ABA panel considering making the LSAT optional
By Karen Sloan
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The Law School Admissions Test is a rite of passage for aspiring lawyers, but could go from mandatory to voluntary under proposed changes to the American Bar Association's law school accreditation standards.

The committee reviewing the standards is leaning toward dropping the rule that law schools require J.D. applicants to take a "valid and reliable admission test," chairman Donald Polden, dean of Santa Clara University School of Law, said on Wednesday.

"A substantial portion of the committee believes that provision should be repealed," said Polden, noting that about 10 law schools already have waivers from the ABA allowing them to admit some students who haven't taken the LSAT.

Much of the committee's LSAT debate has focused on the proper role of the ABA in the regulation of law school admissions, said Loyola University Chicago School of Law Dean David Yellen, who sits on the standards review committee.

"I think an accrediting body ought to ensure that law schools are producing students who can enter the practice," he said, noting that he personally is on the fence about the LSAT requirement. "Is taking a standardized test the only way to determine if someone should be able to go to law school? Schools ought to be able to decide how they want to admit students."

Yellen said committee members have also questioned whether the ABA should be making rules that financially benefit the Law School Admission Council—the organization that administers the LSAT.

"It's a wealthy institution," Yellen said. "So many people take the LSAT. Why is the ABA ensuring its future success?"

The admission council has not taken a position on the committee's proposal, said spokeswomen Wendy Margolis, but council President Daniel Bernstine did address the committee during a meeting last year. "It would be inappropriate and premature of us to comment before a decision has been made by the committee," Margolis said. Dropping the LSAT requirement would be unlikely to prompt many schools to abandon the test. Both Polden and Yellen believe that most schools would continue to require the LSAT, in part because it is the most reliable way to measure applicants against each other and make merit-based financial aid decisions.

"I think most schools would keep it," Yellen said. "It gives you an indication of how prepared people are for law school. On the other side, getting rid of the test would be yet another way for law schools to game the U.S. News rankings, but I don't think the ABA should take U.S. News into account when making these decisions."
The committee is still in the relatively early stages of discussing the LSAT. It is closer to finalizing its recommendations in several other areas, including so-called "student learning outcomes." Law schools would be evaluated based on what students learn rather than input measures, such as the size of law libraries or faculty-to-student ratios. That matter was discussed during a two-day committee meeting last weekend.

The learning outcomes standards should be ready for presentation to the ABA's Council on Legal Education and Admissions to the Bar in the summer, Polden said. That council must approve all changes to the accreditation standards.

The committee is still debating other controversial topics, including security of position and tenure for faculty and law school governance.

The draft standards would require law schools to define their educational mission and learning goals for graduating students—a significant departure from the existing standards, which rely on more easily quantifiable measures such as bar passage rates. The draft would require schools to develop assessment methods that would "provide meaningful feedback to students." The schools would assess whether students are attaining the stated educational goals, although the proposal does not specifically define what those goals should be or how they should be measured.

"We are trying to make sure that as we move into this very different way of evaluating schools by assessing student learning outcomes, that we give them a lot of flexibility," Polden said. "The provision is quite general, but the idea is for schools to have leeway."

Too much leeway could be a problem, said Ian Weinstein, the associate dean for clinical programs at Fordham University School of Law and the president of the Clinical Legal Education Association. The association has advocated for stronger, more detailed standards for the learning outcomes of individual students. The committee draft places more focus on the effectiveness of the law school as a whole, rather than on individual students, he said.

"The current version gives schools a lot of room to define mission and outcomes," Weinstein said. The clinical association "has expressed real concern about that all along. In our view, we'd like those learning outcomes to be considerably more specific."

Weinstein believes it would be imprudent to move too far from the existing measures such as faculty-to-student ratios if the new standards don't create strong enough output requirements.

One change the association supports is beefing up the existing requirement that all students take at least one externship, clinic or simulation course.

The committee is still working on the standards that pertain to tenure and security of position, but members largely agree that tenure should be encouraged if not required by the ABA, Polden said. The committee has interpreted the existing accreditation standards to mean that tenure is not a requirement, although many legal academics disagree with that interpretation.

The committee is struggling with changes to law school governance standards, Polden said. It is considering a new standard that law schools require full-time faculty members to participate in governance and decision-making. This would help to eliminate the exclusion of some clinical, legal writing and other non-tenure track positions from hiring decisions and other governance issues, he said.
The committee will hold a public hearing on all of these proposals during its next meeting April 2 in Chicago. Those proposals are posted on the ABA’s Web site. Individuals and groups wishing to comment will be asked to register ahead of time to speak during the three-hour public comment session, Polden said.