MEMORANDUM

TO: Interested Persons and Entities

FROM: Diane Bosse, Council Chair
Barry A. Currier, Managing Director of Accreditation and Legal Education

DATE: March 17, 2020

SUBJECT: ABA Standards and Rules of Procedure – Matters for Notice and Comment - Cancellation of Public Hearing

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 the 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

All proposed revisions and accompanying explanations are published on the Section’s website:
http://www.americanbar.org/groups/legal_education/resources/notice_and_comment/.
We solicit and encourage written comments on all the proposals listed above. A hearing on the proposed changes was scheduled for Wednesday, May 13, 2020 at 1 p.m. However, due to COVID-19, the hearing has been cancelled and the written comment deadline has been extended to April 17, 2020. Please address all written comments on the proposals to Diane Bosse, Council Chair. Please send comments to Mary Kearin (mary.kearin@americanbar.org) by Friday, April 17, 2020.

Written comments received after Friday, April 17, 2020, may not be included in the materials considered by the Council at its May 14-16, 2020 meeting.

PROPOSED CHANGES TO DEFINITIONS, STANDARDS, RULES, AND CRITERIA FOR DISTANCE EDUCATION

Explanation of Changes:

The first step in the proposal is to add distance education as a substantive change under Standard 105 and Rule 24.

The second step in the proposal is to delete Standard 306. The language currently in Standard 306(a), providing the definition of “distance education” would be addressed in the definitions, adding a definition for “Distance Education Course” and “Distance Education J.D.”

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, it does not appear that the language in Standard 306(b) is necessary.

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, it appears 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. It appears that the requirements of Standard 302 on learning outcomes applies to the entire law school and does not exclude distance education, thus it does not appear that a separate section such as Standard 306(d) continues to be necessary.

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.

The Council also noted that it would like 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.

Please note these recommendations for Notice and Comment will also involve minor amendments to both sets of criteria for Foreign Programs, more specifically, deleting references to Standard 306.

A. Redline of Recommended Additions to Definitions:

Definitions:

(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.

(7) “Distance Education J.D. Program” means a program where a law school grants a student more than one third of the credit hours required for the J.D. degree for distance education courses.

B. Redline of Recommended Additions to Standard 105:

Standard 105. ACQUIESCENCE FOR SUBSTANTIVE CHANGE IN PROGRAM OR STRUCTURE

(a) Before a law school makes a substantive change in its program of legal education or organizational structure, it shall obtain the acquiescence of the Council for the change. A substantive change in program or structure that requires application for acquiescence includes:

(12) The addition of courses or programs that represent a significant departure from existing offerings or method of delivery since the latest site evaluation including instituting a new full-time or part-time division, instituting a Distance Education J.D. Program, or establishing a new or different program leading to a certificate or degree other than a J.D. degree.

C. Redline of Recommended Deletion of Standard 306:

Standard 306. DISTANCE EDUCATION

(a) A distance education course is 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.

(b) Credit for a distance education course 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.
(c) A law school shall have the technological capacity, staff, information resources, and facilities necessary to assure the educational quality of distance education.

(d) A law school may award credit for distance education and may count that credit toward the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction required by Standard 311(a) if:

1. there is opportunity for regular and substantive interaction between faculty member and student and among students;

2. there is regular monitoring of student effort by the faculty member and opportunity for communication about that effort; and

3. the learning outcomes for the course are consistent with Standard 302.

(e) A law school may grant a student up to one-third of the credit hours required for the J.D. degree for distance education courses qualifying under this Standard. A law school may grant up to 10 of those credits during the first one-third of a student’s program of legal education.

(f) A law school shall establish an effective process for verifying the identity of students taking distance education courses and that also protects student privacy. If any additional student charges are associated with verification of student identity, students must be notified at the time of registration or enrollment.

Interpretation 306-1
Methods to verify student identity as required by Standard 306(f) include, but are not limited to (i) a secure login and pass code, (ii) proctored examinations, and (iii) other technologies and practices that are effective in verifying student identity. As part of the verification process, a law school shall verify that the student who registers for a class is the same student that participates and takes any examinations for the class.

D. Redline of Recommended Changes to Standard 311

Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR

(a) A law school shall require, as a condition for graduation, successful completion of a course of study of not fewer than 83 credit hours. At least 64 of these credit hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.

(b) A law school shall require that the course of study for the J.D. degree be completed no earlier than 24 months and, except in extraordinary circumstances, no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.

(c) A law school shall not permit a student to be enrolled at any time in coursework that exceeds 20 percent of the total credit hours required by that school for graduation.
(d) Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school's J.D. program of study, except for credit that may be granted pursuant to Standard 505. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

(e) A law school may grant up to 10 credit hours required for the J.D. degree for distance education courses during the first one-third of a student’s program of legal education.

Interpretation 311-1

(a) In calculating the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction for the purpose of Standard 311(a), the credit hours may include:

(1) Credit hours earned by attendance in regularly scheduled classroom sessions or direct faculty instruction;

(2) Credit hours earned by participation in a simulation course or law clinic in compliance with Standard 304;

(3) Credit hours earned through distance education in compliance with Standard 306; and

(4) Credit hours earned by participation in law-related studies or activities in a country outside the United States in compliance with Standard 307.

E. Redline of Recommended Addition of Standard 511:

Standard 511. VERIFICATION OF STUDENT IDENTITY

A Law School shall verify that a student who registers for any distance education course is the same student that academically engages in the course.

F. Redline of Recommended Changes to Rule 24:

Rule 24: Application for Acquiescence in Substantive Change

(a) Substantive changes requiring application for acquiescence include:

(12) The addition of courses or programs that represent a significant departure from existing offerings or method of delivery since the latest site evaluation including instituting a new full-time or part-time division, instituting a Distance Education J.D. Program, or establishing a new or different program leading to a certificate or degree other than a J.D. degree.

...  

(i) The decision of the Council granting acquiescence in a substantive change to institute a Distance Education J.D. Program under Rule 24(a)(12) may 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.
(j) The decision granting acquiescence in a substantive change to institute a Distance Education J.D. Program may require the law school to report to the Managing Director or the Council regularly as specified in the decision.

G. Redline of Recommended Changes to Criteria for Programs Offered by ABA - Approved Law Schools in a Location Outside the United States:

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

These Criteria apply to summer, intersession, semester, and year-long programs offered by ABA approved law schools in a location outside of the United States. Programs in which students enroll in an institution outside the United States to receive credit toward the J.D. degree are governed by the Criteria for Accepting Credit for Student Study at a Foreign Institution.

These Criteria recognize that the primary responsibility for determining the quality of the educational experience that students receive during a study abroad experience rests with the faculty and administration of the law school.

The ABA Standards and Rules of Procedure for the Approval of Law Schools shall apply to study abroad programs except as modified by the Criteria or by necessary implication.

I. Criteria Applicable to All Programs Offered by ABA-Approved Law Schools in a Location Outside the United States

A. Educational Program

1. The dean and faculty of the law school are responsible for formulating and administering the educational program.

2. The faculty must approve the academic content of the educational program in the same manner as the curriculum of the law school’s on-campus program.

3. The academic content of the educational program must meet the same standards, including evaluation of student performance, as the on-campus program of the law school.

4. The number of students enrolled shall not exceed the number appropriate for the academic content of the educational program, available facilities, the number and availability of faculty members, the administrative support structure, and any special educational program goals.

5. Students must be provided with the name and contact information of the program director or another responsible person on-site who can be reached at all times during the program.
6. The law school shall offer students at or shortly after the conclusion of the program an opportunity to evaluate in writing both the overall program and the faculty and courses offered in the program.

7. The law school may include participants other than those earning credit toward the J.D. degree, provided that such participation does not detract from the law school’s ability to maintain a program that meets the requirements of these Criteria and the Standards.

B. Academic Credit

1. Length of program

   (a) The educational program must provide adequate time for class preparation, reflection and intellectual maturation similar to that provided in the regular semester.

   (b) The number of credits a student may receive in the program must comply with Standard 310 regarding credit hours and in no event shall a student receive more than 1.5 semester credit hours for each week of the program.

2. Instruction Conducted in a Foreign Language

   (a) When instruction is offered in a foreign language with consecutive English interpretation, the time expended in class is not commensurate with class time spent when instruction is in English. For purposes of Standard 310 compliance, classes in which consecutive interpretation is needed may not count more than fifty (50) percent of actual class time expended.

   (b) When instruction is offered in a foreign language with simultaneous English interpretation, the time expended in class is commensurate with class time spent when instruction is in English.

3. If credit is given for field placements, the educational program must meet the requirements of Standard 304.

4. If credit is given for distance education courses, those courses and credits must comply with the requirements of Standard 306.

54. Educational Visits

   (a) The program shall include at least two visits that relate to the socio-legal environment in the host country.

   (b) Time or a portion of the time allocated for visits may not be counted toward the requirements of Standard 310 regarding credit hours unless the content of the visit is academic in nature and specifically related to the class for which the credit is being awarded.
65. If course materials, including all case, statutory, and text materials needed for full understanding of the course and completion of assignments, are not self-contained, then adequate library resources must be available.

H. Redline of Recommended Changes to Criteria for Accepting Credit for Student Study at a Foreign Institution

Criteria for Accepting Credit for Student Study at a Foreign Institution

These Criteria recognize that the primary responsibility for determining the quality of the educational experience that students receive during a study abroad experience rests with the faculty and administration of the law school.

The ABA Standards and Rules of Procedure for the Approval of Law Schools shall apply to study abroad programs except as modified by the Criteria or by necessary implication.

For the purpose of these Criteria the following definitions apply:

• “law school” refers to an ABA-approved law school.

• “foreign institution” refers to the institution outside the United States at which a student from an ABA approved law school is studying to receive credit toward the law school J.D. degree.

I. Criteria Applicable to all Student Study at a Foreign Institution

A. Course of Study

1. The law school must ensure that the content of the studies at the foreign institution is such that credit would have been granted towards satisfaction of degree requirements of the law school.

2. To be approved for credit toward the J.D. degree, the course of study must be related either to the socio-legal environment of the country in which the foreign institution is located, or it must have an international or comparative focus.

3. A law school that permits students to undertake foreign study under these Criteria shall develop and publish, prior to approving any foreign study, a statement that defines the educational objectives the law school seeks to achieve in allowing students to study abroad for credit toward the J.D. degree. Publication should usually be on a website, in an announcement or brochure, or in writing directly to prospective students.

4. Academic Advisor

(a) The law school must appoint an academic advisor for any student studying at a foreign institution. The academic advisor must approve in advance the student’s academic course of study to be undertaken at the foreign institution. The academic
advisor must be a faculty member or a law school administrator who has the training or experience to permit effective approval and monitoring of foreign study by law students.

(b) The student and the academic advisor shall develop a written plan to define the educational objectives a student seeks to achieve during a period of study abroad. The plan shall specify the methods to be used in evaluating the student’s attainment of those objectives. If changes occur, such as a course change or cancellation, the student and the academic advisor shall reexamine the written plan to determine whether the approved foreign study continues to satisfy the stated educational objectives.

5. The law school must ensure that course materials and methods of evaluation of student performance are satisfactory for the award of credit at the law school.

6. The law school must ensure that a student approved for foreign study under these Criteria is proficient in the language of instruction.

7. The law school must ensure that any student who studies at a foreign institution has reliable access to library resources that are adequate to meet the educational objectives of the course of study.

8. The law school must offer students at or shortly after the conclusion of the period of study abroad an opportunity to evaluate in writing the faculty, courses offered and the experience at the foreign institution.

9. The law school must ensure that there is a contact person at the foreign institution and must provide the contact information for that person to each student studying at the foreign institution.

B. The foreign institution. The foreign institution must be:

1. Government sanctioned or recognized, if educational institutions are state regulated within the country;

2. Recognized or approved by an accrediting agency, if such an agency exists within the country; or

3. Chartered to award first degrees in law by the appropriate authority within the country.

C. Academic Credit

1. Credits toward the J.D. degree for all foreign study shall not exceed one-third of the credits required for the J.D. degree at the law school.

2. A law school shall award credit consistent with the requirements of Standard 310 regarding the determination of credit hours for coursework, and should make reasonable efforts to determine appropriate comparability between the foreign course and the regular law school curriculum.

3. The law school shall ensure that no credit is given for field placements (e.g., in a law firm, government office, or corporation) unless the field placement is consistent with the requirements of Standard 304(d).
4. The law school shall ensure that no credit is given for distance education unless the courses are consistent with the requirements of Standard 306.