

November 2008

MEMORANDUM

TO: Interested Persons and Entities

FROM: Hulett H. Askew, Consultant on Legal Education  
Donald J. Polden, Chair, Standards Review Committee

SUBJECT: Proposed Elimination of Standard 104 of the  
*ABA Standards for the Approval of Law Schools*

At its June 7, 2008 meeting the Council considered the report of the Standards Review Committee with respect to Standard 104. After discussion, the Council agreed to publish for notice and comment the proposed elimination of the Standard. The proposed changes are published on the Section's website, [www.abanet.org/legaled](http://www.abanet.org/legaled). Notice of the proposed change and a request for comments were originally distributed in August 2008.

We again solicit comments on the proposal by letter, e-mail or through an appearance at a hearing that will be conducted by the Standards Review Committee on January 9, 2009 at 3:15 p.m. at the Hilton San Diego Bayfront during the Annual Meeting of the American Association of Law Schools. Please address written comments on the proposal, and requests to speak at the hearing, to Becky Stretch, Assistant Consultant, at our Chicago office or at [StretchC@staff.abanet.org](mailto:StretchC@staff.abanet.org).

Comments on this change in the Standards should be submitted no later than December 15, 2008. All comments will be provided to, and reviewed by, the Standards Review Committee prior to the hearing.

Thank you.

cc: Randy A. Hertz, Council Chairperson  
Dan Freehling, Deputy Consultant

## Revisions to Standards for the Approval of Law Schools

(Additions underlined; deletions ~~struck through~~)

### ~~Standard 104. SEEK TO EXCEED REQUIREMENTS~~

~~An approved law school should seek to exceed the minimum requirements of the Standards.~~

#### ~~Interpretation 104-1~~

~~As stated in the Preamble, the Standards “are minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education.” Consistent with the aspirations, mission and resources of a law school, it should continuously seek to exceed these minimum requirements in order to improve the quality of legal education and to promote high standards of professional competence, responsibility and conduct.~~

## **EXPLANATION OF DELETION OF STANDARD 104**

The essential quality of a Standard is that it articulates clearly defined requirements that are binding on all accredited law schools and the violation of which can trigger disciplinary action. Under Standard 103, a law school must be in compliance with each Standard. A school that is in compliance with each Standard is entitled to obtain or retain full approval by the ABA.

The Standards Review Committee believes Standard 104—which provides that schools “should continuously seek to exceed” minimum accreditation requirements-- is an aspirational statement rather than a clearly articulated and enforceable Standard. In this regard, the Committee also believes that there are concerns about potential difficulties in applying Standard 104, for example, whether or not schools have to seek to exceed every standard, and if not, which ones must be exceeded. Further, it is not clear what should happen if a school seeks, but fails, to exceed any of the Standards. Moreover, if Standard 104 was fully enforced, a school that is in compliance with every other Standard could be cited for not trying hard enough to exceed the minimum requirements of the Standards and be faced with penalties including removal from the list of accredited schools, notwithstanding its compliance with all other Standards.

The Standards Review Committee also concluded that Standard 104 articulates an aspiration that is widely shared and demonstrated by approved law schools and expressed the hope that all law schools would seek to strengthen and improve their programs and their opportunities for their students. Indeed, schools should be encouraged to continuously strive to improve their abilities to educate their students and contribute to legal education.

As stated in the Preamble to the Standards, the Standards "... are minimum requirements designed, developed, and implemented for the purpose of advancing the basic goal of providing a sound program of legal education." No doubt schools seek to exceed the Standards in a variety of ways. But the aspirational goals set forth in the Preamble are not the same as required minimum standards for approval. Therefore, the sentiment expressed in Standard 104 is better placed in the Preamble to the Standards and not as a separate Standard.