American Bar Association
Section of Legal Education and Admissions to the Bar

MEMORANDUM

TO: Interested Persons and Entities

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

DATE: June 11, 2015

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

At its meeting held on June 5-6, 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:

- Standard 105 and Rule 29(a)
- Standard 305(e)(6) and Interpretation 305-3
- Interpretation 305-2
- Interpretation 311-4
- Standard 503
- Rule 29(b-f)

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.

We solicit and encourage written comments on the proposed changes by letter or e-mail. Written comments should be submitted no later than Friday, July 10, 2015.

A hearing on these proposed changes is scheduled for Thursday, July 16, 2015, at 10 a.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, July 10, 2015.
In the 2013-2014 Standards and Rules, Interpretation 105-1 included the following in the list of major changes that require acquiescence: [the same items were included in Rule 21(a)(1) – (3) and Rule 20(a)(13) of the 2013-2014 Standards and Rules]

(1) Instituting a new full-time or part-time division;
(2) Changing from a full-time to a part-time program or from a part-time to a full-time program;
(3) Establishing a two-year undergraduate/four year law school or similar program;

……..
(19) The addition of courses or programs that represent a significant departure from existing offerings or method of delivery since the last accreditation period.

In the comprehensive review those subsections were combined in Standard 105 and in Rule 29 to state:

(12) The addition of courses or programs since the most recent AC period, such as that represent a significant departure from existing offerings or method of delivery since the last 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 division; or changing from a full-time to a part-time program or from a part-time to a full-time program;

Some of the additional language that was added has caused confusion. The proposed change clarifies the language and complies with the Department of Education requirements.

**Standard 105. ACQUIESCENCE FOR MAJOR CHANGE IN PROGRAM OR STRUCTURE**

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

(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 school resulting from a change in ownership of the school or a contractual arrangement;

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

(9) Establishing a branch campus;

(10) Establishing a separate location;

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

(12) The addition of courses or programs since the most recent AC period, such as that represent a significant departure from existing offerings or method of delivery since the last most recent accreditation period site evaluation, 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 division; 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) The Council shall grant acquiescence only if the law school demonstrates that the change will not detract from the law school’s ability to remain in compliance with the Standards.
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 since the most recent AC period, such as that represent a significant departure from existing offerings or method of delivery since the last most recent accreditation period site evaluation, 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 division; 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.

**STANDARD 305(e)(6) AND INTERPRETATION 305-3**

Prior to the comprehensive revisions, Standard 305(e)(6) allowed a student to participate in a field placement after successfully completing one academic year toward the J.D. degree. Under the revisions to the Standards, Standard 305(e)(6) was changed to require 28 units of instruction prior to participation. Under the former Standard, students who had completed one year of part-time instruction were entitled to enroll in field placements. Under the current Standard, part-time students with one year of instruction are not entitled to participate.

The change in language from “one academic year” to “28 units” was designed, in part, to comport with Standard 306 on Distance Education, which required – pre and post comprehensive revisions – 28 units prior to enrolling in distance education courses. Additionally, there was some concern expressed whether part-time students who had completed only one year of education would be able to participate meaningfully in a field placement program. However, it is unclear whether the change in language was actually intended as a substantive change to the field placement program to prohibit first year part-time students from participating or whether it was intended only as a change in language – that one academic year equals 28 units of instruction in the full time program.

Following the adoption of Standard 306(e)(6), the Council received comments from law schools with part-time programs. They argued for a return to the former rule, especially in light of the greater emphasis on experiential learning. In addition, some of those who commented suggested that emphasis should be placed on the extent of preparation for the field placement program rather than on the number of credits taken prior to participation in a field placement program.

The Council recommends that students may participate in field placement programs if the student has successfully completed sufficient prerequisites or receives sufficient training to assure the quality of the student educational experience in the field placement program.

The Council recommends the addition of Interpretation 305-3 to make clear that field placement programs must comply with the requirements of Standard 303(a)(3) in order to qualify as an experiential course under Standard 303.
Standard 305. FIELD PLACEMENTS AND OTHER STUDY OUTSIDE THE CLASSROOM

(a) A law school may grant credit toward the J.D. degree for courses that involve student participation in studies or activities in a format that does not involve attendance at regularly scheduled class sessions, including courses approved as part of a field placement program, moot court, law review, and directed research.

(b) Credit granted for such a course shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.

(c) Each student’s educational achievement in such a course shall be evaluated by a faculty member. When appropriate a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program.

(d) The studies or activities shall be approved in advance and periodically reviewed following the school’s established procedures for approval of the curriculum.

(e) A field placement program shall include:

1. a clear statement of its goals and methods, and a demonstrated relationship between those goals and methods and the program in operation;

2. adequate instructional resources, including faculty teaching in and supervising the program who devote the requisite time and attention to satisfy program goals and are sufficiently available to students;

3. a clearly articulated method of evaluating each student’s academic performance involving both a faculty member and the site supervisor;

4. a method for selecting, training, evaluating, and communicating with site supervisors;

5. for field placements that award three or more credit hours, regular contact between the faculty supervisor or law school administrator and the site supervisor to assure the quality of the student educational experience, including the appropriateness of the supervision and the student work;

6. a requirement that each student has successfully completed sufficient prerequisites or receives sufficient training to assure the quality of the student educational experience in the field placement program; instruction equivalent to 28 credit hours toward the J.D. degree before participation in the field placement program; and

7. opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection. Where a student may earn three or more credit hours in a field placement program, the opportunity for student reflection must be provided contemporaneously.
(f) A law school that has a field placement program shall develop, publish, and communicate to students and site supervisors a statement that describes the educational objectives of the program.

Interpretation 305-1
Regular contact may be achieved through in-person visits or other methods of communication that will assure the quality of the student educational experience.

Interpretation 305-2
A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation. This Interpretation does not preclude reimbursement of reasonable out-of-pocket expenses related to the field placement.

Interpretation 305-3
To qualify as an experiential course under Standard 303, a field placement must also comply with the requirements set out in Standard 303(a)(3).

INTERPRETATION 305-2

In August 2014, when the House of Delegates reviewed the proposed comprehensive set of changes to the ABA Standards and Rules of Procedure for Approval of Law Schools, it referred Interpretation 305-2 back to the Council for further consideration.

While the Standards Review Committee was considering the Interpretation and during the Notice and Comment period, the Council received a number of comments for and against a change in this Interpretation. Some of those who commented expressed the belief that some law schools do not provide adequate supervision of students participating in field placement programs. The Council discussed possibly reviewing Standard 305 to determine if any changes are needed in the Standard but decided that the current Standard already includes many safeguards to assure adequate supervision. The Council also noted that enforcement of Standard 305 is increasingly important with the new requirement of 6 hours of experiential learning.

The Council concluded that if a law school properly monitors the operation of a field placement program and is in compliance with all of the requirements of Standard 305, the question of whether or not a student may receive both compensation and credit for the experience should be determined by the law school. Rather than completely eliminating the Interpretation, the Council proposes that a law school be given the option of granting credit for a field placement experience where compensation is provided only if it is able to demonstrate that sufficient control was maintained in these instances such that all of the requirements of Standard 305 were met. In order to meet that requirement, law schools granting credit where compensation is provided must maintain separate records of these instances for examination by site visitors.
Interpretation 305-2
A law school may not grant credit to a student for participation in a field placement program for which the student receives compensation. A law school that grants credit for a field placement for which a student receives compensation must demonstrate sufficient control of the student experience to ensure that the requirements of the Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard. This Interpretation does not preclude reimbursement of reasonable out-of-pocket expenses related to the field placement.

INTERPRETATION 311-4

Under Standard 505(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 the courses had been completed at the admitting school. Pursuant to Standard 505(f), a student admitted under 505(c) may receive up to one-third of the total number of credits required by the admitting school for the J.D. degree.

Students admitted under 505(c) must, of course, complete all of the requirements for the J.D. degree at the admitting law school. Since they are earning up to one year’s credit, they may need to spend at least two years at the admitting law school. For a student from a law school outside the U.S., that might mean that they have already studied for three to five years abroad. If the course of study for the J.D. degree is considered to have started when the student began studies at the foreign law school, the student will have a limited amount of time to complete studies at the admitting ABA-approved law school.

Current Interpretation 311-4 was intended to explain that the time for determining the commencement of law studies under Standard 311(c) is different for students accepted with credits for prior law study outside the United States and attempts to further clarify the interplay between 505 and 311. An example is provided to further clarify how the Interpretation works.

As written, current Interpretation 311-4 is not clear. The proposed change clarifies the ambiguities and simplifies the Interpretation. The proposed change limits the Interpretation to an explanation of how Standard 311(c) applies when credit is given for prior law study outside the United States and attempts to further clarify the interplay between 505 and 311. An example is provided to further clarify how the Interpretation works.

Interpretation 311-42
For purposes of Standard 311(c), 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 grants credit for prior law study who has completed law studies at a law school outside the United States as permitted under Standard 505(c), only the time commensurate with the amount of credit given counts toward the length of study requirements of
Standard 311(c). For example, if a student has studied for three years at a law school outside the United States and is granted one year of credit toward the J.D. degree, the amount of time that counts toward the 84 month requirement is one year. The student has 72 months in which to complete law school in the United States.

STANDARD 503

The Standards Review Committee made alternative proposals to the Council regarding Standard 503. The Council approved sending out both alternatives for notice and comment.

Alternative 1

The first alternative is to eliminate Interpretation 503-3, which was adopted by the Council in August 2014 and was based on the Council’s experience with schools operating under variances previously granted by the Council.

The Standards Review Committee is concerned that Interpretation 503-3 eliminates the requirement of the LSAT for some students admitted to law schools. The LSAT is the only entrance exam designed specifically for law school admissions and the only admission test that has demonstrated that it is valid and reliable for assessing an applicant’s capability to satisfactorily complete a law school’s program of legal education. None of the testing services administering the alternative tests permitted under Interpretation 503-3 have conducted their own studies to demonstrate that the tests are valid and reliable tests for law school admission purposes. Absent such studies demonstrating that these other tests are valid and reliable for law school admission purposes, the Standards Review Committee recommends that all students admitted to ABA-approved law schools be required to take the LSAT.

Alternative 2

The second alternative is to amend Interpretation 503-3 to make the admission of students based on other tests and undergraduate GPAs available to all law schools. The Standards Review Committee felt that if the experience of 16 schools with variances was sufficient to justify the creation of an alternative admission program that does not require an LSAT for some applicants, that alternative should be available to all law schools including law schools that are not affiliated with a university. If the combination of a certain level of performance on an alternative test and undergraduate GPA is sufficient for admissions purposes at one law school, it seems that it should be sufficient for admission to any law school. In addition, the restriction that a law school may only admit an undergraduate from the same campus as the campus on which the law school is located does not appear necessary. The Standards Review Committee is aware that these present restrictions in Interpretation 503-3 reflect restrictions in the variances previously granted, but it is not clear that they are necessary should Interpretation 503-3 remain.

Interpretation 503-3 reflects the requirements of the variances to Standard 503 and Interpretation 503-1 that the Council previously granted to 16 law schools. Under those variances, the law schools were required to provide periodic reports to demonstrate that the use of an alternative
test, such as the ACT, SAT, GRE or GMAT, in combination with undergraduate GPA would demonstrate that the alternative admission tests were valid and reliable tests to assist the law schools in assessing an applicant’s capacity to satisfactorily complete the law school’s program of legal education. In adopting Interpretation 503-3, the Council terminated all of those variances and thereby relieved the law schools from the reporting obligation to demonstrate that the alternative tests were valid and reliable. The Standards Review Committee believes that such reporting would continue to be helpful in assessing whether alternative tests are valid and reliable in combination with certain undergraduate GPAs.

If the Council decides to retain Interpretation 503-3 in its current form or with the recommended changes, the Standards Review Committee recommends that the Council require law schools to report the LSAT scores for every student who has an LSAT score, even if the student is admitted under an alternative admission program, and the scores students receive on alternatives tests (ACT, SAT, GRE, GMAT) that are used in place of the LSAT.

The Standards Review Committee also recommends that the Council require law schools to file periodic reports measuring the performance of students admitted under Interpretation 503-3 in order to demonstrate that the alternative admission tests were valid and reliable. This data should be collected and reported so that the Office of the Managing Director will be able to assess whether there is sufficient data to demonstrate that the alternative tests are valid and reliable and could be substituted for the LSAT without limitation on the number of students admitted under Interpretation 503-3. Without continuing to collect and analyze the data of the performance of students under Interpretation 503-3, there will be no way to determine if what started out as an experiment is successful and there will also be no justification for continuing to limit the use of alternative tests to 10% of an entering class.

Alternative 1

Interpretation 503-3
(a) It is not a violation of this Standard for a law school to admit no more than 10% of an entering class without requiring the LSAT from:

(1) Students in an undergraduate program of the same institution as the J.D. program; and/or

(2) Students seeking the J.D. degree in combination with a degree in a different discipline.

(b) Applicants admitted under subsection (a) must meet the following conditions:

(1) Scored at or above the 85th percentile on the ACT or SAT for purposes of subsection (a)(1), or for purposes of subsection (a)(2), scored at or above the 85th percentile on the GRE or GMAT; and
Alternative 2

Interpretation 503-3

(a) It is not a violation of this Standard for a law school to admit no more than 10% of an entering class without requiring the LSAT. From Applicants admitted under this Interpretation must meet the following conditions:

(1) Students in an undergraduate program of the same institution as the J.D. program; and/or

(2) Students seeking the J.D. degree in combination with a degree in a different discipline. (b) Applicants admitted under subsection (a) must meet the following conditions:

(i) (a) Scored at or above the 85th percentile on the ACT, or SAT, for purposes of subsection (a)(1), or for purposes of subsection (a)(2), scored at or above the 85th percentile on the GRE or GMAT; and

(ii) (b) Ranked in the top 10% of their undergraduate class through six semesters of academic work, or achieved a cumulative GPA of 3.5 or above through six semesters of academic work.

RULE 29(b-f)

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.

The revisions to Rule 29(d) comply with U.S. Department of Education requirements regarding the timing of fact finding visits to law schools following acquiescence in certain types of major changes.

New Rule 29(e) restores the language of former Rule 20(b)(1) – (2) regarding applications for a major change that may result in the creation of a new or different law school.

Rule 29: Application for Acquiescence in Major Change

(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 under Rules 29(a)(1) through 29(a)(9), the Committee or Council may appoint a fact finder subsequent to the effective date of acquiescence, as provided in Rule 30(e). The Committee or Council also may appoint a fact finder subsequent to the effective date of acquiescence in a major change under Rules 29(a)(10) through 29(a)(17) for purposes of determining whether the law school remains in compliance with the Standards. In recommending or granting acquiescence under Rule 29(a)(10) in a separate location at which the law school offers more than 50% of the law school’s program of legal education, however, the Committee or Council shall appoint a fact finder to conduct a visit within six months of the effective date of acquiescence or in the first academic term subsequent to acquiescence in which students are enrolled at the separate location.

(e) In addition to satisfying the requirements of Rule 29(b), an application for acquiescence shall contain information sufficient to allow the Accreditation Committee to determine whether the major change is so significant as to constitute the creation of a new or different law school. If the Accreditation Committee determines that the major change constitutes the creation of a new or different law school, then it shall recommend to the Council that the school apply for provisional approval under the provisions of Standard 102 and Rule 27. Factors that shall be considered in making the determination of whether the major change is so significant as to constitute the creation of a new or different law school include, without limitation:

(1) the financial resources available to the law school;

(2) a significant change, present or planned, in the governance of the law school;

(3) the overall composition of the faculty and staff at the law school;

(4) the educational program offered by the law school; and
(5) the location or physical facilities of the law school.

(e)(f) A law school’s approval status remains unchanged following acquiescence in any major change.