

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

MEMORANDUM

TO: Interested Persons and Entities

FROM: Maureen A. O'Rourke, Council Chair  
Barry A. Currier, Managing Director of Accreditation and Legal Education

DATE: February 22, 2018

SUBJECT: ABA Standards and Rules of Procedure – Matters for Notice and Comment

---

At its meeting held on February 9-10, 2018, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to the following Standards and Rules of Procedure of the *ABA Standards and Rules of Procedure for Approval of Law Schools*:

- Standard 306. Distance Education
- Standard 307. Studies, Activities, and Field Placements Outside the United States
- Rule 53. Applications, Decisions, and Recommendations Made Public

At its November 2017 meeting, the Council also approved for Notice and Comment proposed changes to several Standards (Standards 205, 206, 303, 304, 503, and 601) and Rules of Procedure (Rules 3,5, 10, 14, 22, 23, 24, 25, 34, and 52). These matters were circulated for Notice and Comment on November 17, 2017. Further, at the November 2017 meeting, the Council approved for Notice and Comment proposed revisions to Standards and Rules necessary to accomplish the merging of the Accreditation Committee and the Standards Review Committee into the Council. These proposed changes were circulated for Notice and Comment on December 15, 2017.

All proposed revisions and accompanying explanations are 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 all the proposals listed above. A hearing on the proposed changes is scheduled for Thursday, April 12, 2018, at 1 p.m. The hearing will be held at The Westin Georgetown (2350 M Street NW, Washington, DC 20037).

Please address written comments on the proposals to Dean Maureen A. O'Rourke, Council Chair. Please send comments and requests to speak at the hearing to JR Clark ([jr.clark@americanbar.org](mailto:jr.clark@americanbar.org)) by Monday, April 2, 2018.

Requests to speak at the hearing received after April 2, 2018, will be accommodated if possible. Written comments received after April 2, 2018, may not be included in the materials considered by the Standards Review Committee at its April 13-14, 2018, meeting.

## **Standard 306. Distance Education**

### Explanation of Changes:

The Standards Review Committee (SRC) recommended changes to Standard 306 at the Council's November 2017 meeting, which the Council approved for Notice and Comment. In preparing the materials for Notice and Comment, it became clear that the proposed draft presented issues that needed clarification. The Managing Director's Office and SRC Chair consulted with the Council Executive Committee, which requested that SRC review the proposed text and, if necessary, present a new draft for the Council's consideration at its February 2018 meeting.

At its January 2018 meeting, the SRC reviewed the November 2017 draft. It agreed that while the intent of the draft was to provide law schools with greater flexibility, the change in the structure of the Standard that had previously been proposed resulted in confusion.

After discussion, the SRC developed and unanimously recommended to the Council a proposal that provides greater flexibility to law schools while returning to the structure of current Standard 306. The Council approved the recommendation for Notice and Comment at its February 2018 meeting.

The proposal raises the number of distance education credit hours permitted from 15 credits to up to one-third of the credits required for the J.D. degree. Under this proposed revision, law schools would be permitted to grant 10 of those distance education credit hours in the first year. The current structure of the Standard is familiar and avoids the confusion caused by a different approach. The current definition of a distance education course is also retained: 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.

Interpretation 306-1 has been deleted because the description of the types of technology that can be used to support distance education is outdated and unnecessary.

### Redlined Draft:

## **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(b) 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 shall not grant a student more than a total of 15 credit hours toward the J.D. degree for courses qualifying under this Standard. 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 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.~~

(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*

~~Technology used to support a distance education course may include, for example:~~

~~(a) The Internet;~~

~~(b) One way and two way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices;~~

~~(c) Audio and video conferencing; or~~

~~(d) Video cassettes, DVDs, and CD-ROMs, if the cassettes, DVDs, or CD-ROMs are used in a course in conjunction with any of the technologies listed in paragraphs (a) through (c);~~

#### *Interpretation 306-2 306-1*

*Methods to verify student identity as required in Standard 306(g) 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.*

### **Standard 307. Studies, Activities, and Field Placements Outside the United States**

#### Explanation of Changes:

The current Standard states that studies must be “approved in accordance with the Rules and the Criteria.” The *Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States*, the *Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools*, and the *Criteria for Accepting Credit for Student Study at a Foreign Institution* (collectively, the “Criteria”) no longer require approval of all programs; thus, the word “approval” is no longer appropriate. Further, there is no need to mention the Rules of Procedure in Standard 307. As revised, the proposed draft of Standard 307(a) would be amended to read: “A law school may grant credit for study outside the United States that meets the requirements of the Criteria adopted by the Council.”

There is a need to clarify the rules on foreign field placements. Newly revised Standard 304(c), as well as former Standard 305, makes no distinction between domestic and foreign field placements. Proposed subsection (b) clarifies that foreign field placements must meet the requirements of Standard 304. The proposed draft includes a reference to field placements in subsection (c) to clarify that foreign field placements count toward the maximum of credits allowed for study outside the United States. The two-third credit limitation would thus also include field placement credits obtained outside of the United States.

There is some confusion about the limits the Standards impose on the number of credits allowed toward the J.D. degree for studies outside the United States. The proposed changes to the Standards clarify the matter. The proposal distinguishes between studies outside the United States that are operated and sponsored by an ABA-approved law school and studies at a foreign institution. The draft proposes that law schools be permitted to grant up to two-thirds of the credits required for the J.D. degree in study outside the United States, but that only one-third of those credits may be from study at a foreign institution. See subsection (c) of the proposed amendments. Studies that are sponsored by an ABA-approved law school include programs held in accordance with the *Criteria for Approval of Foreign Summer and Intersession Programs Established by ABA-Approved Law Schools*; programs held in accordance with the *Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools*; and field placements outside the United States. Study at a foreign institution includes any credit given under Standard 505 for prior law study at a foreign institution, as well as any credit given under the *Criteria for Accepting Credit for Student Study at a Foreign Institution*.

There is a need to clarify how the limit on study outside the United States in Standard 307 interacts with the limit on credit for prior law study outside the United States provided in Standard 505. The draft proposes in subsection (d) that law schools be permitted to grant up to one-third of the credits

required for the J.D. degree for study at a foreign institution, including both credit for prior law study under Standard 505 and credit for student study at a foreign institution.

The *Criteria for Approval of Foreign Summer and Intersession Programs Established by ABA-Approved Law Schools* were amended recently and no longer include a provision prohibiting foreign study before a student has completed one year of full- or part-time study because the Council concluded that such a provision should be in the Standards, if anywhere. The draft proposes that subsection (f) of Standard 307 be amended to permit foreign study so long as a student has successfully completed sufficient prerequisites or contemporaneously receives sufficient training to assure the quality of the student educational experience undertaken outside the United States.

Redlined Draft:

**Standard 307. STUDIES, ACTIVITIES, AND FIELD PLACEMENTS OUTSIDE THE UNITED STATES**

(a) A law school may grant credit for study outside the United States that meets the requirements of the Criteria adopted by the Council.

(b) A law school may grant credit for field placements outside the United States that meet the requirements of Standard 304.

(c) A law school may grant up to two-thirds of the credits required for the J.D. degree for study outside the United States provided the credits are obtained in a program sponsored by an ABA-approved law school. Programs sponsored by an ABA-approved law school include programs held in accordance with the *Criteria for Approval of Foreign Summer and Intersession Programs Established by ABA-Approved Law Schools*; programs held in accordance with the *Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools*; and field placements outside the United States.

(d) A law school may grant up to a maximum of one-third of the credits required for the J.D. degree for any combination of 1) student participation in study outside the United States under the *Criteria for Accepting Credit for Student Study at a Foreign Institution* and 2) credit for courses completed at a law school outside the United States in accordance with Standard 505(c).

(e) Credit hours granted pursuant to subsections (b), (c) and (d) shall not in combination exceed two-thirds of the total credits required for the J.D. degree.

(f) A student participating in study outside the United States must have successfully completed sufficient prerequisites or must contemporaneously receive sufficient training to assure the quality of the student educational experience.

**~~Standard 307. STUDIES, ACTIVITIES, AND FIELD PLACEMENTS OUTSIDE THE UNITED STATES~~**

~~(a) — A law school may grant credit for (1) studies or activities outside the United States that are approved in accordance with the Rules of Procedure and Criteria as adopted by the Council and (2) field placements outside the United States that meet the requirements of Standard 304 and are not held in conjunction with studies or activities that are approved in accordance with the Rules of Procedure and Criteria as adopted by the Council.~~

~~(b) — The total credits for student participation in such studies or activities may not exceed one-third of the credits required for the J.D. degree.~~

*~~Interpretation 307-1~~*

*~~The three Criteria adopted by the Council are the Criteria for Approval of Foreign Summer and Intersession Programs Established by ABA Approved Law Schools, the Criteria for Approval of Foreign Semester and Year Long Study Abroad Programs Established by ABA Approved Law Schools, and the Criteria for Accepting Credit for Student Study at a Foreign Institution.~~*

*~~Interpretation 307-2~~*

*~~For purposes of Standard 307, a brief visit to a country outside the United States that is part of a course offered and based primarily at the law school and approved through the school's regular curriculum approval process is not considered to be studies outside the United States.~~*

**Rule 53. Applications, Decisions, and Recommendations Made Public**

Explanation of Changes:

The Council proposes three changes to Rule of Procedure 53, which addresses when accreditation matters, generally confidential under Rule 49, may or shall be made public. These proposed changes are to promote transparency in the accreditation process.

One proposed change adds the submission of a teach-out plan (see Rule 34) to Rule 53 in two places. First, it includes the submission of a teach-out plan in the list of requests or submissions that shall be made public when filed by a law school in Rule 53(a). Second, it adds the Council's conclusion and decision on a teach-out plan to the list of conclusions and decisions that must be made public following Council action and notification to the law school of that action in Rule 53(c).

A second proposed change clarifies and makes specific the requirements of Rules 53(b) and (c) that the Managing Director make public, after notice of the decision to a school, an Accreditation Committee or Council decision of significant non-compliance with a standard under Rule 12(a)(4). This aligns the Rule with the requirements of the United States Department of Education, to which the Council is subject, and the provisions of Council Internal Operating Practice 4.

Finally, for accreditation matters that have been made public regarding the status of a law school, the proposed new Rule 53(e) clarifies the Managing Director's ability to comment on these matters.

Redlined Draft:

**Rule 53: Applications, Plans, Decisions, and Recommendations Made Public**

- (a) When a law school has applied for provisional or full approval, acquiescence in a major change, or a variance, or has submitted a teach-out plan for approval, the ~~Council or the~~ Managing Director shall provide public notice:
  - (1) That the law school has submitted an application or plan; and
  - (2) Of the procedural steps for consideration of the application or plan.
  
- (b) After a law school has been notified of the Committee's decision or recommendation, the Managing Director may state publicly the conclusions of the Committee and its decision or recommendation, with an explanation of the procedural steps in further consideration of the matter, concerning:
  - (1) The law school's application for provisional or full approval;
  - (2) The law school's application for acquiescence in a major change;
  - (3) The law school's application for a variance;
  - (4) The imposition of sanctions or specific remedial action on the law school;
  - (5) The placing of the law school on probation; ~~or~~
  - (6) The withdrawal of the law school's approval; or
  - (7) The law school's significant non-compliance with one or more Standards under Rule 12(a)(4).
  
- (c) After a law school has been notified of the Council's decision, the Managing Director shall provide public notification of the Council's conclusions and decision (except as to a sanction that is explicitly not public), with an explanation of any procedural steps for further consideration of the matter, concerning:
  - (1) The law school's application for provisional or full approval;

- (2) The law school's application for acquiescence in a major change;
  - (3) The law school's application for a variance;
  - (4) The imposition of sanctions or specific remedial action on the law school;
  - (5) The placing of the law school on probation; ~~or~~
  - (6) The withdrawal of the law school's approval;
  - (7) The law school's significant non-compliance with one or more Standards under Rule 12(a)(4); or
  - (8) The law school's submission of a teach-out plan.
- (d) After a matter concerning a law school has been acted upon by an Appeals Panel, the ~~Council or the~~ Managing Director shall provide public notification of the conclusions and decision of the Appeals Panel.
- (e) After a law school has received a decision from the Committee or Council, the Managing Director, with the concurrence of the Council Chair, may issue a public statement in writing or orally to address other matters related to the accreditation of the school, to confirm or deny any media report on the law school's accreditation or matters related to that accreditation, or to respond to an inquiry from the public.