Memorandum

To: Interested Persons and Entities

From: Scott Bales, Council Chair
       William Adams, Managing Director of Accreditation and Legal Education

Date: September 30, 2020


At a special meeting on September 29, 2020 to discuss new U.S. Department of Education (Department) regulations, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Rule 29 of the ABA Standards and Rules of Procedure for Approval of Law Schools that appear below. The proposed changes incorporate wording that complies with the Department’s new regulations on Teach-Out.

All proposed revisions and accompanying explanations are published on the Section’s website at https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/.

We solicit and encourage written comments on all the proposals listed above. Due to COVID-19, there will not be an open hearing, only a written comment period. Please address all written comments on the proposals to Scott Bales, Council Chair. Please send comments to Mary Kearin (mary.kearin@americanbar.org) by Friday, October 30, 2020. Written comments received after Friday, October 30, 2020, may not be included in the materials considered by the Council at its November 2020 meeting.

PROPOSED CHANGES TO RULE 2

Explanation of Changes

A few months before the new Department of Education Regulations were released on November 1, 2019 (effective July 1, 2020), the Standards Review Subcommittee appointed a working group to determine what changes would be needed to Rule 29 (Teach-Out Plan). In a November 5, 2019 memo, the working group concluded that additional guidance from the Department was needed before making any changes. The Department has not subsequently provided any additional guidance.

Based on recent correspondence with the Department, these changes to Rule 29 need to be implemented without waiting for additional guidance from the Department. The changes below add language required by the new regulations.
Redline of Recommended Changes to Rule 29

Rule 29: Teach-Out Plan

(a) If a provisional or fully approved law school or branch is closing, suspending, or ceasing to operate its approved program of legal education, the law school shall promptly provide notice to the public, all students at the law school, the Managing Director, the appropriate state licensing authority, and the United States Department of Education of the action.

(b) A provisional or fully approved law school must submit a teach-out plan for approval upon occurrence of any of the following events:

   (1) The United States Secretary of Education notifies the Managing Director’s Office of a determination by the law school’s independent auditor expressing doubt about the law school’s ability to operate as a going concern or indicating an adverse opinion or a finding of material weakness related to financial stability.

   (2) The Council acts to place the law school on probation or equivalent status.

   (3) The United States Secretary of Education notifies the Managing Director’s Office that the law school is participating in Title IV, HEA programs under a provisional program participation agreement and the Secretary has required a teach-out plan as a condition of participation.

(c) A provisional or fully approved law school must submit a teach-out plan, and if practicable, teach-out agreements for approval upon occurrence of any of the following events:

   (1) The law school notifies the Managing Director’s Office that it intends to close, suspend, or cease to operate its approved program of legal education at the law school or a branch campus;

   (2) The Council acts to withdraw, terminate, or suspend the accreditation of the law school;

   (3) The United States Secretary of Education notifies the Managing Director’s Office that the Secretary has placed the law school on the reimbursement payment method under 34 CFR 668.162(c) or heightened cash monitoring payment method, requiring the Secretary’s review of the law school’s supporting documentation under 34 CFR 668.162(d)(2).

   (4) The United States Secretary of Education notifies the Managing Director’s Office that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any Title IV, HEA program, in accordance with Section 487(c)(1)(F) of the HEA, and that a teach-out plan is required;

   (5) A state licensing or authorizing agency notifies the Managing Director’s Office that an institution’s license or legal authorization to provide an educational program has been or will be revoked;

   (6) The Executive Committee of the Council determines that the law school is at risk of sudden closure, suspension, or ceasing of some or all of its operations because it is in financial distress, under governmental investigation, or facing other significant challenges.

(d) A law school applying for provisional approval under Rule 22 must submit a teach-out plan for approval with its application that includes the names of other law schools that could enter into a teach-out agreement with the law school.

(e) The law school shall submit the teach-out plan required by paragraph (b) to the Managing Director’s Office
within the time specified by the Managing Director. Upon submission of the teach-out plan, the law school must cease recruiting students, accepting deposits, and admitting new students.

(f) The Council may require a law school to enter into a teach-out agreement as part of its teach-out plan if the law school will not be able to teach out its own students prior to its closure as a law school.

(g) A law school must submit the “Teach-Out Plan Approval Form,” as adopted by the Council, and address each item in the form.

(h) If the Council requires a law school to submit a teach-out agreement as part of a teach-out plan, the law school must submit the “Teach-Out Agreement Approval Form,” as adopted by the Council, and address each criterion in the form.

(i) A law school is not permitted to serve as a teach-out law school if the law school is subject to the conditions of (b) or (c), or is under investigation, subject to an action, or being prosecuted for an issue related to academic quality, misrepresentation, fraud, or other severe matters by a law enforcement agency.

(j) The Council may waive requirements regarding the percentage of credits that must be earned by a student at the law school awarding the J.D. if the student is completing a program through a written teach-out agreement or transfer.

(k) The Executive Committee of the Council shall either approve or deny the teach-out plan submitted in accordance with (b) and (d).

(1) Approval of the teach-out plan may be conditioned on specified changes to the plan.

(2) If the teach-out plan is denied, the law school must revise the plan to meet the deficiencies identified and resubmit the plan as directed, after receiving notice of the decision.

(l) Upon approval of a teach-out plan of a law school or branch campus that is also accredited by another recognized accrediting agency, the Managing Director’s Office shall notify that accrediting agency within 30 days of its approval.

(m) Upon approval of a teach-out plan, the Managing Director shall within 30 days notify all recognized agencies that accredit other programs offered by the institution of which the law school is a part.

(n) For a law school that is suspending or reducing operations, the Council may withdraw approval from the law school if it ceases to operate as an educational institution, if its legal authorization to operate and grant degrees is terminated, or if the Council determines, based on its review, that what remains of the law school is no longer in compliance with the Standards as required to sufficiently provide students with a quality legal education.

(o) In the event a law school closes without an approved teach-out plan or agreement, the Managing Director’s office will work with the United States Department of Education and the appropriate state agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.