

Chapter Eight

Best Practices for Assessing Institutional Effectiveness

A. Evaluate Effectiveness Regularly.

Principle: The school regularly evaluates the program of instruction to determine if it is effective at preparing students for the practice of law.

Comments:

Information about educational effectiveness is necessary for law schools to make informed judgments about their inputs, resources, and outcomes in order to improve instruction and accountability to all stakeholders in the educational process. Educational effectiveness is a “core commitment” of institutions committed to excellence.⁷⁹² Any institution committed to learning and improvement should investigate the effectiveness of its program of instruction on a regular basis.

The American Association of Higher Education makes it clear that educational institutions need to evaluate their effectiveness longitudinally, repeatedly, and as part of the institutions’ process of doing business:

Assessment works best when it is ongoing not episodic. Assessment is a process whose power is cumulative. Though isolated, “one-shot” assessment can be better than none, improvement is best fostered when assessment entails a linked series of activities undertaken over time. This may mean tracking the progress of individual students, or of cohorts of students; it may mean collecting the same examples of student performance or using the same instrument semester after semester. The point is to monitor progress toward intended goals in a spirit of continuous improvement. Along the way, the assessment process itself should be evaluated and refined in light of emerging insights.⁷⁹³

The ABA accreditation standards require schools to evaluate the effectiveness of their programs of instruction, including how well they prepare students for the practice of law.

Each law school shall engage in a periodic review of the curriculum to ensure that it prepares the school’s graduates to participate effectively and responsibly in the practice of law.⁷⁹⁴

The ABA also requires law schools to develop self-studies before sabbatical inspections and, since 2006, to engage in a continuing process of setting goals, selecting means for achieving goals, monitoring success in achieving goals, and appropriately reexamining goals.

⁷⁹² WESTERN ASSOCIATION ACCREDITATION HANDBOOK, *supra* note 18, at 44.

⁷⁹³ American Association of Higher Education (AAHE), *Nine Principles of Good Practice for Assessing Student Learning* [hereinafter *Nine Principles*], <http://www.aahe.org/assessment/principl.htm>.

⁷⁹⁴ Interpretation 302-3, ABA STANDARDS, *supra* note 28, at 19.

SELF-STUDY. Before each site evaluation visit, the dean and faculty of a law school shall develop a written self-study, which shall include a mission statement. The self-study shall describe the program of legal education, evaluate the strengths and weaknesses of the program in light of the school's mission, set goals to improve the program, and identify the means to accomplish the school's unrealized goals.⁷⁹⁵

STRATEGIC PLANNING AND ASSESSMENT. In addition to the self-study described in Standard 202, a law school shall demonstrate that it regularly identifies specific goals for improving the law school's program, identifies means to achieve the established goals, assesses its success in realizing the established goals and periodically reexamines and appropriately revises its established goals.⁷⁹⁶

In other words, best practices preclude law schools from simply assuming that, just because students complete the law schools' degree requirements, they will possess the skills, values, and knowledge described as the school's educational outcomes. Rather, law schools need to develop and identify evidence that their graduates regularly attain each of the law school's intended outcomes.

B. Use Various Methods to Gather Information.

Principle: The school uses various methods to gather quantitative and qualitative information about the effectiveness of the program of instruction.⁷⁹⁷

Comments:

Assessment experts refer to the goal of creating a "set" of assurance measures as creating a "culture of evidence."⁷⁹⁸ For example, the Western Association of Schools and Colleges requires that an institution employ "a deliberate *set* of quality assurance processes at each level of institutional functioning These processes involve assessments of effectiveness, track results over time, and use the results of these assessments to revise and improve structures and processes, curricula and pedagogy."⁷⁹⁹ The Association's standards also indicate that an institution committed to learning and improvement "conducts sustained, evidence-based, and participatory discussions about how effectively it is accomplishing its purposes and achieving its

⁷⁹⁵ Standard 202, *id.* at 11.

⁷⁹⁶ Standard 203, *id.*

⁷⁹⁷ This principle was adapted from a definition of assessment in research on standards for the conduct of quality assessment in higher education. Alice M. Thomas, Standards for the Conduct of Quality Assessment in Higher Education, Paper Presented at the Annual Meeting of the Association for the Study of Higher Education (Oct. 31, 1991).

⁷⁹⁸ See A. Darlene Pacheco, *Culture of Evidence*, 9 ASSESSMENT AND ACCOUNTABILITY FORUM 14 (Summer 1999). Pacheco, who is the Associate Director of the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges, explains the culture of evidence idea by asserting that "[d]eveloping a program for assessing institutional effectiveness requires an institutional commitment to assessment that is a 'broad-based and integrated system of research, evaluation and planning.' Institutional assessment is expected to include program reviews that demonstrably leads to improvement of programs and services." *Id.*

⁷⁹⁹ WESTERN ASSOCIATION ACCREDITATION HANDBOOK, *supra* note 18, at 29.

educational objectives.”⁸⁰⁰

Evidence of educational effectiveness may be direct or indirect. The Council for Higher Education Accreditation (CHEA) explains that direct evidence of student learning outcomes is the result of a process deliberately designed for this purpose and may include such approaches as:

- *capstone performances* (typified by traditional doctorate dissertation experiences),
- *professional/clinical performances* (using students’ performances in clinical settings to evaluate student attainment of the student learning outcomes),
- *third-party testing* (licensing examinations, such as bar examinations), and
- *faculty-designed examinations* (competency tests, for example).

Indirect evidence of student learning outcomes may include:

- *portfolios and work samples* (students select samples from course, externship and clinical work as evidence of their attainment of each outcome),
- *follow-up of graduates* (surveys),
- *employer ratings for performance* (surveys), and
- *self-reported growth by graduates* (surveys).⁸⁰¹

The Council for Higher Education Accreditation identifies four criteria for determining whether a set of assessment practices are sufficient.

1. *Comprehensiveness*. Submitted evidence should cover knowledge and skills taught throughout a course or program.
2. *Multiple Judgments*. Submitted evidence should involve more than one source or involve multiple judgments of student performance.
3. *Multiple Dimensions*. Submitted evidence should provide information on multiple dimensions of student performance – i.e., they should yield more than a summative grade.
4. *Directness*. Submitted evidence should involve at least one type based on direct observation or demonstration of student capacities – i.e., they should involve more than simply a self-report.⁸⁰²

Greg Munro identified the following methods for assessing the success of the law school in meeting its mission and institutional outcomes.

Self-study: A law school’s self-study done in preparation for an accreditation visit can be an excellent form of institutional self-assessment if it is a collaborative task performed by the faculty. If the self-study is window dressing performed by the deans or a small committee of the faculty, it will have less value. Also, the self-study can be effective if those conducting it make the right inquiries regarding the state of the school’s mission, outcomes, teaching methods, curriculum, assessment program, strategies for achieving goals, and obstacles to those goals. It can be much less useful if it focuses only on such things as library size, staff size, level of funding,

⁸⁰⁰ Standard 4, Creating an Organization Committed to Learning and Improvement, *id.* at 28.

⁸⁰¹ *Student Learning Outcomes Workshop*, 5 THE CHEA CHRONICLE 2 (2002).

⁸⁰² *Id.*

and faculty characteristics.

Accreditation and site visits: To a certain extent, accreditation teams constitute an outside objective source for institutional self-assessment. Site visits and accreditation reviews are the most intensive form of institutional assessment most law schools undergo. Nevertheless, accreditation will generally reveal whether the school meets minimum accreditation standards and is not necessarily focused on whether the school meets its own institutional mission and outcomes.

Interviews: Law schools can use interviews to ask specific questions of any of the school's constituencies to glean answers that will allow the school to evaluate its success in any area. For example, students, upon admission to the law school, might be interviewed to determine effectiveness in marketing the law school; likewise, students might be interviewed upon graduation to determine effectiveness in meeting institutional outcomes. Lawyers, judges, or virtually any constituency that has a chance to observe the school or its students, faculty, or alumni are appropriate candidates for carefully designed interviews.

Questionnaires and surveys: These can be sent to any constituency of the law school. Most commonly, schools survey their alumni or the bench and bar for perspectives or opinions about some aspect of the institutional mission. The student body can be surveyed quickly for feedback on many issues of institutional outcomes.

Statistical information: Those engaged in institutional assessment will find useful statistical data readily accessible in the school's own files. Admission files contain LSAT scores, information on prior occupation and education, reasons for entering law school, bar exam results, and a host of other statistics that can be used for assessment. Student files can answer many questions about the nature of the school's students and the value added during their tenure in law school. Fund development has caused schools increasingly to develop and retain alumni records, which are a source of much information on institutional outcomes.

Bar exam results: Though bar exam results are a form of statistical information discussed above, such results merit separate mention. One of the most obvious measures of student and institutional outcomes in law schools is bar exam results and trends that may be reflected in such results over time. They are limited in their usefulness and valid only on particular questions, but they are an important measure of whether the school is providing students with that body of knowledge and skills deemed necessary by bar examiners. The bar exams are unique forms of institutional assessment, because they are administered and evaluated by a body outside the law school and require graduates to demonstrate a certain level of proficiency in those skills the exams address. Some bar

exams now require demonstration of drafting and other professional skills.

Faculty portfolios: Faculty curriculum vitae are the prime source of data on the success of the institution in promoting faculty achievement in the area of teaching, public service, and scholarship. Faculty can also develop portfolios for purposes of promotion and tenure that would supplement a CV by addition of teaching videotapes, class syllabi, and other materials by which the faculty's performance and qualities can be assessed.

Placement records: One measure of success in student learning and institutional outcomes is the school's success in placing its graduates. Hence, review of placement records is a valuable assessment tool for the institution.⁸⁰³

The bar examination is, as mentioned above, one form of direct evidence of institutional effectiveness. ABA accreditation practices have used first-time bar pass rates on the bar examination most commonly taken by a law school's graduates as the primary, if not exclusive, measure of educational effectiveness. This approach results in accreditation decisions that are both over-inclusive and under-inclusive.

The decisions are over-inclusive because, if a law school has a high bar pass rate, its ABA approval is assured even though that bar pass rate may be the product of factors that do not bear on the quality of a law school's educational program. For example, a law school may achieve a very high bar pass rate if the law school admits only students with excellent entrance credentials and does not make the students so much worse that they fail the bar exam. In the alternative, a law school's bar pass rates may be high, and its ABA approval secure, simply because its graduates take a bar examination that is, relative to all bar examinations, easier. The ABA only looks at the bar exam results in the state where most of a school's students take the bar exam. It does not matter if a high percentage of the law school's students fail other states' examinations.

The decisions are under-inclusive because a law school that admits high risk students and is situated in a state with a relatively more difficult bar examination will have difficulty obtaining or retaining its ABA approval, even if nearly all of its graduates pass the bar examination eventually and even if the first-time rate, after controlling for entrance credentials, is better than other law schools in the jurisdiction. This issue is compounded by the fact that the bar examination, does not necessarily test the skills and knowledge most important to the success of novice lawyers. For example, one standard for evaluating an assessment tool is whether it is valid. "An assessment measure is valid if it actually assesses or measures what it claims to assess or measure."⁸⁰⁴ The MBE portion of the bar exam, to which many states give the greatest weight, does not really measure students' ability to write the kinds of documents lawyers typically write or analyze the kinds of problems lawyers typically analyze, making the validity of the instrument dubious. While the essays and performance tests at least require students to analyze and write, lawyers in practice never base their analyses on their memory of legal doctrine, never cite rules without using court opinions and statutes to support their discussions, and very

⁸⁰³ MUNRO, *supra* note 700, at 244-46.

⁸⁰⁴ SMITH & RAGAN, *supra* note 197, at 95.

infrequently have only a half hour, hour, or even three hours to think through legal problems.

For these reasons, law schools and law school accrediting bodies should work together to adopt methodologies to supplement bar examination results as a measure of institutional effectiveness.

C. Use Student Performance and Outcome Assessment Results.

Principle: The school uses student performance and outcome assessment results in its evaluation of the educational effectiveness of the school's program of instruction.⁸⁰⁵

Comments:

The Council for Higher Education Accreditation makes the following observation in its Statement of Mutual Responsibilities for Student Learning Outcomes: Accreditation, Institutions, and Programs:

Institutions and programs have their own responsibilities for developing and using evidence of student learning outcomes. Specifically, institutions and programs should . . . [d]etermine and communicate clearly to constituents:

- what counts as evidence that these outcomes have been achieved, and
- what level of attainment of these outcomes is required to assure the quality of institutional or program offerings.

Develop recognizable processes for regularly collecting and interpreting evidence of student learning outcomes.

Use the results of this process to identify strengths and weaknesses or gaps between expected and actual performance and to identify and overcome barriers to learning.⁸⁰⁶

Similarly, the Council of Regional Accrediting Agencies states that accrediting agencies should expect that institutions, among other things, provide:

1. *Documentation of student learning.* The institution demonstrates that student learning is appropriate for the certificate or degree awarded and is consistent with the institution's own standards of academic performance. The institution accomplishes this by:
 - setting clear learning goals, which speak to both content

⁸⁰⁵ This principle was adapted from the accreditation standards of the Accreditation Council for Graduate Medical Education, *available at* <http://www.acgme.org/Outcome/>. The ACGME's shift to outcome assessments is discussed in Chapter Two, in the section "The Global Movement Toward Outcomes-Focused Education." The ACGME and the American Board of Medical Specialties are collaborating on the development of an assessment toolbox. The toolbox will include descriptions recommended for use by programs as they assess the outcomes of their educational efforts.

⁸⁰⁶ Council for Higher Education, Statement Of Mutual Responsibilities for Student Learning Outcomes: Accreditation, Institutions, and Programs, <http://www.chea.org/pdf/StmntStudentLearningOutcomes9-03.pdf> (2003).

- and level of attainment,
- collecting evidence of goal attainment using appropriate assessment tools,
 - applying collective judgment as to the meaning and utility of the evidence, and
 - using this evidence to effect improvements in its programs.

2. Compilation of evidence. Evidence of student learning is derived from multiple sources, such as courses, curricula, and co-curricular programming, and includes effects of both intentional and unintentional learning experiences. Evidence collected from these sources is complementary and portrays the impact of the student of the institution as a whole.⁸⁰⁷

Thus, this principle encourages law schools to create a feedback loop in which the law school regularly collects data about student achievement of the law school's desired student outcomes; disseminates that information to faculty, administration, alumni, employers and other interested parties; and uses the information to reach conclusions about the effectiveness of the law school's overall curriculum and individual programs. In short, law schools need to adopt assessment programs that result in data that helps the law schools evaluate whether their students are learning what they need to be learning.

D. Meet Recognized Standards for Conducting Assessments.

Principle: The school's processes for conducting assessments of student performance and educational outcomes meet recognized standards for conducting assessments in higher education.⁸⁰⁸

Comments:

The Accreditation Council of Graduate Medical Education identified five key considerations for selecting assessment instruments and implementing assessment systems. The assessment approach must provide valid data, yield reliable data, be feasible, have external validity, and provide valuable information.⁸⁰⁹

Alice M. Thomas identified forty assessment standards judged by experts as the most important standards in the practice of quality assessment in undergraduate higher education.⁸¹⁰

Together, these two works suggest that law schools not only should be creating assessment systems but also should be assessing those systems themselves. An assessment system, in other words, is valuable only if it really does result in good information on which a law school can justifiably rely. Consequently, law schools

⁸⁰⁷ Council of Regional Accrediting Agencies, *Regional Accreditation and Student Learning: Principles for Good Practices*, <http://www.msche.org/publications/regnlis1050208135331.pdf>.

⁸⁰⁸ This principle was adapted from the accreditation standards of the Accreditation Council for Graduate Medical Education, *available at* <http://www.acgme.org/Outcome/>.

⁸⁰⁹ Key Considerations for Selecting Assessment Instruments and Implementing Assessment Systems, <http://www.acgme.org/outcome/assess/keyconsider.asp> (last visited 9/19/06).

⁸¹⁰ Thomas, *supra* note 797.

should make sure that their data, collectively, genuinely and accurately assesses the skills, values, and knowledge it is purporting to assess, such that the results could be replicated by an outside assessor. The data should provide the law school with guidance as to which courses, programs and instructional methodologies the law school should retain, which it should alter, and which it should discard.

E. Solicit and Incorporate Opinions from Outside of the Academy.

Principle: The school solicits and incorporates the opinions of its alumni as well as other practicing judges and lawyers who hire and interact with graduates of the school.

Comments:

Many law schools make curriculum decisions, even significant decisions, without consulting with practitioners. This approach is precisely contrary to best practices in curriculum development. For example, the Western Association of Schools and Colleges uses the following criterion for evaluating its member institutions: “Appropriate stakeholders, including alumni, employers, practitioners, and others defined by the institution, are involved in the assessment of the effectiveness of the institution.”⁸¹¹

Likewise, the Council for Higher Education Accreditation includes “employer ratings of performance” and “self-reported growth by graduates” as recommended types of evidence that institutions can use to prove educational effectiveness.⁸¹²

This approach treats employers and alumni as stakeholders in the educational product produced by the law school.

F. Demonstrate How Data is Used to Improve Effectiveness.

Principle: The school demonstrates how educational outcomes data is used to improve individual student and overall program performance.⁸¹³

Comments:

It is not enough that a school simply collects data on educational outcomes. There is a general consensus that institutions must not only conduct assessments but also use the resulting data to determine whether they are delivering an effective educational program. The school should demonstrate how the collected evidence is used to improve instruction both at an individual student level and in furtherance of the overall educational mission of the school.

The accreditation standards of the Western Association of Schools and Colleges require that the results from institutional research be “used to . . . revise institutional . . . approaches to teaching and learning . . .”⁸¹⁴

⁸¹¹ WESTERN ASSOCIATION ACCREDITATION HANDBOOK, *supra* note 18, at 30.

⁸¹² *Student Learning Outcomes Workshop*, *supra* note 801, at 2.

⁸¹³ This principle was adapted from the accreditation standards of the Accreditation Council for Graduate Medical Education, *available at* <http://www.acgme.org/Outcome/>.

⁸¹⁴ Standard 4, WESTERN ASSOCIATION ACCREDITATION HANDBOOK, *supra* note 18.

A commitment to continuous improvement is a duty owed by educators to the general public. The ninth principle in the American Association of Colleges and Schools *Nine Principles of Good Practice in Student Assessment* states that:

Through assessment, educators meet responsibilities to students and to the public. There is a compelling public stake in education. As educators, we have a responsibility to the public that support or depend on us to provide information about the ways in which our students meet goals and expectations. But that responsibility goes beyond the reporting of such information; our deeper obligation – to ourselves, our students, and society – is to improve. Those to whom educators are accountable have a corresponding obligation to support such attempts at improvement.⁸¹⁵

The Association of American Colleges expresses a similar vision for the future of evaluating the success of American higher education: “the institution itself becomes a life-long learner, continuously assessing itself at all levels, then feeding the results back into improvement loops for both student learning and campus processes.”⁸¹⁶

Peggy L. Maki, a Senior Scholar with the American Association of Higher Education explains that a commitment to student learning requires institutions to develop and use data:

Accreditors are increasingly interested in learning about what an institution has discovered about student learning and how it intends to improve student outcomes

If an institution aims to sustain its assessment efforts to continually improve the quality of education, it needs to develop channels of communication whereby it shares interpretations of students’ results and incorporates recommended changes into its budgeting, decision making, and strategic planning as these processes will likely need to respond to and support proposed changes. Most institutions have not built into their assessment plans effective channels of communication that share interpretations of student achievement with faculty and staff, as well as with members of an institution’s budgeting and planning bodies – including strategic planning bodies. Assessment is certain to fail if an institution does not develop channels that communicate assessment interpretations and proposed changes to its centers of institutional decision making, planning, and budgeting.⁸¹⁷

In short, data collection about student outcomes is meaningful only to the extent that a law school *distributes* data to all interested parties and *uses* that data to improve itself, to change the curriculum, to change teaching and learning methods, and even to change the assessment methods themselves.

⁸¹⁵ *Nine Principles*, *supra* note 793.

⁸¹⁶ *Principles of Good Practice in the New Academy*, *supra* note 270, at 36.

⁸¹⁷ Maki, *supra* note 130, at 8.

