



February 16, 2011

Dean Donald J. Polden  
Santa Clara Law  
500 El Camino Real  
Santa Clara, California 95053

Dear Dean Polden:

This letter is written on behalf of the ABA Section of Legal Education: Technology and Education Committee, a committee comprised of a group of academics who are familiar with a variety of different distance education methodologies. We were tasked with examining Standard 306 and met for several hours at the AALS conference, and then via a telephone conference call. Our committee considered the importance of having a Standard that reflects current technology and makes distance education viable for schools that wish to pursue this route, including those who wish to try out this method of legal education for the first time. At the same time we all recognized the importance of maintaining high standards for legal education, especially with respect to student interaction in distance education. Attached is the result of our review of Standard 306. We have included both a tracked change copy so that our suggested revisions can be easily identified, and also a final copy for easy reading.

We did want to express our thoughts with regard to some of these changes:

1. Standard 306(a) [previously (b)] – We recommend modifications to the existing definition of what constitutes distance education to account for current and possible future technologies. The committee believed that the emphasis of the definition should not be focused on the actual technology used, something that is likely to change over time, but rather on a definition that focuses on the methodology (separation in time or place and using technology). We also considered it important to use terminology that was closer to that being used by the Department of Education in its recent changes regarding distance education.
2. Standard 306 (b) & (c) – We moved items from prior Interpretations 5 & 6 into the Standard, with some minor stylistic modifications. Our rationale for moving this into the Standard was to assure that those who engaged in distance education had the appropriate level of technology and support to accomplish the education goals.

3. Standard 306 (d) [previously (c)] – We were concerned with the vagueness of the term “ample” and selected “regular and substantive” to emphasize the importance of interaction and feedback as necessary components to quality distance education.
4. Standard 306 (e)[ previously (d)] – We advocate for increasing the hours permitted for distance education from 12 credits to 20 credits and place no limits on when the credits may be taken, except we do not change the existing provision in Standard 306 (f) prohibiting distance education in the first year.
  - a. The increase to 20 credits is a very deliberate number and was not in any way an arbitrary amount, or a compromised number. Our rationale for allowing 20 credit hours was to provide those who wanted to take an internship semester, had a medical issue, were deployed in the military, or had a reason that put them off campus for the semester from being excluded from law school during that time if they met all other criteria required by other Standards. Off campus learning experiences are growing both nationally and internationally and distance education can assist with making these worthwhile experiences.
  - b. Recognizing that a typical semester would have 15 – 17 hours for a full course load, you may ask why the additional hours (a maximum of 20 is recommended) above this amount. Our rationale here is that very often students/faculty who are unfamiliar with distance education do not recognize the effort and time involved in preparing and participating in a distance learning class. Having the opportunity to take one class as a trial before opting to complete a semester via distance education may assist in assuring success in a future semester that might be exclusively by distance learning. We did not, however, require students to take a prior course before opting for a semester of distance education because many students now come to law school having already taken a distance class in undergraduate school or another graduate program.
  - c. We also removed the restriction of a student being limited to four hours of distance education in a semester. This restriction has served as a bar to students who wished to enroll in courses during the summer months while in a different location from their law school. We were particularly concerned about limiting access to legal education given the financial pressures faced by students in a depressed economy.
5. Interpretation 306-4 [previously 7] – Our committee discussed whether to differentiate between synchronous and asynchronous distance education, and opted that the distinction was not needed, except when discussing the computation of course minutes for credit. The asynchronous context has been one of the more problematic areas for those engaged in distance teaching as the Standards and Interpretations have provided

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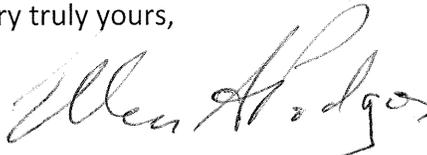
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no guidance on computing class minutes. Adding language that supports using the discussion board conversations as part of class time provides assurance that the asynchronous method is recognized by the Standards. At the same time, the additional language in Interpretation 306-5 (previously 8) emphasize to those using distance education that methods of instruction and student interaction are important components of the course.

If additional information or explanation is needed, please do not hesitate to contact me or other members of the committee.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ellen S. Podgor".

Ellen S. Podgor

Gary R. Trombley Family White-Collar Crime  
Research Professor

ABA Section of Legal Education: Technology and  
Education Committee, Chair

EP/sm

Standard 306. Distance Education

Distance education credit 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.

(a) Distance education is an educational process in which more than one-third of the instruction of the course is characterized by: (1) separation in time or place, or both, between instructor and student; and (2) where technology is used to provide instruction.

(b) A law school shall have the technological capacity, staff, information resources, and facilities needed to provide the support, and the training needed for instructors and students involved in distance education at the school.

(c) A law school shall establish mechanisms to assure that faculty who teach distance education courses, and students who enroll in them, have the skills, training, and access to the technology necessary to enable them to participate effectively.

(d) A law school may award credit for distance education and may count that credit toward the 45,000 minutes of instruction required by Standard 304(b) if:

- (1) there is regular and substantive interaction with the instructor and other students both inside and outside the formal structure of the course throughout its duration; and
- (2) there is regular monitoring and substantive feedback of student effort and accomplishment as the course progresses.

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

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

(g) No credit otherwise may be given toward the J.D. degree for any distance education course.

**Interpretation 306-1**

To allow the Council and the Standards Review Committee to review and adjust this Standard, law schools shall report each year on the distance education courses that they offer.

**Interpretation 306-2**

Distance education presents special opportunities and unique challenges for the maintenance of educational quality. Distance education accordingly requires particular attention from the law school and by site visit teams and the Accreditation Committee.

**Interpretation 306-3**

Law schools shall provide students in distance education courses opportunities to interact with instructors and other students that is comparable to the opportunities for such interaction with instructors and students in non-distance learning settings.

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¶ 1) technological transmission, including Internet, open broadcast, closed circuit, cable, microwave, or satellite transmission; .  
(2) audio or computer conferencing; .  
(3) video cassettes or discs; or .  
(4) correspondence.

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**Interpretation 306-4**

Faculty approval of credit for a distance education course shall include a specific explanation of how the course credit was determined. Credit shall be awarded in a manner consistent with the requirement of Interpretation 304-4 that requires 700 minutes of instruction for each credit awarded. If the course is being offered asynchronously, class discussion time on a discussion board may be used in calculating the class time.

**Interpretation 306-5**

A law school that offers credit for distance education shall periodically review the educational effectiveness of its distance education courses and programs, particularly methods of instruction and student interaction appropriate to the courses offered.

**Interpretation 306-6**

“Credits” in this Standard means semester hour credits as provided in Interpretation 304-4. Law schools that use quarter hours of credit shall convert these credits in a manner that is consistent with the provisions of Interpretation 304-4.

**Deleted: Interpretation 306-5**  
Law schools shall have the technological capacity, staff, information resources, and facilities required to provide the support needed for instructors and students involved in distance education at the school.

**Interpretation 306-6**  
Law schools shall establish mechanisms to assure that faculty who teach distance education courses and students who enroll in them have the skills and access to the technology necessary to enable them to participate effectively.

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*Courses in which two-thirds or more of the course instruction consists of regular classroom instruction shall not be treated as “distance education” for purposes of Standards 306(d) and (e) even though they also include substantial on-line interaction or other common components of “distance education” courses so long as such instruction complies with the provisions of subsections (1) and (2) of Standard 306(c).*

## Standard 306. Distance Education

Distance education credit 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.

- (a) Distance education is an educational process in which more than one-third of the instruction of the course is characterized by:
  - (1) separation in time or place, or both, between instructor and student; and
  - (2) where technology is used to provide instruction.
- (b) A law school shall have the technological capacity, staff, information resources, and facilities needed to provide the support, and the training needed for instructors and students involved in distance education at the school.
- (c) A law school shall establish mechanisms to assure that faculty who teach distance education courses, and students who enroll in them, have the skills, training, and access to the technology necessary to enable them to participate effectively.
- (d) A law school may award credit for distance education and may count that credit toward the 45,000 minutes of instruction required by Standard 304(b) if:
  - (1) there is regular and substantive interaction with the instructor and other students both inside and outside the formal structure of the course throughout its duration; and
  - (2) there is regular monitoring and substantive feedback of student effort and accomplishment as the course progresses.
- (e) A law school shall not grant a student more than a total of twenty credit hours toward the J.D. degree for courses qualifying under this Standard.
- (f) A law school shall not enroll a student in courses qualifying for credit under this Standard until that student has completed instruction equivalent to 28 credit hours toward the J.D. degree.
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