



GEORGETOWN UNIVERSITY LAW CENTER

December 17, 2008

Office of the Dean

Mr. Hulett H. Askew
Consultant on Legal Education
Mr. Richard J. Morgan
Chair, Standards Review Committee
American Bar Association
321 N. Clark Street
Chicago, IL 60654-7598

Dear Mr. Askew and Mr. Morgan:

I write to express my concern about the proposal to eliminate Interpretations 402-1 and 402-2. I believe that their elimination will reduce the amount of useful information available to students and others, will make other information harder to interpret and would have significant substantive impacts.

In assessing the Accreditation Committee's proposal, it is important to consider first the usefulness of any student-faculty ratio. On this core question, the committee's rationale is surprisingly ambiguous. The committee's memo correctly indicates that such a ratio is not alone sufficient to assess adequacy of the faculty. However, it makes an unexplained leap from this statement to the conclusion that any ratio is useless. This conclusion defies common sense and law schools' experience. Standard 402 would continue to require that schools have an adequate faculty. It seems inconceivable that anyone assessing the adequacy of a faculty would not ask, "How large is the faculty relative to the size of the student body?" The committee similarly concludes that the ratio is not useful consumer information because prospective students have access to different information, i.e., the size of classes. It is simply not the case, however, that the size of classes is the same as total size of the faculty relative to the total number of students. To give an extreme example, one could imagine two schools both with the same number of students and with classes of exactly the same size, but with one school having a significantly smaller faculty who teach very heavy loads. The fact that there are relatively few faculty with high teaching loads would seriously affect students – it would be harder to get individual feedback, to find faculty willing and able to supervise independent research projects, and harder to get references. The point is that class size is not the same as student faculty ratio, and both provide useful information. The committee makes much of the fact that there is a low correlation between first year class size and student faculty ratio, but this simply highlights that these data measure different things.

A second major issue is methodological. Assuming that a student-faculty ratio provides some useful information, how should that ratio be calculated? Interpretation 402-1 offers a detailed methodology that no doubt generates questions at the margin. Of course, any methodology will generate questions, and both the Section and law school administrators have substantial experience in addressing those issues. The committee's curious solution to the problem of line drawing is to eliminate all lines and any methodology. Since Standard 402 still exists and schools will presumably continue to report the number of faculty and administrators, what the proposal will do is to eliminate all guidance as to who should be included in those numbers.

The elimination of all methodology would have substantive effects not addressed in the committee's August 2008 memorandum. The committee notes that under the current approach, faculty on short-term contract ("other" full-time faculty) are not included in the category of full-time faculty and are counted as "additional resources." The committee characterizes this fact as one that "increases the tension surrounding the issue of terms and conditions of employment." The implication is that eliminating Interpretation 402-1 will eliminate this "tension," presumably because faculty on short-term contracts will now be reported as "faculty" and included as such in the Official Guide data. Allowing schools to characterize faculty on short-term contracts as "full-time faculty" is unlikely to reduce "the tensions surrounding the issue of terms and conditions of employment." Rather, it is likely to increase those tensions by increasing the likelihood that schools will increase their reliance of short-term contract teachers. Currently, the cost saving appeal of short term contract faculty is checked by the 20% cap on counting "additional teaching resources." The committee's proposal will eliminated that check.

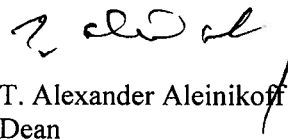
A third concern is fairness. The committee reports that most schools "max out on the [20%] cap" on additional resources. Allowing short-term contract full time faculty to "count" as full time faculty -- or simply failing to give guidance on these definitional issues -- would unfairly advantage schools that rely heavily on this category of faculty as opposed to schools that rely, for example, on adjunct faculty, for additional teaching resources. In some cases, schools could increase their "count" of full-time faculty by as much as 50% by "counting" non-tenure track (or tenure-track equivalent) as full-time faculty. A strong benefit of the current methodology for computing the ratio is that it assures a level playing field across schools with respect to use of additional teaching resources. The proposed change to Interpretation 402-1, on the other hand, blurs the definition of full-time faculty and might well provide an incentive to favor short-term over tenure-track and tenure-track-equivalent faculty appointments.

The committee suggests that Interpretation 402-2, which establishes presumptions of compliance and noncompliance with the ratio, be eliminated because most schools are now presumptively compliant. It points out that "the student-faculty ratio served an important function in helping to move schools away from extremely large ratios and enormous class sizes." On their face, these facts suggest that Interpretations 401-1 and 401-2 should be retained precisely because they have been so effective. The committee, however, argues that because other information about class sizes is available, holding schools to presumptions of compliance with a ratio is no longer useful. The operation of the "competitive market place and pedagogical advances [involving smaller classes]," it asserts, provide sufficient incentive to keep class sizes small and the size of the faculty adequate. Given increasing pressures on law school budgets, this approach may be ill advised.

I urge the committee to address the general and obvious usefulness of the faculty-student ratio, the important issues surrounding the definition of full time faculty, and the negative incentives the proposed changes would create.

I look forward to discussing these issues with you at the committee's hearing on January 9, 2009.

Sincerely,



T. Alexander Aleinikoff
Dean

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