

American Bar Association Considers Mandatory Free Speech Policies for Law Schools



In response to escalating free speech controversies within law schools, the American Bar Association (ABA) is contemplating a groundbreaking requirement for educational institutions to adopt policies safeguarding "freedom of expression." The ABA, the accrediting body for law schools, has opened a window for public input until September 29th, inviting opinions on a proposal that would mandate the implementation of written free speech policies. These policies would facilitate the exchange of ideas while prohibiting disruptive activities.

The proposal marks a significant step as it would be the first accreditation standard addressing free speech for the entire law school community, focusing on preserving academic freedom for faculty and students. The ABA's Section of Legal Education and Admissions to the Bar anticipates receiving substantial feedback on the proposal, which is scheduled for further discussion in November.

Recent high-profile free speech incidents at institutions such as Stanford Law School and Yale Law School have drawn attention to the need for comprehensive policies. At Stanford, students disrupted a speech by 5th U.S. Circuit Judge Stuart Kyle Duncan, prompting an apology from the school and the implementation of free speech training for students. Similarly, at Yale Law School, a group of students disrupted a discussion featuring a conservative speaker in March 2022. The fallout from this incident led two federal judges to announce their refusal to hire clerks from Yale.

Under the ABA's proposal, law schools would be responsible for developing their own free speech policies. These policies must ensure the rights of faculty, staff, and students to express controversial or unpopular ideas, fostering robust debate, demonstrations, and protests. Simultaneously, they must prohibit disruptive activities that hinder free expression or substantially interfere with law school functions and activities.

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In addition to the free speech proposal, the ABA is seeking public input on various other changes, including modifications to library rules to enable schools to maintain fully digital collections. Furthermore, a separate proposal on student learning outcomes would necessitate schools to create specific and measurable lists of things students should learn in individual courses. All first-year courses would be mandated to include at least one "formative assessment," providing students with an opportunity to receive feedback and evaluate their performance before final examinations.

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These proposed changes reflect the ABA's commitment to address challenges related to free speech within law schools while also modernizing and enhancing educational standards. The debate over free speech in legal education remains a critical issue, and the ABA's decision could set a precedent for how institutions nationwide approach this complex matter. Public feedback will play a pivotal role in shaping the final policies and standards adopted by the ABA.

Don't be a silent ninja! Let us know your thoughts in the comment section below.