MEMORANDUM

TO: Interested Persons and Entities

FROM: Joan S. Howland, Council Chairperson
Barry A. Currier, Managing Director of Accreditation and Legal Education

DATE: March 20, 2015

SUBJECT: ABA Standards for Approval of Law Schools Matters for Notice and Comment

At its meeting held on March 13-14, 2015, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment the following proposed revisions to the ABA Standards and Rules of Procedure for Approval of Law Schools:

- Definition (17) and Standard 106
- Standard 304
- Standard 311(a) and Interpretation 311-1
- Standard 311(f) and Standard 308(a)
- Standard 505(b)
- Rule 27 and Rule 28
- Rule 29
- Rule 30

The proposed revisions and accompanying explanations are attached and published on the Section’s website: [http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html](http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html).

We solicit and encourage written comments on the proposed changes by letter or e-mail. Written comments should be submitted no later than Friday, April 24, 2015.

A hearing on these proposed changes is scheduled for Thursday, April 30, 2015, from 3 to 5 p.m. The hearing will be held at American Bar Association (321 N. Clark St.).

Please address written comments on the proposals and requests to speak at the hearing to JR Clark, jr.clark@americanbar.org, by Friday, April 24, 2015.
Definition (17) and Standard 106

Under the proposed change, the definition of “separate location” is changed from one at which “the law school offers more than sixteen credit hours” to one at which “a student may earn more than sixteen credit hours.”

In the 2013-14 Standards, a “satellite campus” was defined in Standard 106(15) as one “at which a student could take the equivalent of 16 or more semester credit hours.” Standard 105 required schools to provide a certain level of support for satellite campuses including library resources, academic advising, full-time faculty, etc.

During the comprehensive review of the Standards, the term “satellite campus” was eliminated and replaced with the term “separate location.” In the 2014-15 Standards, a “separate location” is defined as one at which the law school “offers more than sixteen credit hours” of the program of legal education.

Following the comprehensive review, law schools that offered courses at separate locations voiced concern about the revision. If the school offered a number of courses at the location that totaled more than sixteen credits, new Standard 106 required that they provide the level of support required for a separate location even if a student was not permitted to earn more than sixteen credit hours at that location. The proposed change returns the situation to that found before the comprehensive revision, and requires that the school provide the level of support required for a separate location only if a student may earn more than sixteen credit hours.

Interpretation 106-1, which repeated the definition of “separate location” found in the Definitions section, is deleted. Interpretation 106-2 is renumbered to be Interpretation 106-1.

DEFINITIONS

(17) “Separate location” means a physical location within the United States; (1) at which the law school offers J.D. degree courses, (2) where a student may earn more than sixteen credit hours of the school’s program of legal education, and (3) that is not in reasonable proximity to the law school’s main location.

Standard 106. SEPARATE LOCATIONS AND BRANCH CAMPUSES

(a) A law school that offers a separate location shall provide:

(1) Full-time faculty adequate to support the curriculum offered at the separate location and who are reasonably accessible to students at the separate location;

(2) Library resources and staff that are adequate to support the curriculum offered at the separate location and that are reasonably accessible to the student body at the separate location;
(3) Academic advising, career services and other student support services that are adequate to support the student body at the separate location and that are reasonably equivalent to such services offered to similarly situated students at the law school’s main location;

(4) Access to co-curricular activities and other educational benefits adequate to support the student body at the separate location; and

(5) Physical facilities and technological capacities that are adequate to support the curriculum and the student body at the separate location.

(b) In addition to the requirements of section (a), a branch campus must:

(1) Establish a reliable plan that demonstrates that the branch campus is reasonably likely to be in substantial compliance with each of the Standards within three years of the effective date of acquiescence as required by Rule 22;

(2) Comply with instructional requirements and responsibilities as required by Standard 403(a) and Standard 404(a); and

(3) Offer reasonably comparable opportunities for access to the law school’s program of legal education, courses taught by full-time faculty, student services, co-curricular programs, and other educational benefits as required by Standard 311.

(c) A law school is not eligible to establish a separate location until at least four years after the law school is granted initial full approval.

Interpretation 106-1
“Separate location” and “branch campus” as used in this Standard are defined terms that apply only to locations at which a law school offers more than sixteen credits of the program of legal education.

Interpretation 106-1 106-2
A law school with more than one location may have one dean for all locations.
Standard 304

Subsequent to the comprehensive revision to the Standards, several faculty teaching mediation clinics submitted comments that the new definition of a “law clinic” excluded work done by their students serving as mediators, a lawyering role that does not involve advising or representing one or more clients. The change addresses that issue. The language of “serving as a third-party neutral” is used in Rule 2.4 of the ABA Model Rules of Professional Conduct to describe lawyering work as mediators. In mediation clinics, students serve as third-party neutrals for real parties who are either proceeding pro se or with the assistance of counsel. This is real lawyering work and involves actual individuals. Like other law clinics under the new definition, these mediation clinics provide students with substantial lawyering experience in a real life context.

Standard 304. SIMULATION COURSES AND LAW CLINICS

(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:

(i) direct supervision of the student's performance by the faculty member;

(ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and

(iii) a classroom instructional component.

(b) A law clinic provides substantial lawyering experience that (1) involves advising or representing one or more actual clients or serving as a third-party neutral, and (2) includes the following:

(i) advising or representing a client;

(ii) direct supervision of the student’s performance by a faculty member;

(iii) opportunities for performance, feedback from a faculty member, and self-evaluation; and

(iv) a classroom instructional component.
Standard 311(a) and Interpretation 311-1

Subsequent to the comprehensive revision of the Standards and Rules, the Council requested the Standards Review Committee reexamine Standard 311 – Academic Program and Academic Calendar to see if the requirements regarding the academic calendar could be streamlined.

Standard 311 contains four specific requirements that impact the nature and length of the academic program: a) 140 days of regular instruction including examinations; b) 83 credits of minimum instruction to earn the JD; c) the limitation that a degree may not be earned earlier than 24 months or later than 84 months; d) limitation of 20% of total credit hours per term on coursework.

After careful discussion of these four sections, the Standards Review Committee determined that it was important to maintain certain requirements to ensure that the program of study provides a rigorous program of legal education under Standard 301. Further, that it was important to provide students with the opportunity for adequate time for study and reflection. Consequently, the Standards Review Committee recommended maintaining b) the 83 unit minimum, c) the 24 month limitation on accelerated programs; and d) the 20% limitation on coursework.

However, the Standards Review Committee also concluded that there was no need to prescribe a minimum of 140 days of instruction, given that the other three requirements offer sufficient protection to ensure an academic calendar that is of sufficient length and breadth, and given the newly stated requirements found in Standard 310 regarding credit hours. Therefore, the Standards Review Committee recommended the elimination of Standard 311(a) and Interpretation 311-1 and the re-lettering of the remaining sections to address the elimination.

Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR

(a) A law school shall have an academic year of not fewer than 140 days on which classes and examinations are regularly scheduled in the law school, extending into not fewer than eight calendar months. The law school shall provide adequate time for reading periods and breaks, but such time does not count toward the 140-day academic year requirement.

(b)(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.

(c)(e) 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.

(d)(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.
Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

A law school shall adopt, publish, and adhere to a written policy requiring regular class attendance. [MOVED TO STANDARD 308(a)]

Interpretation 311-1
A law school may not count more than five class days each week toward the 140-day requirement.

Interpretation 311-2
(a) In calculating the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction for the purpose of Standard 311(b) (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.

(b) In calculating the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction for the purpose of Standard 311(b) (a), the credit hours shall not include any other coursework, including, but not limited to:
   (1) Credit hours earned through field placements and other study outside of the classroom in compliance with Standard 305;
   (2) Credit hours earned in another department, school, or college of the university with which the law school is affiliated, or at another institution of higher learning;
   (3) Credit hours earned for participation in co-curricular activities such as law review, moot court, and trial competition; and
   (4) Credit hours earned by participation in studies or activities in a country outside the United States in compliance with Standard 307 for studies or activities that are not law-related.

Interpretation 311-3-2
Whenever a student is permitted on the basis of extraordinary circumstances to exceed the 84-month program limitation in Standard 311(c) (b), the law school shall place in the student’s file a statement signed by an appropriate law school official explaining the extraordinary circumstances leading the law school to permit an exception to this limitation. Such extraordinary circumstances, for example, might include an interruption of a student’s legal education because of an illness, family exigency, or military service.

Interpretation 311-4-3
For purposes of Standard 311(e) (b), the time for determining the commencement of law study is ordinarily the time when a student commences law study at any institution. For example, if a law
school accepts transfer credit from another institution, the time begins when the student commenced study at the law school from which the transfer credit is accepted. If a law school accepts a student who has completed law studies at a law school outside the United States as permitted under Standard 505, only the time commensurate with the amount of credit given counts toward the length of study requirements of Standard 311(e). (b).
Standard 311(f) and Standard 308(a)

Newly revised Standard 311(f) focuses on the law school’s obligation to adopt, publish, and adhere to a written policy requiring regular attendance. The Standards Review Committee recommended the retention of this Standard, but that it should be moved to Standard 308(a), which contains similar obligations for other academic standards.

Standard 308. ACADEMIC STANDARDS

(a) A law school shall adopt, publish, and adhere to sound academic standards, including those for regular class attendance, good standing, academic integrity, graduation, and dismissal.

(b) A law school shall adopt, publish, and adhere to written due process policies with regard to taking any action that adversely affects the good standing or graduation of a student.

Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR

(f) A law school shall adopt, publish, and adhere to a written policy requiring regular class attendance. [MOVED TO STANDARD 308(a)]
Standard 505(b)

Prior to the comprehensive review, Standard 506(a) had permitted ABA-approved law schools to admit students with advanced standing and allow credits for studies at law schools not approved by the ABA if the unapproved law school had been granted the power to confer the J.D. degree by the appropriate governmental authority in the unapproved school’s jurisdiction, or if graduates of the unapproved school were permitted to sit for the bar examination in that jurisdiction. Following the comprehensive review, Standard 505 stated that credits could be transferred only if graduates of the unapproved law school were permitted to sit for the bar examination in that jurisdiction; the section regarding transfer of credits from unapproved law schools that had been granted the power to confer the J.D. degree by the appropriate governmental authority had been removed.

The change made to this section could be detrimental to students enrolled in some unapproved schools who seek to transfer to ABA-approved law schools. In some jurisdictions, the authority to start a law school is granted by an agency that has no authority to grant graduates of the school permission to sit for the bar examination in that jurisdiction. Indeed, some law schools have started with permission from a state agency so that they can obtain provisional accreditation and their graduates be permitted to sit for the bar examination in that jurisdiction. If ABA-approved law schools can accept credits only from those unapproved schools whose graduates have been granted permission to take the bar examination in their jurisdiction, students enrolled in unapproved law schools during that period between the granting of authority by a state agency and the granting of approval to take the bar examination, if separate operations, would be unable to transfer. The proposal to amend Standard 505 restores the ability of students to seek to transfer credit if they are enrolled in an unapproved law school that has been granted the power to confer the J.D. degree by the appropriate governmental authority in the unapproved school’s jurisdiction.

Standard 505. GRANTING OF J.D. DEGREE CREDIT FOR PRIOR LAW STUDY

(a) A law school may admit a student and grant credit for courses completed at another law school approved by the Council if the courses were undertaken as a J.D. degree student.

(b) A law school may admit a student and grant credit for courses completed at a law school in the United States that is not approved by the Council if the unapproved law school has been granted the power to confer the J.D. degree by the appropriate governmental authority in the unapproved law school’s jurisdiction, or if graduates of the unapproved law school are permitted to sit for the bar examination in the jurisdiction in which the unapproved law school is located, provided that:

1. the courses were undertaken as a J.D. degree student; and
2. the law school would have granted credit toward satisfaction of J.D. degree requirements if earned at the admitting school.
(c) A law school may admit a student and grant credit for courses completed at a law school outside the United States if the admitting law school would have granted credit towards satisfaction of J.D. degree requirements if earned at the admitting school.

(d) A law school may grant credit toward a J.D. degree to a graduate of a law school in a country outside the United States for credit hours earned in an LL.M. or other post-J.D. program it offers if:

1. that study led to successful completion of a J.D. degree course or courses while the student was enrolled in a post-J.D. degree law program; and

2. the law school has a grading system for LL.M. students in J.D. courses that is comparable to the grading system for J.D. degree students in the course.

(e) A law school that grants credit as provided in Standard 505(a) through (d) may award a J.D. degree to a student who successfully completes a course of study that satisfies the requirements of Standard 311 and that meets all of the school’s requirements for the awarding of the J.D. degree.

(f) Credit hours granted pursuant to subsection (b) through (d) shall not, individually or in combination, exceed one-third of the total required by the admitting school for its J.D. degree.
Rule 27 and Rule 28

Under the Rules of Procedure, a law school seeking provisional or full approval may request a site evaluation in the spring semester by filing an application no later than October 15 of the preceding fall semester. This timetable provides insufficient time to appoint a site evaluation team and arrange for a visit by the spring semester. The proposed changes to Rules 27 and 28 would require that a law school seeking approval file a written notice of intent to seek approval no later than March 15th in the academic year prior to the academic year in which the law school will apply for approval and indicate the semester in which it would prefer to have a visit.

Rule 27: Application for Provisional or Full Approval

(a) A law school seeking provisional or full approval shall file with the Managing Director a written notice of intent to seek approval, submit its application to the Managing Director after the beginning of fall term classes but no later than October 15 in the academic year in which the law school is seeking approval.

(1) The notice shall be filed no later than March 15th in the academic year prior to the academic year in which the law school will apply for approval and shall indicate the law school’s preference for a fall or spring site evaluation visit. If the law school is seeking a site evaluation in the fall academic term it shall also file with the Managing Director, during the month of March of the preceding academic year, a written notice of its intent to do so.

(2) Upon receipt of written notice of a law school’s intent to seek provisional or full approval, the Managing Director shall arrange for a site evaluation as provided under Rule 5.

(3) A law school may not apply for provisional approval until it has completed the first full academic year of operating a full-time program of legal education.

(2)(4) A provisionally approved law school may apply for full approval no earlier than two years after the date that provisional approval was granted.

(3)(5) Upon notice to the Managing Director of its intent to seek provisional approval, a law school seeking provisional approval shall comply with Standard 102(f) regarding communication of its status.

(b) The application for provisional or full approval is due at least eight weeks prior to the scheduled site evaluation visit and must contain:

(1) A letter from the dean certifying that the law school has completed all of the requirements for seeking provisional or full approval or that the law school seeks a variance from specific requirements of the Standards and that the law school has obtained the concurrence of the president in the application;
(2) All completed forms and questionnaires, as adopted by the Council;

(3) In the case of a law school seeking provisional approval, a copy of a feasibility study that evaluates the nature of the educational program and goals of the law school, the profile of the students who are likely to apply, and the resources necessary to create and sustain the law school, including relation to the resources of a parent institution, if any;

(4) A copy of the self-study;

(5) Financial operating statements and balance sheets for the last three fiscal years, or such lesser time as the institution has been in existence. If the applicant is not a publicly owned institution, the statements and balance sheets must be certified;

(6) Appropriate documents detailing the law school and parent institution’s ownership interest in any land or physical facilities used by the law school;

(7) A request that the Managing Director schedule a site evaluation at the law school’s expense; and,

(8) Payment to the Section of any required fee, the application fee.

(c) A law school may not apply for provisional approval until it has completed the first full academic year of its program.

(d)(c) A law school must demonstrate that it or the university of which it is a part is legally authorized under applicable state law to provide a program of education beyond the secondary level.

(e)(d) A law school shall disclose whether an accrediting agency recognized by the United States Secretary of Education has denied an application for accreditation filed by the law school, revoked the accreditation of the law school, or placed the law school on probation. If the law school is part of a university, then the law school shall further disclose whether an accrediting agency recognized by the United States Secretary of Education has taken any of the actions enumerated above with respect to the university or any program offered by the university. As part of such disclosure, the law school shall provide the Managing Director with information concerning the basis for the action of the accrediting agency.

(f) When a law school submits a completed application for provisional or full approval, the Managing Director shall arrange for a site evaluation as provided under Rule 5.

**Rule 28: Reapplication for Provisional or Full Approval**

(a) If the Council denies an application for provisional or full approval or withdraws provisional or full approval, or if a law school withdraws an application for provisional or full approval, a law school shall not reapply until it is able to certify that it has addressed the reasons
for the denial, removal, or withdrawal, explain how it has done so, and is able to demonstrate that it is operating in compliance with the Standards.

(b) Any new notice and reapplication must be filed within the schedule prescribed by Rule 27(a).
Rule 29

Subsequent to the adoption of the revised Rules of Procedure, it came to the attention of the Standards Review Committee that newly adopted Rule 29, which addresses Major Changes, does not include language that is required by the Department of Education. That language, which was former Rule 20(d), was inadvertently omitted during the drafting of Rule 29. The Committee recommended reinsertion of the language in Rule 29 as new section Rule 29(f).

Rule 29: Application for Acquiescence in Major Change

(a) Major changes requiring application for acquiescence include:

(1) Acquiring another law school, program, or educational institution;

(2) Acquiring or merging with another university by the parent university where it appears that there may be substantial impact on the operation of the law school;

(3) Transferring all, or substantially all, of the program of legal education or assets of the approved law school to another law school or university;

(4) Merging or affiliating with one or more approved or unapproved law schools;

(5) Merging or affiliating with one or more universities;

(6) Materially modifying the law school’s legal status or institutional relationship with a parent institution;

(7) A change in control of the law school resulting from a change in ownership of the law school or a contractual arrangement;

(8) A change in the location of the law school that could result in substantial changes in the faculty, administration, student body, or management of the law school;

(9) Establishing a branch campus;

(10) Establishing a separate location other than a branch campus;

(11) A significant change in the mission or objectives of the law school;

(12) The addition of courses or programs that represent a significant departure from existing offerings or method of delivery since the most recent accreditation period including combined undergraduate and J.D. programs, such as 2/4, 4/2 programs, and programs leading to a J.D. and a first-degree program at foreign institution; instituting a new full-time or part-time program; or changing from a full-time to a part-time program or from a part-time to a full-time program;
(13) The addition of a permanent location at which the law school is conducting a teach-out for students at another law school that has ceased operating before all students have completed their program of study;

(14) Contracting with an educational entity that is not certified to participate in Title IV, HEA programs, that would permit a student to earn 25 percent or more of the course credits required for graduation from the approved law school;

(15) Establishing a new or different program leading to a degree other than the J.D. degree;

(16) A change in program length measurement from clock hours to credit hours; and

(17) A substantial increase in the number of clock or credit hours required for graduation.

(b) An application for acquiescence in a major change shall consist of the following:

(1) All completed forms and questionnaires, as adopted by the Council;

(2) A letter from the dean certifying that the law school has completed all of the requirements for requesting acquiescence in a major change and that the law school has obtained the concurrence of the president in the application;

(3) A copy of the law school’s most recent self-study or an updated self-study if the most recent self-study is more than three years old where the application is for acquiescence in a major change described in Rule 29(a)(1) through 29(a)(13);

(4) A description of the proposed change and a detailed analysis of the effect of the proposed change on the law school’s compliance with the Standards;

(5) Payment to the Section of the application fee.

(c) The Managing Director shall appoint a fact finder in connection with an application for acquiescence in a major change, except that no fact finder is required if the Managing Director and the Chair of the Accreditation Committee determine that the application does not require additional information to assist Accreditation Committee and Council determination of the question of acquiescence.

(d) In recommending or granting acquiescence in a major change, the Committee or Council may appoint a fact finder subsequent to the effective date of acquiescence, for purposes of determining whether the law school remains in compliance with the Standards.

(e) A law school’s approval status remains unchanged following acquiescence in any major change.
(f) A law school’s request for acquiescence in the proposed major change in organizational structure shall be considered under the provisions of Rule 30, and will become effective upon the decision of the Council. The decision of the Council may not be retroactive.
Rule 30

The revision to Rule 30 was made in order to ensure compliance with the U.S. Department of Education regulation (34 CFR 602.24).

Rule 30: Major Changes Requiring a Reliable Plan

(e) In a case where the Council has acquiesced in a major change subject to (a), the Council shall appoint a fact finder subsequent to the effective date of acquiescence, as provided in (f), (g), or (h), or (i).

(f) In the case of the establishment of a branch campus under Rule 29(a)(9), the fact finding visit required in accordance with (e) shall be conducted appointed within six months of the effective date of acquiescence to verify that the branch campus satisfies the requisites of (b)(2).

(g) In a case involving a substantial change in ownership, control, assets, or finances of the law school under Rule 29(a)(1) through 29(a)(7), the fact finding visit required in accordance with (e) shall be conducted appointed within six months of the effective date of acquiescence to verify that the law school is in compliance with the Standards.

(h) In a case involving a substantial change in location of the law school that could result in substantial changes in the faculty, administration, student body, or management of the law school, under Rule 29(a)(8), the fact finding visit required in accordance with (e) shall be conducted appointed within one year of acquiescence to verify that the law school is in compliance with the Standards.