

(1) for a period of five years, all appointments shall be [subject] *reported to the Board* [approval];

(2) all members shall serve staggered three-year terms, with a two-term limit; and

(3) no more than 50% of the members shall be law school deans or faculty;

(E) revise the Standards Review Committee's membership as follows:

(1) for a period of five years, all appointments shall be [subject to] *reported to the Board* [approval];

U.S. Department of Education

Staff Analysis of the Interim Report Submitted by the Council of the Section of Legal Education and Admission to the Bar of the American Bar Association

December 5-6, 1994.

### Background

The Council of the section of Legal Education and Admission to the Bar of the American Bar Association (ABA) appeared on the first list of nationally recognized accrediting agencies published by the Commissioner of Education in 1952. The Council has received periodic renewal of recognition since that time.

The Council's most recent review by the National Advisory Committee was in May 1992. At that time, there was considerable third-party opposition to the Council, most of which centered on its accreditation standards. As a result, Advisory Committee members questioned Council representatives at length about their process for reviewing and revising the standards. Upon completion of that discussion, the Advisory Committee recommended that, while renewing the Council's recognition for a period of five years, the Secretary should also require the Council to submit an interim report by July 1, 1993 on its effort to strengthen compliance with § 602.16(i)—maintenance of a systematic program of review designed to assess the validity and reliability of the Council's criteria, procedures and standards. On August 18, 1992, the Secretary renewed the Council's recognition for a period of five years and requested the interim report on § 602.16(i).

In January 1994, the Massachusetts School of Law (MSL), one of the third parties that testified in opposition to the Council at the May 1992 meeting of the National Advisory Committee, filed a formal complaint against the Council and requested that the Secretary terminate the Council's recognition on the grounds that it failed to follow appropriate and required standards, procedures, and regulations. MSL cited a number of reasons for its request, many of which were related to the issue of whether the Council's criteria, procedures, and standards were valid and reliable. Consequently, in this analysis, Department staff examines both the Council's interim report and MSL's complaint. The analysis also takes into account both the Council's response to MSL's complaint and subsequent responses by MSL and the Council.

It should be noted that, as is customary when the Department receives a compliant

against an accrediting agency, staff provided the Council with an opportunity to respond to MSL's complaint. MSL subsequently requested and, because of the seriousness of its charges against the Council, was granted an opportunity to rebut the Council's response. MSL's rebuttal was not received by the Department, however, until August 1994. Department staff's investigation of MSL's complaint was completed in as timely as manner as possible, given the delay in the submission of MSL's rebuttal and the extent of the documentation submitted by both parties.

### Summary of Findings

While the Council has technically complied with the requirement to provide the Secretary with a progress report on its efforts to assess the validity and reliability of its standards by describing its process for reviewing its 100- and 200-series standards, it has not provided any results of its work to date. The Council needs to do so.

### Staff Analysis

602.16(i) It maintains a systematic program of review designed to assess the validity and reliability of its criteria, procedures, and standards relating to its accrediting and preaccrediting activity and their relevance to the educational and training needs of affected students.

*Problem:* At the time of the Council's last review, there was considerable third-party opposition to the Council, most of which centered on the validity and reliability of its standards. Noting that the Council had reported that work was continuing on the assessment of the validity and reliability of its standards as a result of a conference held on the subject in 1989, the Advisory Committee requested an interim report on the Council's continuing progress assessing validity and reliability.

*Agency Response:* The Council maintains a Standards Review Committee, each of whose meetings includes a review of the validity and reliability of certain standards among the ones currently used to accredit programs. At its November 1992 meeting, the Committee agreed to concentrate on the 100- and 200-series of its standards. At its meeting in January 1993, the Committee focused on the 100-series standards, discussing various comments received from the membership on the standards and agreeing to proposed some changes to the membership. At its May 1993 meeting, the Committee continued its review of the 100-series and began work on the 200-series. At the conclusion of the meeting, the Committee decided that, rather than propose changes in either series' standards to the Council's different constituencies, it would continue its standards review for the next 2-3 years and then propose all the changes at once. Its rationale for this course of action was the effect that more than one of the modified standards would have on some of the Council's other standards.

*Staff Determination:* By describing the process it is engaged in to review the validity and reliability of its standards, the Council has technically complied with the requirement that it submit an interim report addressing its continuing progress assessing

validity and reliability. However, the Council has failed to provide any concrete results of its efforts, presumably because it plans to extend its current review effort over the next 2-3 years.

The Department's new regulations require not just a demonstration that the Council has in place a systematic program for the review of the validity and reliability of its standards but a demonstration that each of its standards provides a valid measure of the educational quality it is intended to measure and a consistent basis for determining the educational quality of different law schools. It is the Council's compliance with this new requirement that is challenged by MSL in its complaint against the agency.

Like all agencies, the Council must take action to bring itself into compliance with this new requirement. Department staff recognizes that this will take some time. However, Department staff also recognizes that in the interim some institutions may be denied accreditation, placed on probation, and/or forced to take corrective action to come into compliance with standards that may in fact prove not to be valid and reliable measures of educational quality. For this reason, Department staff believes it is critical that the Council keep the Department thoroughly informed of its progress in assessing the validity and reliability of its standards and the *results* of that assessment. Specifically, the Council should provide the Department with an interim report in each of the next two years, and that report should include complete reports of each meeting of its Standards Review Committee, including any proposed changes in Council standards that are under consideration, and reports of any other meetings, forums, or other opportunities for discussion of its standards that took place that year. Department staff has been informed by MSL that at least one such opportunity—a meeting of a group of law school deans—is scheduled to take place in January or February of 1995.

At this point, Department staff believes that any termination of the Council's recognition on the grounds that its standards are neither valid nor reliable measures of quality, as has been requested by MSL, is premature and without merit. All currently recognized accrediting agencies need to come into compliance with the requirement in the new regulations that each of their standards must provide a valid measure of the educational quality it is intended to measure and a consistent basis for determining educational quality. To single the Council out for noncompliance at this time when other agencies are likewise in noncompliance would be unfair to the Council.

While MSL may not like the Council's current standards and may question their validity and reliability, it has not provided convincing evidence to contradict the Council's assertion that its current standards have in fact been adopted by its members in the manner that has been agreed to by the members for the establishment of accreditation standards. Thus, even though they may be found at some future date not be fully valid or reliable indicators of educational quality, at the present time the Council's standards represent the current best thinking of those in the profession.