

TO: Standards Review Committee

FROM: Richard K. Neumann, Jr  
Hofstra Law School

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RE: Interpretations 402-1 & 402-2

For several reasons, Interpretations 401-1 and 402-2 should remain in the Standards. Three are explained below.

The third reason, beginning on page 4, is particularly worrisome. A reading of the Committee's Explanation of Deletions of Interpretations 402-1 and 402-2 suggests that the Committee has not considered the unintended consequence that rescinding these Interpretations could damage many law schools, with unfortunate results for the way the Section is perceived in legal education.

**1.**  
**Without 402-1 and 402-2, Accreditation  
Committee Decisions on Faculty Resources Would Be  
Less Predictable and More Vulnerable to Doubt.**

In determining whether a school has adequate faculty resources, the Accreditation Committee certainly looks at many factors other than the student/faculty ratio. But the Accreditation Committee's ability to decide is not the only issue. Other issues include predictability and transparent consistency.

To be effective, a regulatory rule, such as the one requiring adequate faculty resources, has to be concrete enough that people governed by it can know what they would have to do to stay out of trouble. The more predictable the rule, the greater will be compliance. As a rule becomes less predictable, people subject to it will complain that they do not know how to comply and that enforcement is arbitrary.

A careful dean needs to be able to predict before a site inspection whether the school has a faculty resources problem. If a dean can recognize the risk before being inspected, everyone is better off. The school gets a fair opportunity to solve the problem beforehand and avoid being cited. The number of issues that arise during an inspection is reduced, making enforcement less difficult for the ABA. And students benefit from resolving the problem earlier before an inspection rather than later after the school has been cited.

Certainly, faculty resources are too complicated to be measured entirely by one number. But nobody in accreditation tries to use a number for that purpose now anyway. The real question is whether a ratio adds at least some predictability and transparency.

At the threshold, a number can help a dean predict the chances of trouble ahead. If a school's student/faculty ratio is substantially out of line with the ratios of similarly situated schools, that provides some early warning to a dean that faculty resources should be worried about. It shouldn't be the only kind of warning. But quantification can be quite effective in getting the attention of people who need to minimize the risks of being cited by an accreditor.

The ABA has sometimes been accused of making accreditation decisions that are inconsistent, unpredictable, arbitrary, not transparent, and not based on measurable criteria. Those accusations are generally wrong. But they continue to be made, and they deplete the Section's resources. Complaints to the Department of Education have to be dealt with, and sometimes lawsuits have to be defended. Complaints would be fewer if the Standards were to include more measurable criteria that lend themselves to consistent and predictable enforcement. We will never be able to do that in every Standard. But if we already have some measurable and objective criteria in an Interpretation, it does not seem wise to remove them.

## 2. A Student/Faculty Ratio Is Useful to Applicants

It's easy to find fault with any ratio formula that compares the number of students in a school with the number of teachers. We can always point to something that is left out or underrepresented or overrepresented. But flaws in a formula don't mean that it is not useful to applicants.

The ABA/LSAC Guide to Law Schools — sometimes called the 509 book — contains specific information about class size. But that, too, can give a misleading impression. For example, a school could reasonably decide to have larger first-year sections so that second- and third-year students can get more individual attention. This school might have an ample supply of teachers, but the 509 book's data would suggest that the school's faculty is smaller than it really is. First-year class size is the most prominent relevant number in the 509 book. And it is the one in which applicants would naturally have the most immediate interest. The distortion here is not really different from the distortion in a student/faculty ratio.

The 509 book also lists the number of seminars a school offers and the number of second- and third-year courses in different ranges of student enrollments. But those numbers are helpful only if an applicant does the math necessary to figure out the percentage of a school's courses that fit into each of those categories and only if the applicant knows things not shown in the 509 book, such as the subjects of those courses and seminars and the odds of the applicant being able to enroll in them. Most applicants will not do that math or wonder about the subtleties of the 509 numbers. Here again, the 509 book's data can confuse an applicant in the same way that a ratio can.

An applicant comparing 10 or 20 schools on the basis of many different characteristics can probably cope with no more than one statistic about faculty resources. The applicant has too many other characteristics to consider. A student/faculty ratio, with all its faults, is not significantly worse than other statistics the applicant can use for that purpose.

A large amount of the information used by applicants to choose law schools would not satisfy an empirical researcher. But applicants are not empirical researchers, and it is hard to argue that they would benefit from a more nuanced faculty statistic, if anybody were ever to develop one.

**3.**  
**Without 402-1, Many Schools  
Would Be Damaged in Unexpected Ways**

Every law school's student/faculty ratio is factored into the U.S. News rankings, using the formula in 402-1. U.S. News also publishes that ratio on its website, which is where most applicants now get their information about U.S. News rankings. There seems to be an impression that rescinding 402-1 would somehow improve that situation. It won't, and it could easily make things worse.

U.S. News will not stop using and publishing a student/faculty ratio just because we rescind 402-1. Entirely eliminating a factor from the rankings is unlikely because that would require the magazine to rework its entire methodology in order to reallocate that factor's weight among the other factors on which the rankings are based. U.S. News already has a much simpler way of handling the situation.

U.S. News already has at least three other formulae for calculating student/faculty ratios. The easiest solution for the magazine would be to substitute one of those other formulae for the one in 402-1 by rewording the ratio question in the questionnaire it sends to deans' offices. That is so simple in comparison that it is undoubtedly what U.S. News would do.

For reasons that I'll explain in a moment, substituting another formula would cause a great many schools to fall in the rankings. And when those schools' deans and faculties figure out how that happened, their understandable reaction could be outrage at the ABA based on an obvious cause-and-effect. Our rescinding 402-1 caused U.S. News to change its student/faculty ratio formula, and the change in that formula caused them to fall in the rankings.

The issue is not whether that would be right or wrong. The issue is whether it would adversely affect the ABA's credibility as an accreditor. Whenever an accrediting authority embarrasses a significant number of schools in the eyes of their stakeholders, those schools have been given an incentive to question the accreditor's wisdom.

U.S. News uses quantified data to rank schools of law, medicine, engineering, business, and education.<sup>1</sup> In each of these fields except business, U.S. News uses a

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<sup>1</sup> For other post-graduate schools, U.S. News bases its rankings entirely on reputation surveys, using no quantified data.

student/faculty ratio.<sup>2</sup> But the ratios differ from field to field. Here they are:

<i>Law</i>	<i>the Interpretation 402-1 formula —</i> “The ratio of students to faculty members . . . using the American Bar Association definition” <sup>3</sup>
<i>Medicine</i>	<i>FT students/FT faculty —</i> “the ratio of full-time science and full-time clinical faculty to full time M.D. or D.O. students” <sup>4</sup>
<i>Education</i>	<i>FTE students/FT faculty —</i> “The . . . ratio of all full-time equivalent doctoral students to full-time faculty” <sup>5</sup>
<i>Engineering</i>	<i>FT students/FT tenured &amp; tenure-track faculty —</i> “The ratio of full-time doctoral students to full-time tenured or tenure-track faculty . . . and the ratio of full-time master’s students to full-time tenured or tenure-track faculty” <sup>6</sup>

We can’t predict which formula U.S. News would use if 402-1 were to be rescinded. But any change in the way the rankings are calculated will produce both winners and losers. Some schools would gain ground in the rankings, and others would lose. The winners will thank fate. The losers will blame the ABA.

To learn the extent to which changing the formula would damage how individual

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<sup>2</sup> Student/faculty ratio is one of several ways of measuring a school’s educational resources. Business is the only ranking that does not measure educational resources in any way. Instead, the business rankings report the mean graduate starting salary and signing bonus. U.S. News apparently believes that business schools applicants consider what they will earn at graduation to be more important than a school’s educational resources.

<sup>3</sup> <http://www.usnews.com/articles/education/best-graduate-schools/2008/03/26/law-methodology.html>

<sup>4</sup> <http://www.usnews.com/articles/education/best-graduate-schools/2008/03/26/medicine-methodology.html>

<sup>5</sup> <http://www.usnews.com/articles/education/best-graduate-schools/2008/03/26/education-methodology.html>

<sup>6</sup> <http://www.usnews.com/articles/education/best-graduate-schools/2008/03/26/engineering-methodology.html>

law schools are perceived by applicants, employers, and alumni, I compared the results of the 402-1 formula with the results of U.S. News's medical school formula (FT/FT), using the most recent data.<sup>7</sup> Because U.S. News ranks schools against each other on each of the factors in its methodology, I ranked all 185 schools twice — once according to the 402-1 formula currently used by U.S. News<sup>8</sup> and a second time by computing a ratio for each school according to the FT/FT formula used by U.S. News for medical schools.<sup>9</sup> Then I compared each school's rankings according to the two formulae.

I recalculated *only* student/faculty rankings, which are factored by U.S. News into the overall rankings. I did not recalculate the overall rankings. (The rankings I provide here are only student/faculty ratio rankings, not overall rankings.)

Ninety-one of the 185 schools would be treated worse by U.S. News' medical school FT/FT formula than they are now. Twenty-five of those 91 schools would fall more than 40 places in student/faculty ratio rankings (which, again, are not the overall rankings). For those 25 schools, the difference between the two formulae appears below. (*SFR* = student/faculty ratio. *Rank* = the lowest [most favorable] ratio to the highest [least favorable]. *-t* = a tie caused by identical ratios.)

	402-1 SFR rank	FT/FT SFR rank	loss in SFR rank
School A	42	121-t	-79
School B	61-t	140-t	-79
School C	22	97-t	-75
School D	69-t	141-t	-72
School E	59	127-t	-68
School F	52-t	118-t	-66
School G	36-t	101-t	-65
School H	61-t	124	-63
School I	72-t	134-t	-62
School J	120-t	180	-60
School K	43	100	-57
School L	33-t	89-t	-56

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<sup>7</sup> This is the data reported in the 2009 editions of the 509 book and of U.S. News, both of which were published in spring 2008 and are based on fall 2007 questionnaires.

<sup>8</sup> Each current factor in the U.S. News law school methodology can be ranked at <http://www.ilrg.com/rankings/law/index.php/1/asc/SFRatio/2009>. U.S. News asks schools to compute the ratio themselves using the 402-1 formula. The ratio published by U.S. News sometimes differs from the ratio published in the 509 book. I spot-checked by comparing 35 schools' ratios in U.S. News and the 509 book. A handful of schools had slight differences, only one more than 0.1.

<sup>9</sup> Using the 2009 edition of the 509 book, for each school I divided the number of full-time students by the fall semester combined total of "full-time" and "other full-time" faculty.

School M	52-t	108-t	-56
School N	55-t	108-t	-53
School O	108-t	161-t	-53
School P	32	84-t	-52
School Q	102-t	153-t	-51
School R	113-t	164	-51
School S	23-t	70-t	-47
School T	46-t	93-t	-47
School U	33-t	79-t	-46
School V	111-t	156	-45
School W	72-t	115-t	-43
School X	40-t	82-t	-42
School Y	33-t	74-t	-41

A dean of any of these schools would be stunned to learn that rescinding 402-1 could have this kind of effect. Although student/faculty ratio counts for only 3% in the overall rankings, each of these schools would be doomed to fall in the overall rankings unless the school's other numbers (LSAT, UGPA, etc.) improve.

Another 36 schools would lose 20 to 40 places in student/faculty ratio rankings. The remaining 30 more would lose fewer than 20 places. The effect on those school's overall rankings would be less dramatic, but many of them would still fall in the rankings based on their student/faculty ratios alone.

I did not recalculate with either of the other two formulae used by U.S. News. Those are the education schools FTE/FT ratio and the engineering schools FT/tenured/tenure-track-FT ratio. Recalculating according to any one of the three alternative formulae should tell us whether rescinding 402-1 risks adversely affecting a significant number of schools. Remember that we can't predict which of these formulae U.S. News would use for law schools.

The engineering formula would probably cause even greater dislocation than the medical formula illustrated in this memo. If U.S. News were to use the engineering formula for law schools, the only faculty counted in the ratio would be those who are tenured or tenure-tracked. *The result would be to pressure any school concerned about its ranking to consider putting all of its off-tenure-track teachers onto some kind of tenure-track.*

Those who have been lobbying the Committee for rescission of 402-1 should be especially concerned about the consequences if U.S. News were to use a formula other than the one already in 402-1. It is impossible to predict whether their own schools would be damaged by one of the other formulae. And if there is concern about the job security incentives in 402-1 now, it would be cautionary to consider the consequences if U.S. News were to use the engineering formula for law schools.

Each spring, schools that fall significantly in the U.S. News rankings obsess about why. Deans have to explain what went wrong to university presidents, faculties, students, and alumni. Presidents and faculties worry about their schools' prestige. Students worry about their employment prospects. Alumni worry about diploma depreciation. Assigning blame becomes inevitable.

Some schools would gain from a change in the student/faculty formula. Others would lose. We cannot predict who would gain and who would lose. But if the formula changes because the ABA rescinds 402-1, deans and faculties that lose ground because of that change will be tempted to accuse the ABA of hurting their school.

Those schools will demand to know why the ABA did so. Based on the Committee's Explanation, here are the primary justifications the ABA could offer:

- Student/faculty ratios are not useful numbers.
- Calculating a student/faculty ratio each year is burdensome on everyone involved.
- Schools look for loopholes in the formula and play with data to improve their ratios.

None of these justifications makes any real difference, and they will not persuade people who feel aggrieved. Regardless of whether we think student/faculty ratios are useful numbers, every school is going to be ranked in part according to one, and there's nothing we can do to prevent that. With or without 402-1, calculating ratios will never stop being burdensome, and schools will continue to play with data to improve their ratios. Rescinding 402-1 will do nothing to make those problems go away.

The credibility of accreditation suffers when schools are hurt without good regulatory reasons. These are not good regulatory reasons.

### **Conclusion**

Interpretations 402-1 and 402-2 are far from perfect. But getting rid of them would create more problems than it would solve.