in law school or be able to pass the bar exam, the Standards Review Committee (“SRC”) of the ABA Section of Legal Education and Admissions to the Bar (“Section”) [has proposed revisions to Standard 501](#). The Council for the Section will consider these proposed revisions at its upcoming March meeting.

I am in favor of most of the suggested revisions to Standard 501 (as discussed below). I am not in favor of the SRC’s Proposal 2 which proposes an “attrition” threshold above which schools would face heightened attention. In a subsequent post, I will discuss the need for a more robust Standard 308, which addresses academic standards, as a corollary to Standard 501.

“Proposal 2” Presents Two Problems

In its Proposal 2, the SRC suggests adding a new Interpretation 501-3 – “A law school having a non-transfer attrition rate above ____ percent bears the burden of demonstrating that it is in compliance with the Standard.” (The SRC anticipated that the Council would insert a number, perhaps 10%, in place of the blank.) Proposal 2 presents two problems; it is too broad in scope, and it is unlikely to be effective in practice.

The proposed interpretation focuses on “non-transfer” attrition, when it should be focused solely on “academic attrition.”

Non-transfer attrition consists of two components – “academic attrition” and “other attrition.” Academic attrition includes students involuntarily dismissed under a law school’s academic policies or students who leave voluntarily but would have been dismissed had they remained in school. As noted [in my recent blog posting analyzing attrition data](#), academic attrition varies widely across law schools from zero to over 20%, particularly among law schools with relatively low LSAT/GPA profiles.

Other attrition includes students who leave law school for reasons other than academic attrition. They may have decided law school is not for them, or have had a family emergency or their own physical health concern or mental health concern that leads them to withdraw from law school. Other attrition has much less variability; at most law schools other attrition is in the 2% to 4% range.

Law schools should be able to look at historical trends regarding student performance at their law school to predict whether applicants with certain entering class credentials are likely to

experience “academic attrition.” Thus, a high “academic attrition” rate may suggest a law school is admitting too many students who are unlikely to be successful. By contrast, law schools rarely are going to be able to identify in advance those students who are likely to fall into the “other attrition” category.

Accordingly, if Proposal 2 is going to move forward, I would strongly advise that it focus solely on “academic attrition” rather than on all non-transfer attrition.

(It is conceivable that the SRC chose non-transfer attrition rather than academic attrition because it was concerned law schools would opt to classify a student’s attrition as other attrition rather than academic attrition to avoid whatever threshold might be set for academic attrition. While that risk could be addressed through careful assessment of attrition data, if there is a strong desire to use non-transfer attrition, I would suggest that the non-transfer attrition threshold be set at a slightly higher percentage to recognize that many law schools regularly experience other attrition of between 2% and 4%.)

The proposed interpretation is unlikely to accomplish its intended purpose

Regardless of whether the threshold focuses solely on academic attrition or on non-transfer attrition, however, this proposed interpretation fails to account for how law schools are likely to respond to the new interpretation. The SRC may believe the proposed interpretation will make law schools refrain from admitting as many at risk students. While that is possible, it is actually as likely or more likely that some law schools will not change their admissions practices, but simply will adjust how they implement their academic dismissal policies or grading policies to keep academic attrition or non-transfer attrition below whatever threshold is established.

For example, assume the proposed interpretation set 10% as the academic attrition “threshold” for shifting to law schools the burden of demonstrating compliance with the Standard. In the 2014-15 academic year, an academic attrition threshold of 10% would have “caught” 30 law schools. One easily can imagine that a significant number of those law schools likely would simply adjust their academic dismissal policies or their grading policies so that they maintain academic attrition below the 10% threshold (even at the risk of noncompliance with the bar passage standard a few years later). (Indeed, 11 of the 30 law schools in 2014-15 with academic attrition more than 10% have an academic attrition rate between 10% and 11%, such that getting under 10% would not have been very difficult for these law schools.)

The SRC may be assuming that law schools don’t have “control” of how academic attrition actually functions. Perhaps the SRC believes that academic dismissal policies are fairly consistent across all law schools such that a given threshold (10%) would have comparable meaning and effect across all law schools. As noted above, however, academic attrition varies widely among similarly situated law schools, particularly those with relatively low LSAT/GPA profiles. This suggests that academic dismissal and grading policies differ across law schools or, phrased differently, that the way in which grading policies interact with academic dismissal policies varies widely. In reality, law schools have sufficient “local control” over their grading and academic dismissal policies that it would not be that difficult for law schools to avoid being “caught” by whatever academic attrition or non-transfer attrition threshold would get established in Standard 501.

The Other Three Suggested Revisions to Standard 501 are Generally Good Ideas

First, in Section 501(a), the SRC wants to replace “maintain” with “adopt, publish, and adhere to” such that the standard will read: “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.” This clarifies that law schools have to have policies, have to publish policies, and have to adhere to the policies, all good things.

Second, in Section 501(b), the SRC wants to shift from a negative framework to a positive framework. The existing standard has a negative framework -- “A law school *shall not admit* an applicant *who does not appear capable* of satisfactorily completing its program of legal education and being admitted to the bar.” The SRC recommends shifting to a positive framework -- “A law school *shall admit only* applicants *who appear capable* of satisfactorily completing its program of legal education and being admitted to the bar.” (emphasis added) While I don’t feel strongly about this, I think it is easier to conceptualize this in the positive framework -- focused on who should be admitted -- rather than on who should not be admitted. That said, it might help to maintain a singular focus on each “applicant” rather than shifting to the plural “applicants.” “A law school shall admit an applicant only if the applicant appears capable of satisfactorily completing its program of legal education and being admitted to the bar.” This keeps the focus on each individual applicant rather than the pool of applicants a law school admits.

Third, in the first interpretation -- Interpretation 501-1 -- the SRC recommends adding a sentence that states: “Compliance with Standard 316 is not alone sufficient to comply with the Standard.” Standard 316 is the bar passage standard. This suggested revision is designed to highlight that Standard 501 is an independent standard that is not just derivative of Standard 316. This also strikes me as a useful change.

If Standard 501 is simply derivative of Standard 316, then there is no way to assess compliance with Standard 501 in “real time.” Rather, one would only assess compliance with Standard 501 by waiting three or four years to see whether the graduates of the law school comply with the bar passage standard. Standard 501 would be somewhat superfluous.

By adding this sentence, the SRC is suggesting that compliance with Standard 501 should be assessed “presently” by looking at the LSAT/GPA profile of matriculants, the law school’s experience with attrition, and the success of the law school’s academic support program, along with the law school’s historical bar passage results. Historical attrition and historical results on the bar exam in relation to prior graduates’ entering LSAT/GPA profile and prior graduates’ law school academic performance should inform the determination of whether the law school is continuing to admit only those applicants reasonably capable of being successful in the program of legal education and in passing the bar exam. If students with certain LSAT/GPA profiles over a three-year or four-year period consistently have performed poorly in law school and experienced academic attrition, or performed poorly on the bar exam, then the law school has data that would make it challenging for the law school to demonstrate that applicants with those profiles are “capable of satisfactorily completing its program of legal education and being admitted to the bar.”

(I am very grateful for the helpful comments of Debby Merritt and Scott Norberg on earlier drafts of this blog posting.)