

Memorandum

To: Dean Maureen O'Rourke, Chair
Council of the Section of Legal Education and Admissions to the Bar

From: Pamela Lysaght, Chair
Standards Review Committee

Date: January 22, 2018

Re: Proposed Changes to Standard 306

The Standards Review Committee met January 12-13, 2018, and concluded its initial review of all the Standards and Rules on the Committee's 2017-18 agenda. This is the first of four memoranda setting forth the Committee's recommendations. This Memorandum addresses proposed Standard 306.

The Committee 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 Office and Chair consulted with the Executive Committee, which requested the Committee review the proposed text and, if necessary, present a new draft for the Council's consideration at this meeting.

The November 2017 proposal eliminated from the Standard the language that said that any course with less than one-third distance education did not count as a distance education course. It replaced the one-third threshold with language that said any course with more than a minimal amount of distance education would count as a distance education course. The effect of the revised language was to imply that only 50% of the courses may include distance education. The change in the structure of the Standard also resulted in confusion about how the Standard interacts with Standards 310 and 311.

That was not the intent of the proposal. Instead, the intent was to allow 50% of the instruction required for graduation to be by distance education, either for courses offered entirely through distance education or for the proportional amount of the instruction done in a course that is offered partially through distance education. While the intent was to provide law schools with greater flexibility, the language seemed to have the opposite result.

After discussion, the Committee unanimously recommends returning to the structure of current Standard 306 and raising 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 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.

We also suggest that a Managing Director's Memo may be useful for explaining the interaction between Standard 306 and Standards 310 and 311.

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.