THE BUCKEYE INSTITUTE

July 6, 2026

Submitted via email

Daniel R. Thies
Council Chair
Council of the ABA Section of Legal Education and Admissions to the Bar

Re: Matters for Notice and Comment: Standard 303(c)

Dear Chair Thies:

The Buckeye Institute writes in response to the Council's request for comments on proposed revisions to Standard 303(c)[1] of the ABA Standards and Rules of Procedure for Approval of Law Schools (Accreditation Standards). The Buckeye Institute supports the Council's proposal to repeal Standard 303(c) and Interpretations 303-6, 303-7, and 303-8. Standard 303(c) exceeds the properly narrow role of accreditation, which is to ensure that law schools provide students with the knowledge, skills, ethical training, and professional preparation necessary for competent legal practice. The ABA's role as accreditor is not to impose uniformity on vague and contested issues.

Repeal would not prevent any law school from providing education on bias, cross-cultural competency, and racism if that instruction fits the school's institutional mission, so long, of course, as such instruction is not contrary to other legal requirements.[2] It would simply prevent that instruction from being imposed as a national accreditation requirement.

I. Standard 303(c)'s Background Suggests it is Unnecessary and Excessive

In 2020, deans of 150 of the 199 ABA-accredited law schools asked the ABA to add a new accreditation requirement mandating instruction on "bias, cultural competence, and anti-racism."[3] The deans only proffered support for the need for this training was their *belief* that "bias, cultural awareness, and anti-racism" are "essential parts of professional competence, legal practice, and being a lawyer." Forty-nine deans declined to sign the letter. Neither the Supreme Court of the United States nor any state supreme court filed any statement or provided any support for the theory that the training was necessary to effectively practice law in those jurisdictions. In 2022, the ABA added Standard 303(c) to its already extensive Accreditation Standards. This standard also entered a legal environment in which numerous states had already

[1] Council of the ABA Section of Legal Educ. & Admissions to the Bar, ***Revisions to Standards for Approval of Law Schools–Standard 303(c)*** (May 20, 2026) (Standard 303(c): "A law school shall provide education to law students on bias, cross-cultural competency, and racism").
[2] *See* **34 C.F.R. 602.18(a)** (requiring accrediting agencies to "consistently apply and enforce standards that respect the stated mission of the institution").
[3] **Letter from 150 Law School Deans to Council of the ABA Section of Legal Educ. & Admissions to the Bar** (July 30, 2020); American Bar Association, ***2020-2021 Annual Report, The Year in Review*** (2021) (listing 199 ABA accredited law schools in 2020).

enacted or considered laws restricting "critical race theory," "divisive concepts," or related instruction on race and bias.[4] Those laws created obvious tension for public law schools seeking to comply with Standard 303(c) while also acting consistently with state law. Notably, the soliciting deans were free to implement bias, cultural awareness, and anti-racism into their respective school's curriculum if they chose, however the creation of the accreditation standard both applied the imprimatur of the ABA to the policy and imposed a controversial requirement on *all* law schools, including those which did not join the letter requesting what became Standard 303(c).

II. Accreditation Should Not Be Used to Enforce Ideological Uniformity

Interpretations 303-6 and 303-7 illustrate why Standard 303(c) exceeds the proper role of accreditation: They convert contested social goals into mandatory professional obligations. To dispute the need for the accreditation standard is not to suggest that lawyers should be indifferent to bias, cross-cultural competency, or racism. Lawyers must represent clients competently and ethically, comply with the law and professional-conduct rules, and uphold equal justice under law.[5] As an accreditor, the Council may properly ensure that law students understand the ethical obligations of the profession, including obligations tested through the Multistate Professional Responsibility Examination, which is required for admission to the bar in most jurisdictions.[6] But it is not the proper role of an accreditor to require law schools to teach that every lawyer has an ABA-defined obligation to work to eliminate racism in the legal profession—particularly given that numerous policies that claimed to address race in hiring and education have been found to be unlawful in recent court opinions.[7]

The distinction between teaching professional conduct and the 303(c) mandate matters because the subjects covered by Standard 303(c) are not self-defining, and the empirical foundation for treating mandatory bias training as a required component of legal education remains contested. For example, scholars continue to dispute whether the Implicit Association Test[8] reliably measures bias or predicts discriminatory behavior, with one review reporting "very little evidence" that changes in implicit bias correspond to changes in behavior.[9] Recent research also found that mandatory diversity training may create resistance that undermines its intended effect by making some participants more likely to deny that discrimination remains a problem.[10] The

[4] *See, e.g.*, **Tenn. Code Ann. § 49-7-1904(a)(1)–(2)**; **Fla. Stat. § 1000.05(4)(a)**; **Iowa Code § 261H.8**.
[5] *See* Model Rules of Pro. Conduct rr. 1.1, 1.3, 1.4, 3.3, 8.4.
[6] ***Multistate Professional Responsibility Examination***, National Conference of Bar Examiners (last visited June 3, 2026).
[7] *See, e.g.*, ***Students for Fair Admissions, Inc. v. Presidents & Fellows of Harvard Coll.***, 600 U.S. 181, 221 (2023).
[8] The Implicit Association Test is a voluntary on-line test administered by Harvard University available at **Project Implicit**.
[9] Tom Bartlett, ***Can We Really Measure Implicit Bias? Maybe Not***, Chron. Higher Education, Jan. 5, 2017.
[10] Peter Jin, Gavan J. Fitzsimons & Aaron C. Kay, **Exploring the Counteractive Effects of Mandating Diversity Training: Solution Aversion, Reactance, and Polarized Social Beliefs**, J. Personality & Soc. Psych., December 15, 2025, at 12–13.

ABA's own notice reinforces the point: the Council proposed repeal after receiving feedback suggesting that Standard 303(c) "has not effectively achieved its purpose."[11]

The Supreme Court of the United States's bar-admission cases reinforce the same distinction. A state may assess professional competence, moral character, and fitness to practice law. But access to the legal profession may not be conditioned on adherence to official views or associations unrelated to fitness. In *Baird v. State Bar of Arizona*, the Court held that a qualified applicant could not be excluded from the profession based on protected beliefs or associations.[12] In *In re Stolar,* the Court likewise held that Ohio could not deny bar admission simply because an applicant refused to answer questions about beliefs and associations.[13] While these cases are not directly about accreditation, they reflect an important principle for professional gatekeeping: Professional standards may test competence and ethics, but they may not be used to enforce ideological conformity.

III. Recent Supreme Court Case Law Also Supports Repeal

Although Standard 303(c) does not expressly involve admissions or racial quotas, *Students for Fair Admissions v. Harvard* rejects institutional policies that treat individuals primarily through the lens of race. In explaining why race-based admissions practices were unconstitutional, the Court warned that universities may "further[] stereotypes that treat individuals as the product of their race, evaluating their thoughts and efforts—their very worth as citizens—according to a criterion barred to the Government by history and the Constitution."[14] Standard 303(c) creates a related concern in the accreditation context. By requiring every law school to provide mandatory instruction on bias, cross-cultural competency, and racism, the standard pressures schools to implement a uniform approach to contested questions of race, identity, and professional responsibility—questions that individual law schools should remain free to address according to their own missions and educational judgment.

Standard 303(c) also raises a distinct First Amendment problem because it uses accreditation to shape how law schools speak about contested questions of race, bias, identity, and professional responsibility. While status as a government-approved accreditor alone does not constitute state action,[15] the ABA occupies a unique role in legal education as the only recognized accreditor for law schools. The ABA itself recognizes that every U.S. state treats "graduation from a Council-approved law school as meeting the legal education requirements for eligibility to sit for the bar exam."[16] And courts have recognized the ABA's quasi-public role. In *Thomas M. Cooley Law School v. American Bar Association*, the Sixth Circuit described the ABA as "the national accrediting body for law schools" and analyzed the procedural obligations that attach when such

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[11] Council of the ABA Section of Legal Educ. & Admissions to the Bar, ***Revisions to Standards for Approval of Law Schools–Standard 303(c)*** (May 20, 2026).
[12] ***Baird v. State Bar of Arizona***, 401 U.S. 1, 6–8 (1971).
[13] ***In re Stolar***, 401 U.S. 23, 30–31 (1971).
[14] *Students for Fair Admissions, Inc.*, 600 U.S. at 221.
[15] *See* ***McKeesport Hosp. v. Accreditation Council for Graduate Medical Educ.***, 24 F.3d 519, 524 (3d Cir. 1994).
[16] **Frequently Asked Questions**, American Bar Association (last visited June 10, 2026).

a quasi-public accrediting body exercises authority over law schools.[17] While the ABA may not be "subject to the strictures of constitutional due process requirements," the ABA has a common law duty "to employ fair procedures when making decisions affecting their members."[18] As an institution effectively regulating legal education, the ABA should respect the free speech rights of the law schools it regulates.

Aside from the ABA's direct impact on the speech of law schools, it must also consider the conflict Standard 303(c) places on public law schools that are expressly bound by the First Amendment. Public law schools are state actors, and accreditation requirements that direct the content of their instruction therefore raise constitutional concerns not present in ordinary private accreditation.[19] Because the ABA is the sole federally recognized accreditor for J.D. programs and because every state treats graduation from an ABA-accredited law school as sufficient to satisfy the legal-education requirement for bar eligibility, the ABA standards operate as state-backed conditions on entry into the legal profession, thereby raising unique First Amendment concerns for public institutions.

In *Chiles v. Salazar,* the Court confirmed speech does not lose constitutional protection merely because it occurs in a regulated profession.[20] Law schools likewise engage in protected speech when they design curricula, teach professional identity, and decide how to frame contested legal and social questions. Yet accreditation standards operate as practical conditions for a law school's continued approval. Schools therefore cannot dismiss Standard 303(c) as a mere suggestion, nor can they reasonably ignore the Council's expectations when deciding how to teach race, bias, and professional identity.

Law students also have a First Amendment interest in a legal education shaped by a genuine, uninhibited marketplace of ideas.[21] That principle matters in legal education because Standard 303(c) imbues a specific social view of the law upon students at three formative points in the law-school experience: orientation, when students are first introduced to the profession, as part of professional responsibility training, and field placements or other experiential settings, where students begin applying professional norms in practice.[22]

IV. Standard 303(c) Illustrates the Dangers of Vague Accreditation Mandates

The current Department of Education accreditation framework confirms the vagueness problem. 34 C.F.R. § 602.16 requires accreditors to set "clear expectations" for student success "as established by the institution, including . . . consideration of State licensing examinations, course completion, and job placement rates."[23] The same rule also requires clear expectations for

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[17] ***Thomas M. Cooley Law School v. American Bar Association***, 459 F.3d 705, 707, 712–13 (6th Cir. 2006).
[18] ***Pro. Massage Training Ctr., Inc. v. Accreditation All. of Career Schs. & Colleges***, 781 F.3d 161, 170 (4th Cir. 2015).
[19] *See* ***Healy v. James***, 408 U.S. 169, 180 (1972) ("[S]tate colleges and universities are not enclaves immune from the sweep of the First Amendment.").
[20] ***Chiles v. Salazar***, 607 U.S. ___, slip op. at 7–8, 14–15 (2026).
[21] ***Red Lion Broadcasting Co. v. FCC***, 395 U.S. 367, 390 (1969).
[22] Am. Bar Assoc., ***Standards & Rules of Procedure for Approval of Law Schools 2025-2026***, at 23 (2025).
[23] **34 C.F.R. § 602.16(a)(1)(i)**.

"curricula."[24] Standard 303(c) does neither. It is not tied to measurable educational outcomes, bar passage, licensing, course completion, job placement, or other student-achievement measures. And although the requirement is embedded in the curriculum standard, it does not provide clear curricular expectations. Instead, Interpretation 303-8 states that the standard does "not prescribe the form or content" of the required education, leaving schools subject to accreditation review without a clear understanding of what compliance requires.

The same lack of clear guidance also creates problems under 34 C.F.R. § 602.17, which requires an accreditor to have "effective mechanisms for evaluating" institutional compliance before making accreditation decisions.[25] Standard 303(c) lacks such mechanisms because it does not define the required competency, identify measurable objectives, or explain how schools will be judged. Interpretation 303-8 makes the problem worse. By stating that the standard does "not prescribe the form or content" of the required education, the interpretation leaves compliance to the subjective judgment of ABA decisionmakers. The problem, therefore, is not only that schools lack clear notice of what compliance requires, but also that compliance must later be measured by unknown decisionmakers applying an inherently subjective standard. One evaluator may deem a school's programming sufficient; another may find the same programming inadequate because it does not use the preferred framework, vocabulary, or emphasis. Accreditation standards should not turn on that kind of "I know it when I see it" judgment.

Section 602.18(a) likewise requires accreditors to "consistently apply and enforce standards that respect the stated mission of the institution, including religious mission, . . . to achieve its stated objective for the duration of any accreditation or preaccreditation period." Standard 303(c) conflicts with that principle because it forces schools with different religious, philosophical, pedagogical, and intellectual missions into a single mandatory framework on contested subjects. Although Interpretation 303-8 leaves schools discretion over the form and content of the required education, it still imposes a framework that pressures schools toward ideological conformity while purporting to respect mission-based differences.

V. Conclusion

The Council therefore should repeal Standard 303(c). Repeal would not prevent law schools from teaching about racism, bias, and cultural competency. It would simply return those curricular choices to individual law schools, where they belong. Standard 303(c) is unnecessary, legally questionable, difficult to enforce, and detached from measurable educational quality. Its repeal would better respect institutional mission, educational pluralism, and the proper limits of accreditation.

Respectfully,
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The Buckeye Institute

[24] **34 C.F.R. § 602.16(a)(1)(ii)**.
[25] **34 C.F.R. § 6.17**.