

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: April 23, 2018

Re: Comments Received on Items Circulated for Notice and Comment;
SRC Recommendations—Standards 303/304, 306, 307, and 601

In addition to making recommendations on proposed changes to Standards 205, 206, 501, and 503, covered in another memorandum, the Standards Review Committee (SRC) also reviewed the comments and testimony on those Standards that were part of the Committee's 2017-18 agenda and which the Council approved for Notice and Comment during its meetings held in November 2017 and February 2018. These Standards were the subject of a hearing held on April 12, 2018.

Standard 303 Curriculum; Standard 304 Simulation Courses, Clinics, and Field Placements

Notice and Comment Explanation:

The proposed changes move the general definition of what an experiential course must contain from Standard 303(a)(3) to Standard 304(a). Next, the duplicative language defining simulation, clinic, and field placement in Standard 304 is deleted. Finally, the cross references to the Standards in the Interpretations are changed to reflect the recommended changes. [A copy of the proposal circulated for Notice and Comment is included in the Appendix.]

Comments Received: One comment was received, from the Clinical Legal Education Association, questioning the removal of key language in proposed Standard 304 when the intent of the Committee was not to make any substantive changes but, rather, to remove redundancies and streamline Standards 303 and 304.

Hearing Testimony: A representative from the organization testified, reiterating and expanding on the comment submitted.

SRC Recommendation: The Committee considered the comment and testimony concerning proposed changes to Standards 303 and 304. The SRC concluded that specific language in these Standards that had been proposed to be deleted may ultimately result in the unintended consequence of generating some confusion and possibly weakening the intent of these Standards.

The SRC recommends to the Council that some of the language that had been proposed to be deleted be reinserted into Standard 304. This language includes that the requirement that

an experiential course be “primarily experiential in nature,” and that “direct supervision of the student’s performance by the faculty member” be inserted for simulation and clinic courses, and that “direct supervision of the student’s performance by a faculty member or site supervisor” be inserted for field placements. The additional language in bold below illustrates the SRC’s recommendations, which only affects Standard 304(a). The Committee offers no additional changes to Standard 303 as approved for Notice and Comment.

Standard 304. EXPERIENTIAL COURSES: SIMULATION COURSES, LAW CLINICS, AND FIELD PLACEMENTS

(a) Experiential courses satisfying Standard 303(a) are simulation courses, law clinics, and field placements **that must be primarily experiential in nature** and must:

- (1) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
- (2) develop the concepts underlying the professional skills being taught;
- (3) provide multiple opportunities for performance;
- (4) provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor;
- (5) a classroom instructional component; or, for a field placement, a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and
- (6) **provide direct supervision of the student’s performance by the faculty member; or, for a field placement, provide direct supervision of the student’s performance by a faculty member or a site supervisor.**

Standard 306 Distance Education

Notice and Comment Explanation:

The 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. [A copy of the proposal circulated for Notice and Comment is included in the Appendix.]

Comments Received: One comment was received in support.

Hearing Testimony: None.

SRC Recommendation: The Committee offers no additional changes to proposed Standard 306 as approved for Notice and Comment.

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

Notice and Comment Explanation:

[Note: The overarching goal of these proposed changes was to address two matters: (a) how the Standards and Criteria deal with field placements that are located outside the United States; and (b) the total amount of credits that may be earned toward the J.D. for studies outside the United States.]

[First, t]he 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.”

[Further, t]here 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 [also] 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*.

[Finally, t]here 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. [The red-lined version circulated for Notice and Comment is attached in the Appendix.]

Comments Received: None.

Hearing Testimony: None.

SRC Recommendation: The Committee offers no additional changes to proposed Standard 307 as approved for Notice and Comment.

Standard 601 Library and Information Resources, General Provisions

Notice and Comment Explanation:

The current version of Standard 601(3)(a) was developed during the Comprehensive Review as a method of involving a law library in the process of strategic planning required of a law school. It was envisioned that the planning and assessment taking place for a law school (under what was then Standard 203) would incorporate the work done by the library under this new Standard. To ensure that incorporation, it was decided that a written assessment should be completed by the library. However, when the requirement for strategic planning for a law school was removed during a later phase of the Comprehensive Review, no change was made to the new Standard 601. As a result, the library community has been left confused as to what is required to comply with 601(a)(3). For example: Does a written assessment require an annual report? Must a survey of user satisfaction be conducted to develop an assessment? How often must the written report be prepared?

It is appropriate for a law library to engage in the process of planning and assessment. This process helps the staff to achieve the goals set out in the rest of Standard 601. However, the requirement that the assessment be written is excessive, not required of any other unit of the law school, and has led to confusion for both library directors and the Accreditation Committee. This can be resolved simply by removing the requirement that the assessment be “written.” By making this change, a law library and a law school can determine how best to develop a method of assessment that meets the needs of the institution. [A copy of the proposal circulated for Notice and Comment is included in the Appendix.]

Comments Received: Two comments were received, both in opposition. The Society of American Law Library Directors and the American Association of Law Libraries urged that the Standard not be changed and that a “written” assessment be retained as a requirement.

Hearing Testimony: None.

SRC Recommendation: The Committee considered the comments and offers no additional changes to proposed Standard 601 as approved for Notice and Comment. More specifically, members of the Committee had consulted with members of the Accreditation Committee and determined that the requirement continues to cause confusion for site teams and law schools having site visits. In addition, those offering comments seemed to believe that removing the requirement that an assessment be written would, in some way, reflect the view that libraries are not valued as critical elements of law school operations. The removal of one aspect of the Standard that has caused confusion and delay for the Accreditation Committee does not indicate such a view. Indeed, the fact that some form of assessment is still required (a requirement not stated in a Standard for other units of the law school such as admissions, placement, clinics, etc.) demonstrates a belief that a showing is required to demonstrate the continuing strength of the foundation that law libraries have always provided to law schools.

Appendix
Drafts as circulated for Notice and Comment

Standard 303 Curriculum
Standard 304 Simulation Courses, Clinics, and Field Placements

Redlined Draft:

Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

(1) one course of at least two credit hours in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members;

(2) one writing experience in the first year and at least one additional writing experience after the first year, both of which are faculty supervised; and

(3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement, as defined in Standard 304. ~~To satisfy this requirement, a course must be primarily experiential in nature and must:~~

~~(i) — integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;~~

~~(ii) — develop the concepts underlying the professional skills being taught;~~

~~(iii) — provide multiple opportunities for performance; and~~

~~(iv) — provide opportunities for self-evaluation.~~

(b) A law school shall provide substantial opportunities to students for:

(1) law clinics or field placement(s); and

(2) student participation in pro bono legal services, including law-related public service activities.

Interpretation 303-1

A law school may not permit a student to use a course to satisfy more than one requirement under this Standard. For example, a course that includes a writing experience used to satisfy the upper-class writing requirement [see 303(a)(2)] cannot be counted as one of the experiential courses required in Standard 303(a)(3). This does not preclude a law school from offering a course that may count either as an upper-class writing requirement [see 303(a)(2)] or as a simulation course [see ~~303(a)(3)~~ and 304(a) and 304(b)] provided the course meets all of the requirements of both types of courses and the law school permits a student to use the course to satisfy only one requirement under this Standard.

Interpretation 303-2

Factors to be considered in evaluating the rigor of a writing experience include the number and nature of writing projects assigned to students, the form and extent of individualized assessment of a student's written products, and the number of drafts that a student must produce for any writing experience.

Interpretation 303-3

Rule 6.1 of the ABA Model Rules of Professional Conduct encourages lawyers to provide pro bono legal services primarily to persons of limited means or to organizations that serve such persons. In addition, lawyers are encouraged to provide pro bono law-related public service. In meeting the requirement of Standard 303(b)(2), law schools are encouraged to promote opportunities for law student pro bono service that incorporate the priorities established in Model Rule 6.1. In addition, law schools are encouraged to promote opportunities for law students to provide over their law school career at least 50 hours of pro bono service that complies with Standard 303(b)(2). Pro bono and public service opportunities need not be structured to accomplish any of the outcomes required by Standard 302. Standard 303(b)(2) does not preclude the inclusion of credit-granting activities within a law school's overall program of law-related pro bono opportunities so long as law-related non-credit bearing initiatives are also part of that program.

Interpretation 303-4

Law-related public service activities include (i) helping groups or organizations seeking to secure or protect civil rights, civil liberties, or public rights; (ii) helping charitable, religious, civic, community, governmental, and educational organizations not able to afford legal representation; (iii) participating in activities providing information about justice, the law or the legal system to those who might not otherwise have such information; and (iv) engaging in activities to enhance the capacity of the law and legal institutions to do justice.

Standard 304. EXPERIENTIAL COURSES: SIMULATION COURSES, LAW CLINICS, AND FIELD PLACEMENTS

(a) Experiential courses satisfying Standard 303(a)(3) are simulation courses, law clinics, and field placements, and must:

(1) integrate doctrine, theory, skills, and legal ethics, and engage students in

performance of one or more of the professional skills identified in Standard 302;

- (2) develop the concepts underlying the professional skills being taught;
- (3) provide multiple opportunities for performance;
- (4) provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor; and
- (5) include a classroom instructional component; or, for a field placement, a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection.

(b) (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.~~

(c) (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) direct supervision of the student's performance by a faculty member;~~
- ~~(ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and~~
- ~~(iii) a classroom instructional component.~~

(d) (e)—A field placement course provides substantial lawyering experience that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and (2) includes the following:

- (i) direct supervision of the student's performance by a faculty member or site supervisor;
- (ii) opportunities for performance, feedback from either a faculty member or a site supervisor, and self-evaluation;

~~(i) (iii)~~-a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student's academic performance;

~~(ii) (iv)~~-a method for selecting, training, evaluating and communicating with site supervisors, including regular contact between the faculty and site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience. 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;

~~(v) a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and~~

~~(iii) (vi)~~-evaluation of each student's educational achievement by a faculty member.; and

~~(iv) (vii)~~-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, which shall include, but is not necessarily limited to, the written understandings described in Standard 304(c)(iii).

~~(e) (d)~~-Credit granted for such a simulation, law clinic, or field placement course shall be commensurate with the time and effort required and the anticipated quality of the educational experience of the student.

~~(f) (e)~~-Each student in such a simulation, law clinic, or field placement course shall have successfully completed sufficient prerequisites or shall receive sufficient contemporaneous training to assure the quality of the student educational experience.

Interpretation 304-1

~~To qualify as an experiential course under Standard 303, a simulation, law clinic, or field placement must also comply with the requirements set out in Standard 303(a)(3). 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.~~

Standard 305. OTHER ACADEMIC STUDY

(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, but not limited to, 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.

Interpretation 305-1

To qualify as a writing experience under Standard 303, other academic study must also comply with the requirement set out in Standard 303(a)(2). To qualify as an experiential course under Standard 303, other academic study must also comply with the requirements set out in Standard ~~303(a)(3)~~304.

Standard 306. Distance Education

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

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.~~

Standard 601. Library and Information Resources, General Provisions

Redlined Draft:

Standard 601. GENERAL PROVISIONS

- (a) A law school shall maintain a law library that:
- (1) provides support through expertise, resources, and services adequate to enable the law school to carry out its program of legal education, accomplish its mission, and support scholarship and research;
 - (2) develops and maintains a direct, informed, and responsive relationship with the faculty, students, and administration of the law school;
 - (3) working with the dean and faculty, engages in a regular planning and assessment process, including ~~written~~ assessment of the effectiveness of the library in achieving its mission and realizing its established goals; and
 - (4) remains informed on and implements, as appropriate, technological and other developments affecting the library's support for the law school's program of legal education.
- (b) A law school shall provide on a consistent basis sufficient financial resources to the law library to enable it to fulfill its responsibilities of support to the law school and realize its established goals.