

American Bar Association
Section of Legal Education and Admissions to the Bar
Standards Review Committee

Variances
DRAFT FOR April 2011

Standard 107: VARIANCES

A law school proposing to change its program of legal education or take any other action that is or may be inconsistent with one or more of the Standards may apply for a variance only on one of the following bases:

a) In response to extraordinary circumstances in which compliance with the relevant Standard or Standards would create or constitute extreme hardship for the law school and/or its students, the law school may apply for a variance. In such cases, the law school must clearly establish that: 1) the proposed variance is consistent with the general purposes and objectives of the overall Standards, and 2) the anticipated benefits of granting the variance outweigh any anticipated harms to the law school's program and/or its students.

The variance, if granted, will be for a term certain and limited to the expected duration of the extraordinary circumstances on the basis of which it was granted. It may be extended once for a further term certain, but only if the extra ordinary circumstances persist and are beyond the control of the law school, its governing body or its parent university.

The decision granting a variance on this basis may require the law school to report to the Consultant, the Accreditation Committee or the Council regularly as specified in the decision.

b) In proposing new programs, changes in existing programs or other actions that are or may be inconsistent with one or more of the Standards, and that do not fall within the scope of subsection (a) above, the law school may apply for a variance. In such cases, the law school must clearly establish that: 1) the proposed variance is consistent with the general purposes and objectives of the overall Standards, 2) the proposed changes or actions that are the basis for the requested variance are experimental or innovative and have the potential to improve or advance the state of legal education, and 3) the anticipated benefits of granting the variance outweigh any anticipated harms to the law school's program and/or its students.

The variance, if granted, shall be for a term certain and can be extended once, with the extension being for either a further term certain or indefinite, but subject to revocation on the basis of a change in the showing made by the law school when the variance was granted.

The decision granting a variance on this basis may require the law school to report to the Consultant, the Accreditation Committee or the Council regularly as specified in the decision.

Should the programs, changes or actions that are the subject of the application for a variance constitute or come to constitute a major change in programs or structure as defined in Standard 105 or 106, then the law school shall seek acquiescence in order to initiate or continue the programs, changes or actions.

Interpretation 107-1

A law school applying for a variance has the burden of clearly demonstrating that the variance should be granted. The application should include, at a minimum, the following:

a) A precise description of the program changes or other actions for which the variance is sought, and identification of the Standard or Standards with which they are or may be inconsistent;

b) An explanation of the bases and reasons that justify granting the variance; and

c) Any additional information and factual material needed to sustain the law school's burden of proof and support the granting of the application.

Interpretation 107-2

The chair of the Accreditation Committee or the Consultant may appoint one or more fact finders to elicit additional information and facts relevant and necessary to consideration of the application for a variance. An application for a variance, other than one based on extraordinary circumstances and extreme hardship, must be filed well in advance of the meeting dates of the Accreditation Committee and Council at which the application could be considered.

Interpretation 107-3

The Consultant, the Accreditation Committee or the Council may, from time to time, request additional written reports from a law school to which a variance has been granted.

Interpretation 107-4

Variances, when granted, are school-specific and are based on and limited to the facts and circumstances that existed at the law school that applied for the variance. They do not constitute precedent and cannot be cited or considered in connection with subsequent applications that may be filed by other law schools.

Standard 802. VARIANCE

~~A law school proposing to offer a program of legal education a portion of which is inconsistent with a Standard may apply for a variance. If the Council finds that the proposal is nevertheless consistent with the general purposes of the Standards, the Council may grant the variance, may impose conditions, and shall impose time limits it considers appropriate. Council may terminate a variance prior to the end of the stated time limit if the school fails to comply with any conditions imposed by the Council. As a general rule, the duration of a variance should not exceed three years.~~

Interpretation 802-1

Variances are generally limited to proposals based on one or more of the following:

(a) a response to extraordinary circumstances that would create extreme hardship for students or for an approved law school; or

(b) an experimental program based on all of the following:

(1) good reason to believe that there is a likelihood of success;

(2) high quality experimental design;

(3) clear and measurable criteria for assessing the success of the experimental program;

(4) strong reason to believe that the benefits of the experiment will be greater than its risks; and

(5) adequately informed participation by students involved in the experiment.

Interpretation 802-2

A school applying for a variance has the burden of demonstrating that the variance should be

granted. The application should include, at a minimum, the following:

(a) a precise statement of the variance sought;

(b) an explanation of the bases and reasons for the variance; and

(c) additional information needed to support the application.

Interpretation 802-3

The Chair of the Accreditation Committee or the Consultant may appoint one or more fact finders to elicit facts relevant to consideration of the application for a variance. Thus an application for a variance must be filed well in advance of consideration of the application by the Accreditation Committee and the Council.

Interpretation 802-4

The Consultant, the Accreditation Committee or the Council may from time to time request written reports from the school concerning the variance.

Interpretation 802-5

Variances are school specific and based on the circumstances existing at the law school filing the request.