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**MEMORANDUM**

**TO:** Committee on Educational Planning, Policies, and Programs

**FROM:** Margaret Spellings, President

**DATE:** June 16, 2017

**SUBJECT:** Recommended Findings and License Restrictions for Charlotte School of Law

**I. BACKGROUND**

Pursuant to N.C.G.S. § 116-15, the Board of Governors is responsible for the licensure of nonpublic post-secondary degree granting institutions in North Carolina. UNC General Administration (UNC-GA) has the authority to perform compliance reviews to ensure that licensed institutions continue to meet the statutory and regulatory standards for licensure, as set forth in the *Rules and Standards for Licensing Nonpublic Institutions to Conduct Post-Secondary Degree Activity in North Carolina*. If an institution is not in compliance, the Board of Governors may revoke the institution's license, or may place conditions on the license until the institution coming into compliance. It is generally expected that before closing an academic program, arrangements will be made to ensure that existing students can either complete the course of study or transition to another program without disadvantaging the students, an arrangement commonly referred to as a "teach out."

The Charlotte School of Law (CSL) has been licensed to conduct post-secondary degree activity in North Carolina since 2005. Effective November 14, 2016, the American Bar Association (ABA), CSL's accrediting organization, placed the institution on a two-year probation, finding "substantial and persistent" noncompliance with certain ABA accreditation standards. Shortly after the ABA action, the Department of Education denied CSL's application for recertification for participation in Title IV programs, a decision that was finalized by letter dated January 18, 2017. On January 24, 2017, UNC General Administration initiated a licensure review, which included engaging outside reviewers with expertise in financial operations and law school academic program matters. UNC General Administration had communicated its concerns about CSL to the North Carolina Department of Justice prior to initiating the compliance review.<sup>1</sup>

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<sup>1</sup> G.S. 116-15(j) states that [t]he Board shall call to the attention of the Attorney General, for such action as he may deem appropriate, any institution failing to comply with the requirements of this section."

General Administration's review resulted in a staff report finding:

- Noncompliance with Standard 10.A.(1) of the *Rules and Standards*, for failure to demonstrate financial resources indicating the institution is capable of maintaining operational continuity;
- Noncompliance with Standard 10.A.(3), for failure to demonstrate an adequate financial plan for long-range management of the institution;
- Noncompliance with Standard 10.A.(4), due to recent financial records and audit reports that do not demonstrate financial stability; and
- Noncompliance with Standard 10.A.(6), for failure to maintain an adequate tuition guaranty bond.

In addition, the report noted concerns regarding CSL's ability to continue to remain in compliance with Standard 3, which focusses on the quality of the program of study. The staff report is attached hereto.

Because the staff report could potentially lead to a decision by the Board to revoke CSL's license, the report was forwarded to CSL on May 24, 2017, in accordance with Section IX of the *Rules and Standards*.

As allowed by the *Rules and Standards*, CSL requested an interview and an opportunity to provide additional information regarding the findings in the report. CSL provided supplemental information, and met with staff on June 16, 2017, to discuss the report and explain the steps they have taken to address the findings.

CSL indicates they are working on a series of actions that will allow them to address the findings regarding Standard 10 and continue to operate on a financially stable base, including the restructuring of its debt agreements with certain investors. CSL has described the financial restructuring in detail, and has made their chief financial officer, president, and others available to meet with UNC-GA staff and external reviewers to answer questions about CSL's financial operations. CSL has committed to providing all documents and signed agreements regarding these arrangements as the restructuring progresses, but those materials are not yet available.

In addition, CSL shared with staff additional information regarding its remaining student population. According to CSL, they currently enroll 11 first-year students (most of whom are part-time students who have partially completed their first year), 55 second-year students, and 34 third year students. CSL has indicated that a significant number of these students hope to complete their education at CSL, and that many have no other options due to family or work considerations that prevent them from leaving the Charlotte area. There are currently 73 students who are on "leave of absence" status, meaning that they are not currently enrolled but have not officially withdrawn. CSL expects that many of these students would return if the Department of Education allows participation in Title IV programs.

CSL and UNC-GA staff have discussed and recognize the need to address issues associated with students who are still enrolled or are partway through their programs at CSL. Of paramount importance is the assurance of a path towards degree attainment for those students who wish to finish their legal education at CSL. In order to ensure that these students are protected and afforded the opportunity to continue with their education, informed and prompt action by the Board is appropriate. While much information about CSL is available now, further determinations regarding CSL's potential to continue to operate will need to be addressed as the necessary information becomes available. The information and materials that CSL has provided have been reviewed and considered, and these recommendations are presented to the Board of Governors for consideration and approval.

## **II. RECOMMENDED FINDINGS AND DISPOSITION OF LICENSE**

At this time, it is recommended that the Board of Governors find as follows:

**Standard 10: Finance and Organization** - The institution must be financially sound and capable of fulfilling its commitments to students.

1. Standard 10.A.(1): Stability – Financial resources should be characterized by stability that indicates the institution is capable of maintaining operational continuity for an extended period of time. The minimum “extended period of time” is the duration of the most lengthy post-secondary degree program offered.

*Finding* -- CSL has indicated that it is working on addressing issues concerning its financial stability, and that it expects to remedy through a financial restructuring that is underway. CSL has also provided financial information in support of a plan for continued operations during a teach-out of current students, and is continuing to provide information concerning its finances and stability. Based on the information available at this time, CSL has not yet demonstrated that its financial resources are characterized by stability that indicates the institution is capable of maintaining operational continuity for an “extended period.”

2. Standard 10.A.(3): Plan for Financial Development – A coordinated, comprehensive, flexible financial plan (budget) for long-range management of the institution must be maintained.

*Finding* – CSL has presented documents setting forth a financial plan for a “teach out” of current students. Although CSL indicates that it is undertaking a financial restructuring, it has not yet provided revised or projected financial statements or budget documents demonstrating the effects of that restructuring. While CSL expects to provide this additional information, the facts and information provided by CSL and reviewed by staff and external reviewers to date support this finding.

3. Standard 10.A.(4): Financial Records and Audit Report – The institution's recent financial history must demonstrate financial stability.

*Finding* – Although CSL has indicated that it is working on addressing issues concerning its financial stability through a financial restructuring that would address certain matters in its financial records and audit report, CSL’s recent financial history as reflected in the materials presented during the review does not demonstrate financial stability at this time.

4. Standard 10.A.(6): Bonding – Tuition guaranty bond, or equivalent, of not less than \$10,000 and at least equal to or higher than the maximum amount of prepaid tuition held (i.e., unearned tuition held) existing at any time during the most recent fiscal year must be maintained

*Finding* – CSL does not currently maintain a surety bond in the required amount, and did not maintain a bond in the required amount during the last fiscal year. Given the substantially reduced current enrollment, the bonding requirement will be addressed further below.

These noncompliance issues must be considered in light of the fact that there is still a substantial number of students currently enrolled at CSL who would like to complete their course of study at that institution.

**Standard 3: Program of Study** – The substance of each course, program of study, equivalent experience, or achievement test must be such as may reasonably and adequately achieve the stated objective for which the study, experience, or test is offered in order to be certified as successfully completed.

**Standard 5: Faculty and Other Personnel Qualifications** – The education, experience, and other qualifications of directors, administrators, supervisors, and instructors must be such as may reasonably ensure that the students will receive, or will be reliably certified to have received, education of good quality consistent with the stated objectives of any course or program of study, equivalent experience, or achievement test offered by the institution.

*Finding* – While there are no findings specific to compliance with Standards 3 and 5, the staff report observed that CSL’s objectives for addressing the issues essential to compliance with Standard 3 are not clearly supported by detailed, feasible plans for achieving those objectives. Moreover, the steps necessary to achieve the objectives identified by CSL, as described in its remedial plan submitted to the ABA as a condition of its probation (the “Reliable Plan”), could potentially worsen CSL’s financial stability. CSL may provide additional information regarding its plans to achieve its goals. The Reliable Plan CSL submitted to the ABA for approval is currently under review.

### **III. PRESIDENT’S RECOMMENDATION FOR DISPOSITION OF CHARLOTTE SCHOOL OF LAW’S LICENSE**

The American Bar Association (ABA) has placed Charlotte School of Law (CSL) on probation for two years, beginning November 14, 2016, based on its finding that CSL is in substantial and persistent noncompliance with ABA accreditation standards 301 and 501. In response, CSL has asked the ABA to approve: (a) a plan to teach-out any remaining CSL students in anticipation of possible closure of

the school; and (b) a remedial plan (which is referred to by the ABA as a “Reliable Plan”) in anticipation of CSL’s continued operation as an accredited law school. The U.S. Department of Education has suspended CSL’s continued participation in Title IV programs. CSL has petitioned the Department of Education for reinstatement in Title IV programs, and CSL’s request remains under consideration. CSL is currently under investigation by the North Carolina Department of Justice, Consumer Protection Division, based on the division’s concerns about CSL’s future viability, the effects of CSL’s viability on CSL students, and the Consumer Protection Division’s concerns about keeping students fully informed about CSL’s status.

Based on the foregoing, the CSL information and materials reviewed to date, CSL’s financial status, and the potential impact on current CSL students, I recommend that the Board of Governors impose the following limitations on CSL’s license, pending further action and review of CSL’s compliance with the Board of Governors Rules and Standards:

1. CSL shall not admit any new or additional students to CSL until such time as this condition may be removed by further action of the Board of Governors.
2. No later than August 1, 2017, and subject to item 3, below, CSL shall present to the Licensure Unit such evidence as the Licensure Unit may deem necessary to show that CSL has remedied any deficiencies and has come into full compliance with the licensure standards for which the Board has found it to be out of compliance.
3. CSL shall immediately obtain, maintain, and provide proof to the Licensure Unit of a tuition guaranty bond in an amount at least equivalent to the amount of prepaid tuition to be paid by the maximum number of students who may participate in the teach-out CSL has proposed for the ABA’s consideration. The bond shall otherwise comply with Standard 10 of the Rules and Standards.
4. CSL may continue to conduct post-secondary degree activity in North Carolina at this time and on a limited basis while it develops and seeks ABA approval of an appropriate teach-out plan that fully protects the interests of CSL students who may wish to complete their CSL degree programs, and/or approval for continued operation as an accredited law school, subject to the following requirements:
  - a. CSL’s plan for teaching out its remaining students and/or remedial plan for continued operation as an accredited law school, must be approved by the American Bar Association (ABA) no later than August 10, 2017; and
  - b. The Department of Education (DOE) must determine no later than August 10, 2017, that any CSL student who remains enrolled may participate in Title IV federal loan programs.

5. CSL shall keep the Licensure Unit fully informed of the progress and the status of:
  - a. The investigation of CSL by the Consumer Protection Division of the North Carolina Department of Justice;
  - b. The ABA's consideration of CSL's request to approve its teach-out plan and remedial plan; and
  - c. The Department of Education's consideration of CSL's request for reinstatement for participation in Title IV programs.
6. CSL shall promptly distribute the findings and determinations of the Board of Governors, including this document, to:
  - a. All CSL students, including currently enrolled students, and students who have the status of "leave of absence" or "withdrawn";
  - b. The ABA;
  - c. The Department of Education; and
  - d. The North Carolina Department of Justice, Consumer Protection Division.
7. Nothing herein shall limit the Licensure Unit from conducting additional review, or the Board of Governors from taking further action, on any matter relating to CSL's operations and licensure, including without limitation such further review, recommendations, and actions as the Licensure Unit or the President may deem to be appropriate due to changes in CSL's circumstances, the development of new information, and the actions of the ABA, the Department of Education, or the North Carolina Department of Justice.
8. CSL has indicated that it believes it has the ability to remain open and become financially stable. CSL also expects that, upon the occurrence of certain financial restructuring events that it expects to consummate in the immediate future, CSL will be recertified by the U.S. Department of Education to participate in the federal Title IV student loan program. Provided that all conditions and requirements in items 1 through 6 are met, and subject to item 7, the Licensure Unit at UNC General Administration shall expeditiously review and present for the President's consideration possible actions that the Board may take to adjust or remove limitations on CSL's license.
9. Unless the Board of Governors takes further action, CSL's license shall expire on the earlier of:
  - a. The failure to meet the conditions set forth in items 1 through 4(a) and (b), above; or
  - b. May 30, 2019.



**Junius J. Gonzales, M.D., M.B.A.**  
**Senior Vice President for Academic Affairs**

Office: 919-962-4614  
Email: [jjgonzales@northcarolina.edu](mailto:jjgonzales@northcarolina.edu)

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May 24, 2017

Mr. Chidi Ogene  
President, Charlotte School of Law  
201 S. College Street, Suite 400  
Charlotte, NC 28244

Dear Mr. Ogene,

According to N.C.G.S. § 116-15(h), "[a]ny institution holding a license to conduct post-secondary degree activity in this State that is found by the Board of Governors not to satisfy the licensure requirements of this section shall have its license to conduct post-secondary degree activity in this State revoked by the Board; provided, that the Board of Governors may continue in force the license of an institution deemed by the Board to be making substantial and expeditious progress toward remedying its licensure deficiencies."

Section VIII.K of the *Rules and Standards for Licensing Nonpublic Institutions to Conduct Post-Secondary Degree Activity in North Carolina* states that "[a]ny institution that acquires licensure shall be subject at any time to review by the Board of Governors to determine whether the institution continues to meet standards for licensure." Section IX of the *Rules and Standards* requires that "the institution . . . be notified in writing of any staff recommendations that might result in revocation, with the grounds set forth for the action contemplated. The institution may request, in writing, within ten days of receipt of the notification, an interview to respond to the recommendation of noncompliance."

In January, 2017, the Licensure Unit of the University of North Carolina General Administration initiated a compliance review for the Charlotte School of Law. The Licensure Unit made several document requests to the institution. The staff for the Licensure Unit engaged reviewers who reviewed the documents submitted by the institution and prepared the enclosed report, which considers the institution's compliance with Standards 3 (Program of Study), 5 (Faculty and Other Personnel Qualifications), and 10 (Finance and Organization). The staff has accepted the report, and recommends the following findings:

**Standard 10.A.(1): Stability**

Charlotte School of Law has not demonstrated that its financial resources are characterized by stability that indicates the institution is capable of maintaining operational continuity for an "extended period," which, in CSL's case, means at least three years.



Standard 10.A.(3): Plan for Financial Development

Charlotte School of Law has not demonstrated that it maintains a "coordinated, comprehensive, flexible financial plan (budget) for long-range management of the institution."

Standard 10.A.(4): Financial Records and Audit Report

Charlotte School of Law's recent financial history does not demonstrate financial stability.

Standard 10.A.(6): Charlotte School of Law has not demonstrated that it maintains a tuition guaranty bond of not less than \$10,000 and at least equal to or higher than the maximum amount of prepaid tuition held (i.e., unearned tuition held) existing at any time during the most recent fiscal year.

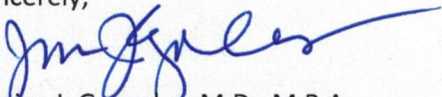
Standards 3 and 5

While there are no findings specific to compliance with Standards 3 and 5, the Reviewers observe that Charlotte School of Law's objectives for addressing the issues essential to compliance with Standard 3 are not supported by detailed, feasible plans for achieving those objectives. Moreover, the steps necessary to achieve the objectives identified by Charlotte School of Law would likely worsen the institution's financial stability.

This report and the staff's recommendation is hereby submitted to the Charlotte School of Law for its review, pursuant to the *Rules and Standards*. Because the staff recommendation could ultimately result in revocation of the institution's license, the institution has ten days from the receipt of this notification, pursuant to the *Rules and Standards*, to request an interview to respond to the recommendation of noncompliance. In order to facilitate this interview, we have scheduled June 7, 2017, at 2:00 pm, to meet with representatives of Charlotte School of Law at the University of North Carolina General Administration Building.

In accord with the *Rules and Standards*, any supplemental material submitted by the institution will be taken under consideration in developing the President's recommendation to the Board of Governors, notwithstanding the contents of the report or the staff's recommended findings that are being presented to Charlotte School of Law today based on that report. If you would like to submit additional documentation prior to the June 7, 2017, meeting, please direct any such documentation to Dr. Kimberly van Noort.

Sincerely,



Junius J. Gonzales, M.D., M.B.A.

Senior Vice President for Academic Affairs

cc: Thomas Shanahan, University of North Carolina General Administration  
Kimberly van Noort, University of North Carolina General Administration  
Liz Riley, Charlotte School of Law



**Report to the University of North Carolina**

**Charlotte School of Law's Compliance  
with Licensure Standards**

**Charlotte School of Law**  
Charlotte, North Carolina

**Date of Report: May 24, 2017**

**REVIEWERS**

**Dr. Frank Prochaska (Chair), Retired Associate Vice President for Academic Affairs, University of North Carolina General Administration, Chapel Hill, North Carolina; and Professor of Chemistry Emeritus, Western Carolina University, Cullowhee, North Carolina**

**Paul Kurtz, Associate Dean & Professor Emeritus, University of Georgia School of Law, Athens, Georgia**

**Michael Juby, First Tryon Advisors, Charlotte, North Carolina**

## **BACKGROUND**

Charlotte School of Law (CSL), located in uptown Charlotte, is a for-profit law school wholly-owned by InfiLaw Corporation. It was founded in 2004 and granted licensure by the University of North Carolina Board of Governors in 2005 to offer the Juris Doctor degree program. After enrolling its first class in 2006, the School was granted provisional approval by the American Bar Association (ABA) in 2008. Charlotte School of Law received full approval from the ABA on June 10, 2011.

Charlotte School of Law is currently licensed by the University of North Carolina Board of Governors to offer the Juris Doctor (J.D.) and the Master of Laws (LL.M.) in American Legal Studies degree programs.

The American Bar Association is responsible for law school accreditation. Accreditation by a recognized accreditor is a prerequisite for participation in Title IV programs. Prior to its full approval by the ABA, CSL was able to participate in Title IV programs under a provisional Program Participation Agreement (PPA) that was executed in 2009. Charlotte School of Law's last PPA was executed in July 2011.

Following an on-site Three-Year Interval evaluation of CSL, the ABA issued an Inspection Report dated September 15, 2014, and invited Charlotte School of Law to provide comments and/or note any factual errors. The cover letter to the report stated that the ABA Accreditation Committee was to consider the school's continued accreditation at its January 22-24 2015 meeting. CSL submitted its response to this report in October 2014.

The Committee considered both the Inspection Report and Charlotte School of Law's response at its January 2015 meeting, and subsequently issued a decision, finding, among other things, that there was reason to believe that CSL was not in compliance with certain ABA standards. While some of the compliance issues were relatively minor, the Committee requested additional information to make a determination as to CSL's compliance with Standards 301(a), 501(a), 501(b), and Interpretation 501-1. These standards pertain to the rigor of the educational program in preparing students for admission to the bar. Accordingly, the Committee requested that CSL submit a report "with all relevant information necessary to demonstrate compliance with the Standards."

- Standard 301(a) states, “A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”
- Standard 501(a) states, “A law school shall maintain sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.”
- Standard 501(b) states, “A law school shall not admit an applicant who does not appear capable of satisfactorily completing its program of legal education and being admitted to the bar.”
- Interpretation 501-1 states, “Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school’s entering students, the academic attrition rate of the law school’s students, the bar passage rate of its graduates, and the effectiveness of the law school’s academic support program.”

Charlotte School of Law submitted its response to the Committee in December 2015, after which the Accreditation Committee issued its decision on CSL’s status. The Committee concluded that Charlotte School of Law was not in compliance with Standards 301(a), 501(a), 501(b), and Interpretation 501-1. The Committee requested that CSL submit a report with all relevant information necessary to demonstrate compliance, to be considered at the Committee’s June 2016 meeting. The Committee requested specific information regarding bar passages rates for students in the lower percentiles for LSAT scores and/or undergraduate GPAs. In addition, the Committee requested that the President and the Dean of CSL appear at a hearing before the Committee to determine whether sanctions should be imposed.

Following the June 2016 meeting, at which a hearing was held, the Committee issued a decision in which it found, once again, that Charlotte School of Law was not in compliance with Standards 301(a), 501(a), 501(b), and Interpretation 501-1. The Committee stated that the issues of non-compliance “are substantial and have been persistent. The Law School’s plans for bringing itself into compliance with the Standards have not proven effective or reliable. Further, the Law School has not shown sufficient cause why it should not be directed to take specific remedial action to come into compliance with the Standards.” The remedial action

directed by the Committee included the development of a reliable plan to bring CSL into compliance, the reporting of its admissions data and methodology, a site visit to be conducted by October 1, 2016, notification to all CSL students of the remedial actions required by the American Bar Association, and specific notification requirements to CSL students regarding bar passage rates and its compliance status with the ABA. CSL appealed aspects of this, the third Committee decision, to the Council of the Section of Legal Education and Admissions to the Bar of the ABA (the Council).

At the October 2016 meeting of the Council, a hearing was held at which Charlotte School of Law accepted the finding of noncompliance with Standards 301 and 501, but requested that the Committee overturn its finding that its noncompliance was “substantial and persistent.” CSL also requested the elimination of the public disclosure requirement, requested that the remediation period begin in July 2016 rather than February 2016, and asked that the Committee provide greater clarity as to its expectations.

On November 14, 2016, the Council affirmed the Committee’s findings of noncompliance, including that the noncompliance was substantial and persistent, and that CSL’s plans for bringing itself into compliance have not proven effective or reliable. As a result of its findings, the Council placed Charlotte School of Law on a two-year probation, effective November 14, 2016, and directed that CSL take a number of remedial actions, including public notification of its probationary status.

On December 19, 2016, the Department of Education (DOE) informed Charlotte School of Law that it denied CSL’s application for recertification for participation in Title IV programs, and that CSL’s participation in those programs will conclude on December 31, 2016. (Attachment 1 – Letter from Department of Education) The DOE based its recertification denial largely on CSL’s failure to meet the requirements established by its accreditor, the American Bar Association, as evidenced by the Committee’s findings and the Council’s imposition of a two-year probation due to substantial and persistent noncompliance. In addition, the Department of Education cited substantial misrepresentations by Charlotte School of Law regarding the status of its accreditation and the nature of the educational program offered by CSL.

Charlotte School of Law was provided with an opportunity to respond to the DOE’s denial of its recertification, which it did by letter requesting reconsideration dated January 5, 2017.



The Department of Education denied the request for reconsideration by letter dated January 18, 2017. Despite their inability to participate in Title IV programs, the release of a substantial number of its faculty, and a sharp reduction in its enrollment as a result of the ABA and DOE actions, Charlotte School of Law continued its academic year and held classes for spring semester 2017. (Note: On or around May 5, 2017, the DOE agreed to release the second disbursement of Title IV funds, payable to the accounts of students who had been previously approved for fall-spring loans but had only received their fall disbursement.)

Following the DOE's denial in January of the request for reconsideration, the Licensure Unit of the Board of Governors initiated a review of Charlotte School of Law's compliance with licensure requirements. (Attachment 2 – Letter from UNC General Administration) The Licensure Unit has made several requests for documentation from Charlotte School of Law, to which CSL has responded, and has met with representatives of Charlotte School of Law and CSL's counsel on several occasions.

On March 10, 2017, the North Carolina Department of Justice sent Charlotte School of Law a Civil Investigative Demand, citing concerns in light of the American Bar Association's and Department of Education's actions, as well as CSL's lack of clear communication to its students about the future of the school. (Copies of that Investigative Demand, the cover letter to the demand from the North Carolina Department of Justice, the letter sent to UNC-GA from the Department of Justice expressing "serious concerns" about "the ability of Charlotte School of Law to fulfill its commitments and provide students with an adequate education...", and the letter sent in response by UNC-GA's Senior Vice President and General Counsel are all attached to this report as Attachments 3, 4, 5, and 6, respectively.)

As part of the Licensure Unit's review of Charlotte School of Law's compliance with licensure requirements, Dr. Kimberly van Noort, Vice President for Academic Programs, Faculty, and Research at the University of North Carolina General Administration appointed a Team of Reviewers to evaluate Charlotte School of Law's compliance with the standards contained in The University of North Carolina Board of Governors' *Rules and Standards for Licensing Nonpublic Institutions to Conduct Post-Secondary Degree Activity in North Carolina*. The Team of Reviewers focused on Standard 3 (Program of Study), Standard 5 (Faculty and Other Personnel Qualifications), and Standard 10 (Finance and Organization). In preparing its report,

the Reviewers reviewed and utilized the documentation and data provided by Charlotte School of Law.

***STANDARD 10 of the UNC Board of Governors Rules and Standards for Licensing Nonpublic Institutions - FINANCE AND ORGANIZATION***

First Tryon Advisors (“First Tryon”) conducted a comprehensive review (the “Review”) of the financial health and business model of the Charlotte School of Law (“CSL”) in relation to the Board of Governor’s *Rules and Standards*. First Tryon's written report of its comprehensive review is provided at the end of this report as Attachment 7.

Under Standard 10 of the *Rules and Standards*, Charlotte School of Law must demonstrate to the Board’s satisfaction that CSL is “*financially sound and capable of fulfilling its commitments to students.*” The *Rules and Standards* further state that CSL must show that it possesses and maintains “*adequate financial resources to sustain its mission and purpose.*” CSL’s stated mission is “*to provide a student-centered education, that produces practice-ready lawyers and that serves underserved communities.*”

Summaries of the finance-related criteria established under the *Rules and Standards* are presented below, which serve as a guide for evaluating Charlotte School of Law’s compliance with Standard 10 of the *Rules and Standards*.

**Overview of the Finance-Related Guidelines under Standard 10**

- **Stability (Standard 10.A.(1))**

CSL must demonstrate to the Board’s satisfaction that CSL’s financial resources are characterized by stability that indicates the institution can maintain operational continuity for an “extended period,” which, in CSL’s case, means at least three years.

- **Adequacy (Standard 10.A.(2))**

CSL must demonstrate adequate financial support, which is determined, in part, based on an analysis of various ratios, as well as CSL’s financial policies, procedures and practices.

- **Plan for Financial Development (Standard 10.A.(3))**

CSL must demonstrate to the Board's satisfaction that CSL maintains a "coordinated, comprehensive, flexible financial plan (budget) for long-range management of the institution."

- **Financial Records and Audit Report (Standard 10.A.(4))**

The institution's recent financial history must demonstrate financial stability. CSL must submit financial statements, the most recent audit report, a description of any material **changes in the audit report and a detailed disclosure of legal and binding relationships** with any parent or subsidiary corporation or institution.

- **Other Criteria (Standards 10.A.(5) and 10.A.(6))**

CSL must also demonstrate to the Board's satisfaction that it maintains (1) adequate insurance to protect its financial interests and (2) a tuition guaranty bond at least equal to the maximum amount of unearned tuition held at any time during the most recent fiscal year.

First Tryon made the following findings, as set forth in more detail in Attachment 7:

### **1. Liquidity Concerns**

As discussed in the *Put Option and Collateralized Obligations* and in the *Cash Pooling Arrangement* sections of Attachment 7 (page 2), CSL appears unable to maintain adequate financial resources to sustain its mission, purpose and operational continuity for the next three years, as required by Standard 10.

### **2. Statistics and Trends**

As discussed in the *Enrollment* section of Attachment 7 (pages 2-3), the uncertainty surrounding Charlotte School of Law's Title IV eligibility, its historical dependence on Title IV funding, and its status with the ABA, together with CSL's inability to forecast the impact of those factors on its enrollment, calls into question (1) the existence of a "coordinated, comprehensive, flexible financial plan" for its long-range management and (2) CSL's ability to maintain adequate financial resources to sustain its mission, purpose and operational continuity for the next three years, in each case as required by Standard 10.

As discussed in the *Financial Adequacy* section of Attachment 7 (pages 3-4), given CSL's declining enrollment, the data presented in this section raise concerns regarding the

adequacy, as evaluated under Standard 10, of CSL's financial support for its mission to provide a "student-centered education."

### **3. Going Concern Disclosures**

As discussed on pages 4-5 of Attachment 7, the Going Concern Disclosures in the FY2016 Audit, along with the FY2016 Audit's disclosures regarding InfiLaw's recent inability to remain in compliance with its covenants under the Preferred Unit Purchase (PUP) and Credit Agreements, do not indicate a recent history of financial stability for CSL and its affiliates, nor do they support a finding that CSL has a "coordinated, comprehensive, flexible financial plan (budget) for long-range management of the institution" or the ability to maintain adequate financial resources to sustain its mission, purpose and operational continuity for the next three years, in each case as required by Standard 10.

### **4. Tuition Guaranty Bond**

As discussed on page 5 of Attachment 7, Charlotte School of Law does not currently hold a tuition guaranty bond in compliance with the requirements of Standard 10. During the compliance review process, the Licensure Unit has repeatedly and consistently informed Charlotte School of Law that the failure to obtain a bond calculated according to the required formula constitutes continued noncompliance with state licensing requirements. To date, although CSL has placed money in escrow to hold students harmless in the event of closure, CSL has not obtained a proper bond.

To date, Charlotte School of Law also has not provided information sufficient to establish the "maximum amount of prepaid tuition held ... at any time" during the fiscal year ended July 31, 2016 in the manner prescribed under Standard 10, nor has CSL provided a statement from an independent certified public accountant stating that the existing principal amount of its tuition guaranty bond is at least equal to such amount, as required by Standard 10.

### ***STANDARD 3 - of the UNC Board of Governors Rules and Standards for Licensing Nonpublic Institutions - PROGRAM OF STUDY***

Paul Kurtz, Associate Dean & Professor Emeritus, University of Georgia School of Law, reviewed Charlotte School of Law's compliance with Standards 3 and 5 of the *Rules and Standards*. As in previous licensure reviews of CSL, the *Rules and Standards* were supplemented by the American Bar Association's standards (chapters) as follows: Standard 3



(Program of Study) by Chapter 3, Program of Legal Education; and Standard 5 (Faculty and Other Personnel Qualifications) by Chapter 4, the Faculty. Dean Kurtz's written report is attached hereto as Attachment 8.

As stated in Standard 3 of the *Rules and Standards*, "*The program of study offered by an institution must reflect and support the mission of the institution and achieve the stated objectives.*" Furthermore, "*The institution shall have an academic curriculum that is designed to reasonably and adequately achieve its mission and educational objectives.*"

As presented in the Introduction to this report, and as discussed in more detail in Attachment 6, the American Bar Association (ABA) concluded in its most recent review that Charlotte School of Law is not in compliance with Standards 301(a), 501(a), 501(b), and Interpretation 501-1 of the *ABA Standards and Rules of Procedure for Approval of Law Schools* (hereinafter *ABA Standards*). The ABA's findings of CSL's noncompliance with these four standards are discussed in more detail in Attachment 8, pages 13-18 and 26-28.

A brief summary of some of Dean Kurtz's major findings, as set forth in Attachment 6, are provided below.

One of the ABA Accreditation Committee's findings concerning Charlotte School of Law, in Finding (12) (p. 4, Accreditation Committee Decision, January, 2016) focused on bar passage rates:

The first-time bar passage differential has been worsening over the past few years, and the Law School has been taking measures to address the issue. The 2013 calendar year had a differential rate between the relevant state averages and the Law School average of -8.7 [%]; 2014 was -12.2 [%]; and 2015 was -18.4 [%]. Given the [declining performance of entering classes on the Law School Admissions Test] the bar passage rates might continue to be 15 points or more below [the relevant state averages].

Recent data obtained by the Reviewers from the North Carolina Attorney General's Office indicates that the negative trend identified by the ABA has continued to worsen, as the first-time bar passage differential for CSL students for the February, 2016 test was -16.4%, and the parallel number for the July, 2016 test was -20.70%, and for February, 2017 was -19.44%.

In its January, 2016 decision the Accreditation Committee concluded, on the basis of Finding (12) and findings dealing with bar preparation, curriculum, writing requirements, and other items, that Charlotte School of Law had not demonstrated compliance with Standard

301's mandate of a "rigorous program of legal education that prepares its students...for admission to the bar....." The Committee then asked the school to provide, by May 1, 2016, a report demonstrating compliance with Standard 301. CSL filed the requested report in May and appeared at a hearing before the Accreditation Committee in June, 2016. The Accreditation Committee's decision was issued in July, 2016.

After again finding Charlotte School of Law not in compliance with Standard 301, the Accreditation Committee concluded its decision of July, 2016 with a list of five remedial actions, including the submission of a "reliable plan" for "bringing the Law School into compliance with Standard() 301(a)...." (Accreditation Committee Decision of July, 2016 (p. 12)).

The school appealed the Accreditation Committee's decision to the Council of the ABA Section on Legal Education and Admissions to the Bar. The Council's resolution of the appeal, issued on November 14, 2016, affirmed the findings and conclusions of the Accreditation Committee and added an additional sanction. Because of what it concluded were "substantial and persistent" violations of these Standards, the Council placed the school on probation for two years and required the school to publicize this fact to all of its students and to place a notice of the probation on its website.

In December, 2016, Charlotte School of Law submitted to the Accreditation Committee a 38-page "reliable plan" for remedying its violations of the ABA Standards. The document identified five major goals.

In addition to restructuring the J.D. curriculum and bar preparation programs (Goals 2 and 3), the fundamental objective of this plan is the improvement of the quality of student being enrolled (Goal 1). The first stated goal of the "reliable plan" is to "[r]apidly increas[e] entering class academic indicators, particularly the LSAT profile." While this is a worthy goal, the Plan, other than including charts showing projected gradual increases in LSAT scores for the entering classes over the next several years to a level "comparable to those of earlier entering classes...before bar passage rates began to decline," offers no clear explanation of exactly how this goal will be achieved. In fact, the plan itself seems to acknowledge the difficulty of achieving this goal in light of the school's current probationary status with the ABA and the Department of Education's termination of Title IV eligibility for student loans (see Note 2 of the Reliable Plan, at page 5). Getting better-qualified students to enroll in the school while it is on

probation and while the ability to secure federal loans is at best uncertain and will be a significant challenge.

Furthermore, the school's ABA Annual Questionnaire filed in the fall of 2016 shows the 25<sup>th</sup> percentile of the entering class' LSAT scores to be 141, the 50<sup>th</sup> percentile as 144, and 75<sup>th</sup> percentile as 148. According to the projections in the "Reliable Plan," CSL hopes these numbers will be 145-46/149/151-152, respectively, for the class entering in August, 2018 (Reliable Plan, p. 6). This is an extremely ambitious goal for a two-year period, especially in the current environment of CSL in particular and of legal education in general. The only change to the admissions methodology identified in the Plan, however, is to require those students with LSAT scores of 142 or 143 to have an interview with two individuals, at least one of whom will be a member of the Faculty Admissions Team. CSL explains that the goal of the interview will be to determine "whether the candidate is qualified for admission despite the lower LSAT" (Reliable Plan, p. 10). This would seem to be at cross-purposes with the goal of raising the LSAT credentials of the entering class.

There are brief mentions of smaller class sizes and "generous scholarships to admitted students that are highly competitive, based on market analysis" (Id. at pp. 12, 13). As discussed in the *Financial Adequacy* section of Attachment 7 (pages 3-4) however, Charlotte School of Law's educational expenditures per student dipped more than 25% in 2016. Further, educational expenditures as a percentage of total expenditures have fallen in each of the past four years, while institutional support and management fees have risen from 30.9% of total expenditures in FY2012 to nearly half of total expenditures in FY2016. The Plan does not address what sources of funding might be available to pay for the smaller class sizes and "generous scholarships."

The asserted relationship between the Plan's goals of effectively "managing academic attrition," (Goal 4) and attracting highly qualified University of New Haven students to the CSL (Goal 5) and the improvement of bar passage rates can be examined by a reading of the Plan (pp. 31-38). As explained in the Plan, the strategy of Goal 4 is designed, at least in part, to "minimiz[e] the debt of unsuccessful law students (Plan, p. 3)." What this means in practice is a stricter grading curve which will result in the academic exclusion of more students and a winnowing of likely unsuccessful candidates for the bar examination upon graduation. The

stricter grading curve has already been implemented, beginning Fall 2015 (Plan, p. 32). The stricter grading curve, of course, will likely lead to lower retention rates during this period of critically low enrollment for CSL.

Because of the very ambitious nature of the Reliable Plan and the lack of details demonstrating that its goals can be met, the Reviewers are cautious about whether the Plan can be successfully implemented in an expedited period of time. Given Charlotte School of Law's perilous financial situation as discussed in Attachment 7, and given the reservations about whether the Reliable Plan can be successfully implemented quickly enough, the Reviewers are not optimistic about CSL's ability moving forward to maintain compliance with the requirements of Standard 3.

***STANDARD 5 of the UNC Board of Governors Rules and Standards for Licensing Nonpublic Institutions - FACULTY AND OTHER PERSONNEL QUALIFICATIONS***

A description of the quality of the Charlotte School of Law faculty is presented on pages 19-26 of Attachment 8.

**FINDINGS OF THE REVIEWERS**

For the detailed reasons presented in Attachment 7 and in Standard 10 of this report, the Reviewers find Charlotte School of Law not in compliance with the following Standards:

**1. Standard 10.A.(1): Stability**

Charlotte School of Law has not demonstrated that its financial resources are characterized by stability that indicates the institution is capable of maintaining operational continuity for an "extended period," which, in CSL's case, means at least three years.

**2. Standard 10.A.(3): Plan for Financial Development**

Charlotte School of Law has not demonstrated that it maintains a "coordinated, comprehensive, flexible financial plan (budget) for long-range management of the institution."

**3. Standard 10.A.(4): Financial Records and Audit Report**

Charlotte School of Law's recent financial history does not demonstrate financial stability.



#### **4. Standard 10.A.(6): Bonding**

Charlotte School of Law has not demonstrated that it maintains a tuition guaranty bond of not less than \$10,000 and at least equal to or higher than the maximum amount of prepaid tuition held (i.e., unearned tuition held) existing at any time during the most recent fiscal year.

#### **5. Standards 3 and 5**

While the Reviewers make no findings specific to compliance with Standards 3 and 5, the Reviewers observe that Charlotte School of Law's objectives for addressing the issues essential to compliance with Standard 3 are not supported by detailed, feasible plans for achieving those objectives. Moreover, the steps necessary to achieve the objectives identified by Charlotte School of Law would likely worsen Charlotte School of Law's financial stability.



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**DEC 19 2016**

Mr. Chidi Ogene  
President  
Charlotte School of Law  
201 South College Street, Suite #400  
Charlotte, NC 28244

Sent Via UPS  
Tracking #: 1Z37X7Y30198482316

Re: Denial of Recertification Application to Participate in the Federal Student Financial Assistance Programs – Charlotte School of Law, 201 South College Street, Suite #400, Charlotte, NC 28244; OPEID 04143500.

Dear Mr. Ogene:

The U.S. Department of Education (Department) has reviewed the application for recertification submitted by Charlotte School of Law (CSL) to continue to participate in the student financial assistance programs authorized pursuant to Title IV of the Higher Education Act (HEA) of 1965, as amended, 20 U.S.C. §§ 1070 *et seq.* (Title IV programs). CSL's most recent Program Participation Agreement (PPA) expired on June 30, 2015. CSL, however, timely submitted its recertification application prior to that date. As a result, the Department extended CSL's PPA on a month-to-month basis while evaluating the application and related matters. *See* 34 C.F.R. § 668.13(b)(2). This notice is to inform you that the Department has concluded its review and hereby denies CSL's application for continued participation. CSL's participation in Title IV programs will therefore conclude at the end of this month, on December 31, 2016.

For purposes of evaluating a recertification application, the Department reviews an institution's performance as a participant in the Title IV programs and must ensure that the institution has met the standards of administrative capability and financial responsibility, has complied with Title IV program requirements, and has operated under the high standards of care, trust, and diligence required of a fiduciary. A denial of an institution's recertification application is warranted if the Department determines that the institution does not meet all requirements and standards set forth in Title IV and regulations issued thereunder. HEA § 498, 20 U.S.C. § 1099c; 34 C.F.R. § 668.13.

In reaching a decision on CSL's recertification application, the Department reviewed all materials submitted by CSL in support of its application. The Department also reviewed other relevant documents and information, including but not limited to the institution's history as a participant in the Title IV programs and documents associated with the actions taken by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar

**Federal Student Aid**  
An OFFICE of the U.S. DEPARTMENT of EDUCATION

Administrative Actions and Appeals Service Group  
830 First St., N.E. Washington, D.C. 20002-8019  
StudentAid.gov

Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association (the Council) and the Accreditation Committee of the Council (Committee). Collectively, the Council and the Committee will be referred to herein as the ABA.

CSL was founded in 2004 as a member institution of The InfiLaw System, a consortium of for-profit law schools that includes Florida Coastal School of Law and Arizona Summit Law School. Each of the three InfiLaw schools is owned by InfiLaw Holding, LLC. According to the InfiLaw schools, nearly all of the voting units of InfiLaw Holding, LLC are held by Sterling Capital Partners, L.P. The ABA provisionally approved CSL in 2008 and granted full approval in 2011. CSL first began participating in the Title IV programs through its execution of a provisional PPA in February 2009. CSL executed its most recent PPA in July 2011.

As a participating institution in Title IV, HEA programs, CSL drew \$ 65,238,752 in Title IV funds during the 2014-15 award year and \$48,537,250 for the 2015-16 award year. With respect to the 2015-16 award year, those funds included \$29,434,902 in Direct, Graduate PLUS loans and \$19,102,348 in Direct Stafford Unsubsidized loans. During this same award year, CSL enrolled 946 students who received Title IV aid. For purposes of its participation in Title IV programs, the school is approved only to offer a juris doctor program.

As described below, the ABA has determined that CSL is, and has been, out of compliance with certain ABA standards and that this noncompliance was “substantial” and “persistent.” CSL also made substantial misrepresentations regarding the nature of its academic program in violation of the prohibition on substantial misrepresentations. 34 C.F.R Part 668, Subpart F. For the reasons discussed below, CSL’s noncompliance with its accreditor’s standards constitutes an independent basis for the Secretary to deny CSL’s application for recertification, as does each of CSL’s substantial misrepresentations. *See generally* HEA § 498, 20 U.S.C. § 1099c; 34 C.F.R. § 668.13.

Due to this denial, CSL is no longer eligible to participate in the Title IV programs, effective December 31, 2016. *See* 34 C.F.R. § 668.13(b)(2). This includes all Title IV programs listed on CSL’s most current Eligibility and Certification Approval Report, including: Federal Work-Study (FWS), Federal Perkins Loan (Perkins Loan), and William D. Ford Federal Direct Loan (Direct Loan) programs. The Direct Loan program includes the Federal Direct Unsubsidized Stafford/Ford Loan program and the Federal Direct PLUS Program.

**CSL Violated the HEA, the Department’s Regulations and its PPA by Failing to Meet the Requirements Established by its Nationally Recognized Accreditor**

As a condition of eligibility to participate in Title IV programs, an institution must be accredited by an accreditor recognized by the Secretary. HEA §§ 101, 102(a)(1)(A), 102(b)(1)(D), 20 U.S.C. §§ 1001, 1002(a)(1)(A), 1002(b)(1)(D). *See also* 34 C.F.R. § 600.5(a)(6). In addition to that eligibility requirement, as a separate condition of initial and continued participation, an institution must “meet the requirements established by” its accreditor. HEA § 487(a)(21), 20 U.S.C. § 1094(a)(21). Under Part H of Title IV, all accrediting agencies are required to have, apply, and enforce standards for accredited institutions of higher education. *See* HEA §§ 496(a)(4)-(6), 20 U.S.C. §§ 1099b(a)(4)-(6) (including the requirement that accrediting agencies

Association (the Council) and the Accreditation Committee of the Council (Committee). Collectively, the Council and the Committee will be referred to herein as the ABA.

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standards for an institution of higher education or program to be accredited”). *See also* 34 C.F.R. § 668.14(b)(23) (noting that “[b]y entering into a program participation agreement, an institution agrees that ... [i]t will meet the requirements established pursuant to part H of Title IV of the HEA by the Secretary and nationally recognized accrediting agencies”). In its PPA, CSL expressly agreed to this latter condition, certifying that it would meet the requirements set by its accreditor pursuant to Part H of Title IV. PPA at 5 ¶ 23.

Between March 16 and 19, 2014, an ABA “site team” conducted an on-site Three-Year Interval evaluation of CSL. During the course of this site visit, the team met with Rick Inatome (CEO of InfiLaw Holding, LLC), Jay Conison (Dean of CSL), Don Lively (then-President of CSL), numerous CSL administrators, members of the institution’s accreditation self-study Committee, CSL faculty, CSL staff, and CSL students. Members of the site team also visited a significant majority of the classes taught during its visit.

On September 15, 2014, the ABA provided CSL with a 72-page Inspection Report (Report) and invited the school to provide comments and note factual errors. The ABA informed CSL that the Report would provide the basis for its determination on whether CSL’s programs were operating in compliance with the ABA Standards for the Approval of Law Schools (Standards). Among its topics, the Report discussed CSL’s program of legal education (pp. 6-24), students (including both admissions qualifications and output metrics, including a discussion of bar passage statistics) (pp. 34-49), and financial operations (pp. 67-71). In October 2014, CSL responded in writing to the Report.

At its January 2015 meeting, the Committee reviewed both the Report and CSL’s written response. Following that meeting, the Committee issued a decision (the “First Committee Decision”) announcing that it had “reason to believe” that CSL had “not demonstrated compliance” with certain ABA standards. The Committee also “request[ed] additional information to make a determination” as to CSL’s compliance with additional standards and interpretations, including Standards 301(a), 501(a), and 501(b), and Interpretation 501-1, which are foundational to the educational enterprise and the nature of the educational program offered by CSL.<sup>1</sup> Those additional standards and interpretation are:

**Standard 301(a):** “A law school shall maintain a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.”

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<sup>1</sup> As discussed *infra*, compliance with these standards is materially important to students and prospective students. Moreover, we note that versions of current Standards 301 and 501 have been in effect since the ABA first adopted and published the Standards and Rules of Procedures in 1973. Even as the ABA has amended its standards and interpretations, such amendments have highlighted the importance of these particular standards. For example, in a recent revision of Standard 301(a), effective for the 2014-15 year, the ABA moved the word “rigorous” from an interpretation to a standard (as it now exists in the language above) to “place[]upfront” the importance of the program of legal education. *See* ABA Section of Legal Education and Admission to the Bar Explanation of Changes (April 2014) (*available at* [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/201404\\_src\\_meeting\\_materials\\_proposed\\_standards.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/201404_src_meeting_materials_proposed_standards.authcheckdam.pdf)). In that same revision, the ABA also expanded the scope of former Interpretation 501-3 and renumbered it as current Interpretation 501-1 (shown above), highlighting the importance of this particular interpretation.

**Standard 501(a):** “A law school shall maintain sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.”

**Standard 501(b):** “A law school shall not admit an applicant who does not appear capable of satisfactorily completing its program of legal education and being admitted to the bar.”

**Interpretation 501-1:** “Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school’s entering students, the academic attrition rate of the law school’s students, the bar passage rate of its graduates, and the effectiveness of the law school’s academic support program.”

In December 2015, CSL provided the additional information requested by the Committee. On February 3, 2016, the Committee issued its second decision regarding CSL (the “Second Committee Decision”). In this decision, the Committee made twenty factual findings, thirteen of which pertained to the Committee’s request for additional information to determine CSL’s compliance with Standards 301(a), 501(a), and 501(b) and Interpretation 501-1. Although the Committee concluded that CSL was in compliance with the particular standards that previously led the Committee to assert its “reason to believe” that CSL was noncompliant with those standards, the Committee concluded that CSL was “not in compliance” with other standards, specifically with:

Standards 301(a), 501(a), 501(b), and Interpretation 501-1, in that the Law School has not demonstrated that it is maintaining a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession; maintaining sound admissions policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education; or is admitting applicants who do not appear capable of satisfactorily completing its program of legal education and being admitted to the bar.

Second Committee Decision at 6 (citing Findings of Fact 8-20).

In the Second Committee Decision, the Committee also requested that CSL provide additional information consisting generally of “all relevant information necessary to demonstrate compliance” with Standards 301(a), 501(a), and 501(b), as well as specific information about students “between and including the fall 2010 entering class and the spring (May) 2016 entering class” that would show, with respect to individual students who had LSAT scores or undergraduate GPAs at or below CSL’s 25<sup>th</sup> and 50<sup>th</sup> percentiles, enrollment status (including attrition information) and bar passage information.<sup>2</sup> The Committee also requested that CSL’s

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<sup>2</sup> ABA Interpretation 501-1 establishes that academic and admission test credentials, attrition rates, and bar passage rates are among the factors considered when the ABA assesses compliance with Standard 501.

President and Dean appear before its June 2016 hearing, the purpose of which was “to determine whether to impose sanctions in connection with the Law School’s noncompliance with the Standards.” Second Committee Decision at 7.

In May 2016, CSL submitted a 62-page report, later described by CSL as “very comprehensive,”<sup>3</sup> accompanied by 29 pages of student-specific information, which, taken together, the school claimed “show[s] that the School of Law is in compliance with Standards 301(a), 501(a), and 501(b), and Interpretation 501-1.” On June 23, 2016, the Committee held a hearing at which you and Dean Jay Conison appeared, along with CSL’s Associate Dean for Academics, Associate Dean for Enrollment Management, and Shared Services Director of Bar Preparation.

Following that hearing, in July 2016, the Committee issued another decision (the “Third Committee Decision”) again finding CSL to be out of compliance with Standards 301(a), 501(a), and 501(b) and Interpretation 501-1. In this decision, the Committee also announced its conclusion that “the issues of non-compliance with Standards 301(a), 501(a), and 501(b), and Interpretation 501-1 *are substantial and have been persistent.*” Third Committee Decision at 12 (emphasis added). The Committee also found that CSL’s “plans for bringing itself into compliance with the Standards have not proven effective or reliable.” *Id.*

The Third Committee Decision was expressly based on 44 factual findings, on topics such as admissions, programming for admitted students, mentoring and related opportunities, the writing program, academic support, faculty, summer and intersession changes, attrition, bar preparation during law school, post-graduation bar preparation, and bar examinations. Among its factual findings, the Committee concluded:

- With respect to CSL’s admissions policies, “[i]t was not clear to the Committee how [CSL’s] admission practices demonstrate that applicants with low academic and admission test credentials appear capable of completing the Law School’s program of legal education and being admitted to the bar.” (Finding 11)
- “Attrition for the 25<sup>th</sup> and 50<sup>th</sup> percentile LSAT individuals for those who started in 2010 was 13%. It rose to 14% for those who started in 2011; 15% for those who started in 2012; 20% for those who started in 2013; 35% for those who started in 2014; and 24% for those who started in 2015. At the hearing, the Associate Dean for Academics indicated that 74 first-year students out of a class of 223 (33%) that began studies in the fall of 2015 were academically attrited in December 2015. In May 2016, 26 students attrited, with 21 of them being spring semester starts of the entering class of 77 (27%). *This attrition is substantial and suggests that the Law School’s admissions process is not*



*as predictive of academic success as it might be.* The attrition target range for 2016-17 is 13%-17%” (Finding 23) (emphasis added).<sup>4</sup>

- “The Law School’s bar passage rates ... remain *low, often significantly so.*” (Finding 41) (emphasis added).
- “For the February 2016 bar examination in North Carolina, the state first-time pass rate for first-time takers was 51.1%. The Law School’s first-time February 2016 rate was 34.7% (75 takers), which placed it fifth in the state. This deviation is *more than 15 points*

<sup>4</sup> This finding is consistent with data made public by the ABA, which requires institutions to report attrition each year and to categorize the type of attrition. In the reports submitted to, and made publicly available by, the ABA, CSL reported that:

- 49.2% (or 174 out of 354 students) of first-year CSL students left due to attrition as reported for 2016. As reported for 2015, 44.6% (or 203 out of 455 students) of first-year CSL students left due to attrition.
- Of the 174 first-year CSL students who attrited as reported for 2016, 130 students (or more than 36% of the entering class) left due to academic attrition. Similarly, as reported in 2015, of the 203 first-year CSL students who attrited, 121 students (or more than 25% of the entering class) left due to academic attrition.
- Of the 208 law schools accredited by the ABA as reported for 2016, CSL has the largest number (130) and highest percentage (36.7%) of first-year students attriting for academic reasons. (The school with the second highest number of first-year students leaving for academic reasons was InfiLaw’s Florida Coastal School of Law with 77 students.) CSL also had the largest number (174) and highest percentage (49.2%) of total first-year attrition.

See Standard 509 Information Report for Charlotte School of Law & “All Schools Data” compilation report for 2015 & 2016. (Available at <http://www.abarequireddisclosures.org>). In addition to the 2015 & 2016 figures, data submitted to and made publicly available by the ABA establishes that both the total attrition percentage and the academic attrition percentage of CSL students have been increasing in recent years. According to the ABA:

ABA REPORT YEAR	CSL 1 <sup>ST</sup> YEAR TOTAL ATTRITION %	CSL 1 <sup>ST</sup> YEAR ACADEMIC ATTRITION %
2016	49.2%	36.7%
2015	44.6%	26.6%
2014	32.1%	18.3%
2013	22.6%	8.34%

See Standard 509 Information Reports for Years 2013-2016 (available at <http://www.abarequireddisclosures.org/>). The ABA’s reports show the percentage of total attrition and raw numbers of the various types of attrition. The percentage of first year academic attrition was calculated by applying the percentage of academic attrition to the total attrition percentage. Academic attrition is defined by the ABA as referring to “those students who discontinued their education at a time when they were not in good academic standing (typically a g.p.a. below 2.0). It includes both students who have been dismissed because they did not satisfy the minimum standards of progress established by the law school in order to continue their legal studies at that school, and students who discontinued their enrollment at the school at a time when their g.p.a was below that required for good academic standing as of the end of the first year.” 2016 Annual Questionnaire Instructions Part II Admissions & Enrollment Information (available at

[http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/governancedocuments/2016\\_aq\\_part2.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2016_aq_part2.authcheckdam.pdf)).

*below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions.” (Finding 42) (emphasis added).*<sup>5</sup>

- The Law School’s ultimate bar passage rates were in compliance for 2011, 2012, and 2013. The school “may be in compliance for 2014, but the 17% missing or never passed could affect that compliance. It is *not in compliance for 2015 at this point, with 43% either missing or never [having] passed the bar.*” (Finding 44) (emphasis added).

In the Third Committee Decision, the Committee also directed CSL to take a series of remedial actions, including developing and submitting, by September 1, 2016, a plan to come into compliance with the Standards. The Committee further required CSL to supply the Committee with additional data and information, required CSL to disclose the Committee’s decision to students and the public, and provided for the appointment of a fact finder to review an array of topics, including CSL’s admissions policies, academic rigor, bar examination results, student loan default rates, and graduate employment outcomes.

In August 2016, CSL appealed aspects of the Third Committee Decision to the Council and, on October 21, 2016, the Council held a hearing at which you and Dean Conison testified on CSL’s behalf. At that hearing, Dean Conison testified that CSL is “not appealing that conclusion of noncompliance with Standards 301 and 501,” despite the school’s “disappointment” with the conclusion. Oct. 21, 2016 Council Hearing Transcript at 7:2-6 (Conison). CSL did, however, through Dean Conison, make four requests of the Council, that the Council (1) overturn the Committee’s finding that CSL’s noncompliance was “substantial and persistent”; (2) eliminate the requirement that CSL publicly disclose the findings of noncompliance or, in the alternative, delay such disclosure for one year; (3) start the two-year remediation period in July 2016, rather than in February 2016; and (4) provide “greater clarity” as to what was expected of CSL. *Id.* at 17:11-25.

On November 14, 2016, the Council issued a decision (the “Council Decision”) informing CSL that it had reviewed the Third Committee Decision, all material considered by the Committee in rendering that decision, the August 2016 appeal letter, a subsequent submission made by CSL on October 4, 2016, and the transcript of the October 21, 2016 hearing. After reviewing that record, the Council concluded, for the same reasons stated by the Committee, that CSL was “not in compliance” with Standards 301(a), 501(a), and 501(b), that the issues of noncompliance with these standards “are substantial and have been persistent,” and that CSL’s “plans for bringing itself into compliance with the Standards have not proven effective or reliable.” The Council

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<sup>5</sup> Here too, the ABA’s findings are consistent with publicly available data. For example, in July 2016, 45.2% of CSL graduates who took the North Carolina bar exam for the first time passed. The statewide average, including CSL and repeat takers who were unsuccessful on their first attempt, was 65.9%, almost 50% higher. *See* <http://www.charlottelaw.edu/gainful-employment-aba-required-disclosures.html> (last visited December 1, 2016). The Department also notes that, although CSL’s first-time bar passage rates for the North Carolina Bar increased between February and July 2016, the rates have trended downward since July 2010, and the July 2016 first time passage rate remains below the July 2015 rate.

ordered remedial actions, including public disclosure, and placed CSL on probation, effective November 14, 2016.<sup>6</sup>

The facts recited above make clear that on three separate occasions, in February 2016, July 2016, and November 2016, the ABA announced its determination that CSL was out of compliance with ABA Standards 301(a), 501(a), and 501(b), and Interpretation 501-1. CSL has conceded the noncompliance findings and certain remedial requirements. Per ABA Rule of Procedure for Approval of Law Schools No. 4, the ABA Appeals Panel does not have authority to consider an appeal of the Council Decision, thus rendering that decision final. Each of these decisions was made after the ABA provided CSL notice and an opportunity to submit evidence. The decisions announced in July 2016 and November 2016 were made after CSL officials presented testimony to the Committee and Council, respectively.

In reviewing this matter, the Department carefully considered the extent of process that the ABA afforded the institution when making its determinations, including the numerous opportunities CSL was given to present evidence and provide testimony. The Department also considered the particular accreditation standards that CSL was found to be noncompliant with, *see supra* 3-4 & n.1, the nature of those standards, the fact that the ABA found the noncompliance to be both “substantial” and persistent,” the fact that the ABA found CSL’s “plans for bringing itself into compliance with the Standards have not proven effective or reliable,” the fact that ABA believed the noncompliance to be so severe as to merit placing the institution on probation,<sup>7</sup> corroborative evidence of the noncompliance, *see supra* at n.4 – n.5, and the institution’s administrative capability and fiduciary conduct.

After concluding the review, and based on the particular facts set out herein, the Department finds that CSL’s statutory, regulatory, and contractual failure to “meet the requirements” established by the ABA is of sufficient severity to merit the denial of recertification.<sup>8</sup>

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<sup>6</sup> See Letter from B. Currier, ABA Managing Director of Accreditation and Legal Education to C. Ogene & J. Conison (Nov. 14, 2016), attaching the Council Decision. The Council Decision is publicly available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/PublicNoticeAnnouncements/2016\\_november\\_charlotte\\_probation\\_public\\_notice.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/PublicNoticeAnnouncements/2016_november_charlotte_probation_public_notice.pdf).

<sup>7</sup> Not only is the probation sanction the most severe sanction that can be imposed by the ABA, short of withdrawal of accreditation, *see* ABA Standards & Rules of Procedure for Approval of Law Schools at Rule 16(b)-(c), the Department is unaware of any instance in the last 10 years which the ABA has placed an accredited law school on probation.

<sup>8</sup> The Department’s denial of CSL’s application for recertification should not be read to suggest that the Department will reach the same conclusion each time an accreditor finds an institution noncompliant with the accreditor’s standard. As it did in this case, the Department will continue to review, in the context of a recertification application, any finding of noncompliance by an institution’s accreditor in light of the specific facts regarding that finding, other relevant facts regarding the institution under review, and the appropriate statutory and regulatory standards.

**CSL Breached its Fiduciary Duty to the Department and Demonstrated a Lack of Administrative Capability by Substantially Misrepresenting the Nature of its Educational Program**

Through its PPA, CSL agreed to comply with all conditions specified therein, including compliance with all Title IV, HEA program requirements. *See also* 20 U.S.C. § 1094(a)(1); 34 C.F.R. § 668.14. By entering into the PPA, CSL and its officers also accepted fiduciary responsibility in the administration of the Title IV programs. 34 C.F.R. § 668.82(a). As fiduciaries, an institution and its officers must act with the highest standard of care and diligence in administering the Title IV programs and in accounting to the Secretary for the funds received. 34 C.F.R. §§ 668.82(a), (b). This standard of care and diligence includes prohibitions against substantial representations by an institution's officers or employees. *See e.g., In re Warnborough College*, Dkt Nos. 95-164-ST, 96-60-SF (Aug. 9, 1996) (finding an institution in violation of the required fiduciary standard due to its failure to properly oversee an employee who made substantial misrepresentations to students, and holding the institution responsible for that employee's misrepresentations). Additionally, in order to "continue participating" in any Title IV program, a school must be "capable of adequately administering that program." 34 C.F.R. § 668.16. A school is not considered to have such administrative capability if it fails to "administer[] the Title IV, HEA programs in accordance with all statutory provisions of or applicable to Title IV of the HEA" and "all applicable regulatory provisions prescribed under that authority." 34 C.F.R. § 668.16(a).

Under the Department's regulations, "[s]ubstantial misrepresentations are prohibited in all forms," 34 C.F.R. § 668.71(b), and the Department may deny institutional participation applications, including recertification applications, when it determines that an institution has engaged in a substantial misrepresentation. 34 C.F.R. § 668.71(a)(3). A "misrepresentation" is:

[a]ny false, erroneous or misleading statement an eligible institution, one of its representatives, or any ineligible institution, organization, or person with whom the eligible institution has an agreement to provide educational programs, or to provide marketing, advertising, recruiting or admissions services makes directly or indirectly to a student, prospective student or any member of the public, or to an accrediting agency, to a State agency, or to the Secretary. A misleading statement includes any statement that has the likelihood or tendency to deceive. A statement is any communication made in writing, visually, orally, or through other means.

34 C.F.R. § 668.71(c).

A "substantial misrepresentation" is "any misrepresentation on which the person to whom it was made could reasonably be expected to rely, or has reasonably relied, to that person's detriment." *Id.* Substantial misrepresentations include misrepresentations made by the institution itself, or one of its representatives, regarding the nature of the institution's academic programs or the employability of its graduates. 34 C.F.R. § 668.71(b). Substantial misrepresentations involving

the nature of an institution's education program include misrepresentations concerning the "nature and extent" of the institution's accreditation and the "availability, frequency, and appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet." 34 C.F.R. §§ 668.72(a), (g). Substantial misrepresentations regarding the employability of an institution's graduates include misrepresentations regarding "requirements that are generally needed to be employed in the fields for which training is provided." 34 C.F.R. § 668.74(f). Each substantial misrepresentation serves as an independent ground for the Department to deny an institution's recertification application.

The Department's review established that CSL substantially misrepresented to students and prospective students the "nature and extent" of CSL's accreditation and the "appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet." 34 C.F.R. §§ 668.72(a), (g). As set forth above, since February 2016, CSL has been found to be out of compliance with ABA Standards 301(a), 501(a), and 501(b), and Interpretation 501-1. These standards are foundational to the educational enterprise insofar as they speak to whether the school "maintain[s] a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession," (Standard 301(a)); whether the school "maintains sound admission policies" that are "consistent with the Standards, [the school's] mission, and the objectives of [the school's] program of legal education" (Standard 501(a)); and whether the school refrains from admitting applicants "who do not appear capable of satisfactorily completing its program of legal education and being admitted to the bar" (Standard 501(b)).

In February 2016, the ABA first concluded that CSL was out of compliance with the standards and interpretation discussed above. However, neither CSL nor the ABA publicly disclosed this fact until November 2016, when the ABA first announced that CSL was being placed on probation. Prior to the ABA's November 2016 announcement, the Department was unaware of *any* public statements that would have informed a student or prospective student that the ABA had found the school to be out of compliance with the Standards, or that the ABA had determined that CSL had "not demonstrated that it is maintaining a rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession." Second Committee Decision at 6, Third Committee Decision at 12, Council Decision at 2. Nor is the Department aware of any statement or disclosure during that period by CSL that the ABA had determined that the school was "admitting applicants who do not appear capable of satisfactorily completing its program of legal education and being admitted to the bar." *Id.*

In contrast, beginning no later than February 2016 and continuing at least until December 2016, CSL made public statements to students and prospective students that constitute misrepresentations regarding the nature of the educational program that CSL offered.

*First*, CSL promoted, and continues to promote, on its website that it "has been awarded full accreditation" by the ABA in 2011, which required the school to "ha[ve] established *full compliance with each of the ABA's standards*, including standards *relating to bar passage*, job

placement and diversity.”<sup>9</sup> In the same section, CSL promoted, and continues to promote, that, although it had received only provisional approval by the ABA in 2008, the Council had determined in June 2011 that CSL was “in full compliance with the ABA Standards for Approval of Law Schools.” A student or prospective student could reasonably read these statements and conclude that the 2011 finding of “full compliance” by the ABA was the final word as to the institution’s compliance with the ABA’s accreditation standards. This is particularly true because the school disclosed prior accreditation events, such as its initial “provisional” approval. Accordingly, beginning in February 2016, when the Committee determined that CSL was “not in compliance” with Standards 301(a), 501(a), and 501(b) and Interpretation 501-1, the above-mentioned statements were misleading insofar as they had the likelihood or tendency to deceive reasonable students and prospective students about the current status, nature, and extent of CSL’s accreditation. The misrepresentation became even more pronounced in July 2016 when the Committee again notified CSL of its noncompliance and also found that the noncompliance was “substantial” and “persistent.” Although the school appealed the July 2016 determination as to the findings of the “substantial” and “persistent” nature of the noncompliance, the school did not appeal the finding of noncompliance itself. Nonetheless, the school did not amend, update, or otherwise correct its continuing and misleading representation on its website.

*Second*, CSL promoted, and continues to promote, on its website to students and prospective students (under the heading “Practical Preparation is Critical”) that it “created” a “rigorous curriculum ... to ensure that [CSL] students are equipped with practical skills that will allow them to thrive in a professional setting.” See Enclosure 1. This statement appears directly beneath the section of the webpage in which CSL promotes its “full compliance” with ABA standards, which includes Standard 301(a), which provides that law schools should maintain a “rigorous program of legal education that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession.” In this context, CSL’s promotion of its “rigorous curriculum” is misleading insofar as: (1) as described above, the ABA has specifically and repeatedly concluded that CSL has not maintained a “rigorous” program of legal education, that its failures in this regard are “substantial” and “persistent,” and that CSL’s plans to come into compliance with that standard have not proven effective or reliable; and (2) the positioning of CSL’s description of its curriculum as “rigorous” directly beneath the discussion of compliance with the ABA standards (which use the word “rigorous” to describe what is expected of a compliant program) has the likelihood or tendency to leave students and prospective students with the false impression that CSL was compliant with that very requirement by the ABA.

Each of these misleading statements constitutes a substantial misrepresentation because students and prospective students could reasonably be expected to rely on each of these statements to their detriment. 34 C.F.R. § 668.71(b). Indeed, CSL argued to the ABA that if students and prospective students were aware of the ABA’s findings of noncompliance, that would have a “profound impact on admissions” because: (1) knowledge of the ABA’s findings would make

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<sup>9</sup> See <http://www.charlottelaw.edu/our-mission.html> (last visited Dec. 16, 2016) (attached hereto as Enclosure 1) (emphasis added).

applicants “much less likely to enroll;”<sup>10</sup> and (2) such a disclosure would “effectively tell applicants to beware of attending the Charlotte School of Law.”<sup>11</sup> In addition, CSL argued to the ABA that public disclosure of its noncompliance would “have an adverse impact on [CSL’s] ability to retain high-performing students,” because it would “inevitably create anxiety on the part of high-performing students and make their transfer more likely.” *Id.* Thus, under CSL’s own arguments, the truth about its noncompliance would have impacted the decisions made by prospective students and current students to either enroll or continue their studies at CSL.

CSL’s assertion that knowledge of noncompliance would be material to student admissions and retention decisions was not conjecture. Indeed, in the Third Committee Decision, the Committee ordered CSL to disclose to its admitted students and the public, via its webpage, a statement disclosing the ABA’s noncompliance findings and required remedial actions. As part of its appeal of this requirement, CSL commissioned (and provided to the ABA) a market study that tested the impact of disclosure on CSL applicants. The study analyzed the views of individuals with LSAT scores above 142 who had applied to one or more of the InfiLaw schools. These individuals were asked to assess the impact on the likelihood of their respective enrollment at a particular law school if acceptance materials from that school included a statement that the school failed to meet accreditation standards dealing with admissions, educational programs, and bar passage. The study concluded that approximately 3 in 4 applicants (or 74%) stated that they would be “much less likely to enroll” after reading such a statement – establishing that reasonable students were highly likely to rely on the disclosure of information regarding the accreditation failures that CSL sought to keep from public view.

*Finally*, the Department finds that CSL substantially misrepresented the bar passage rates of CSL graduates in an interview you had with the Charlotte Business Journal published on November 30, 2016.<sup>12</sup> In that interview, you stated that “[i]f you look at bar pass rates between 2009 and 2013, we were consistently *at or above* the state bar average pass rate. That is an incredible feat for a new school.” (emphasis added). However, bar passage data published on CSL’s website shows that, out of the nine sittings of the North Carolina bar exam (between July 2009 and July 2013), CSL’s first-time bar passage rate was actually *below* the state average *five times* (with a maximum differential of -13.33%) and above the state average only four times (with a maximum differential of 7.4%).<sup>13</sup> Thus, your statement was false and/or misleading, particularly when you were making representations as a law school president responding to questions about an accreditor’s finding of the school’s substantial and persistent failures to prepare students for admission to the bar. Substantial misrepresentations about the success that CSL graduates have on bar examinations constitute substantial misrepresentations about both the “appropriateness of [CSL’s] courses and programs to the employment objects that [CSL] states

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<sup>10</sup> Letter from J. Conison & C. Ogene to G. Murphy, Chair, Council of the ABA Section of Legal Education & Admissions to the Bar (Oct. 4, 2016).

<sup>11</sup> Letter from J. Conison to G. Murphy (Aug. 22, 2016) (enclosing Appeal) & Appeal at 11.

<sup>12</sup> Jennifer Thomas, *Charlotte School of Law president talks probation, considers nonprofit status*, CHARLOTTE BUS. J., Nov. 30, 2016 available at 2016 WLNR 36711693 (Nov. 30, 2016).

<sup>13</sup> Bar passage data published at: <http://www.charlottelaw.edu/gainful-employment-aba-required-disclosures.html>.

its programs are designed to meet,” 34 C.F.R. § 668.72(g), and the schools’ success in training its students to meet “requirements that are generally needed to be employed in the fields for which the training is provided,” 34 C.F.R. § 668.74(f). You either knew or reasonably should have known that this interview was to be made public and could be viewed by current or prospective students.<sup>14</sup> Because a reasonable student or prospective student would have understood your comments to be misleading in its representation of CSL graduates’ prior success on the bar examination, these statements constituted substantial misrepresentations in violation of 34 C.F.R. § 668.71.

\* \* \* \*

The denial of recertification will be effective on December 31, 2016. Should CSL have factual evidence to dispute the Department’s findings and demonstrate their inaccuracy, CSL may submit that evidence via overnight mail to me at the following address:

Administrative Actions and Appeals Service Group  
U.S. Department of Education  
Federal Student Aid/Enforcement  
830 First Street, NE (UCP-3, Room 84F2)  
Washington, DC 20002-8019

If any such material is received by **January 3, 2017**, the Department will review it and notify CSL whether the recertification denial will be modified, rescinded, or left in place. If the recertification denial remains in effect following the Department’s review of such submission, or if CSL opts not to make such a submission, the Multi-Regional School Participation Division will contact CSL concerning the proper procedures for closing out CSL’s Title IV program accounts.

In the event that CSL submits an application to participate in the Title IV, HEA programs in the future, that application must address the deficiencies noted in this letter. If you have any questions about this letter, you may contact Mitch Cary of my staff at (303) 844-3145.

Sincerely,



Susan D. Crim  
Director  
Administrative Actions and Appeals Service Group

Enclosure

cc: Rick Inatome (InfiLaw), via [rinatome@infilaw.com](mailto:rinatome@infilaw.com)  
Jonathon Glass (Cooley LLP), via [jglass@cooley.com](mailto:jglass@cooley.com)

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<sup>14</sup> Notably, the question immediately preceding the question that elicited your statement about bar passage rates was: “What’s the message to current students?”



Barry A. Currier, Managing Director, Accreditation and Legal Education, ABA Section of Legal Education and Admissions to the Bar, via [barry.currier@americanbar.org](mailto:barry.currier@americanbar.org)

Dr. Tim Gallimore, Associate VP for Academic Planning and State Authorization, The University of North Carolina – General Administration, via [tagallimore@northcarolina.edu](mailto:tagallimore@northcarolina.edu)

Department of Defense, via [osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil](mailto:osd.pentagon.ousd-p-r.mbx.vol-edu-compliance@mail.mil)

Department of Veteran Affairs, via [INCOMING.VBAVACO@va.gov](mailto:INCOMING.VBAVACO@va.gov)

Consumer Financial Protection Bureau, via [CFPB\\_ENF\\_Students@cfpb.gov](mailto:CFPB_ENF_Students@cfpb.gov)



910 Raleigh Rd.  
Chapel Hill, NC 27514

**Constituent Universities**

Appalachian  
State University  
  
East Carolina  
University  
  
Elizabeth City  
State University  
  
Fayetteville State  
University  
  
North Carolina  
Agricultural and  
Technical State  
University  
  
North Carolina  
Central University  
  
North Carolina  
State University  
at Raleigh  
  
University of  
North Carolina  
at Asheville  
  
University of  
North Carolina  
at Chapel Hill  
  
University of  
North Carolina  
at Charlotte  
  
University of  
North Carolina  
at Greensboro  
  
University of  
North Carolina  
at Pembroke  
  
University of  
North Carolina  
at Wilmington  
  
University of  
North Carolina  
School of the Arts  
  
Western Carolina  
University  
  
Winston-Salem  
State University

January 24, 2017

Mr. Jay Conison, Dean  
Charlotte School of Law  
201 South College Street  
Suite 400  
Charlotte, NC 28244  
Email: [jconison@charlottelaw.edu](mailto:jconison@charlottelaw.edu)

**Tim Gallimore, Ph.D.**  
**Associate Vice President for Academic  
Planning and State Authorization**

Office: (919) 843-4538  
Email: [tagallimore@northcarolina.edu](mailto:tagallimore@northcarolina.edu)

**Required Documentation of Compliance with Licensure Standards**

Dear Dean Conison:

Pursuant to North Carolina General Statutes Section 116-15 and the *Rules and Standards for Licensing Nonpublic Institutions to Conduct Post-Secondary Degree Activity in North Carolina*, any institution that acquires licensure shall be subject at any time to review by the University of North Carolina Board of Governors to determine whether the institution continues to meet the standards for licensure.

Our discussion on January 20, 2017, along with the communications that my office has had with the U.S. Department of Education concerning its recent adverse action against the Charlotte School of Law, and a submission to the North Carolina Post-Secondary Education Complaints have raised questions about the School's compliance with the license standards.

Therefore, I am requesting that the Charlotte School of Law provide to the Licensure Division at the University of North Carolina-General Administration the documentation/information listed below to demonstrate its continued compliance with the license standards.

The documentation/information must be submitted for review no later than January 31, 2017.

Please be advised that based on staff recommendation, "Any institution holding a license to conduct post-secondary degree activity in North Carolina that is found by the Board of Governors not to satisfy these licensure requirements shall have its license to conduct post-secondary degree activity revoked by the Board."

I am available to answer any questions that you may have concerning this compliance review.

Sincerely,

Tim Gallimore

**Constituent High School**

North Carolina  
School of Science  
and Mathematics

## **Charlotte School of Law -- Required Documentation**

Current organizational chart showing any controlling entities and their relationship to the Charlotte School of Law (CSL)

List of current governing board members and their contact information

Policies and articulation agreements for transferring academic credit and copies of the policies and agreements as publicized in recruitment materials and in the institution's catalog

Description of curriculum approval procedures

Description of course approval methods

Description of course evaluation procedures

Copies of contractual agreements with other libraries

Copies of lease agreements for facilities not owned by the institution

Faculty qualifications, size, and stability (complete faculty matrix form)

Definition/description of faculty responsibilities

Description of faculty role in governance and decision-making of the School

Description of official action/procedure by which faculty is appointed

Procedure for annual evaluation of faculty

Published policies on academic freedom

Evidence/examples of ongoing professional development for faculty

Resumes showing the qualifications of all senior administrators/officers of CSL

Copy of policy and description of practices for verifying and issuing program completion credentials

Copy of policies for determining amount of credit awarded for each course

Copy of record-keeping procedures

Evidence that student attendance, progress, and performance standards are enforced

Copy of admissions policy and copies of recruitment, advertisement, and marketing materials describing that policy

Copies of policies and procedures regarding financial aid administration and distribution

Graduation and job placement rates (2014-2017) and explanation of how rates were calculated

Job placement records for students who graduated in 2014-2017 and copies of recruitment, advertising, and marketing materials mentioning CSL job placement record

Description of job placement assistance provided by CSL and copies of recruitment, advertising, and marketing materials containing that description

Description of health care services provided by CSL

Copies of counseling and guidance policies

Report of student satisfaction with all student services and education quality

Copy of annual Compliance Report

Policies and compliance record concerning the Americans with Disabilities Act

Copy of Clery Act Reporting (2014-2017)

Copy Title IX Reporting (2014-2017)

List of any significant correspondence with regulatory agencies and officials

Statement about any record of non-compliance/violations of health and safety laws/ordinances

Evidence of financial stability (current financial statement, detailed description of any material changes contained in the audit report, financial development plan)

Tuition guaranty bond – based on all current student charges & fees as well as enrollment

Signed statement/description of how the bond amount was calculated

Statement from an Independent CPA attesting to accuracy of tuition bond

Evidence of Adequate Casualty and Liability Insurance

Detailed disclosure of binding legal relationship with any parent or subsidiary corporation or institution

Plan for short-term financial management

Evidence of adequate casualty and liability insurance

Copies of policy and process for monitoring conflicts of interest

Policy describing and distinguishing administration and policy-making functions of the governing board, academic administration, and faculty

Description of the role of the governing board, academic administration, faculty, and students in determining policy and resolving issues

Institutional Effectiveness Plan

Current catalog and all required disclosures to students and the public

Copies of financial policies and procedures governing business practices

Advertising, marketing, recruiting and promotional materials

Bar examination pass rate and other indicators of student/graduates' success

Statement about ongoing and pending litigation

Description of all adverse regulatory and accreditation actions for last 3 years

Statements about any record of unprofessional conduct by School personnel

Copy of student complaint process

Record/log of student complaints for last 3 years and summary of resolution

Copies of cancellation and refund policies

Statements about any record of unprofessional conduct by vendors and contractors

Copies of policies and procedures for determining credit hours awarded in courses and programs and three examples of the application of these policies and procedures in courses and programs



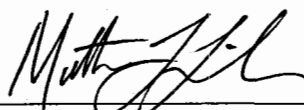
**State of North Carolina**  
**Department of Justice**  
**INVESTIGATIVE DEMAND**

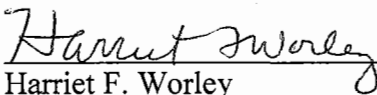
TO: Charlotte School of Law  
c/o Johnny M. Loper  
Counsel for Charlotte School of Law  
Womble Carlyle Sandridge & Rice, LLP  
*Via electronic mail to [jloper@wcsr.com](mailto:jloper@wcsr.com)*

**TAKE NOTICE: YOU ARE REQUIRED** to produce for inspection and copying the records set forth in the attached document production request and tender such documents to the undersigned on **March 20, 2017**, at 10:00 a.m. at the Office of the Attorney General, Consumer Protection Division, 114 W. Edenton Street, Raleigh, North Carolina, or at such other time and place to which the parties may agree. In the alternative, copies of the requested documents and answers to the questions may be delivered to the undersigned on or before the foregoing date.

**Issued this 10th day of March, 2017, under my hand and seal pursuant to the authority vested in me by Section 75-10 of the General Statutes of North Carolina.**

JOSH STEIN  
Attorney General of North Carolina

By:   
Matthew L. Liles  
Assistant Attorney General

  
Harriet F. Worley  
Special Deputy Attorney General  
North Carolina Department of Justice

# **INVESTIGATIVE DEMAND FOR PRODUCTION OF DOCUMENTS**

## **I. DEFINITIONS**

As used in this investigative demand, the following definitions shall apply:

1. "Communication(s)" means every disclosure, transfer, exchange, or transmission of information, whether oral, written, or electronic, and whether face to face, by telecommunications, computer, U.S. Mail, corporate internal mail, telecopier, telephone, text, email, facsimile machine, or otherwise.

2. "Document," unless otherwise specified, means written, computerized, programmed, recorded or graphic materials, information or data of every kind and description, including but not limited to: letters, correspondence, telegrams, facsimiles, voice mail, e-mail, memoranda, reports, studies, summaries, analyses, bulletins, circulars, advertisements, instructions, books, records, notes, records and notes of telephone or personal conversations and conferences, minutes, worksheets, contracts, charts, graphs, photographs, film, audiotape and videotape recordings, and all other data compilations or information resources from which information can be obtained or translated into reasonably usable form. "Document" includes the original of any document in whatever medium it may exist and all copies that differ in any way from the original, including the addition of any notations, underlining, markings, or electronically imbedded comments or codes. "Document" also includes information stored in, or accessible through, computer diskettes and hard drives or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations.

3. "You," "your," and "CSL" means Charlotte School of Law, LLC, and, unless otherwise noted, all of its officers, board members, members, employees, agents, representatives, parent companies, subsidiaries, predecessors, successors, assigns, and all persons acting on its behalf. Without limiting the foregoing, "you," "your," and "CSL" include any persons who were employees of other entities who were acting for the benefit of or on behalf of an educational institution or business holding itself out as "Charlotte School of Law."

## **II. INSTRUCTIONS**

1. This Civil Investigative Demand requests production of all described documents in your possession, custody or control without regard to the person or persons by whom or for whom the documents were prepared. Unless otherwise stated, these Requests seek documents from January 1, 2014 to the present.
2. This request includes documents in possession of your employees, agents, representatives, and attorneys, unless privileged. If any document or information is withheld under claim of privilege, identify the document and state the basis for the privilege, and provide a detailed privilege log that contains at least the following information for each document or information that you have withheld:
  - a. The name of each author, writer, sender, creator, or initiator of such document;

- b. The name of each recipient, addressee, or party for whom such document was intended or to whom the document was sent;
  - c. The date of such document, or an estimate thereof if no date appears on the document;
  - d. The general subject matter of the document; and
  - e. The claimed grounds for withholding the document, including, but not limited to, the nature of any claimed privilege and grounds in support thereof.
3. These document requests impose a continuing duty to produce promptly any responsive information or item that is not objected to, which comes into your knowledge, possession, custody or control after your initial production of responses to the requests.
4. In each instance in which a document is produced in response to a request, produce the current edition, along with all earlier editions or predecessor documents serving the same function, even though the title of earlier documents may differ from current versions.
5. The following procedures shall apply to the production of documents and information in response to this Civil Investigative Demand:
  - a. The recipient of this Civil Investigative Demand shall label each responsive document (i.e., Response to Request No. 1, Response to Request No. 2, and so forth), group all documents responsive to a particular request together, and place a label on each group of documents which identifies the corresponding Request;
  - b. All attachments to responsive documents or information shall be produced with, and attached to, the responsive documents (or digitally in corresponding order);
  - c. Each responsive document or information shall be produced in its entirety and no portion of any document or information shall be edited, cut, masked, redacted or otherwise altered, unless for applicable privilege which shall be logged according to the procedures set forth above; and
  - d. The recipient of this Civil Investigative Demand shall provide a key to all abbreviations used in the documents or information and shall attach the key to the corresponding documents or information.
6. Documents or information that may be responsive to more than one numbered request in these Requests need not be submitted more than once. However, for each such document or information, the recipient of this Civil Investigative Demand shall identify all of the numbered requests to which the document or information is responsive. If any responsive document or information has been previously supplied to the North Carolina Attorney General's Office, you shall identify the document(s) or information previously provided and the date(s) of submission.
7. You shall consecutively number each page of all documents or information produced with your response and indicate the total number of pages produced with your response. This page numbering must be separate from and must not alter any original page numbering on the responsive documents or information.
8. Your responses to these requests for production should include all relevant electronically stored information in your possession, custody, or control.



9. The following procedures shall apply to the production of electronic Documents.
- A. Documents should be produced in Bates labeled single-page TIF format with associated searchable text files including extracted and OCR where applicable, together with Concordance load files (DAT and OPT). The DAT file should include the following fields: BegBates; EndBates; BegAttach; EndAttach; Request Number; Custodian; Subject; From; To; CC; BCC ; Date Sent; Time Sent; Date Received; Time Received; Original File Name; Title; Author; Date Created; Date Last Modified; Document Extension; File Size; Folder; NativeFile. Reference the appendix at the end of this document for technical descriptions of each required field.
  - B. Spreadsheet, database, audio, and video files should be produced in native format with a Bates labeled single-page slipsheet image with the message "This Document has been Produced Natively." Full image conversion for these file types is not required. If responsive data exists in non-portable databases (such as SQL, Oracle or other proprietary software), export in Comma Separated Value (CSV) text file format. If a list must be compiled to respond to a particular request because that information does not exist in the normal course of business, produce as an Excel Spreadsheet in your response to this CID.
  - C. Microsoft PowerPoint files should be converted to images to show "Slides and Notes" and to unhide hidden slides. Microsoft Word files should reveal hidden text, display Track Changes, and show comments. Responsive Documents produced in electronic format must be produced in a format that accurately captures each version and draft of the document, including handwritten notes and signatures.
  - D. The North Carolina Department of Justice may request that certain Documents be produced in native format, indicating on a document-by-document basis that the Documents are difficult to read in the produced format or contain embedded information that is potentially relevant. As such, your duty to preserve the original Documents in native format continues beyond the production of the Documents.
  - E. You shall submit electronically stored data on a generally supported storage medium. Currently supported storage media include the following: CD-readable disks formatted to ISO 9660 specifications; DVD-ROMs; USB mass storage; or delivery via secure FTP.
10. If you are unable to fully answer any particular interrogatory or request for documents, supply all of whatever information is actually available. Designate such incomplete information as incomplete and accompany the information with an explanation that includes the reasons for the incomplete answer; a description of any and all of your efforts to obtain the information; and the source from which the Office of the Attorney General may obtain information to complete your response. If books, records, or other sources that provide accurate answers are not available, provide your best estimates and describe how you derived the estimates, including the sources or bases of such estimates. Designate estimated data as such by marking it with the "est." notation. If there is no reasonable way for you to make an estimate, provide an explanation.

11. If particular documents responsive to this Civil Investigative Demand no longer exist for reasons other than the ordinary course of business but you have reason to believe they have been in existence, describe the documents, state the circumstances under which such documents were lost or destroyed, and identify persons having knowledge of the content of the documents.
12. In order for your response to this Demand to be complete, submit with your response the attached certification form, as executed by the official supervising your compliance with this Demand.

### **III. INFORMATION REQUESTED TO BE PRODUCED**

Produce the following documents:

1. All documents, following the decision by the Accreditation Committee of the Council of the ABA Section of Legal Education and Admissions to the Bar ("ABA Accreditation Committee") to place CSL on probationary status and/or following the U.S. Department of Education's ("USDOE") decision in December 2016 to terminate CSL's participation in Title IV programs, which discussed or explained CSL's plans for continued operations or which communicated CSL's plans for continued operations to CSL students;
2. All documents describing what CSL termed "alternative financing" for CSL students, including but not limited to options referenced in the letter of January 13, 2017;
3. All documents CSL sent to current or potential CSL students, from December 19, 2016, to present, concerning the availability of Title IV funds or how their student debt may be affected by the continued operations of CSL after the loss of Title IV funds;
4. All documents explaining any plan by CSL, as referenced in CSL's January 19, 2017, statement, to credit CSL students for federal funds and what will happen to these credits if CSL's Title IV eligibility is not reinstated;
5. All promotional materials intended to be reviewed by prospective CSL students and made available by CSL to students at any time from January 1, 2016 to the present;
6. A roster of students, identified by class, currently enrolled at CSL for the 2017 Spring Semester, including identification of those who are in a position to receive a degree after successful completion of course work at the end of the 2017 Spring Semester;
7. A roster of students, identified by class, enrolled at CSL for the 2016 Fall Semester, including current e-mail addresses and any other contact information in the possession of CSL for those students;
8. A copy of CSL's course offering schedules for the 2016 Fall Semester and 2017 Spring Semester, including the names and contact information for the professors teaching those classes and the number of students enrolled in each class;
9. Copies of all complaints, whether received in written or electronic form and including any notes from telephone conversations, that CSL has received since January 1, 2016, to the present from current and past CSL students;
10. Copies of any responses by CSL to those complaints identified in Request Number 10;
11. Copies of all documents reflecting the current application process for students applying

for admission to CSL in the summer or fall of 2017;

12. All documents related to the program under which CSL financially assisted students who deferred taking the bar examination after graduation ("Deferral Program"), including but not limited to:
  - a. the total amount of financial assistance provided to students who participated in the Deferral Program;
  - b. the total number of students who received financial assistance under the Deferral Program;
  - c. the total number of students who participated in the Deferral Program and ultimately took a bar exam; and
  - d. the total number of students who participated in the Deferral Program and ultimately passed a bar exam;
13. All documents CSL gathered or created in connection with the American Bar Association's ("ABA") review of CSL's accreditation and its subsequent decision to place CSL on probation, including any documents CSL has provided to the ABA in response to the ABA's decision;
14. All documents CSL gathered or created in connection with the USDOE's decision to withdraw student funding for students attending CSL including all documents CSL has provided to USDOE while appealing its decision to withdraw funding;
15. Copies of all market studies CSL conducted, or had conducted on its behalf, concerning the impact of potential disclosures on CSL applicants, including, but not limited to, the market study discussed on page 12 of the December 19, 2016, letter USDOE sent to CSL;
16. All records of the interview Mr. Ogene had with the *Charlotte Business Journal* on or about November 30, 2016; and
17. To the extent not provided in response to Request No. 14, provide a copy of the following documents:
  - (a) The September 15, 2014, Inspection Report provided to the ABA;
  - (b) The January 2015 decision of the ABA Accreditation Committee;
  - (c) The February 3, 2016, decision the ABA Accreditation Committee issued;
  - (d) The May 2016 report CSL submitted to the ABA;
  - (e) All records of the testimony of CSL at the June 23, 2016, ABA hearing;
  - (f) The ABA Accreditation Committee's decision issued in the summer of 2016;
  - (g) All documents CSL submitted to the ABA Accreditation Committee in August and October 2016; and
  - (h) All records relating to CSL's October 2016 hearing before the ABA Accreditation Committee.

**CERTIFICATION**

I, \_\_\_\_\_, having made the foregoing responses to requests for production of documents, certify under penalty of perjury under the laws of the State of North Carolina, that I am authorized to sign legal documents on respondent's behalf and know the responses herein to be true, correct and complete.

Signature:

\_\_\_\_\_

Title or Position:

\_\_\_\_\_

Date:

\_\_\_\_\_

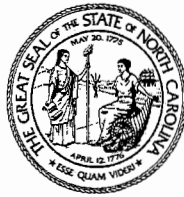
City and State:

\_\_\_\_\_

## APPENDIX

Field Name	Description
BegBates	First Bates number of the document
EndBates	Last Bates number of the document
BegAttach	BegBates number of the parent document in an attachment range
EndAttach	EndBates number of the last document in an attachment range
Custodian	Individual who possessed the document in the normal course of business or the shared repository from which the document was collected
Request Number	Request number(s) to which the document is responsive. Where multiple numbers apply, separate with a semi-colon
Subject	Subject line of the email
From	Sender of the email
To	Recipient(s) of the email
CC	Carbon copy recipient(s) of the email
BCC	Blind carbon copy recipient(s) of the email
DateSent	Date on which the email was sent
TimeSent	Time the email was sent
DateRcvd	Date on which the email was received
TimeRcvd	Time the email was received
FileName	File name of the original non-email file
Title	Title metadata of non-email file
Author	Author metadata of non-email file
DateCreated	Date on which the non-email file was created
DateLastMod	Date on which the non-email file was last modified
DocExt	File extension of the non-email file
FileSize	Size of the file in bytes
Folder	For e-docs, the full path of source files. For emails/attachments, the folder path contained within a mail store
NativeFile	Hyperlink to natively produced documents

Dates should appear in MM/DD/YYYY format.



STATE OF NORTH CAROLINA  
DEPARTMENT OF JUSTICE

JOSH STEIN  
ATTORNEY GENERAL

REPLY TO: MATT LILES  
Assistant Attorney General  
[mliles@ncdoj.gov](mailto:mliles@ncdoj.gov)

March 10, 2017

Mr. Chidi Ogene  
President, Charlotte School of Law  
201 S. College Street, Suite 400  
Charlotte, NC 28244

Jay Conison, Esq.  
Dean, Charlotte School of Law

Re: Civil Investigative Demand to Charlotte School of Law

Dear Mr. Ogene and Dean Conison:

We are writing concerning (1) the recent actions by the U.S. Department of Education ("USDOE") and the American Bar Association ("ABA") against Charlotte School of Law ("CSL"); and (2) in light of those actions, your decision to begin classes for the Spring Semester of 2017 after you released a substantial number of the school's faculty. We have questions about CSL's future viability and how, in turn, that affects the CSL students, many of whom have incurred substantial student debt while attending CSL. We also are concerned that CSL's statements to students have not fully apprised them of all material facts, including most recently students' options going forward and how they might best minimize that substantial debt. For these reasons, in the attached civil investigative demand, we request information concerning CSL's statements to students, CSL's interactions with the ABA and USDOE, CSL's plans for its ongoing and continued operation, and how CSL's students will be protected.

We are aware that USDOE's recent action revoked CSL's ability to receive Title IV funding. Likewise, we are aware that in the fall of 2016, the ABA put CSL on probationary status for noncompliance with the ABA's accreditation standards. The cumulative result of these actions is that CSL students cannot currently use federal funds to pay for their education at CSL. Additionally, if the ABA decides to revoke CSL's accreditation, students are in jeopardy of not graduating from an accredited law school and, therefore, being unable to take a bar examination in certain states. These actions are obviously significant for students and for CSL's continued operation.

Many students' ability to attend CSL is predicated upon access to Title IV funds. Therefore, the loss of these funds prevented students from enrolling for the spring semester. At the close of the fall semester, students were faced with the decision to continue to attend a school where they could not use federal student loans and were not given clear directives on whether the school would even reopen for the spring semester as reports abounded about the school's impending closure. Hundreds of students made the decision not to enroll at CSL for the spring semester without any guidance from the school as to the effect failure to reenroll might have on their ability to discharge their debt if the school did close. Despite numerous reports that CSL planned to close, you issued a statement on January 19<sup>th</sup> indicating that you planned to contest the revocation and to begin the spring semester four days later.

While reopening the school for the spring semester protected CSL's financial interests by reducing its liability for closed school discharges in the event of closure, our office is concerned that your continued operation potentially endangers students' eligibility for a closed school discharge, absent extraordinary action by the USDOE. *See* 34 C.F.R. § 685.214(c)(1)(i)(B) (providing a closed school discharge only to students who attended a school within 120 days of the date of closure). Consequently, your failure to challenge the USDOE's final agency decision to revoke Title IV funding, combined with your decision to reopen for the spring semester have left students with no clarity on how to proceed. We understand the majority of CSL students did not return for the spring semester due to the uncertainty of CSL's future. Therefore, by continuing to operate, CSL endangers these students' eligibility for a closed school discharge – should you eventually close – because they would not have attended the school within 120 days of the closure.

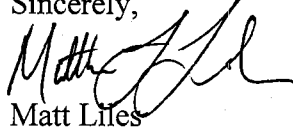
### ***Failure to Communicate with Students***

One of the most troubling aspects of this situation is that throughout the process students have felt uninformed. Students have contacted the Consumer Protection Division looking for information both on CSL's status and their options. Though your statement on January 19<sup>th</sup> confirmed that CSL would open on January 23<sup>rd</sup> and that students would be given some sort of credit for their federal loans, it otherwise provided very little detail on CSL's future.

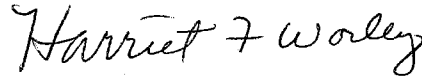
The details matter here. We have not seen any public statements where you have informed students about their rights should CSL close, how those rights are affected by their decisions to attend this semester, or the actual viability of CSL's plans to remain open despite the loss of Title IV funding and the termination of the majority of its faculty. Students who have spent tens of thousands of dollars to attend your school should not be kept in the dark about such important details and to do so is fundamentally unfair to them.

Due to the urgency of this matter, we ask that you respond to the attached civil investigative demand by March 20, 2017. If you have any questions, we are happy to discuss this matter with you at your convenience.

Sincerely,



Matt Liles  
Assistant Attorney General  
Consumer Protection Division

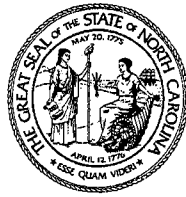


Harriet Worley  
Special Deputy Attorney General  
Consumer Protection Division

cc: Dr. Tim Gallimore Associate VP for Academic Planning and State Authorization,  
UNC General Administration  
Barry A. Currier, Managing Director, Accreditation and Legal Education, ABA Section  
of Legal Education and Admissions to the Bar  
Dan Zibel, Deputy Assistant General Counsel for Postsecondary Education, U.S.  
Department of Education

Attachment





STATE OF NORTH CAROLINA  
DEPARTMENT OF JUSTICE

JOSH STEIN  
ATTORNEY GENERAL

REPLY TO: MATT LILES  
Assistant Attorney General  
[mliles@ncdoj.gov](mailto:mliles@ncdoj.gov)

March 10, 2017

Dr. Tim Gallimore  
Associate VP for Academic Planning and State Authorization  
UNC General Administration  
910 Raleigh Rd.  
P.O. Box 2688  
Chapel Hill, NC 27514

Re: Charlotte School of Law – Continued Licensure Under N.C. Gen. Stat. § 116-15

Dear Dr. Gallimore:

We write to share our serious concerns, based on recent findings of the American Bar Association (“ABA”) and the U.S. Department of Education (“USDOE”), about the ability of Charlotte School of Law (“CSL”) to fulfill its commitments and provide students with an adequate education consistent with CSL’s stated objectives. Our office is taking steps to obtain more information. However, we believe these concerns merit review by the Board of Governors as it fulfills its responsibility under N.C. Gen. Stat. § 116-15 to determine whether CSL should continue to be licensed to conduct post-secondary degree activity in the State of North Carolina.

These issues are not only important, but also urgent. It appears that many CSL students left CSL after the 2016 fall semester. As described further below, when a school closes a federal program provides automatic forgiveness of student debt to any student who has not graduated and was enrolled within 120 days of the school’s closure. In early April 2017, this deadline would pass for students who recently left CSL.

As you know, in November 2016, CSL’s accreditor – the American Bar Association (“ABA”) – put CSL on probationary status and required remedial actions, following a years-long investigation and appeals process. The ABA concluded that CSL was not in compliance with three ABA accreditation standards:

- The ABA found that CSL did not comply with Standard 301(a), which requires a rigorous legal education that prepares graduates to pass the bar examination and participate in the legal profession.
- The ABA found that CSL did not comply with Standard 501(a), which requires sound admission policies and practices consistent with the ABA standards, CSL’s mission, and the objectives of CSL’s program.

- The ABA found that CSL did not comply with Standard 501(b), which is violated by admitting applicants who do not appear capable of satisfactorily completing the course of study and gaining admission to the bar.

Then, in December 2016, the USDOE revoked CSL's ability to receive Title IV funds. In its December 19, 2016 letter to CSL, USDOE found that CSL "made substantial misrepresentations regarding the nature of its academic program" in violation of federal regulations. USDOE wrote that its "review established that CSL substantially misrepresented to students and prospective students the 'nature and extent' of CSL's accreditation and the 'appropriateness of its courses and programs to the employment objectives that it states its programs are designed to meet.'"

These statements by the law school's accreditation authority and by the USDOE are troubling. In the meantime, despite the ABA's probation sanction and USDOE's action on Title IV funds, CSL has remained open, albeit with a greatly reduced faculty and student body.

With their school at risk of closure, CSL students are left in an untenable position. Students still attending CSL cannot use federal loan money – their primary means of finance – to pay their tuition. The school has decided to stay open but has offered few details on how it plans to do so long term. Students who try to leave have found that few schools will honor their credits. Students who stay are attending a school that has fired half of its employees, thus diminishing the quality of their legal education. Students who graduate from CSL have on average \$161,000 in debt for a degree that has suffered considerable reputational damage. Finally, as explained further below, students who left CSL after the fall semester may lose their right to loan forgiveness if CSL does not close before early April 2017.

Since the ABA and USDOE's actions, our office has received numerous student inquiries about CSL's future. We previously shared with you the four official complaints we received. We have received two additional complaints since we sent you the other complaints, and those are included with this letter. We have also reviewed several civil lawsuits filed by former CSL students, which allege that CSL actively concealed its substandard educational program and bad student outcomes.

Based on student complaints and our past experience with failing schools, we highlight a few areas of particular concern for CSL students that we ask you to consider before making your recommendation to the Board of Governors:

#### ***Students Report a Lack of Transparency from CSL***

Since November, students have had very real questions about CSL's future. The students report the school has not been forthcoming with information during that time. For example, students reported not having class schedules just days before the school's first day of spring classes. Similarly, CSL in a January 19, 2017 message announced students would be given credits for their previous federal aid dollars, but it did not offer students any details about how that would work. CSL has repeatedly left students in the dark about important matters that affect their future and the thousands of dollars in personal debt they have amassed while students at CSL.

***The Timing of Any Closure Will Affect Students' Rights to Discharge Their Student Debt***

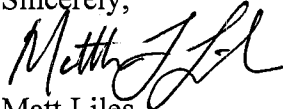
When a school closes, any student who has not graduated and was in attendance within 120 days of closure has the right to discharge their federal student loan debt. *See* 34 C.F.R. § 685.214 (known as "closed school discharge") and 34 C.F.R. § 685.214(c)(1)(i)(B) (discharge limited to students who attended within 120 days of closure). The U.S. Secretary of Education may, in her sole discretion, extend the discharge period for an additional 120 days on the basis of "exceptional circumstances." *Id.* This discharge could be a significant benefit for CSL students who already owe considerable federal student loan debt. CSL's future has been in question since November 2016, causing the majority of CSL students to leave already. Therefore, the longer CSL's future is uncertain, the more likely it becomes that some students will lose their right to a closed school discharge. For this reason, the timing of any closure of CSL is of crucial importance to hundreds of students.

***Future Educational Quality at CSL is in Doubt***

Given that CSL has fired a significant portion of its faculty and staff, we are worried that a stripped-down version of CSL will not be able to deliver the level of education it originally advertised to students. The ABA and USDOE found that CSL offered a substandard legal education and poor student outcomes. These findings are echoed by the class action filings and consumer complaints. CSL is rumored to have proposed a teach-out<sup>1</sup> plan whereby remaining CSL students would receive instruction through CSL's sister school, Florida Coastal Law School. While this plan would obviously protect CSL's monetary interests, it may not best serve students. Florida Coastal has not been authorized to operate in North Carolina, and the quality of the education it provides has likewise been seriously questioned. Continued substandard instruction will compound, not remedy, the injury here.

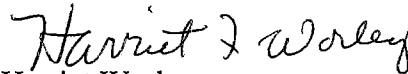
As explained above, this matter requires prompt and decisive action to protect North Carolina students. If you have any questions about these comments, please contact us.

Sincerely,



Matt Liles

Assistant Attorney General



Harriet Worley

Special Deputy Attorney General

cc: Barry A. Currier, Managing Director, Accreditation and Legal Education, ABA  
Dan Zibel, Deputy Assistant General Counsel for Postsecondary Education, USDOE  
Chidi Ogene, President & Jay Conison, Dean, Charlotte School of Law

Attachments

---

<sup>1</sup> Any teach-out plan should clearly advise students that accepting a teach-out will make them ineligible for a closed school discharge. 34 C.F.R. § 685.214(c)(1)(i)(C)(teach out students ineligible for closed school discharge).



PO Box 2688  
Chapel Hill, NC 27515-2688

#### **Constituent Universities**

Appalachian  
State University

East Carolina  
University

Elizabeth City  
State University

Fayetteville State  
University

North Carolina  
Agricultural and  
Technical State  
University

North Carolina  
Central University

North Carolina  
State University  
at Raleigh

University of  
North Carolina  
at Asheville

University of  
North Carolina  
at Chapel Hill

University of  
North Carolina  
at Charlotte

University of  
North Carolina  
at Greensboro

University of  
North Carolina  
at Pembroke

University of  
North Carolina  
at Wilmington

University of  
North Carolina  
School of the Arts

Western Carolina  
University

Winston-Salem  
State University

#### **Constituent High School**

North Carolina  
School of Science  
and Mathematics

An Equal Opportunity/  
Affirmative Action Employer

**Thomas C. Shanahan**  
**Senior Vice President and General Counsel**

Phone: 919-962-4588  
Fax: 919-962-0477  
Email: [tcshanahan@northcarolina.edu](mailto:tcshanahan@northcarolina.edu)

March 23, 2017

Matt Liles, Assistant Attorney General  
Harriet F. Worley, Special Deputy Attorney General  
North Carolina Department of Justice  
Consumer Protection Division  
Post Office Box 629  
Raleigh, North Carolina 27699-0629

Dear Mr. Liles and Ms. Worley:

This responds to your letter dated March 10, 2017, regarding the Charlotte School of Law (“CSL”). Thank you for forwarding your correspondence with CSL, as well as the Investigative Demand issued by your office to CSL’s counsel, and the student complaints received by your office regarding CSL.

As you know, the Licensure Unit at UNC General Administration has already initiated a review of CSL’s license and compliance with the Board of Governors’ requirements for licensure of non-public post-secondary institutions. This review is ongoing, and has been underway for some time. As part of the University’s review process, we have requested records from CSL relating to its program, which CSL has provided to the University. Following review of the CSL records and responses to the University’s inquiries, the President will make a recommendation to the Board of Governors concerning the disposition of CSL’s license, which could include revocation of the license to operate in North Carolina. Under Section IX of the Rules and Standards for Licensing Non-Public Institutions, CSL must be notified in writing in advance of the recommendation that the President intends to make to the Board of Governors. CSL then has ten days from the receipt of the notification to request an interview to respond to the President’s recommendation. A recommendation to revoke CSL’s license, if any, would not go before the Board of Governors until after that interview, if requested.

We understand that you agree with our assessment that the authority of the Board of Governors is limited to granting, reviewing, and revoking licenses to institutions of higher education, and that the Board of Governors lacks any statutory authority to compel any institution to close. Pursuant to G.S. § 116-15(j), enforcement authority for noncompliance with the licensure statute lies with the Attorney General. The Board of Governors “shall call to the attention of the Attorney General, for any action as he may deem appropriate, any institution failing to comply with the requirements of this section.” License revocation by the Board of Governors does not, per se, close an institution. We agree that the concerns involving CSL require prompt attention, and the University has responded by initiating a prompt and thorough licensure review as described in this correspondence.

March 23, 2017

Page 2 of 2

The University stands ready to provide any information or assistance the Attorney General's office may require as it conducts its own investigation of CSL.

Sincerely,

A handwritten signature in blue ink, appearing to read 'T. Shanahan', is written over a light blue rectangular background.

Thomas C. Shanahan

cc: Margaret Spellings, President, University of North Carolina General Administration  
Kimberly van Noort, Vice President for Academic Programs & Instructional Strategy, University of  
North Carolina General Administration  
Daniel A. Zibel, U.S. Department of Education (via email)  
Daniel Harrison, U.S. Department of Education (via email)

Charlotte School of Law  
North Carolina Post-Secondary Activity  
Licensure Review



1355 Greenwood Cliff, Suite 400

Charlotte, NC 28204

*Office:* (704) 831-5202

*Email:* [mjuby@firsttryon.com](mailto:mjuby@firsttryon.com)

## Executive Summary

On behalf of the Board of Governors of the University of North Carolina (the “**Board**”), the University of North Carolina General Administration (“**UNCGA**”) has asked First Tryon Advisors (“**First Tryon**”) to conduct a comprehensive review of the financial health and business model of the Charlotte School of Law (“**CSL**”) in support of the Board’s review of CSL’s license to conduct post-secondary degree activity in North Carolina (the “**Review**”).

Specifically, First Tryon has been asked to evaluate all financial information submitted by CSL in connection with the Review for compliance with the finance-related standards set forth in N.C. Gen. Stat. § 116-15 (the “**Act**”) and the Board’s Rules and Standards for Licensing Nonpublic Institutions to Conduct Post-Secondary Degree Activity in North Carolina (the “**Rules and Standards**”).

Under Standard 10 of the Rules and Standards, CSL must demonstrate to the Board’s satisfaction that CSL is “*financially sound and capable of fulfilling its commitments to students.*” The Rules and Standards further state that CSL must show that it possesses and maintains “*adequate financial resources to sustain its mission and purpose.*” CSL’s stated mission is “*to provide a student-centered education, that produces practice-ready lawyers and that serves underserved communities.*”

Set forth below are summaries of the finance-related criteria established under the Rules and Standards, which serve as a guide for evaluating CSL’s compliance with the Act and Standard 10 of the Rules and Standards.

### Overview of the Finance-Related Guidelines under Standard 10

#### Stability

CSL must demonstrate to the Board’s satisfaction that CSL’s financial resources are characterized by stability that indicates the institution can maintain operational continuity for an “extended period,” which, in CSL’s case, means at least three years.

#### Adequacy

CSL must demonstrate adequate financial support, which is determined, in part, based on an analysis of various ratios, as well as CSL’s financial policies, procedures and practices.

#### Plan for Financial Development

CSL must demonstrate to the Board’s satisfaction that CSL maintains a “coordinated, comprehensive, flexible financial plan (budget) for long-range management of the institution.”

#### Financial Records and Audit Report

The institution’s recent financial history must demonstrate financial stability. CSL must submit financial statements, the most recent audit report, a description of any material changes in the audit report and a detailed disclosure of legal and binding relationships with any parent or subsidiary corporation or institution.

#### Other Criteria

CSL must also demonstrate to the Board’s satisfaction that it maintains (1) adequate insurance to protect its financial interests and (2) a tuition guaranty bond at least equal to the maximum amount of unearned tuition held at any time during the most recent fiscal year.

### Overview of Certain Regulatory Matters

The American Bar Association (“**ABA**”) placed CSL on probation on November 14, 2016, citing CSL’s failure to comply with the ABA’s accreditation standards and directing CSL to take specific remedial actions. On December 19, 2016, the Department of Education (“**DOE**”) informed CSL that its application for continued participation in student financial assistance programs under Title IV of the Higher Education Act of 1965, as amended (“**Title IV**”), had been denied.

## 1. Liquidity Concerns

### Put Option and Collateralized Obligations

CSL is wholly-owned by InfiLaw Corporation (“**InfiLaw**”), which is wholly-owned by InfiLaw Holding, LLC.

In 2011, InfiLaw entered into a Preferred Unit Purchase Agreement (“**PUP Agreement**”) and a five-year Credit Agreement with Ares Capital Corporation. InfiLaw has pledged all its assets, including those of CSL, to secure its obligations under the Credit Agreement, which is cross-defaulted with the PUP Agreement.

Preferred dividends are due under the PUP Agreement quarterly and are currently paid out at a preferred dividend rate of 15%. In December of 2016, the PUP Agreement was amended to defer payments due with respect to the preferred shares until February 1, 2018. Under the PUP Agreement, the holders of InfiLaw’s Series A and Series A-1 preferred units may put their shares back to InfiLaw on July 31, 2018 (180 days after the February 1, 2018 maturity date) or earlier, based on certain trigger events, at a purchase price equal to 100% of the par amount of such shares plus accrued dividends and paid-in-kind distributions. As of December 31, 2016, InfiLaw owed \$8.49 million in preferred dividends on \$132 million in Series A preferred units. Unless InfiLaw renegotiates the PUP Agreement or obtains alternative financing, Note 5 to CSL’s most recent audit (the “**FY2016 Audit**”) states that InfiLaw will be unable to provide the more than \$140 million in cash required to cover the put option, if exercised.

InfiLaw has consistently violated the terms of the PUP Agreement and Credit Agreement, forcing it to rely on waivers from its investors and the payment-in-kind or deferral of its payment obligations under the agreements. Given InfiLaw’s current financial condition, it is unlikely InfiLaw will be able to obtain alternative financing on reasonable terms prior to the put date, and no assurance has been given that InfiLaw’s investors will continue to forbear from exercising its remedies under the agreements in response to InfiLaw’s ongoing noncompliance.

### Cash Pooling Arrangement

CSL participates in a pooled cash arrangement that is managed by InfiLaw. Approximately \$10.5 million in CSL’s cash is held by InfiLaw under the arrangement, which is reflected as an account receivable on CSL’s balance sheet. First Tryon has not reviewed the pooling agreement, but InfiLaw’s liquidity and solvency concerns may negatively affect CSL’s ability to convert the receivable into cash when needed to meet CSL’s operational requirements.

**Taken together, these liquidity concerns cast doubt on CSL’s ability to maintain adequate financial resources to sustain its mission, purpose and operational continuity for the next three years, as required by Standard 10.**

## 2. Statistics and Trends

### Enrollment

Enrollment is a key leading indicator of financial health and operational stability. CSL’s enrollment has deteriorated significantly in recent years, from a high of 1,410 FTE in Fall 2013 to 712 FTE in Fall 2016. Mid-April 2017 data suggests that this downward trend has accelerated, with Spring 2017 enrollment estimated at 220 students. Approximately half of CSL’s remaining students are expected to graduate at the end of the current semester. The following factors have contributed to CSL’s enrollment declines:

- National law school enrollment has dropped by 30% over the past five years to 42-year lows
- CSL’s bar passage rates and job placement statistics have weakened in recent years, raising concerns over the value of CSL’s degree programs
- The ABA’s decision to place CSL on probation
- DOE’s denial of CSL’s application for continued participation in Title IV funding programs, which significantly increased the cost of attendance for many prospective students

CSL’s Reliable Plan for Compliance with Standards 301 and 501 (the “**Reliable Plan**”), which it submitted to the ABA on December 29, 2016, included enrollment targets and projections that were developed before DOE informed CSL that it was ineligible to continue its participation in Title IV programs. CSL notes on page 5 of the Reliable Plan that, “As of the



date of submission of this Reliable Plan, [CSL] does not have sufficient information to determine the extent to which [CSL] will have to modify [its] projections” in light of its ineligibility. In each of the last three fiscal years, Title IV funding has accounted for at least 88% of CSL’s annual institutional revenues (as calculated in accordance with Title IV regulations).

CSL also concedes in the Reliable Plan that changes to its enrollment strategies, as proposed to meet ABA standards, “will result in a significant decline in revenue” in the short-term, and that its current ABA-imposed probation “presents a challenge for both attracting applicants and yielding matriculants.”

The uncertainty surrounding CSL’s Title IV eligibility, its historical dependence on Title IV funding and its status with the ABA, together with CSL’s inability to forecast the impact of those factors on its enrollment, calls into question (1) the existence of a “coordinated, comprehensive, flexible financial plan” for its long-range management and (2) CSL’s ability to maintain adequate financial resources to sustain its mission, purpose and operational continuity for the next three years, in each case as required by Standard 10.

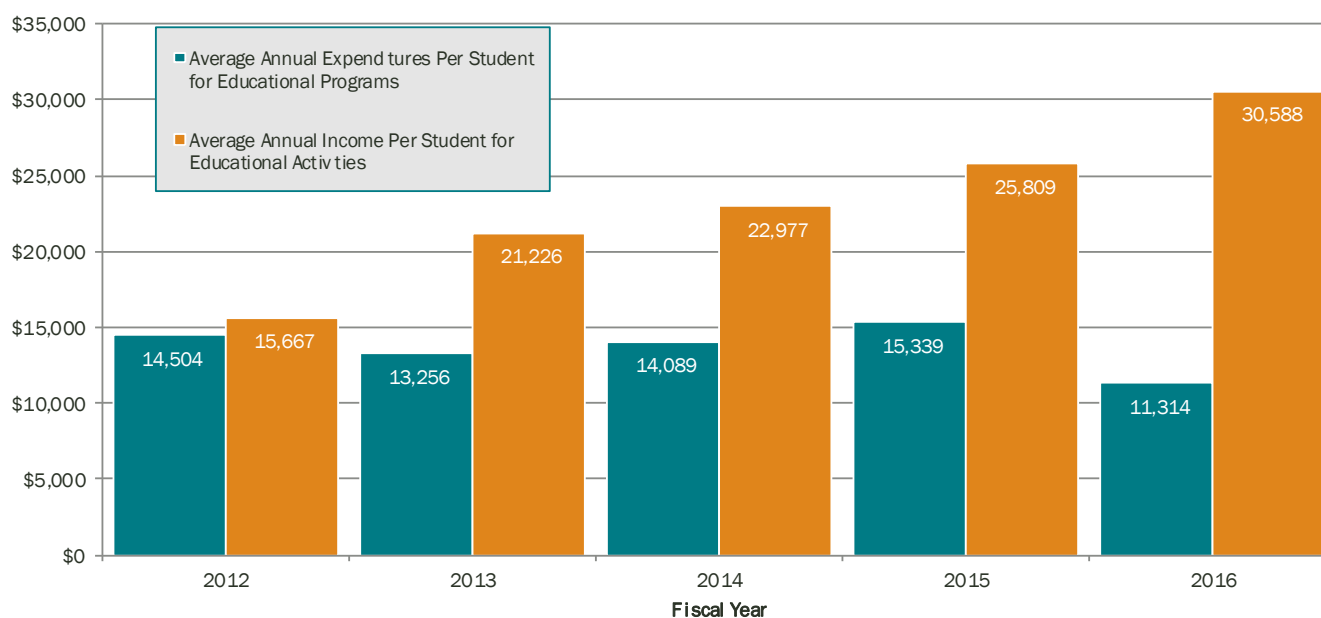
### Financial Adequacy

Under the guidelines set forth in the Rules and Standards, the adequacy of an institution’s financial support is based, in part, on the following three metrics:

- Average annual expenditures per student for educational programs
- Average annual income per student for educational programs
- Ratio of net profit to debt service costs (debt service coverage ratio)<sup>1</sup>

The chart below tracks the per student metrics, which First Tryon has calculated using financial data from the end of CSL’s last five fiscal years and the average of FTE enrollment from the Fall semesters immediately before and after the end of each fiscal year.

**Charlotte School of Law – Standard 10 – Financial Adequacy Metrics (FY2012 through FY2016)**



CSL’s educational expenditures per student have remained relatively flat since 2012, though they dipped more than 25% in 2016. Over the same period, CSL’s educational income per student has risen steadily, nearly doubling since FY2012.

<sup>1</sup> First Tryon has not calculated CSL’s debt service coverage ratio because CSL has no direct debt outstanding. CSL’s assets have been pledged, however, to secure InfiLaw’s outstanding debt under the Credit Agreement, and a portion of InfiLaw’s annual interest expense is allocated to CSL. As of July 31, 2016, there was approximately \$10.3 million outstanding under the Credit Agreement, and InfiLaw charged CSL \$350,000 in allocated interest expenses for the fiscal year ended July 31, 2016.

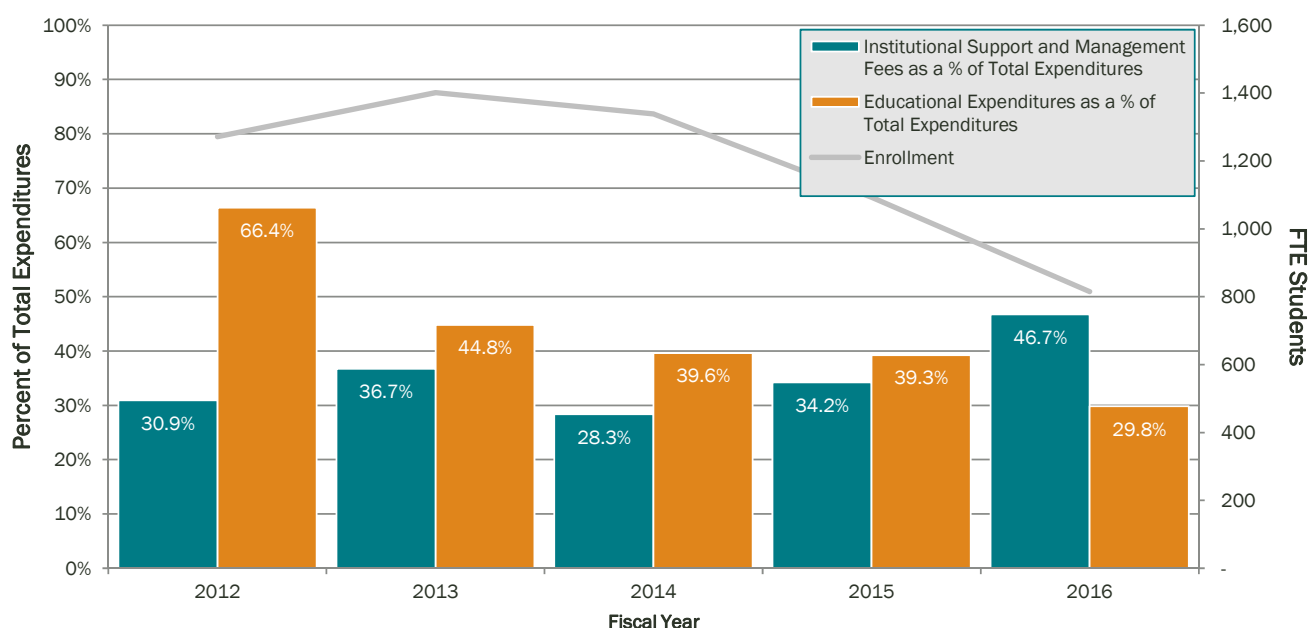
In a stable or rising enrollment environment, this data might indicate that CSL has realized efficiencies that allow it to deliver both a quality educational product and significant value to its investors. In the context of a declining enrollment environment, however, the data suggest that CSL's cost management initiatives may be designed to maintain profitability at the expense of CSL's core educational programming.

To address CSL's recent enrollment volatility and the interpretive challenges that volatility presents for per capita-based ratios, First Tryon has calculated the two ratios described below to provide additional perspective on CSL's financial commitment to adequately support its educational mission:

- Institutional support and management fees as a percentage of CSL's total expenditures
- Educational expenditures as a percentage of CSL's total expenditures

The chart below plots these two metrics as of the end of CSL's last five fiscal years against CSL's average enrollment, using the same enrollment calculation as in the first chart:

Charlotte School of Law – Additional Financial Adequacy Metrics (FY2012 through FY2016)



Educational expenditures as a percentage of total expenditures has fallen in each of the past four years, while institutional support and management fees have risen from 30.9% of total expenditures in FY2012 to nearly half of total expenditures in FY2016.

Given CSL's declining enrollment, the data reflected in the charts above raise concerns regarding the adequacy, as evaluated under Standard 10, of CSL's financial support for its mission to provide a "student-centered education."

### 3. Going Concern Disclosures

The Financial Accounting Standards Board has issued Accounting Standards Update No. 2014-15 ("FASB ASU 2014-15") to provide guidance on determining when and how reporting entities must disclose going-concern uncertainties in their financial statements. The guidance requires, among other things, that the reporting entity provide certain disclosures if there is "substantial doubt about the entity's ability to continue as a going concern."

The audit report in the FY2016 Audit states that it was prepared under the assumption that CSL "will continue as a going concern" but that CSL's ineligibility under DOE's Title IV programs "raises substantial doubt about [CSL's] ability to continue as a going concern" (emphasis added). The audit report also states that no adjustments were made to CSL's

financial statements to account for the uncertainty surrounding CSL's Title IV eligibility. The FY2016 Audit also describes CSL's obligations under FASB ASU 2014-15 and states that the disclosures under Note 11 of the FY2016 Audit address management's "assessment of going concern considerations for the year-end July 31, 2017."

Note 11 describes CSL's ongoing negotiations with DOE regarding its Title IV eligibility and the possibility of restoring Title IV funding under a mutually-acceptable plan of action. Note 11 also states that management cannot predict the outcome of the negotiations with DOE, nor can it forecast the likelihood of CSL's continued participation in the Title IV programs. Note 11 states that without the successful implementation of a plan of action and the reinstatement of Title IV funding, there is substantial doubt about CSL's ability to continue as a going concern, and CSL may be forced to cease operations.

The going concern disclosures in the FY2016 Audit, along with the FY2016 Audit's disclosures regarding InfiLaw's recent inability to remain in compliance with its covenants under the PUP and Credit Agreements, do not indicate a recent history of financial stability for CSL and its affiliates, nor do they support a finding that CSL has a "coordinated, comprehensive, flexible financial plan (budget) for long-range management of the institution" or the ability to maintain adequate financial resources to sustain its mission, purpose and operational continuity for the next three years, in each case as required by Standard 10.

## 4. Tuition Guaranty Bond

Standard 10 requires each institution to maintain a tuition guaranty bond in a principal amount not less than the greater of (1) \$10,000 and (2) the maximum amount of prepaid tuition held by the institution at any time during its most recent fiscal year. Under Standard 10, "prepaid tuition held" on any given date equals the difference, if positive, of (a) the amount of tuition and related required fees collected by the institution and (b) the amount of such tuition and fees actually earned by the institution on such date. For the purposes of calculating "prepaid tuition held," Standard 10 makes no distinction regarding the source of any such payments, stating only that collections include "the amount of cash received by an institution for a student's account as payment for the applicable tuition and related required fees."

As part of its annual report to the Board for the 2015-16 academic year, CSL included a letter to UNCGA describing a change in the methodology CSL unilaterally adopted in determining the required amount of its tuition guaranty bond. The change in methodology, which included only prepaid tuition received directly from students and excluded prepaid tuition received from the federal government on a student's behalf, reduced CSL's tuition guaranty bond requirement from \$13,284,363 for the 2014-2015 academic year to \$2,388,890 for the 2015-16 academic year. CSL used a similar methodology to calculate its tuition bond guaranty requirement for the current academic year.

UNCGA has informed CSL (along with a small number of other institutions who have used a similar approach in calculating its tuition bond requirement) that its methodology is not supported by the plain language of Standard 10 and that CSL's calculation of its "maximum amount of prepaid tuition held" must take into account any prepaid tuition received from the federal government.

To date, CSL has not provided the Board with information sufficient to establish the "maximum amount of prepaid tuition held ... at any time" during the fiscal year ended July 31, 2016 in the manner prescribed under Standard 10, nor has CSL provided a statement from an independent certified public accountant stating that the existing principal amount of its tuition guaranty bond is at least equal to such amount, as required by Standard 10.

## 5. Further Inquiry

As part of its review, First Tryon has not reviewed evidence that would support a finding that CSL maintains adequate insurance to protect its financial interests, as required by Standard 10

In addition, First Tryon is not aware of any materials submitted by CSL that would constitute a "coordinated, comprehensive, flexible financial plan (budget) for long-range management of the institution." The limited projections CSL has provided to date were developed, according to CSL, under the assumption that CSL would remain eligible for funding under Title IV, which is not currently the case. To the extent any such long-range plans have been developed to address CSL's lack of participation under Title IV funding programs, First Tryon would welcome the opportunity to review them in light of the guidelines promulgated under Standard 10.

Finally, First Tryon has not had the opportunity to review (1) the agreement pursuant to which CSL is obligated to pay InfiLaw for certain shared and management-related expenses, (2) any agreements relating to the PUP and Credit Agreements and (3) any pooled cash management agreements among CSL and its affiliates. **We note that the guidelines for Standard 10 require CSL to provide “detailed disclosure of legal and binding relationships with any parent or subsidiary corporation or institution.”** Absent our ability to review those documents, First Tryon has made certain assumptions regarding the content of those agreements and the impact those arrangements might have on CSL’s ability to meet the requirements set forth under Standard 10.

**Review of Charlotte School of Law for Compliance with  
North Carolina Licensure Requirements**

**May 8, 2017**

**Paul Kurtz  
Associate Dean & Professor Emeritus  
University of Georgia School of Law, Athens, Georgia**

## **Program of Legal Education**

### **“Standard 301. OBJECTIVES OF PROGRAM OF LEGAL EDUCATION**

**(a) A law school shall maintain a rigorous program ... that prepares its students, upon graduation, for admission to the bar and for effective, ethical, and responsible participation as members of the legal profession....”**

This language, taken from the 2016-17 ABA Standards and Rules of Procedure for Approval of Law Schools (hereinafter ABA Standards), serves two functions. First, it serves as the general principle describing the American Bar Association’s mandate to American law schools concerning the type of educational program which is pre-requisite to the grant and maintenance of accreditation by the ABA. The rest of the Standards in Chapter 3 are more specific in explaining the contents of a “rigorous program...that prepares...law students.....for admission to the bar and....effective, ethical and responsible participation as members of the legal profession....”

Standard 301, however, has a second, more specific, function as well. This is to stress the importance of the role of an accredited law school in preparing its graduates for passing the examination required for admission to the bar. Each state has its own examination, the passage of which serves as a gatekeeper to the legal profession. The requirements concerning the preparation for bar admission are made even more specific in Standard 316, one of the Standards alluded to in the prior paragraph.

This section of our report will outline the most important of the Program of Legal Education Standards in Chapter 3 of the ABA Standards and provide available data relevant to whether the Charlotte School of Law measures up to the Standards. It should be emphasized, however, that this review and report has been prepared solely on the basis of documents provided to this committee by the CSL at the request of the committee.<sup>1</sup> Likewise, it should be emphasized that, while this report is similar to a report filed with the ABA by a Site Visit team<sup>2</sup>, it is neither as thorough nor as detailed as such a report.

### **“Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR**

**(a) A law school shall require, as a condition for graduation, successful completion of a course of study of not fewer than 83 credit hours. At least 64 of these credit**

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<sup>1</sup> The CSL generally has been prompt and thorough in its cooperation with our committee.

<sup>2</sup> The most recent onsite visit to the CSL by a joint ABA/AALS team was in the fall of 2014. The ABA is the American Bar Association, which the accrediting agency for American law schools. The AALS is the Association of American Law Schools, a membership organization, which is the leading professional group for American legal educators. This committee is in receipt of and has utilized the report made by the site team (hereinafter Site Committee Report), which was sent to the ABA Accreditation Committee. The committee has received and relied on the Decision of the ABA’s Accreditation Committee based on that site committee report (hereinafter Accreditation Committee Decision (2015)).

hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.<sup>3</sup>

- (b) A law school shall require that the course of study for the J.D. degree be completed no earlier than 24 months and, except in extraordinary circumstances, no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.**
- (c) A law school shall not permit a student to be enrolled at any time in coursework that exceeds 20 percent of the total credit hours required by that school for graduation....”**

The Accreditation Committee Decision (2015) (p. 3, Findings (7), (8) and (9) ) specifically finds that the CSL is in compliance with the requirements of subsections (a), (b) and (c) of Standard 311. A review of the current Student Rights & Responsibilities Manual (SRRM) (August 2016) (hereinafter Student Handbook) confirms that the school remains in compliance with these subsections. See pp. 17-18, 21, 25, 38-39, and 51.

#### **“Standard 303. Curriculum**

- (a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:**
  - (1) one course of at least two credit hours in professional responsibility...;**
  - (2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and**
  - (3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. To satisfy this requirement, a course must be primarily experiential in nature and must:**
    - (i) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more ... professional skills....;**
    - (ii) develop the concepts underlying the professional skills being taught;**
    - (iii) provide multiple opportunities for performance; and**
    - (iv) provide opportunities for self-evaluation.**
- (b) A law school shall provide substantial opportunities to students for:**
  - (1) law clinics or field placement(s); and**
  - (2) student participation in pro bono legal services, including law-related public service activities.”**

The Accreditation Committee Decision (2015) (pp. 4-8, Findings (14) through (24)) specifically found that all provisions of this Standard were being met at the time of the 2014

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<sup>3</sup> This is to be distinguished from time spent in credit-bearing activities such as Moot Court, Law Review, Externships, law-related courses in other parts of a university and other similar educational experiences. Most American law schools, including the CSL, award credits to such activities.

Site Visit. The Student Handbook confirms that the school remains in compliance with this Standard. Student Handbook, p. 51. Additionally, the CSL currently requires all students to perform 50 hours of “Access to Justice” work and 10 hours of community service work over the course of their legal education. Id. at p. 34.

Each year the ABA requires all accredited schools to complete and submit the ABA Annual Questionnaire<sup>4</sup> in which the school reports on a range of matters, including admission, curriculum, graduation rates, bar passage rates, etc. The CSL submission for Fall, 2014, reported all 1,625 positions available in simulation courses were filled in the prior academic year. Additionally, 205 of the 256 clinical seats were filled and 215 field placements were made. The Fall, 2015 submission reported 2,481 positions available in simulation courses with 1,941 positions filled in the prior year. Additionally, 167 of the 253 available clinic course seats were filled and field placements for 351 students were made. The Fall, 2016 submission showed in the prior year 756 of the 935 seats filled in simulation courses, 190 of 196 of the clinic seats filled, and 237 field placements made. While a decline in overall enrollment apparently resulted in a contraction of the number of seats offered and filled, it is obvious that the school continues to be committed to experiential learning of all types and that its students are very interested in such coursework.<sup>5</sup>

While no ABA Standards require the teaching of particular courses outside Standard 303, it should be noted that the CSL has consistently required a fairly large number of courses. Unlike many schools which require only a set of first-year courses (and sometimes not all of the first year is devoted to required courses), the CSL had a total of 69 hours of required course work for those seeking the J.D. degree according to its 2014 submission, 63 according to its 2015 submission, and 62 in its 2016 submission. The required courses for students entering in the Fall of 2015 or later are a fairly traditional package of first year courses, plus Professional Responsibility, Practice in Context: Litigation **or** Practice in Context: Real Estate, North/South Carolina Distinctions **or** Multi-State Bar Exam Strategies, Constitutional Law, Criminal Procedure, Evidence, Business Associations, Secured Transactions, Decedent’s Estates, First Amendment and Sales. Student Handbook, pp. 33-4. Additionally, the courses in Federal

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<sup>4</sup> The CSL was asked by the Committee to provide the school’s responses to the 2014, 2015, and 2016 ABA questionnaires. Complete materials for 2015 and 2016 were provided, with substantially all of 2014 provided as well.

<sup>5</sup> The CSL provided to the Committee a list of the courses and instructors being offered during the current academic year. This document is on file with Dean Kurtz. During the current semester, with enrollment significantly reduced from prior levels, the following clinics are being operated: Driver’s License Restoration Clinic, Criminal Litigation Drafting Clinic, Criminal Justice Clinic, and Wills Practitioner Clinic. Additionally, Advanced Externship, Civil Practice Externship, and Judicial Externship are being offered. During the fall semester 2016, the school offered its clinics in Homeless Prevention, Domestic Violence, Criminal Prosecution, Immigration, Human Rights Practice, Family Advocacy, Entrepreneurship, and Wills. Along with a number of externship courses, this reflects the school’s continuing commitment to experiential learning. The current required course work for all students entering in the fall of 2015 and later includes a requirement of at least five credit hours in “practice ready courses”, which include all the clinics, all the externship programs and simulation courses, where students engage in simulation of professional roles. Student Handbook, p. 34.



Income Tax, Administrative Law, Remedies, Family Law, Real Estate Finance (North Carolina), and Insurance Law (South Carolina) are “highly recommended.” *Id.* at p. 35.

There is a tradition of a rich upper-level elective curriculum and a history of small classes at CSL. During the current academic year, for example, courses are being offered in Undocumented Children and the Law, National Security Law, Consumer Bankruptcy, International Sales and Commercial Arbitration, E-Discovery, Media Law, Insurance Law, and Military Law. In 2014, according to the school’s ABA Questionnaire, 80% of upper-class courses had enrollments of 49 students or fewer. In 2015, small classes accounted for 87% of the upper-level course work, and in 2016 the parallel percentage was 90%.<sup>6</sup> The average first year class ranged from 60 in the evening division in 2014 down to 43 in the 2016 submission which included both day and night divisions. While no precise comparative data is available to the committee, a first-year section of 60 or fewer students is smaller than the sections in many, if not, most American law schools. There are obvious educational benefits to a small class and most of the school’s classes are small.

#### **“Standard 306. DISTANCE EDUCATION**

- (a) A distance education course is one in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously.**
- (b) Credit for a distance education course shall be awarded only if the academic content, the method of course delivery, and the method of evaluating student performance are approved as part of the school’s regular curriculum approval process.**
- (c) A law school shall have the technological capacity, staff, information resources, and facilities necessary to assure the educational quality of distance education.**
- (d) A law school may award credit for distance education and may count that credit toward the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction required ... if:**
  - (1) there is opportunity for regular and substantive interaction between faculty member and student and among students;**
  - (2) there is regular monitoring of student effort by the faculty member and opportunity for communication about that effort; and**

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<sup>6</sup> In the Questionnaire for 2014, there was a total of 222 upper division classes with 25 or fewer students. The parallel numbers for 2015 and 2016 were 167 and 140, respectively. The declining numbers are traceable to the declining total enrollment.

**(3) the learning outcomes for the course are consistent with Standard 302.**

**(e) A law school shall not grant a student more than a total of 15 credit hours toward the J.D. degree ... under this Standard.**

**(f) A law school shall not enroll a student in courses ... under this Standard until that student has completed instruction equivalent to 28 credit hours toward the J.D. degree.**

**(g) A law school shall establish an effective process for verifying the identity of students taking distance education courses and that also protects student privacy....”**

The Accreditation Committee Decision (2015) (pp. 8-9; Finding (25)), in its analysis of the school’s compliance with Standard 306, found that

...online courses must first be approved by the Curriculum and Professional Readiness Team...even if the course is already offered as a traditional classroom course. The Law School uses an .... externally hosted, web-based platform (to deliver the course to students). It is presented in a comprehensive and secure online delivery format. The system presents a student from signing up for more than one online course at a time, thus assuring that a student will not take more than four credit hours in a semester. The Registrar’s office conducts a degree check every summer to assure that a student does not have more than 12 credit hours of online courses....Students must verify their identity when signing into an online course by using a secure user login and passcode. Final exams are administered as proctored examinations.

Currently, 15 online course credits may be applied toward satisfaction of the 90 credits required for graduation. Student Handbook, p. 37.<sup>7</sup> Students in the J.D. program are not permitted to take online courses until they have completed 28 credit hours of “in person” coursework. Id. at p. 38.<sup>8</sup>

The CSL has had a robust online education program for a number of years. In its 2015 ABA Questionnaire, it reported 36 courses having been offered in the prior year online.<sup>9</sup> Most of those courses were presented by iLaw Ventures, one of the leading providers of such coursework in American legal education. The school appears to have made good use of the online course platform to broaden the curriculum (offering such courses as White Collar Crime, International and Comparative Antitrust Law, and Small and Solo Firm Practice) as well as

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<sup>7</sup> While this is more than the 12 hours permitted at the time of the Site Visit, it is consistent with the provisions of Standard 306(e) above.

<sup>8</sup> Standard 306(f) prohibits first-year coursework from being offered online.

<sup>9</sup> The 2014 ABA Questionnaire reported 17 online courses in the prior year and the 2016 Questionnaire listed 28 online courses in 2015-16.

providing scheduling flexibility for those students taking more traditional courses (such as Evidence, Family Law, Personal Income Tax, Remedies, Decedents' Estates, and Corporate Taxation).

#### **"Standard 308. ACADEMIC STANDARDS**

**(a) A law school shall adopt, publish, and adhere to sound academic standards, including those for regular class attendance, good standing, academic integrity, graduation, and dismissal.**

**(b) A law school shall adopt, publish, and adhere to written due process policies with regard to taking any action that adversely affects the good standing or graduation of a student."**

The Accreditation Committee Decision (2015) described and implicitly approved the CSL policies concerning regular class attendance (p. 3, Finding (8)), academic good standing and dismissal (p. 10, Finding (30)), and graduation requirements (pp. 2, 3, 4, 5, 7, Findings (6), (9), (11), (16), and (22)). The current Student Handbook contains provisions on regular class attendance (pp. 21-22), good standing and dismissal (pp. 48-51), and graduation requirements (p. 51),<sup>10</sup> all of which are consistent with Standard 308.

Inexplicably, the Accreditation Committee Decision (2015) made no mention explicit or implicit of the CSL's policies on "academic integrity" or "due process [regarding] any action that adversely affects the good standing or graduation of a student." Therefore, a careful review of the Student Honor Code in the Student Handbook (pp. 54-61) was undertaken for the purposes of this report. The Code thoroughly defines academic dishonesty (unfair advantage, plagiarism, unauthorized assistance and misrepresentation) and describes it as a violation of the Honor Code (pp. 54-55). Further, the Code defines and prohibits unprofessional and disrespectful conduct and gives examples of such conduct (pp. 55-56). The Code imposes an obligation on all students to "protect the integrity of the Honor Code" and gives examples of a violation of this obligation, including failure to report a violation by another student, knowingly making a false report of an Honor Code violation, falsifying or destroying evidence in an Honor Code proceeding, failing to appear in an Honor Code proceeding without reasonable excuse or good cause, breaching an obligation of confidentiality under the Code and failing to report to school officials any "federal, state, or local charges or offenses" occurring after admission to the school. (p. 56)

The Student Handbook, on pp. 57-61, outlines the procedures involved in dealing with claims of an Honor Code violation. Any member of the CSL community can report alleged violations to the law school administration. The Assistant Dean for Academic Affairs or the Director of Student Engagement then informally investigates the complaint, interviews

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<sup>10</sup> The CSL is one of the relatively few American law schools which require completion of 90 academic credits for the J.D. degree. Most schools require 88 or sometimes 86 credits.

witnesses, and examines relevant documents. Before any formal hearing is convened the student is provided with a written allegation of the offending behavior. A plea bargain, which includes acknowledgment of guilt and imposition of discipline, may be reached before the hearing.

The Academic Disciplinary Team is a standing committee of five or more faculty members, appointed by the Dean. A Hearing Panel is composed of both students and faculty. A faculty member from the Academic Disciplinary Team chairs the Hearing Panel.<sup>11</sup> Hearings shall be held in private. The accused student is entitled to know the names of the witnesses against him/her no less than 24 hours before the hearing.

The accused student may have a student advisor to provide counsel, who is not permitted to ask questions, introduce evidence, or otherwise represent the accused student. No mention is made of representation by an attorney. The accused student may ask questions of the witnesses. The formal rules of evidence are inapplicable, but “every effort will be made to obtain the most reliable evidence for consideration.” The Panel Chair’s evidentiary rulings may be overruled by majority vote of the Panel. The Panel may make further investigation of the allegations after the hearing is concluded.

The Panel will decide whether the allegations were “proved or not proved.” If not proved, the Chair will write a letter to the Dean noting the decision, along with the Panel’s findings of fact and conclusions, along with a recommended sanction. The sanctions range from an oral reprimand to expulsion from the institution, with many options between those two extremes. The Student Handbook provides a list of the permissible considerations for the Hearing Panel in recommending a sanction (p. 60). The Dean, after receiving the Panel’s findings and recommended sanction, will implement the sanction unless “for compelling reasons he or she wishes to modify” it. Written notice of the decision is to be provided to the student as quickly as practicable.

While the Accreditation Committee of the ABA did not determine the acceptability of these provisions, they would seem to satisfy Standard 308, both in the procedures provided and in the notice provided to CSL students by the material in the Student Handbook.

#### **“Standard 309. ACADEMIC ADVISING AND SUPPORT**

- (a) A law school shall provide academic advising for students that communicates effectively the school’s academic standards and graduation requirements, and that provides guidance on course selection.**

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<sup>11</sup> The Handbook describes this person as a Facilitator, but it is clear that the function which is being served is that of Chair of the Hearing Panel.

**(b) A law school shall provide academic support designed to afford students a reasonable opportunity to complete the program of legal education, graduate, and become members of the legal profession.”**

Academic advising was found by the Accreditation Committee Decision (2015) to be “handled by the Associate Dean for Academic Services and Faculty Development, the Assistant Dean for Academic Services, the Registrar’s Office and the Student Success Department.” (p. 10, (Finding 32)). Additionally, faculty members are expected to hold regular office hours to consult with students and students are encouraged to identify a faculty mentor either formally (in a program operated by a student organization, such as the Black Law Students Association) or informally.

The CSL academic support program required by subsection (b) of Standard 309 was described by the Accreditation Committee as “comprehensive” and the Site Team Report found it evidenced a “strong commitment to an academic success oriented program rather than mere remedial assistance for students.” (p. 21). The Student Success Department is charged with providing direct support for full-time and part-time students on academic probation, students who are on “academic alert,”<sup>12</sup> those students admitted through the CSL conditional admission program (AAMPLE), and students referred to the Department by professors teaching in the first year program. Additionally, it provides assistance to the student body at large.

In December, 2016,<sup>13</sup> the CSL submitted a “Reliable Plan for Compliance with Standards 301 and 501” (hereinafter Reliable Plan or Plan). It described the current structure of academic support at the school as follows:

[a] stand-alone academic skills development courses;<sup>14</sup> [b] academic skills development laboratory components (“Labs”) to doctrinal courses;<sup>15</sup> [c] first-year and upper-level

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<sup>12</sup> Such students are those not on probation, but close to it.

<sup>13</sup> The plan was prepared in response to an Accreditation Committee letter of November 14, 2016 which, in addition to placing the CSL on probation, directed the school to submit “a written reliable plan for bringing the Law School into compliance with Standards 301(a) [and two Standards dealing with the Admissions program].” It should be noted that the letter cites Standard 301, the general introductory Standard in Chapter 3 of the ABA Standards and **not** Standard 316, *infra*, which deals specifically with bar passage. The ABA has not specifically found the CSL to be in non-compliance with Standard 316.

<sup>14</sup> Two such courses are mentioned in the Reliable Plan: Lawyering Fundamentals (a voluntary one-week course begun in 2016 before the start of the first semester for students with a 145 LSAT score or lower, which is designed to “demystify the case method, to begin to develop the skills necessary to achieve academic success”; a critical part of this course was daily assessments, which provided students with continuous feedback on their level of readiness for law school); Legal Methods (required for second-semester 1L students who are on academic probation or alert focusing on issue spotting, critical reading, time management, rule synthesis, analysis and outlining; Criminal Law is deferred for a term for those students taking this course) (pp. 14-15). The plan also mentions five courses designed specifically for bar preparation (pp. 20-23).

<sup>15</sup> These labs (begun in fall semester, 2016) are team-taught by a doctrinal professor and an Academic Success professor. They are designed to allow for “individualized attention and feedback” and “allow students to practice the concepts they are learning.”

workshops, one-on-one counseling, and other support mechanisms delivered by the academic success faculty. (p. 14)<sup>16</sup>

**“Standard 316. BAR PASSAGE**

- (a) A law school’s bar passage rate shall be sufficient, for purposes of Standard 301(a), if the school demonstrates that it meets any one of the following tests:**
  - (1) That for students who graduated from the law school within the five most recently completed calendar years:**
    - (i) 75 percent or more of these graduates who sat for the bar passed a bar examination; or**
    - (ii) in at least three of these calendar years, 75 percent of the students graduating in those years and sitting for the bar have passed a bar examination.**

In demonstrating compliance under sections (1)(i) and (ii), the school must report bar passage results from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency.

- (2) That in three or more of the five most recently completed calendar years, the school’s annual first-time bar passage rate in the jurisdictions reported by the school is no more than 15 points below the average first-time bar passage rates for graduates of ABA-approved law schools taking the bar examination in these same jurisdictions.**

In demonstrating compliance under section (2), the school must report first-time bar passage data from as many jurisdictions as necessary to account for at least 70 percent of its graduates each year, starting with the jurisdiction in which the highest number of graduates took the bar exam and proceeding in descending order of frequency. When more than one jurisdiction is reported, the weighted average of the results in each of the reported jurisdictions shall be used to determine compliance.

**(b) A school shall be out of compliance with this Standard if it is unable to demonstrate that it meets the requirements of paragraph (a)(1) or (2).**

**[Subsection (c) is omitted].”**

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<sup>16</sup> The Plan goes on to describe the current staffing of the Academic Success department as follows: “four full-time faculty (including the Director), one half-time faculty member (who was formerly head of the Academic Success team) and approximately one-half of the time of one of the Librarians. There are also six Academic Success teaching assistants.”

Standard 316 is very complex and, in at least one respect, misleading. The reason for its inclusion in the ABA Standards Chapter on the Program of Legal Education, however, seems fairly clear. The ABA, not to mention potential students and the public, intuit a link between success on a bar examination and the quality of the program of legal education at the school which produced the bar applicant.

Three methods of satisfying the Standard are presented in subsection (a). Two of these methods, which measure ultimate bar passage, are outlined in subsection (a)(1), under which compliance is achieved if either:

75% of the students who have graduated from the law school in the prior 5 calendar years have passed a bar examination; or

In at least three of those 5 years, 75% of that class have passed a bar examination.<sup>17</sup>

The last portion of subsection (a)(1), however, makes clear that the 75% required pass rate in both of the above provisions is illusory. This is because the ABA requires the school to account for the bar exam performance of only 70% of the members of any class. Thus, theoretically, if a particular graduating class had 100 students all of whom took a bar examination and the school only had the results for 70 of them, Standard 316(a)(1) would be satisfied if merely 53 students eventually had passed a bar. This would be 75% of the “class” of 70 graduates for whom the school had bar results.<sup>18</sup>

Subsection (a)(2) provides the third alternative method of satisfying Standard 316. This subsection focuses on the performance of graduates on their first attempt to pass a bar exam. It requires that in at least “three....of the five most recently completed calendar years, the school’s first-time bar passage rate...is no more than 15 points below the average first-time bar passage rate [in the jurisdictions reported by the school].”<sup>19</sup> Just as in the prior subsection, only 70% of the school’s graduates who took the exam in a particular calendar year need be accounted for.

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<sup>17</sup> In light of the second method of satisfying the Standard, one might wonder what purpose is served by the first one. Apparently, it was designed to deal with the possibility that an overwhelming number of the graduates of two years might have passed a bar, but in the other three years, the school came up just short of the required 75% pass rate.

<sup>18</sup> A conversation with the Deputy Managing Director of the ABA Section on Legal Education and Admission to the Bar indicates that a revision to Standard 316 is under consideration. It would require schools to account for more than 70% of their graduates’ performance on the bar examination. It should be noted that in our mobile society a law school’s graduates may take a bar exam in any one of 50 states and staying in touch with them and getting bar exam performance information from them is not always easy.

<sup>19</sup> Note that this third method of satisfying the Standard is based on the performance of a school’s graduates taking a bar exam for the first time in a particular year, regardless of when they might have graduated. The first two methods of satisfying the Standard use a graduating class as the measuring stick, not a calendar year. Because some graduates may wait one or more years before attempting to pass a bar exam, bar pass rates focusing on the year in which the exam is taken may vary drastically from bar pass rates focused on the graduation year.

A school which is found to have failed to satisfy any of the three methods of compliance is given two years to become compliant. It may seek to extend the two-year period remedial by offering one or more of 8 types of evidence delineated in subsection (c).<sup>20</sup>

### **Compliance with Standard 316 by CSL**

In its report on the 2014 Site Visit, the ABA Accreditation Committee Decision (2015) (pp. 21-22, Finding (64)) focused solely on data showing compliance with subsection (c)'s provisions. Its charts, (covering 2009-2014)<sup>21</sup> showed that in 5 of the 6 years the CSL first-time pass rate was lower than the North Carolina statewide first-time pass rate. In order, the deficit (in percentages) were 7.77 (2009), 1 (2011), 11.74 (2012), 8.88 (2013), and 11.7 (2014). The only year in which the CSL alumni bettered the statewide average was in 2010 (+6.6). It should be noted that under subsection (c), all 6 years (not merely the three required by the Standard) were compliant because the school was within the 15% deficit permitted by the subsection.

In the Accreditation Committee's Decision, the Committee requested additional information from the CSL<sup>22</sup> in order for it to make a determination as to the school's compliance with several Standards, including Standard 301(a)'s requirement that a school's "rigorous program of legal education prepares its students, upon graduation, for admission to the bar." The Accreditation Committee referenced Finding (64) (dealing with bar passage rates) detailed above. As noted earlier, the Accreditation Committee did not find the law school in violation of Standard 316.<sup>23</sup>

The CSL Response to the Accreditation Committee's Decision of 2015 was filed in December of that year and included a description of the school's efforts specifically designed to insure bar examination success (see pp. 17-24 of Response of CSL to Decision of the ABA Accreditation Committee, December 2, 2015). It also described a new program established in November, 2015 described as a "bar outcome improvement project." This project included incorporating learning science methodologies into core courses in the school's curriculum, including such features as increased testing, review of first-year and other core knowledge in advanced courses, and a review of the entire curriculum. It also involved a culture change at the school "in respect of grit and professionalism," building a more effective mentoring system,

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<sup>20</sup> Illustrative types of such evidence are: a trend in the performance of the school's graduates whether upward or downward, demonstrated likelihood that students from the law school to other schools will pass a bar examination, and temporary circumstances beyond the law school's control (such as natural disaster or a significant increase in the standard for passing the relevant bar examination(s)), which are being addressed by the law school.

<sup>21</sup> Six years were covered rather than the usual five apparently because final 2014 data came out after the Site Visit report was submitted to the Accreditation Committee.

<sup>22</sup> The Committee asked the school for a response by December 1, 2015.

<sup>23</sup> There has never been a finding by the Accreditation Committee of a violation by the CSL of a violation of Standard 316.



optimization of academic attrition and more attention to financial literacy and planning for students.

The Accreditation Committee subsequently issued a decision responding to the CSL December, 2015 presentation.<sup>24</sup> This decision, in Finding (12) (p. 4, Accreditation Committee Decision, January, 2016) stated:

The first-time bar passage differential has been worsening over the past few years, and the Law School has been taking measures to address the issue. The 2013 calendar year had a differential rate between the relevant state averages and the Law School average of -8.7 points.; 2014 was -12.2 points; and 2015 was -18.4 points. Given the [declining performance of entering classes on the Law School Admissions Test] the bar passage rates might continue to be 15 points or more below [the relevant state averages].<sup>25</sup>

The Accreditation Committee concluded, on the basis of Finding (12) and other findings dealing with bar preparation, curriculum, including the writing requirements, etc., that the CSL had not demonstrated compliance with Standard 301's mandate of a "rigorous program of legal education that prepares its students...for admission to the bar...." The Committee then asked the school to provide, by May 1, 2016, a report demonstrating compliance with Standard 301. The CSL filed the requested report in May and appeared at a hearing before the Accreditation Committee in June, 2016.

The Accreditation Committee's decision was issued in July, 2016. The Committee, after making findings concerning Admissions, Programming for Admitted Students, Mentoring and Related Opportunities, the Writing Program, Academic Support, the Faculty, Attrition, Bar Preparation During Law School, and Post-Graduation Bar Preparation, made findings regarding bar passage. It noted that the results of the February, 2016 bar exams in North Carolina showed CSL students 16.4% below the state first-time taker pass rate and the South Carolina results in February, 2016 showed CSL students 10.8% below the state first-time taker pass rate.

The Committee then made findings regarding the ultimate bar pass rate performance, under Standard 316 (a)(ii). Its conclusion (Finding (44)) was that the school "is in compliance for 2011, 2012, and 2013 with respect to ultimate bar passage. It may be in compliance for 2014, the 17% missing or never passed could affect that compliance. It is not in compliance for 2015 at this point, with 43% either missing or never passed the bar." While the Accreditation Committee did not point this out, it should be noted that Standard 316(a)(ii) requires satisfaction of the 75% bar pass rate in three of the immediately prior five years and as of the writing of the July, 2016 decision, the school was in compliance with that rule. The Committee

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<sup>24</sup> The Committee, in its decision, also considered "the history of decisions made by the Committee with respect to the Law School since its last regular site evaluation visit." (p. 1, Accreditation Committee Decision, January, 2016).

<sup>25</sup> Indeed, data obtained by this committee in an email from North Carolina Assistant Attorney General Matt Liles indicates that the first-time bar passage differential for CSL students for the February, 2016 test was -16.4%, and the parallel number for the July, 2016 test was -20.70%, and for February, 2017 was -19.44%.

did not, and, in light of the data and the language of Standard 316, could not find the school in violation of that Standard.

After finding the CSL not in compliance with Standard 301, the Accreditation Committee concluded its decision of July, 2016 with a list of 5 remedial actions, including the submission of a “reliable plan” for “bringing the Law School into compliance with Standard() 301(a)....” Accreditation Committee Decision of July, 2016 (p. 12). The law school was also required to inform all admitted students of the required remedial actions. Similarly, the Managing Director of the Section of Legal Education and Admissions to the Bar was directed to make public the decision of the Committee and the remedial actions which were ordered.

The school appealed the Accreditation Committee’s decision to the Council of the ABA Section on Legal Education and Admissions to the Bar. The school’s basic claim was that the Accreditation Committee’s sanction requiring the publication of the required remedial actions to both admitted students and to the public was overly harsh and counterproductive. The appeal was heard in October, 2016 and the Council’s resolution of it was issued on November 14, 2016. It affirmed the Findings made by the Accreditation Committee, as well as its conclusions, including a finding of non-compliance with Standards 301(a), 501(a) and 501(b). The Council, however, added an additional sanction. Because of what it concluded were “substantial and persistent” violations of these Standards, the Council placed the school on probation for two years and required the school to publicize this fact to all of its students and to place a notice of the probation on its website.<sup>26</sup>

In December, 2016, the CSL submitted to the Accreditation Committee, pursuant to the sanctions issued in the fall by the Committee and affirmed by the Council, a 38-page “reliable plan” for remedying its violations of the ABA Standards. After recounting prior efforts to strengthen bar preparation and enhance the profile of the students being admitted, the document identified five goals of the “reliable plan”:

- (1) Rapidly increasing entering class academic indicators, particularly the LSAT profile, to levels that will yield strong and sustainable bar outcomes and graduation rates. The indicators also will be comparable to those of earlier entering classes in the School before bar passage rates began to decline.
- (2) Implementing a restructured curriculum, which builds on our experience with curriculum, academic support, and writing; and which, with our substantial improvements to academic support and pedagogy, form an integrated program of core J.D. education and academic support. The entire academic experience is designed to deliver robust legal knowledge and competencies, long-term retention, and preparation for success on the bar examination and beyond.

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<sup>26</sup> This notice does currently appear on the law school’s website, but it should be noted that it is not on the front page of the site.

- (3) Implementing, and continuously assessing and improving, a comprehensive approach to focused bar preparation, involving courses in the J.D. curriculum, counseling and services, and post-graduation programs for both first-time bar takers and repeaters.
- (4) Managing academic attrition so as to continue to provide opportunity for students, while at the same time ensuring compliance with ABA Standards and minimizing the debt of unsuccessful law students.
- (5) Further developing our relationship with the University of New Haven, a comprehensive non-profit university with which we are already working on recruiting high academic caliber students to the School of Law and on prospective joint degree and certificate programs to provide marketable competencies in growing areas of legal services and elsewhere in the economy.

Charlotte School of Law, Reliable Plan for Compliance with Standards 301 and 501 (pp. 2-3 (December, 2016).

While the Plan articulates five different goals, upon careful inspection it is clear that all five of these strategic initiatives are focused on the same ultimate goal---improvement of the performance of the school's graduates on the bar examination. This is not a criticism of the plan. To the contrary, the school has wisely acknowledged that the most important task ahead is significantly raising the bar pass rate.

The part of the Reliable Plan most relevant to the Program of Legal Education is the reshaping of the first-year curriculum to return to a more traditional set of two-semester courses in the traditional first-year subjects which are tested on the Multi-State Bar exam and often on state-specific portions of the bar exam as well. This restructuring is described as follows by the school:

The School of Law has developed a restructured curriculum that will be implemented for the class entering in fall 2017. Some details will be further developed in early 2017, but the key features that make it an improvement over the current curriculum have been approved by the faculty....

The current curriculum, implemented in fall 2013, changed the first-year structure from two-semester doctrinal courses to one-semester courses with reduced credits for the courses. Central features of the new, restructured curriculum are: (a) a return to a first-year program framework in which the core doctrinal courses are taught over two semesters, with (b) increased credits for each such course. Thus, Contracts, Property, Civil Procedure, and Torts will be two-semester courses, with six total credits for each

course, rather than the one semester and four credits in the current curriculum. Evidence, Constitutional Law, and Professional Responsibility (all second-year courses) will each add a credit hour over the current levels, with Evidence increasing to four credits, Constitutional Law to six credits, and Professional Responsibility to three credits.

Another central feature is to tightly integrate into both the doctrinal courses and the curriculum as a whole the academic support programs the School has implemented.... Thus, in light of positive experience with the Labs, over an hour of extra class time per week in the first-year doctrinal courses (Contracts, Property, Civil Procedure, and Torts) will be allocated to Lab activities, such as creating and answering hypotheticals, writing, and improving one's legal analysis based on self-editing and feedback. Academic Success faculty will co-teach with a member of the doctrinal faculty one of the Lab components in one of the first-semester first-year doctrinal classes. This collaboration will allow the success of the current format of integrated first-semester Labs to continue into the new curriculum. In the second year, Criminal Procedure and Evidence will also meet for over an hour of Lab work per week.

In addition, required two-credit courses, such as Sales and Secured Transactions, which meet once a week under the current curriculum, will meet twice a week with an additional hour of class time. The additional hour and the more frequent class meetings will allow reinforcement of the material taught to students.

Because of the data showing the positive impact of Lawyering Fundamentals, we will now require the course for all incoming students, effective in fall 2017. The first week of the student's first semester will be allocated to the course. The course will be required, but will not have any credit hours assigned.

In addition, in the second semester of their first year, students will spend the first week in Lawyering Fundamentals II....The course will expressly integrate the first-year curriculum to both remind students of content from the prior semester, and demonstrate how concepts from various classes are related.

Id. at pp. 17-18 (footnotes omitted).

The return to a more traditional first-year curriculum which provides all-year instruction in the core courses such as Property, Contracts, Civil Procedure and Torts would seem to be solid step forward toward improving bar exam passage rates. Under such an approach students will spend twice as much time focusing on these subjects which are tested on the Multi-State Bar Exam, as well as many state-law portions of the bar examination. The addition of a Lab component in which the student actively engages the subject matter by responding to hypotheticals, creating hypotheticals and rewriting answers seems likely to provide students with a deeper knowledge of the material and, thus, more confidence in approaching the bar

exam. The two-semester courses will also provide more time to teach extra material in these subject matter areas and give the student more time to reflect on material covered in class.

While doing a better and more thorough job of covering the substance of the “bar courses” would be very helpful, a more fundamental goal of this plan is the improvement of the quality of student being enrolled. The first stated goal of the “reliable plan” is to “[r]apidly increas[e] entering class academic indicators, particularly the LSAT profile.” This is a most worthy goal, but the Plan itself, other than including charts showing gradually increasing LSAT scores for the entering classes over the next several years to a level “comparable to those of earlier entering classes...before bar passage rates began to decline,” offers no clear explanation of exactly how this goal will be achieved.<sup>27</sup> There are brief mentions of smaller class sizes and “generous scholarships to admitted students that are highly competitive, based on market analysis,” *Id.* at pp. 12, 13,<sup>28</sup> but there are not very many details offered on how the LSAT scores of applicants will be raised very quickly in order to meet the projections of future entering classes.<sup>29</sup>

The asserted relationship between the Plan’s goals of 1) improving bar preparation during law school and after graduation, 2) effectively “managing academic attrition,”<sup>30</sup> and 3) attracting highly qualified University of New Haven students to the CSL and the improvement of bar passage rates can be examined by a reading of the Plan (pp. 14-38). It would seem that these three parts of the Plan are of distinctly secondary importance to the school as compared to improving the quality of students admitted and revamping the curriculum.

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<sup>27</sup> The plan itself seems to acknowledge the difficulty of achieving this goal in light of the school’s current probationary status with the ABA and the Department of Education’s termination of Title IV eligibility for student loans. See Note 2 of the Reliable Plan, at p. 5 (acknowledging that in light of the situation “as of the date of submission of this Reliable Plan, the School does not have sufficient information to determine the extent it will have to modify those projections [of ‘Expected Matriculant Characteristics 2017-18’]”). Getting better-qualified students to enroll in the school while it is on probation and the ability to secure loans is at best uncertain would be a challenge to say the least.

<sup>28</sup> Because of the financial implications to the school of reducing class size and increasing scholarship totals, this topic is only touched on at this point and will be more thoroughly canvassed in the portion of this report devoted to finances.

<sup>29</sup> The school’s ABA Annual Questionnaire filed in the fall of 2016 shows the 25<sup>th</sup> percentile of the entering class to be 141, the 50<sup>th</sup> percentile as 144 and 75<sup>th</sup> percentile as 148. According to the projections in the “Reliable Plan” these numbers will be 145-46/149/151-152, respectively, for the class entering in August, 2018. Reliable Plan, p. 6. This is an extremely ambitious goal for a two-year period, particularly in the current environment of the school in particular and legal education in general. The only change to the admissions methodology identified in the Plan is to require those students with LSAT scores of 142 or 143 to have an interview with two individuals, at least one of whom will be a member of the Faculty Admissions Team. The goal of the interview will be to determine “whether the candidate is qualified for admission despite the lower LSAT.” Reliable Plan, p. 10. This would seem to be at cross-purposes with the goal of raising the LSAT credentials of the entering class.

<sup>30</sup> As explained in the Plan, this strategy is designed, at least in part, to “minimiz[e] the debt of unsuccessful law students.” Plan, p. 3. What this means is a stricter grading curve which will result in the academic exclusion of more students and a winnowing of likely unsuccessful candidates for the bar examination upon graduation. The stricter grading curve has already been implemented. Plan, p. 32 (reporting a strengthening of the grade curve in the fall of 2015).

Because of the very ambitious nature of the Reliable Plan and the lack of details demonstrating that its goals can be met, the licensing authorities of the school need to be very wary of anything other than a temporary or probationary renewing of the school's license.

## **Faculty**

### **"Standard 401. QUALIFICATIONS**

**A law school shall have a faculty whose qualifications and experience enable the law school to operate in compliance with the Standards and carry out its program of legal education. The faculty shall possess a high degree of competence, as demonstrated by academic qualification, experience in teaching or practice, teaching effectiveness, and scholarship."**

The most recent systematic review of the CSL faculty was conducted in the fall of 2014 during the ABA/AALS Site Inspection. The Site Committee reported to the Accreditation Committee that:

[t]he faculty is highly qualified. Nine faculty members hold LL.M. degrees, 14 hold various other masters degrees, and three hold P.D. degrees. Combined the full-time faculty [of 25 tenured and tenure-track individuals and 49 others not on the tenure track] has 429 years of teaching experience. Fourteen members of the faculty have between 10 and 35 years of experience.

Site Report, p.24.

Because of the recent drastic decline of enrollment<sup>31</sup>, it is not surprising that the current faculty is a good deal smaller than the one reported in the 2014 site visit. It is, however, a qualified teaching corps. Upon request of the committee, the President of the Charlotte School of Law submitted to the committee the resumes of 25 individuals represented to be currently on the full-time faculty of the school. One of those individuals did not appear in the Profile Section of CSL's 2016 ABA Annual Questionnaire.<sup>32</sup> Another is the Director of the Law Library

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<sup>31</sup> The ABA/AALS Site Team, during its Fall, 2014 visit reported a total of 1,410 students (1,141 full-time, 269 part-time). One year later, the school's ABA Questionnaire data for October 1, 2015 indicate a total of 918 students (658 full-time and 260 part-time), while the total on October 1, 2016 was 638 (490 full-time and 148 part-time). Thus, total enrollment dropped from 2014 to 2016 from 1,410 to 638, a decrease of well more than 50%. No figures were obtained concerning the enrollment during the current semester, but the ABA's sanction of probation, issued late in fall 2016, apparently caused a further shrinkage of the student body. See Stancill and Marusak, NC Attorney General Tells DeVos He is Investigating Charlotte School of Law (<http://www.charlotteobserver.com/news/local/article147548644.html#storylink=cpy>) (reporting only 220 students currently enrolled).

<sup>32</sup> She is, however, identified on the CSL website as an Academic Success Lecturer. No further information about her is provided. She is listed on the class schedule for the Spring, 2017 semester teaching a 1-credit distant

and clearly does not teach full-time. Of the 23 remaining individuals in the group of resumes submitted by the CSL President, 10 were designated as tenure or tenure-track in the Profile Section of CSL's 2016 ABA Annual Questionnaire and 13 were listed as "other."<sup>33</sup>

The J.D. degrees of these 23 full-time faculty are all from accredited U.S. law schools, including Georgetown, University of Texas, Emory University, the University of North Carolina, Stanford, Wake Forest, Hastings and Northwestern. A number of the faculty earned membership as students in the Order of the Coif, the leading American honor society within legal education whose membership is limited to the top 10% of a graduating class. Collectively, the 23 faculty members have 212 years of legal practice experience and 218 years of law school teaching experience. They have earned a total of 8 advanced degrees in addition to the J.D., which is the terminal degree in American legal education. In response to a request by the committee, the CSL submitted a list of a total of 31 books, articles, book chapters and other pieces authored by these individuals in the last three years.

Judging the teaching effectiveness of the faculty is a difficult task, given that this report is based on a desk review of documents. However, the ABA/AALS Site Inspection Team in 2014 was extremely complimentary of the classroom teaching it observed.

The site team observed parts of approximately three dozen classes taught by full-time faculty and adjunct faculty during the visit. On a scale of one to ten, the team rated the teaching as a whole between eight and ten, with more nines and tens on average. The team observed that the faculty generally engaged the students from the start of the class time and that a good mix of teaching techniques was employed (e.g., lecture, discussion, Socratic method, and small group work). Most of the classes visited were found to be intellectually stimulating or rigorous. The team is of the opinion that the faculty members were prepared for class. Faculty members consistently made use of technology, such as PowerPoint, in the classroom and visual aids and white boards were used to highlight key information. Students were responsive and actively participating in conversation both voluntarily and when called upon.

Site Visit Report (p. 29); *see also* Accreditation Committee Decision (2015), pp. 23-24 (Finding 43).

In light of the fact that all 23 members of the full-time faculty presently at the school were also teaching at CSL at the time of the site visit, it is pretty clear that the quality of teaching continues to satisfy Standard 401.

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learning course on MPT (Multistate Performance Test) Fundamentals. The MPT is a portion of many bar examinations.

<sup>33</sup> This generally refers to clinicians or those teachers who are on either long- or short-term contracts. It is pretty clear that the CSL full-time faculty, using the approach adopted by the ABA, is actually larger than 23. *See* fn. 34, *infra*.





#### **“Standard 403. INSTRUCTIONAL ROLE OF FACULTY**

**(a) The full-time faculty shall teach substantially all of the first one-third of each student’s coursework. The full-time faculty shall also teach during the academic year either (1) more than half of all of the credit hours actually offered by the law school, or (2) two-thirds of the student contact hours generated by student enrollment at the law school.”**

The Site Visit Report affirmed that the “(f)ull-time faculty members teach the major portion of the Law School Curriculum, including substantially all of the first one-third of the curriculum. No adjunct faculty members teach first-year required courses.”  
Site Visit Report, p. 14.

A review of the class schedule for the current academic year indicates that the entire first-year curriculum is being taught by full-time faculty members<sup>34</sup> It also makes clear that the majority of the credit hours offered by the law school are being taught by full-time faculty members.

**(b) A law school shall ensure effective teaching by all persons providing instruction to its students.”**

See the discussion under Standard 401, *supra*.

#### **“Standard 404. RESPONSIBILITIES OF FULL-TIME FACULTY**

**(a) A law school shall adopt, publish, and adhere to written policies with respect to full-time faculty members’ responsibilities. The policies shall require that the full-time faculty, as a collective body, fulfill these core responsibilities:**

- (1) Teaching, preparing for classes, being available for student consultation about those classes, assessing student performance in those classes, and remaining current in the subjects being taught;**
- (2) Participating in academic advising, creating an atmosphere in which students and faculty may voice opinions and exchange ideas, and assessing student learning at the law school;**
- (3) Engaging in scholarship, as defined by the law school;**

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<sup>34</sup> It should be noted that all the teachers of Legal Process (the traditional first-year course in legal research and writing) are full-time faculty and designated as such in the Profiles section of the ABA Annual Questionnaire. Because we have not been given resumes for most of these teachers, they were not included in the tally of full-time faculty reported in the discussion above under Standard 401.

**(4) Service to the law school and university community, including participation in the governance of the law school, curriculum development, and other institutional responsibilities described in the Standards;**

**(5) Service to the profession, including working with judges and practicing lawyers to improve the profession; and**

**(6) Service to the public, including participation in pro bono activities.**

**(b) The law school shall periodically evaluate the extent to which the faculty discharges its core responsibilities under the law school's policies and the contributions of each full-time faculty member to meeting the core responsibilities of the faculty."**

The CSL has an extensive and carefully drafted Faculty Handbook (hereinafter Handbook), which was last revised in the summer of 2014, presumably in preparation for the school's ABA/AALS inspection of the institution in the fall of that year. On pp. 66-73 of the Handbook, the faculty's basic obligations are outlined. Teaching is described as a faculty member's "primary responsibility" and, in this role, the professor is "accountable for student learning by developing, assessing and contributing to student learning outcomes." The section on teaching goes into great detail in defining and describing course content expertise, teaching effectiveness and student learning.

The expectations in regard to scholarship, which are focused on tenured and tenure track faculty (Handbook, pp. 68-69), are also outlined very clearly, with quantifiable production required for promotion in rank and tenure also described. Concerning the evaluation of scholarship in the context of promotion, tenure and salary consideration:

Each piece ... should be evaluated according to at least one of the following six criteria: aligns with the mission of serving the underserved; aligns with the mission of student-centered outcomes; aligns with the mission of creating practice ready lawyers; improves teaching and learning pedagogy and theory; contributes to faculty member's subject-matter expertise and provides corollary benefit to their larger faculties.

Handbook, p. 69.

A lengthy section describes the type of service, both inside and outside the school, required of all faculty, including service on faculty committees, assistance with co-curricular activities, service as a mentor for colleagues, participation in professional organizations, service as a scholarship reviewer, engagement in pro bono legal services and consulting, and service as a media expert or interviewee. Handbook, pp. 71-72.

Importantly, the mentoring of students is a requirement for all faculty members. The Handbook, p. 88, requires at least six hours per week of office hours for each full-time faculty member. "Social interaction and regular office hours may facilitate mentoring, but, by themselves, do not satisfy the mentoring requirement." Handbook, p. 72. All faculty members are expected to carry an "equitable load" of student academic advisees "as determined by the Dean's office." *Id.*

A number of the standard types of faculty committees exist at CSL (e.g., Admissions, Curriculum, Information Technology, Faculty Appointments, etc.) but, in an effort to stress the goal of cooperative work by such groups they are labelled "teams" not "committees." Handbook, p. 30. In addition to the standard types of committees usually found in law schools, the CSL has an Adjunct Faculty team to review the work of adjuncts and assist in their recruitment and training, a Culture team to "promote understanding of culture among faculty by serving as role models and sources of knowledge," and an Academic Discipline team to serve as the hearing panel in assertions of student academic dishonesty and plagiarism. Handbook, p. 32.

In addition to the reviews of faculty performance in the promotion and tenure process, the Handbook describes an annual formal evaluation by the Dean of each faculty member. *See generally* Handbook, pp. 51-53. Student evaluations are completed and provided to the faculty member. Each faculty member is required to annually submit to the Dean an Individual Plan of Performance and Professional Development and the Dean shall review and respond to each faculty member's IPPD. *Id.* at p. 52. After the grant of tenure (the tenure process is described at Handbook, pp. 57-61), each faculty member is evaluated in an "extensive review" by the Dean and the Faculty Evaluation Team every four years. A faculty member found not to be meeting the "same performance standards that govern an application for tenure," is given one year to achieve compliance or otherwise face "loss of tenure and termination of the employment relationship" one year after the initial year. Handbook, p. 62.

The CSL has created three separate tracks for faculty members. Handbook, pp. 43-44. 1) Traditional tenure track faculty receive one-year contracts until tenure is attained, teach 12-14 credit hours annually, and produce scholarship consistent with the school's expectations as expressed in the Handbook. 2) Those faculty on the teaching track begin with one or two one-year contracts, followed by a three-year contract and then successive five-year terms. They teach either 15-18 credit hours annually, or 12-14 hours with additional "extraordinary service as defined by the School." No scholarship is required of such faculty. 3) The alternative track has a contract sequence identical to the teaching track and teaching responsibilities of 12-14 credit hours annually, no expectations of scholarship or extraordinary service and a "lower pay scale than the other two tracks."

In discussing the faculty, the Accreditation Report was complimentary about its diversity and the policies producing that diversity, the faculty's role in the formation and development of the school's goals and policies, its monitoring the curriculum, and the inclusive nature of the school's policies regarding membership on faculty committees, attendance, and voting

privileges at faculty meetings. Accreditation Report (2015), pp. 12-13, 15 (Findings (36), (37), (39), (40), (46). *See also* Site Committee Report, pp. 24-33.

**“Standard 405. PROFESSIONAL ENVIRONMENT**

....

- (b) A law school shall have an established and announced policy with respect to academic freedom and tenure....**
- (c) A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members....**
- (d) A law school shall afford legal writing teachers such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction..., and (2) safeguard academic freedom.”**

The CSL definition of and protection of Academic Freedom appears at p. 77 of the Faculty Handbook:

Each member of the faculty is entitled to full freedom in research and in the publication of the results of that research, subject to the acceptable performance of her/his other academic duties....

Each member of the faculty is entitled to freedom in the classroom in discussing his/her subject, but he/she should be careful not to introduce in his/her teaching controversial matter which has no relation to his/her subject.

The Accreditation Committee Decision (2015) specifically referenced and implicitly approved the school’s academic freedom protection. (p. 15, Finding (48)).

The CSL philosophy and purpose regarding tenure is as follows (Handbook, p. 58):

The School recognizes the value of tenure as promoting favorable conditions for the exercise of academic freedom and for the orderly development of the School as a community of teachers and scholars.

In tenure reviews, decisions made by the School are of extreme importance in the institution’s pursuit of academic excellence.

Achievement of tenure should never be regarded as a routine or automatic award. It must, rather, reflect and affirm professional competence and performance measured against national standards at comparable institutions. Tenure is dependent not only on demonstrating a record of excellence necessary for promotion, but on indications of a certain promise of continuing high productivity in a tenured capacity.

The School's decision to grant tenure is subject to the determination by the School that the faculty member's services will continue to be needed and that the institution's financial resources are sufficient to meet a long-time commitment. It is also required that the tenured faculty member's level of performance will be maintained or improved.

Unlike faculty handbooks at other schools, there is no explicit explanation in the Handbook of the nature of the protections of tenure at the CSL. However, the Accreditation Committee Decision (2015) specifically referenced and implicitly approved the school's definition of tenure. (p. 15, Finding (48)).

Subsections (c) and (d) of Standard 405 specifically require job security for those teachers of clinical subjects and legal writing, respectively. This has led many law schools to provide separate protections for each of these groups of teachers. The CSL has what the ABA Accreditation Committee called a "unified" faculty in which the distinctions between faculty members are based solely on the track they are on (tenure track, teacher track and alternative track), rather than on the subjects they teach. Thus a "clinical teacher" could be on the tenure track, the teacher track or the alternative track. Similarly, a "legal writing" teacher could be on any one of those tracks.<sup>35</sup>

A member of one of the latter two groups on any of the three tracks would not only have substantially similar job security as a full-time teacher of Torts or Constitutional Law on one of those tracks, but would actually have exactly the same job security. While not explicitly analyzing why the CSL does not have separate provisions for clinicians and legal writing instructors, the Accreditation Committee in Findings (49), (50), and (51) made clear that there were no status issues extant regarding those two groups of faculty members. The only outstanding issue for the "clinical, externship and pro bono" faculty at that time was the issue of what constituted a full load. Accreditation Committee Decision (2015), p. 16 (Finding (51)). It is not clear whether that issue has since been resolved and, if so, how.

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<sup>35</sup> At the time of the Accreditation Committee Decision, six of the clinicians were on the teaching track and the seventh was a visiting professor. Accreditation Committee Decision (2015) (p. 16 (Finding 49) ). Of the legal writing faculty (the course is actually titled Legal Process at CSL), six were on the teaching track and five were on the alterative track). Id. at (Finding (51).)

## **Admissions**

### **“Standard 501. ADMISSIONS**

- (a) A law school shall maintain sound admission policies and practices consistent with the Standards, its mission, and the objectives of its program of legal education.**
- (b) A law school shall not admit an applicant who does not appear capable of satisfactorily completing its program of legal education and being admitted to the bar.**

#### **Interpretation 501-1**

**Among the factors to consider in assessing compliance with this Standard are the academic and admission test credentials of the law school’s entering students, the academic attrition rate of the law school’s students, the bar passage rate of its graduates, and the effectiveness of the law school’s academic support program.”**

Since January, 2015, the ABA, the accrediting agency for American legal education, has dealt with the admissions policies and practices of the Charlotte School of Law on four occasions. These four occasions will be treated and described in order.

#### **1. ABA Accreditation Committee Decision, January 2015**

This document was a review of the joint ABA/AALS Site Visit performed in the fall of 2014. It was prepared by the Committee after reviewing the Site Visit team’s written report. A number of findings<sup>36</sup> by the Committee focused in whole or in part on the school’s admissions policies and practices. In the Committee’s Conclusions, it asked the school to provide “additional information [for the Committee] to make a determination as to the Law School’s compliance with...Standards...501(a), 501(b) and Interpretation 501-1...” That is, the Committee determined that it was not yet in a position to determine whether the school was in compliance with the primary ABA Admissions Standard and its primary interpretation. The Committee asked for the information by December 1, 2015.

#### **2. ABA Accreditation Committee Decision, January 2016**

This decision, issued after the school had submitted the information requested by the Committee, made four Findings devoted to compliance with Standard 501 and Interpretation 501-1.<sup>37</sup> One finding focused on the LSAT profiles of the entering classes of 2012 through 2015. A second focused on a program begun in early 2015 to improve an existing conditional

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<sup>36</sup> See especially Findings (55), (57), (58), (61), (62), (63), and (65).

<sup>37</sup> These were Findings (8), (9), (10), and (11).

admission program.<sup>38</sup> A third finding focused on attrition rates and the school's explanation of why the academic profile of the entering class of 2014 had declined, particularly with regard to the LSAT 25<sup>th</sup> percentile score.<sup>39</sup> The fourth finding noted a recent change in the Admissions process involving clarification of decision criteria and improvement of coordination between the Admissions committee and the Admissions Office and the Dean's Office.

After reviewing the information submitted by the law school, the Committee concluded that the school was "not in compliance with...Standard 501(a), 501(b) and Interpretation 501-1." It asked the school to provide, by May 1, 2016, "information to demonstrate that is in compliance" with these provisions, in essence repeating its request of January, 2015. The Committee also summoned the President and the Dean of the Charlotte School of Law to appear before the Committee in June, 2016 at its regular meeting at a hearing to assist it in the determination of "whether to impose sanctions in connection with the Law School's non-compliance with the Standards."

### **3. ABA Accreditation Committee Decision, June 2016**

After the submission of the school's requested information and the hearing before the Accreditation Committee, a decision was rendered in June, 2016. The Committee made seven Findings directly related to the Admissions program.<sup>40</sup> These findings detailed, among other items, the current Admissions methodology, the conditional admissions program, the LSAT and GPA profiles of recent admitted classes, the school's size, and an additional question being added to the school's application designed to assess the applicant's "grit," defined in terms of "perseverance, motivation, and commitment." The final Finding on Admissions stated, in its entirety:

It was not clear to the Committee how these admissions practices demonstrate that applicants with low academic and admission test credentials appear capable of completing the Law School's program of legal education and being admitted to the bar.

In its conclusions, the Accreditation Committee reiterated its prior conclusion that the school was not in compliance with Standard 501(a) and 501(b) and Interpretation 501-1. It also concluded that the noncompliance had been "substantial and ... persistent." It mandated a number of remedial actions be taken by the school, including the preparation by the school of a

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<sup>38</sup> New entry requirements were added, the amount of academic support was reduced in order to insure that the student's performance in the program reflected "student motivation and ability," and "qualitative factors" were added in the decision to admit students to the conditional admissions program. The Committee found that after the changes, fewer students were granted admission to the law school.

<sup>39</sup> As explained by the school, it "may have set the criteria for the admission to the J.D. program from the [conditional admission program] too low" and "used an assessment, which [it] believed might serve as an alternative to [the conditional admission program] for certain lower-indicator students." The law school relatively quickly determined that the alternative assessment "did not serve students and the Law School well" and was abandoned.

<sup>40</sup> These are Findings (5) through (11).

“written reliable plan” stating it intended to become compliant with, among others, Standard 501(a) and (b), along with Interpretation 501-1. It also directed the appointment of a fact finder by the Managing Director of the Section of Legal Education and Admissions to the Bar.<sup>41</sup>

#### **4. Decision of the Council of the ABA Section on Legal Education and Admission to the Bar, October 2016**

Proceeding under Rule 23 of the ABA Rules of Procedure for Approval of Law Schools, the Charlotte School of Law appealed the Accreditation Committee’s June, 2016 decision to the Council of the Section. A hearing was held on October 21, 2016, at which the President and the Dean of the law school appeared. The Council affirmed the Findings of Fact and Conclusions of the Accreditation Committee and affirmed all of the sanctions imposed by the Committee. Additionally, it placed the school on probation, effective November 14, 2016. There is no explanation, either in the Council’s decision or in the ABA’s Rules of Procedure for Approval of Law Schools, of the contours of probation. The Council, of course, may withdraw “approval” (accreditation) of a law school because of non-compliance with a Standard.<sup>42</sup>

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<sup>41</sup> The fact finder is directed to monitor the admissions data and methodology, the rigor of the school’s program of legal education, and report on a number of matters, including the bar results, admission policies and any plan beyond the “reliable plan” referenced in the text. Other sanctions included the requirement that the school inform all admitted students of the remedial actions ordered by the ABA and a requirement that the mandate of remedial actions be posted on the school’s website. The school has also been ordered to, within 30 days of the assignment of grades each semester, provide each of its students information about the North Carolina and South Carolina bar results for the prior six semesters including the pass rates by the quartile of the applicant. The school must also inform each student within 30 days of assignment of grades of his or her placement in the quartiles of his or her class.

<sup>42</sup> See ABA Rules of Procedure for Approval of Law Schools, Rule 16 (b) (8).