

**SOUTH DAKOTA BOARD OF REGENTS
PLANNING SESSION
AUGUST 3-4, 2016**

SUBJECT: USD Law School Analysis

At the June 2016 Board Meeting, USD Law made a request to the Board of Regents for an additional \$600,000 in ongoing funds from the state. This analysis examines the University of South Dakota's request in light of national trends including declining bar passage rates and selectivity of students.



*** Special Data Analysis ***

USD Law School in a National Market

In June 2016, USD Law made a request to the Board of Regents for an additional \$600,000 in ongoing funds from the state. With this request, USD hopes to decrease its class size by 25% while also increasing the academic quality of its students. This request is a result of declining national applications to law school and an attempt by USD to maintain its image as a quality and affordable school. This report examines USD's request in light of national trends including declining bar passage rates and selectivity of students. The report concludes that such a request must be granted if South Dakota is to keep its only law school.

Background

Over the past five years, the national number of law school applications has steadily declined with the Law School Admissions Council (LSAC), which tracks admissions data, reporting a 38% contraction in the number of applicants since 2010.¹ Many attribute the decline in enrollment to the economic downturn and falling demand for new lawyers.² Moreover, it remains unclear if this current level of applicants will hold or change for better or for worse.

The aftermath of this contraction split law schools into two camps, quality and quantity, based on their response to declining enrollment. The quality camp includes schools who have decided to shrink their enrollment and cut costs. In the case of public law schools, some have asked for increases in state funding to maintain the quality of their programs despite decreasing tuition revenue. As a result, the state's investment preserves the university's reputation and rank on sites such as *U.S. News and World Report*.

The quantity camp includes those schools who maintain their programs by lowering their admissions standards and admitting students below their pre-contraction standards. As a result, these schools do not have to rely as much on state or outside funding to continue their programs at their current levels, but must confront the lower bar exam pass rates that occur. Two examples, one from each of these different camps is listed below:

Quality Schools- University of Minnesota Law School

The University of Minnesota, known for its prestige and top quality education in the Great Lakes region, has seen the effects of enrollment first hand. In response to declining job prospects, applications began to decrease. As a result, the university had

¹ Law School Admission Council (2016). *End-Of-Year Summary: ABA (Applicants, Applications & Admissions), LSATs, Credential Assembly Service*. Available at: <http://www.lsac.org/lsacresources/data/lsac-volume-summary>

² Olson, Elizabeth (2016). *A.B.A. to Enforce Stricter Timeline for Law Graduates to Pass the Bar Exam*. Available at: <http://www.nytimes.com/2016/03/15/business/dealbook/aba-to-enforce-stricter-timeline-for-law-graduates-to-pass-the-bar-exam.html>

to find new ways to support itself due to the loss in tuition revenue. Additionally, Minnesota has shrunk its class size from 250 to 174 by tightening its admission requirements, inhibiting those who may have gotten in under previous standards from being accepted. As a result, Minnesota preserved its prestige and rank, but at the cost of increased tax-payer spending.³

Quantity Schools- Southern Illinois University Law School

SIU's Law school has come under scrutiny in the last year as it has experienced what several schools have in recent years. Since 2010, the school's median LSAT score has dropped by four points to 149 while at the same time the school saw a 5% decrease in their bar passage rate. While the school argues that a student's LSAT score doesn't determine everything about the applicant, it does show that they may have a more difficult time on the bar exam. SIU has slimmed its class sizes, but not at the level of a quality institution.⁴

Consequently, the practices of quantity schools decreased the average score on the multiple choice section of the exam, also known as the MBE, to its lowest point in the last 10 years according to the National Conference of Bar Examiners (NCBE), the non-profit which creates MBE.⁵ The NCBE expected this decline and asserted that the primary cause was the admission of lower quality students into law school.⁶ Unfortunately, this is the only nationwide comparison for the bar exam as the number of sections, cut scores, and content varies from jurisdiction to jurisdiction.

In response to the decline in passage rates, the American Bar Association (ABA) and its accreditation arm, the Section of Legal Education and Admissions to the Bar (the Section), have been criticized by legal education reformers and government officials alike for not having stricter standards for its schools. On June 24th, 2016, the National Advisory Committee on Institutional Quality and Integrity, the U.S. Department of Education (DOE) committee in charge of assessing accreditation agencies, recommended that the ABA's accreditation power for new law schools be suspended for one year.⁷ As a result, the ABA will likely approve changes tightening its accreditation standards as early as October. These changes are:

Standard 316: Bar Passage

This standard sets the minimum passage rate of graduates a law school must obtain to remain accredited by the ABA. The current requirements are that a minimum of 75% of graduates must pass the bar exam in at least three of the last five calendar years. Alternatively, a school's

³ Olson, Elizabeth, (2016). *Minnesota Law School, Facing Waning Interest, Cuts Admissions*. Available at: <http://www.nytimes.com/2016/05/13/business/dealbook/minnesota-law-school-facing-waning-interest-cuts-admissions.html>

⁴ Olson, Elizabeth, (2015). *Study Cites Lower Standards in Law School Admissions*. Available at: <http://www.nytimes.com/2015/10/27/business/dealbook/study-cites-lower-standards-in-law-school-admissions.html>

⁵ National Conference of Bar Examiners (2015). *MBE National Mean Scaled Scores, 2006-2015*. Available at: <http://www.ncbex.org/publications/statistics/mbe-statistics/>

⁶ Kitroeff, Natalie (2015). *Bar Exam Scores Drop to their Lowest Point in Decades*. Available at: <http://www.bloomberg.com/news/articles/2015-09-17/bar-exam-scores-drop-to-their-lowest-point-in-decades>

⁷ Ward, Stephanie Francis (2016). *ABA Threatened with 1-year Suspension of Law School Accreditation Powers*. Available at: http://www.abajournal.com/news/article/aba_threatened_with_1-year_suspension_of_law_school_accreditation_powers/?utm_source=internal&utm_medium=navigation&utm_campaign=most_read

passage rate must not be more than 15 points below the jurisdiction wide average for first-time passage rates in three or more of the last 5 years.⁸

The changes proposed to this standard simplify the requirements so that 75% of a school's graduates must pass a bar exam within two years. This change was unanimously approved by the Standards Review Committee (SRC) in March, a standing committee of the Section tasked with reviewing changes to accreditation standards. Based on this unanimous approval and pressure from the DOE, it is likely that this change will be approved by the Section's governing council in October.

Standard 501: Admissions

The focus of this standard is to ensure that law schools are admitting students who will be able to complete the program and pass the bar exam. Presently, the vague standard provides no objective criteria for determining if a school meets this standard. The SRC approved a new interpretation of this standard which the governing council agreed to seek comment on and discuss in October.

In this interpretation, SRC decided to focus on attrition rates of first year JD candidates as the primary criteria it wanted to add to 501. Although they did not specify the rate, they agreed it was important that the percentage of students leaving the institution who were not transfers was an important data point for the Accreditation Committee to consider when reviewing institutions. The Section's council set the rate in its notice for comment at 20%.⁹ The current USD attrition rate for 1st year students is 6.4%.¹⁰ The national attrition rate is 7%.¹¹

The purpose of this change is to discourage schools from admitting students with poor undergraduate records and LSAT scores, but then expelling them for poor academic performance. This practice ensures that only those with the aptitude and academic stamina graduate and take the bar, giving these schools a high bar passage rate. At the same time, it saddles the expelled students with student loan debt that they now cannot afford to pay back. Typically, these students also receive less financial aid than those who are retained through graduation.

⁸American Bar Association (2015). *Program of Legal Education*
http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2015_2016_chapter_3.authcheckdam.pdf

⁹American Bar Association (2016). *March Minutes*. Available at:
http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/March2016CouncilOpenSessionMaterials/2016_march_council_decisions_re_standards.authcheckdam.pdf

¹⁰ University of South Dakota (2016). *University of South Dakota – 2015 Standard 509 Information Report*
 Available at: <http://www.usd.edu/~media/files/law/abainforeport.ashx>

¹¹ National Law Journal (2016). *Law Schools with High Dropout Rates Could Face ABA Wrath*. Available at:
<http://www.nationallawjournal.com/id=1202752492033/Law-Schools-with-High-Dropout-Rates-Could-Face-ABA-Wrath?slreturn=20160605153843>

Data Notes

As a comparison tool, the risk scale used by the legal education reform group Law School Transparency (LST) and developed by David Frakt, a former law professor at Western State College of Law and Barry University School of Law, in conjunction with statistics provided by the NCBE, provide the means for accessing the likelihood of a student passing the bar exam. The scale uses risk to determine how likely a student is to graduate and pass the bar exam. Students who are at High, Very High, or Extreme risk, are considered to have a low probability of passing the bar. However, as bar exam practices and cut scores vary by jurisdiction, this tool cannot definitively say whether a student can pass the bar exam. The scale is used in conjunction with the median LSAT score to determine how risky a 1L class is. This scale is included below in Table 1.

Table 1
LSAT Risk Scale

Risk Band	LSAT	
	Score	Percentile
Minimal Risk	156-180	≥67.4
Low Risk	153-155	55.6-63.9
Modest Risk	150-152	44.3-52.5
High Risk	147-149	33-40.3
Very High Risk	145-146	26.1-29.5
Extreme Risk	120-144	≤ 22.9

This analysis provides insight into the effects of national declining enrollment at USD Law. As a result, demographic data, such as 1L class median LSAT score and undergraduate GPA, UGPA, are used to look at the quality of applicants admitted to USD. USD provided this information and it was verified against annual academic disclosures to the ABA. The data used in this analysis can be found in Appendix 1.

Secondly, bar passage rates are used to determine the quality of USD's students and their preparedness to take the bar exam. These data were collected and compiled by the NCBE.¹² As the bar exam is the last of many obstacles a J.D. candidate must face before practicing law, the number of test takers that pass the exam would thus be a strong indicator of the how many USD Law students actually enter the profession. For the purpose of this analysis, only first-time test takers are included as they are most likely to be recent graduates of USD Law.

Finally, the cost driver data were compiled using financial statements from the SDBOR. For a detailed breakdown, see Appendix 2.

¹² National Conference of Board Examiners (2016). *2015 Statistics*. Available at http://www.ncbex.org/assets/media_files/Bar-Examiner/articles/2016/BE-March2016-2015Statistics.pdf

Table 2
Definitions

Data Element	Description
<i>Median LSAT Score</i>	This is the midpoint LSAT score for USD Law's Fall 1L class. It is usually indicated at the 50 th percentile. The midpoint gives a general description of where the majority of students fall as most scores trend to the middle. Further discussion on the limitations of the LSAT can be found in the limitations section.
<i>Median UGPA</i>	Like the median LSAT score, UGPA, or undergraduate GPA, this gives insight into where the majority of students fall and prevents outliers from skewing the data. The median UGPA is indicated by the 50 th percentile. As with the LSAT, there are limitations to the use of UGPA, which are discussed below.
<i>Selectivity</i>	This describes how selective USD Law was when extending offers to applicants. Its express this selectivity as a percentage of the total number of applicants. It should be noted that a high selectivity percentage would indicate that USD was not selective in its offers while a low selectivity percentage would indicate the inverse. Selectivity is calculated by dividing the number of offers extend by the total number of applicants to USD and multiplied by 100. It should be noted that not all who receive an offer matriculate which is why selectivity is used in conjunction with data such as LSAT scores and UGPA.

Limitations and Caveats

While this analysis does use UGPA, it is important to note that it is not the primary focus of this analysis. A high score on the LSAT has been proven to show a correlation with higher bar passage rates.¹³ However, an LSAT score does not completely define a student which is why UGPA is used. There are multiple anecdotal stories of students with low LSAT scores, but high UGPA being admitted to the bar. These are exceptions not the rule and research indicates that it does not correlate to higher bar passage rates which is why much of the analysis will focus on LSAT scores.

It is important to note that a high LSAT score and passage of the bar does not necessarily indicate a student's level of skill as a lawyer. However, both tests do show that the student is able to think critically and understand complex situations. This analysis should not be misconstrued that a low LSAT score predetermines a student to failure on the bar, poor performance in law school, or deficiencies as a practicing attorney. Rather it stands as a measure of a student's critical thinking and reasoning abilities both of which are essential to the profession.

When preparing this analysis, data for the 25th and 75th percentiles for UGPA and LSAT were available. However, they were not used since the trends in these two percentiles mirrored what was occurring in the 50th percentile. As such, to give an uncluttered view of the path USD Law is taking, only the 50th percentile is presented in this analysis. However, the data provided on these percentiles is included in Appendix 1.

One final important consideration for the reader is that in 2015, the South Dakota Board of Bar Examiners significantly increased the difficulty of the bar exam. Not only was the cut-score raised by 5 points to 135 out of 200, but also this score was required on both sections of the exam instead of

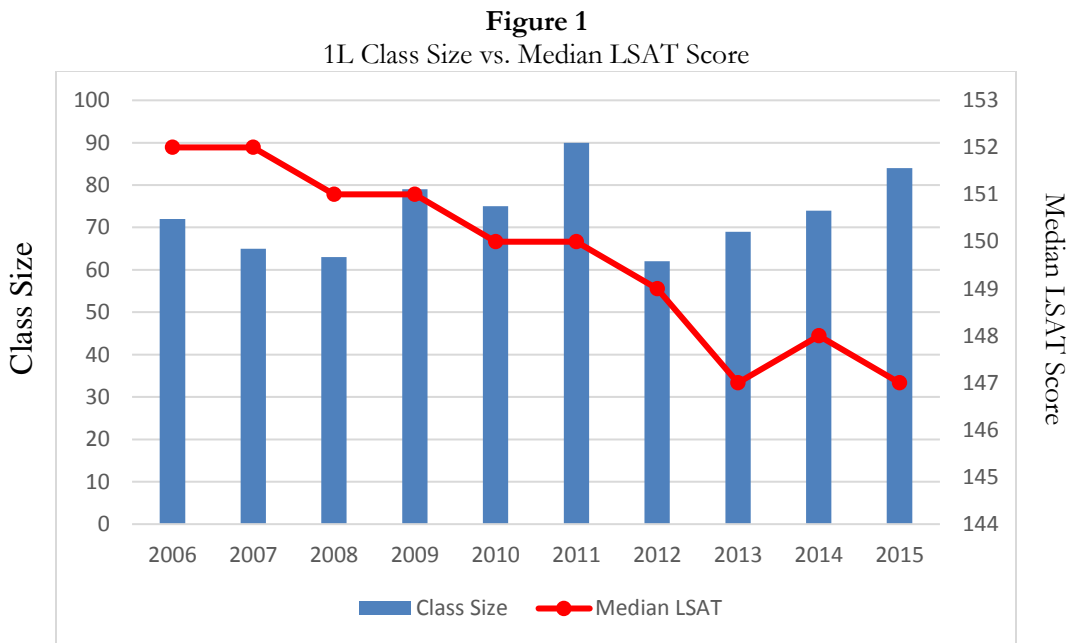
¹³ Law School Admission Council (1998). *LSAC National Longitudinal Bar Passage Study*. Available at: <http://lawschooltransparency.com/reform/projects/investigations/2015/documents/NLBPS.pdf>

weighting each section to determine a final score. South Dakota is only one of four jurisdictions to implement this strict passing system.¹⁴ Therefore, the reader should be mindful of this when looking at bar passage rates for 2015. The full effects of this change will not be understood until data for 2016 are released.

Analysis

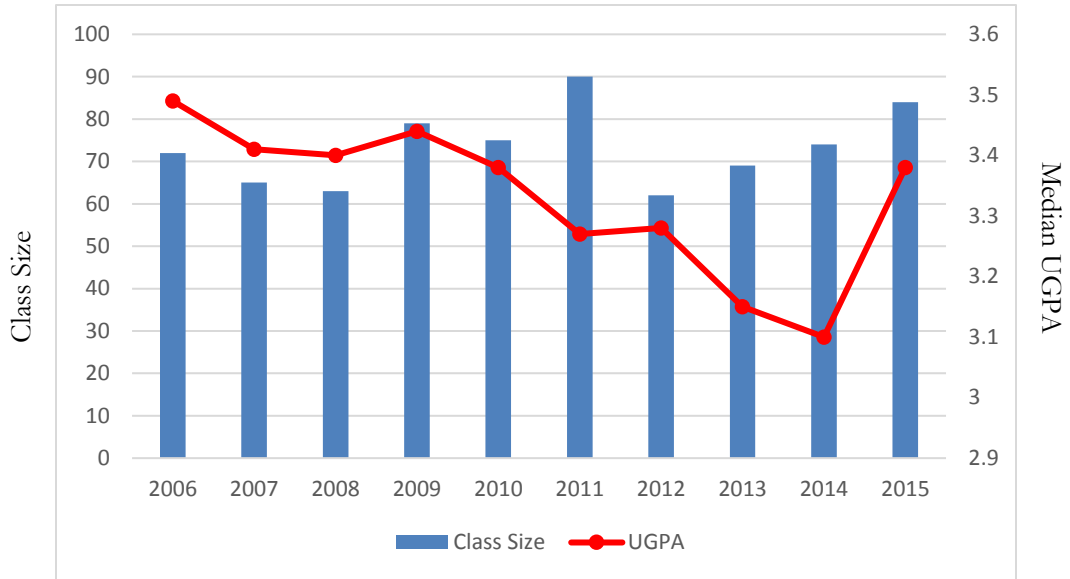
Trend Analysis

Analysis indicates that over the past 10 years, the quality of USD Law’s 1L students has slowly decreased-see Figures 1 and 2. At the same time, class size has fluctuated, but in periods of growth such 2008-2011 and 2012-present there have been continued drops in LSAT and UPGA. This would suggest that, either by accident or design, that USD Law has become a quantity school focused on maintaining its revenue structure at the expense of quality students.



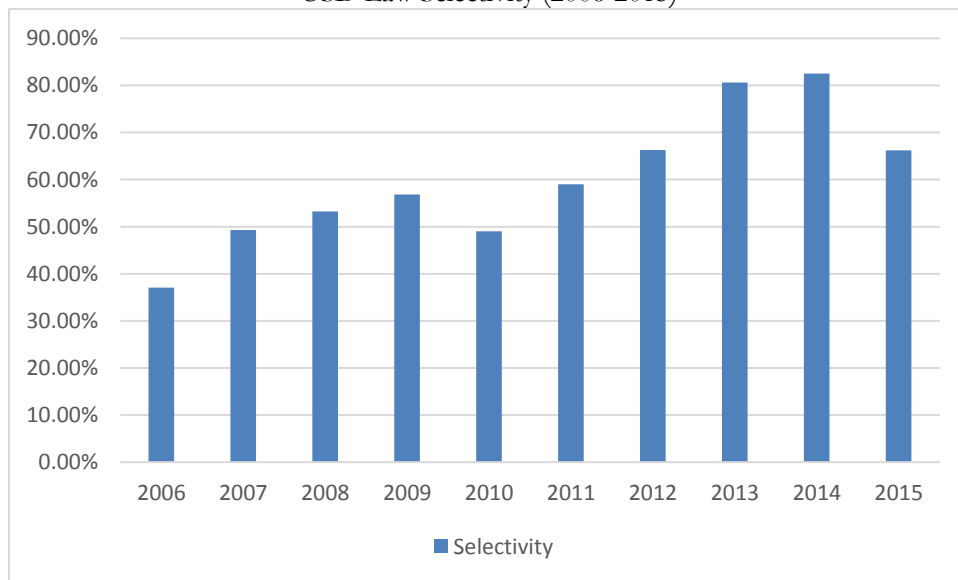
¹⁴ Law School Transparency (2015). *Bar Exam Difficulty*. Available at <http://www.lawschooltransparency.com/reform/projects/investigations/2015/data/other-stats/?show=cutscores>

Figure 2
11 Class Size vs. Median UGPA



The selectivity data further confirms USD’s designation as a quantity school. In the past 10 years, USD has grown increasingly less selective about which applicants receive offers. In essence, Figure 3 mirrors the trends of Figures 1 and 2 in that over time, USD has admitted less apt students to maintain tuition revenue. It is important to note that USD’s selectivity did decrease by almost 20% in 2015. However, this decrease most likely occurred because USD was more selective for applicants with a higher UGPA, causing the spike seen in Figure 2. However, Figure 1 shows median LSAT dropped 1 point to 147 suggesting that the cost of higher UGPA was lower LSAT scores.

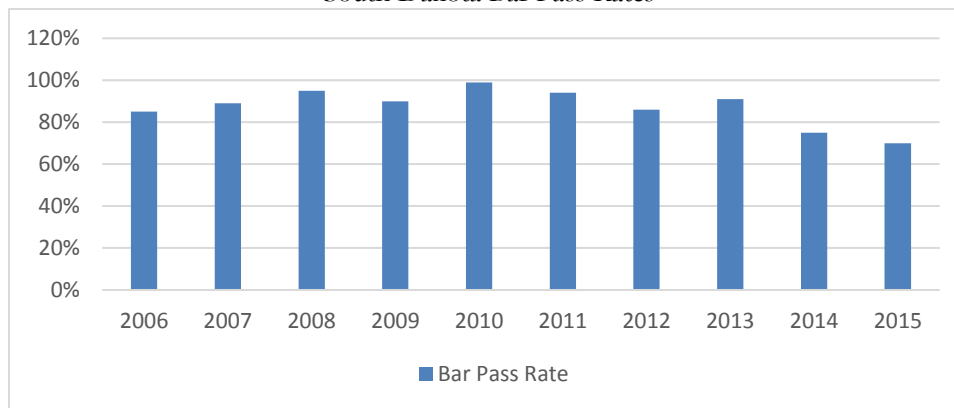
Figure 3
USD Law Selectivity (2006-2015)



Of greatest concern is the consequences of this 10 year trend. Using the risk scale, the majority of USD Law’s students have been at high risk for failing the bar exam based on the median LSAT. In

fact, the data suggests that students in the 1L classes from 2012-Present are likely at high risk of failing. Unfortunately, how these high risks classes will do on the test is unknown as the first classes' results will not be published until December 2016. However, there is an apparent decline in bar passage rates starting in 2010 which would correspond with the 2006 1L data in Figures 1 and 2. This is based on the assumption that most graduates will complete in 3 years and take the test following graduation in July. As each new class is admitted with a lower LSAT and UGPA, three years later those graduates tend to do worse on the bar exam. If this trend were to continue, holding all else constant, the passage rates for 2016 will be the lowest in a decade.

Figure 4
South Dakota Bar Pass Rates



Implications of Analysis

This trend puts USD Law at serious risk for losing its accreditation as the ABA tightens its standards. The current trend indicates that USD's pass rates will be well below the 75% standard increasing the likelihood that USD will be put on probation or have its accreditation revoked. Some are already predicting that USD and other quantity schools will come under increased ABA scrutiny.¹⁵ As a result, the damage to USD Law's reputation could be extensive and potentially leave South Dakota without an accredited law school. Consequently, graduates from a non-accredited USD will be unable to take the bar in many states, including South Dakota.¹⁶

There are a few possible short-term interventions available for USD. The first is to increase bar preparation efforts increasing graduate preparedness for the exam. Unfortunately, this is entirely dependent on a student's willingness to prepare for the exam. The second intervention is to increase attrition. As stated earlier, USD Law's attrition for 1st years is 6.4%.¹⁷ The national attrition rate is

¹⁵ Leichter, Matt (2016). *Why the ABA's Bar Passage Rule Isn't as Tough as it Looks*. Available at: <http://www.americanlawyer.com/id=1202751795885/Why-the-ABAs-BarPassage-Rule-Isnt-as-Tough-as-It-Looks?slreturn=20160606103611>

¹⁶ South Dakota Board of Bar Examiners (2015). *Rules and Regulations for Admission to Practice Law in South Dakota*. Available at <http://www.ujs.sd.gov/uploads/barexaminers/RReg.pdf>

¹⁷ University of South Dakota (2016). *University of South Dakota – 2015 Standard 509 Information Report* Available at: <http://www.usd.edu/~media/files/law/abainforeport.ashx>

7%.¹⁸ If the school were to go this route and academically drop students who are at risk of failing the bar, understanding the strong potential for an ABA attrition cap at 20%, then bar passage rates may increase, but at the cost of a higher attrition. At the same time, both of these measures would require funding especially with the attrition intervention since the school must make up for the loss of tuition.

In the long-term, USD must pivot from being a quantity school to a quality school if it seeks to maintain its status and legitimacy. If it were to set its goal for the 2017 1L class at the 2006 levels (median LSAT 152, median UGPA 3.49) then it is likely that bar passage rates will increase when the class takes the exam in 2021. What the size of that class will be is difficult to say as it depends on a host of outside factors that are largely out of the schools control, such as applicant's perceived employability after graduation, regional law school competitiveness, and academic quality of applicants. In the meantime, such a goal will show accreditors that despite low scores in the past, USD is on track to meeting and exceeding their accreditation standards in the future.

At the same time, USD Law will have to show that it is using its current allocations efficiently before it can receive more funding to make up for the loss of tuition revenue. This report provides no comment on USD's use of its current allocation and is only presented here as an information item. USD Law's current cost breakdown is shown below in Table 3.

Table 3
USD Law Cost Drivers¹⁹

Salaries (Total)	\$2,453,380.27
<i>Instructional/ Administrative</i>	\$470,993.23
<i>Faculty</i>	1,774,824.07
<i>Graduate Assistants</i>	\$71,136.00
<i>Professional/ Technical</i>	\$250,746.26
<i>Career Service</i>	\$234,801.81
<i>Student Labor</i>	\$13,195.00
<i>Longevity Budget</i>	\$6,035.00
Benefits	\$633,628.05
Travel	\$754,232.76
Contractual Services	\$129,178.21
Supplies	\$181,528.37
Capital Outlay	\$383,445.18
TOTAL	\$4,209,592.18

USD's budget request for \$600,000 in ongoing funds to fund basic costs, new learning opportunities, and formal bar preparation curriculum while decreasing class size by 25% has the potential to accomplish some of the short and long-term initiatives presented above.²⁰ If approved, then South Dakota will likely see an increase in its bar passage rates and USD Law will regain its reputation as a quality law school.

¹⁸ National Law Journal (2016). *Law Schools with High Dropout Rates Could Face ABA Wrath*. Available at: <http://www.nationallawjournal.com/id=1202752492033/Law-Schools-with-High-Dropout-Rates-Could-Face-ABA-Wrath?slreturn=20160605153843>

¹⁹ See Appendix 2 for the full breakdown between expenses for the Law School and Law Library.

²⁰ South Dakota Board of Regents (2016). *Informal Budget Hearings*. 24. Available at: https://www.sdbor.edu/the-board/agendaitems/2016/June/4_BOR0616.pdf

Appendix 1

Year	Applicants	Offers	Matriculates	Selectivity	LSAT 75th	LSAT 50th	LSAT 25th	UGPA 75th	UGPA 50th	UGPA 25th
2006	448	166	72	37.05%	155	152	151	3.72	3.49	3.07
2007	420	207	65	49.29%	156	152	150	3.74	3.41	3.14
2008	323	172	63	53.25%	155	151	148	3.63	3.4	3.05
2009	382	217	79	56.81%	155	151	149	3.65	3.44	3.13
2010	449	220	75	49.00%	154	150	149	3.72	3.38	3.12
2011	400	236	90	59.00%	152	150	148	3.53	3.27	3.05
2012	326	216	62	66.26%	153	149	146	3.68	3.28	3.01
2013	273	220	69	80.59%	150	147	144	3.56	3.15	2.93
2014	297	245	74	82.49%	152	148	144	3.44	3.1	2.71
2015	346	229	84	66.18%	151	147	144	3.67	3.38	3.01

Appendix 2

Law School		Law Library	
Personal Services	\$2,965,472.80	Personal Services	\$489,886.62
Salaries	\$2,433,634.49	Salaries	\$388,096.88
Instructional	\$354,960.72	Instructional	\$116,032.51
Administrative		Administrative	
Faculty	\$1,774,824.07	Faculty	\$0.00
Graduate Assistants	\$71,136.00	Graduate Assistants	\$0.00
Professional/Technical	\$60,380.00	Professional/Technical	\$190,366.26
Career Service	\$169,643.70	Career Service	\$65,158.11
Part-Time Temporary	\$0.00	Part-Time Temporary	\$0.00
Student Labor	\$0.00	Student Labor	\$13,195.00
Longevity Budget	\$2,690.00	Longevity Budget	\$3,345.00
Benefits	\$531,838.31	Benefits	\$101,789.74
Operating Expenses	\$362,202.37	Operating Expenses	\$392,030.39
Travel	\$60,081.00	Travel	\$0.00
Contractual Services	\$97,596.15	Contractual Services	\$31,582.06
Supplies	\$157,018.37	Supplies	\$24,510.00
Capital Outlay	\$47,506.85	Capital Outlay	\$335,938.33
Law School Total FY17 Base Budget	\$3,327,675.17	Law Library Total FY17 Base Budget	\$881,917.01
Law School/Law Library Total FY17 Base Budget			\$4,209,592.18