



AMERICAN **BAR** ASSOCIATION

Legal Education and
Admissions to the Bar

MEMORANDUM

TO: The Council of the Section of Legal Education and Admissions to the Bar

FROM: Pamela Lysaght, Standards Review Subcommittee Chair
Stephanie Giggetts, Accreditation Counsel

DATE: May 15, 2020 **UPDATE**

SUBJECT: Final Recommendations on Proposed Changes to Definitions, Standards and Rules related to Distance Education

At its meeting held on February 20-22, 2020, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Definitions, Standards and Rules of Procedure of the *ABA Standards and Rules of Procedure for Approval of Law Schools* that appear below. These changes move the approval of distance education programs under substantive change and remove it from the variance process.

- A. Definitions
- B. Standard 105
- C. Standard 306
- D. Standard 311
- E. Standard 511
- F. Rule 24
- G. Criteria for Programs Offered by ABA -Approved Law Schools in a Location Outside the United States
- H. Criteria for Accepting Credit for Student Study at a Foreign Institution

Comments were initially due by April 17, 2020. Since we received eight comments asking for an extension of time to comment, we agreed to extend the time for comment until May 8, 2020. This Memorandum provides an update on the additional comments submitted by May 8, 2020 and provides final recommendations from the Standards Review Subcommittee. The three additional comments received on or before May 8, 2020 are attached as Appendix C.

Regarding the additional comments, one comment supported the changes to Standard 311. The other two comments requested that language be added back to either the definition or Standard 311 to clarify that a law school can still grant a student up to one-third of the credit hours required for the J.D. degree for distance education courses.

A. Definitions

Summary: The language currently in Standard 306(a), providing the definition of “distance education” has been moved under Definitions adding a definition for “Distance Education Course” and “Distance Education J.D. Program.” The language currently in Standard 306(e) regarding the amount of credit that can be granted for distance education has been included in the new definitions for distance education.

Comments Received: We received two comments regarding our changes to the definitions. One commenter proposed the following:

Distance education course” means one in which a majority of the students are separated from the faculty member or each other for more than one-third of the instruction and the instruction delivery 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.

The commenter noted that the original language might be overbroad in that a course would be classified as distance education when it is taught live in a classroom but where internet videoconferencing is offered to students to be remote on a limited basis, but results in some students being remote for all class sessions.

The commenter also recommended the addition of the following interpretation:

A live, classroom course with the instructors and J.D. students in the same physical place is not a distance education course for J.D. students when non-J.D. students participate remotely and synchronously though technology such as internet videoconferencing even if all such non-J.D. students do so for more than a third of the class sessions.

The commenter explained that if a school has a small number of remote LLM students attending virtually a large class of physically present JD students, it turns the course into distance education for all of the JD students even though no JD student is remote.

A second commenter proposed the following change:

(6) “Distance education course” means 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. A law school may grant up to one third of the credit hours required for the J.D. degree for distance education courses.

The commenter explained that while defining “Distance Education J.D. Program” as a program in which “more than one third of the credit hours” involves distance education suggests that up to one third would be acceptable, the omission of an affirmative statement of this limitation in the Definitions could lead to confusion.

Final Recommendation: The purpose of this change was to move the process of approval of a distance education program to the substantive change process from the variance process. As a result, the subcommittee did not consider any changes to the material terms of distance education, but only the process for approval. The subcommittee recommends that the Council approve the change as recommended and take up consideration of any material changes at a later time.

B. Standard 105. Acquiescence for Substantive Change in Program or Structure

Summary: Instituting a distance education program has been added as a substantive change under Standard 105 requiring a law school to submit an application for acquiescence before starting such a program.

Comments Received: None.

Final Recommendation: Approve the proposed changes as drafted.

C. Standard 306. Distance Education

Summary: Standard 306, Distance Education has been deleted in its entirety. The language currently in Standard 306(a), providing the definition of distance education has been moved under Definitions. The language currently in Standard 306(b), addresses approving distance education courses as part of a law school’s regular curriculum approval process. Because all courses (distance or not) are approved as part of a law school’s regular curriculum approval process, the language in Standard 306(b) is unnecessary. The language currently in Standard 306(c) requires a law school to have the technological capacity, staff, information resources, and facilities necessary to assure the quality of distance education. Because the Standards have requirements for technology, staffing, information resources, and facilities, this language is already covered by other Standards. The language currently in Standard 306(d) addresses when distance education may count toward the 64 credit hours of regularly scheduled classroom sessions under Standard 311, including that learning outcomes are consistent with Standard 302. Proposed language has been added to Standard 311, noting that credit hours earned through distance education may count toward the 64 credits. The requirements of Standard 302 on learning outcomes applies to the entire law school and does not exclude distance education, thus, Standard 306(d) is

unnecessary. The language currently in Standard 306(e) regarding the amount of credit that can be granted for distance education has been included in the new definitions for distance education. The limitation of 10 distance education credits in the first year has been moved to a new Standard 311(e). The language currently in Standard 306(f) regarding the verification of student identity has been moved to a new Standard 511 under Student Services.

Comments Received: None.

Final Recommendations: Approve the proposed changes as drafted.

D. Standard 311. Academic Program and Academic Calendar

Summary: Due to the deletion of Standard 306, proposed language has been added to Standard 311, noting that credit hours earned through distance education may count toward the 64 credits in regularly scheduled classroom sessions or direct faculty instruction.

Comments Received: One. The commenter proposed the following:

(e) A law school that does not offer a Distance Education J.D. Program may grant a student up to one-third of the credit hours required for the J.D. degree for distance education courses; up to 10 of those credits may be granted during the first one-third of a student's program of legal education.

Similar to the comment above regarding Definitions, this commenter believes that we might be creating one of those situations where what is obvious to us is not obvious by simply reading the Standards. In other words, the omission of an affirmative statement that a law school can still grant a student up to one-third of the credit hours required for the J.D. degree for distance education courses could lead to confusion.

Final Recommendation: The purpose of this change was to move the process of approval of a distance education program to the substantive change process from the variance process. As a result, the subcommittee did not consider any changes to the material terms of distance education, but only the process for approval. The subcommittee recommends that the Council approve the change as recommended and take up consideration of any material changes at a later time.

E. Standard 511. Verification of Student Identity

Summary: Due to the deletion of Standard 306, a new standard has been added to address verification of student identity in distance education courses.

Comments Received: None.

Final Recommendation: Approve the proposed changes as drafted.

F. Rule 24. Application for Acquiescence in Substantive Change

Summary: Instituting a distance education program has been added as a substantive change under Rule 24, requiring a law school to submit an application for acquiescence before starting such a program. . The Council also wanted to maintain some of the requirements that have been imposed when granting a variance for distance education like reporting and time limits. This language has been added to the proposed changes in Rule 24.

Comments Received: None.

Preliminary Recommendation: Approve the proposed changes as drafted.

G. Criteria for Programs Offered by ABA -Approved Law Schools in a Location Outside the United States

Summary: Due to the deletion of Standard 306, reference to that standard in the criteria was deleted.

Comments Received: None

Final Recommendation: Approve the proposed change as drafted.

H. Criteria for Accepting Credit for Student Study at a Foreign Institution

Summary: Due to the deletion of Standard 306, reference to that standard in the criteria was deleted.

Comments Received: None

Final Recommendation: Approve the proposed change as drafted.