

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: October 12, 2017

Re: Proposed Changes to Standards

This is the second of four memoranda to the Council regarding actions taken by the Standards Review Committee at its October 2017 meeting. This Memorandum provides the Committee's recommendations to proposed changes to Standards 205 and 206, 303 and 304, 306, and 601. Detailed explanations of the changes follow the recommendations.

- 1. Standard 205 Non-Discrimination and Equality of Opportunity and Standard 206 Diversity and Inclusion:** The Committee unanimously recommends that the Council distribute for Notice and Comment the proposed changes to Standards 205 and 206: Revisions to these two Standards would: (a) include "gender identity" and "ethnicity" in the list of race, gender, and other categories, where appropriate in both Standard 205 and Standard 206; (b) revise Standard 206 in several ways, including adding a new Standard 206(c) that requires a law school to provide an environment "that is inclusive with respect to race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, and disability."
- 2. Standard 303 Curriculum and Standard 304 Simulation Courses, Clinics, and Field Placements:** The Committee unanimously recommends that the Council distribute for Notice and Comment proposed changes to Standards 303 and 304 and Interpretations 303-1, 304-1, and 305-1. The recommended changes are designed to provide greater clarity to the interplay between Standards 303 and 304, and to remove language previously duplicated in these two Standards.
- 3. Standard 306 Distance Education:** The Committee recommends that the Council distribute for Notice and Comment proposed changes to Standard 306 that would allow a law school to grant credit to a student for up to 50% of the work needed to earn the J.D. degree. The Committee's vote was unanimous, with one abstention.
- 4. Standard 601:** The Committee unanimously recommends that the Council distribute for Notice and Comment the proposed change to Standard 601, which would clarify the form of assessment required under Standard 601(a)(3).

Explanation of Changes to Standard 205

On February 13, 2015, the Standards Review Committee conducted an Information Session at which individuals concerned with Standard 205 provided statements. In response to the statements offered at that session and comments received during the comprehensive review of the Standards, the Standards Review Committee proposed to the Council at the meeting held June, 2015, that the category of “gender identity” be added to the list of groups for which a law school shall not use admission policies or other action to preclude admission, and for which a law school shall not discriminate against students, faculty or staff. In addition, in June the Committee recommended adding the phrase “or any other characteristic not relevant to the applicant’s ability to satisfactorily complete the school’s program of legal education” to 205(a) and the phrase “or any other characteristic not relevant to the law school’s capability to operate in compliance with the Standards and carry out its program of education.”

The feedback received from the Council indicated that the phrases expanding the Standard beyond any groups specifically named were vague and would be difficult for law schools to implement. They were removed from the recommendation and a new proposal was offered to the Council in October 2015, that simply added “gender identity” to the list of groups. The proposal was approved by the Council for Notice and Comment. A hearing was held on January 29, 2016, and only favorable comments were received. The Council accepted the proposal, but no further action was taken pending changes proposed to Standard 206.

In preparing Standard 206 for presentation to the Council, the Committee has taken a new look at Standard 205 to ascertain if any additional changes were needed. It was noted that the term “ethnicity” appeared in Standard 206 but not in Standard 205. It has been added. It also was noted that, while the Standard is called “Non-Discrimination and Equality of Opportunity,” the term “non-discrimination” does not appear in 205(a). The phrase “equality of opportunity” does appear in 205(b). Standard 205(a) has been re-worded to use the phrase “a policy of non-discrimination.”

It also was observed that, while the Standard requires that a law school adheres to a policy of non-discrimination and a policy to foster and maintain equality of opportunity, it did not require that a law school make those policies available to potential students, faculty, or staff. Both Standards 205(a) and 205(b) have been amended to require that law schools “adopt, publish, and adhere to” such policies. An interpretation has been added stating that a law school meets this requirement if the parent institution adopts and publishes appropriate policies.

Explanation of Changes to Standard 206

On February 13, 2015, the Standards Review Committee conducted an information session at which individuals concerned with Standard 206 provided statements. In response to the statements offered at that session, and comments received during the comprehensive review of the Standards, the Committee recommended two changes to the Standard for the Council to consider at its June 2015 meeting. First, the Committee recommended that Standard 206 itself not include a list of those groups to which it applied, but focus on the broader purpose of the Standard, which is to promote cross-cultural understanding, help break down stereotypes, and enable students to understand persons of different backgrounds. The specific categories were placed in Interpretation 206-2 and changed from “gender, race, and ethnicity” to “race, color, religion, national origin, gender, sexual orientation, age, disability, and gender identity.” The Interpretation also listed the groups “without limitation” so that

law schools would not consider that they should be limited to the stated groups in applying the Standard.

The feedback received from the Council was twofold. First, members were concerned about the removal of the phrase “providing full opportunities for the study of law and entry into the profession by member of underrepresented group, particularly racial and ethnic minorities,” and the phrase “a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.” Second, the Council was concerned that the phrase “without limitation” was vague and would be difficult for law schools to implement.

In response to these concerns, the Committee offered a new proposal to the Council in December 2015. The revision restored the wording deleted in the previous proposal, while still setting the stage for providing a list of groups that should be considered by a school when creating an environment that welcomes diversity. The revised proposal required a school to demonstrate by concrete action (1) a commitment to providing an environment in which diversity and inclusion are welcomed and embraced; (2) a commitment to providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities; and (3) a commitment to having a faculty, staff, and student body that is diverse with respect to gender, race, and ethnicity. Interpretation 206-1 was unchanged. Interpretation 206-2 provided a list of the specific groups that must be considered by a law school when creating an environment that is welcoming. Interpretation 206-3 took the language of the former Interpretation 206-2 in setting out how a school demonstrated compliance. For members of underrepresented groups, the methods remain the same (the admission process, special recruitment efforts, and programs that assist in meeting the special academic and financial needs of many of these students). For an overall commitment to diversity and inclusion, there were no required methods listed, though it was noted that they might include periodic assessments, etc. This proposal was approved by the Council for Notice and Comment. A hearing was held on January 29, 2016. Some of the groups offering comments believed that the proposed language did not require concrete action by law schools since the list of groups was contained in an Interpretation.

While the Committee believed that the inclusion of the list of categories in an Interpretation would be as effective as including them in the Standard, it recognized the concern of those offering comments and recommended moving them into the Standard. The revised Standard offered to the Council called for a law school to demonstrate by concrete action a commitment to (a) providing an environment that is diverse and inclusive with respect to characteristics that include race, color, religion, national origin, gender, gender identity, sexual orientation, age and disability; and (b) providing full opportunities for the study of law and entry into the profession by members of members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity. The Council decided that no action should be taken on the Standard 206 until additional consideration was made.

In 2017, the Council asked the Committee to again consider changes to Standard 206. The Committee now offers a proposal that it believes will satisfy those who are concerned with retaining important parts of the current Standard 206, while speaking to the interests of those groups who seek to be included in the Standard.

The current proposal retains the wording of the Standard calling for a commitment to providing full opportunities for the study of law and entry to the profession by members of underrepresented

groups. It then calls for a commitment to having a student body, faculty, and staff that are diverse with respect to gender, race, and ethnicity. Finally, it calls for a commitment to providing an environment that is inclusive with respect to race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, and disability. Interpretation 2016-1 is unchanged. Interpretation 206-2 speaks to diversity and is unchanged. Interpretation 206-3 is added to define inclusive as intending to “connote an environment that is welcoming” to individuals in the named groups. It also offers possible ways that the commitment could be demonstrated.

Explanation of changes to Standards 303 and 304

The recommended 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.

Explanation of changes to Standard 306

The proposed changes to Standard 306 revise the definition of “distance education course,” reconfigure the manner in which distance education may be incorporated into the law school academic program, slightly increase the maximum percentage of the academic program that may be delivered by distance education, and eliminate the prohibition on credit toward the J.D. degree for distance education courses before a student has completed 28 credit hours. Underlying the proposed changes is the Committee's belief that legal education instruction can be delivered as effectively by distance education as by instruction in the traditional manner. As part of its consideration of a revised Standard, Committee members reviewed various studies of the effectiveness of distance education in other disciplines, and looked at examples of synchronous and asynchronous distance education in the legal education context. The Committee anticipates that the Standard likely will be further expanded in the future to permit schools to deliver an even greater percentage of the curriculum through distance education. However, there should be a measured transition to such a Standard allowing for continued evaluation of the effectiveness of distance education in the legal education context and developing confidence in the effectiveness of distance education by bar admissions authorities. Further, at present the authority granted to the ABA by the Department of Education to accredit J.D. programs is limited to accrediting programs that offer no more than 50% of the required credits by distance education.

The new definition tracks the definition of “distance education” course in the Department of Education regulations (34 C.F.R. sec. 602.3), except in three respects. First, it omits the regulation's non-exclusive list of the types of technologies that may be used in a distance education course, some of which are outdated. Second, as under the current Standard, it continues to define distance education more narrowly than the DOE regulation to include courses in which students are separated from the instructor or from each other. A course is a distance education course as to all students in the class even if only some of the students are separated from the instructor. Third, the proposed definition provides that a course is a distance education course if more than a *de minimus* portion of the course uses technology to deliver instruction to students who are separated from the faculty member or each other. The new definition thus eliminates the provision in the current definition that defines a distance education course as a course in which more than one-third of the instruction is delivered by technology.

At the same time that the revised Standard eliminates the exclusion for courses that include no more than one-third of distance education, it increases to 50% the portion of the credits required for the J.D. degree that may be earned in distance education courses. This compares to approximately 45% of the credits required for graduation under the current Standard. The current Standard allows up to 15 credits of distance education courses, and as noted, defines distance education courses to exclude courses in which no more than one-third of the instruction is distance education. (To illustrate, under the current standard, a student at a school that required 83 credits for graduation could take a maximum of 15 credits in distance education courses and receive one third of the instruction in the remaining 68 credits worth of courses by distance education, for a total of slightly more than 45% of the credits required for graduation.) Thus, the proposed revised Standard does not significantly increase the total amount of distance education that may be counted toward the degree, but it provides law schools with the flexibility to concentrate distance education into fewer courses.

Explanation of Changes to Standard 601(a)(3)

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.

Standard 205. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY

- (a) A law school shall ~~not adopt, publish, and adhere to a policy of non-discrimination that prohibits the~~ use of admission policies or ~~take other actions~~ to preclude admission of applicants or retention of students on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability.
- (b) A law school shall adopt, publish, and adhere to policies that foster and maintain equality of opportunity for students, faculty, and staff, without discrimination or segregation on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability.
- (c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (1) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (2) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but may not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.
- (d) Non-discrimination and equality of opportunity in legal education includes equal employment opportunity. A law school shall communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement services the school's firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, ethnicity, religion, national origin, gender, gender orientation, sexual orientation, age and disability in regard to hiring, promotion, retention and conditions of employment.

Interpretation 205-1

A law school may not require applicants, students, faculty or employees to disclose their sexual orientation, although they may provide opportunities for them to do so voluntarily.

Interpretation 205-2

So long as a school complies with Standard 205(c), the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs. For example, Standard 205(c) does not require a

school to recognize or support organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school.

Interpretation 205-3

Standard 205(d) applies to all employers, including government agencies, to which a school furnishes assistance and facilities for interviewing and other placement services. However, this Standard does not require a law school to implement its terms by excluding any employer unless that employer discriminates unlawfully.

Interpretation 205-4

The denial by a law school of admission to a qualified applicant is treated as made upon the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability if the basis of denial relied upon is an admission qualification of the school that is intended to prevent the admission of applicants on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability though not purporting to do so.

Interpretation 205-5

The denial by a law school of employment to a qualified individual is treated as made upon the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability if the basis of denial relied upon is an employment policy of the school that is intended to prevent the employment of individuals on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability though not purporting to do so.

Interpretation 205-6

The requirements stated in Standards 205(a) and 205(b) that a law school adopt and publish policies regarding non-discrimination and equality of opportunity may be satisfied through the adoption and publication of appropriate policies by a parent institution.

Standard 205. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY

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- (b) A law school shall adopt, publish, and adhere to policies that foster and maintain equality of opportunity for students, faculty, and staff, without discrimination or segregation on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability.**
- (c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (1) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (2) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but may not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.**
- (d) Non-discrimination and equality of opportunity in legal education includes equal employment opportunity. A law school shall communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement services the school's firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, ethnicity, religion, national origin, gender, gender orientation, sexual orientation, age and disability in regard to hiring, promotion, retention and conditions of employment.**

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Interpretation 205-6

The requirements stated in Standards 205(a) and 205(b) that a law school adopt and publish policies regarding non-discrimination and equality of opportunity may be satisfied through the adoption and publication of appropriate policies by a parent institution.

Standard 206. DIVERSITY AND INCLUSION

A law school shall demonstrate by concrete action a commitment to:

(a) ~~Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by p~~Providing full opportunities for the study of law and entry to the profession by members of underrepresented groups, particularly racial and ethnic minorities; ~~and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.~~

(b) ~~Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by h~~Having a student body, faculty, and staff that are diverse with respect to gender, race, and ethnicity; ~~and.~~

(c) Providing an environment that is inclusive with respect to race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, and disability.

Interpretation 206-1

The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity, or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 206. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 206 by means other than those prohibited by the applicable constitutional or statutory provisions.

Interpretation 206-2

In addition to providing full opportunities for the study of law and the entry into the legal profession by members of underrepresented groups, the enrollment of a diverse student body promotes cross-cultural understanding, helps break down racial, ethnic, and gender stereotypes, and enables students to better understand persons of different backgrounds. The forms of concrete action required by a law school to satisfy the obligations of this Standard are not specified. If consistent with applicable law, a law school may use race and ethnicity in its admissions process to promote diversity ~~and inclusion~~. The determination of a law school's satisfaction of such obligations is based on the totality of the law school's actions and the results achieved. The commitment to providing full educational opportunities for members of underrepresented groups typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, and programs that assist in meeting the academic and financial needs of many of these students and that create a favorable environment for students from underrepresented groups.

Interpretation 206-3

As used in Standard 206(c), an inclusive environment is intended to connote an environment that is welcoming with respect to individuals regardless of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability. While the forms of concrete action required to demonstrate a law school's commitment to an inclusive environment under this Standard are not specified, they may include periodic assessment of progress towards having an inclusive environment; the portrayal of the law school as inclusive to potential students, faculty, and staff; support of affinity groups; provision of mentoring opportunities; and support of pro bono and externship

opportunities that reflect a commitment to an inclusive environment. The determination of a law school's satisfaction of such obligations is based on the totality of the law school's actions.

Standard 206. DIVERSITY AND INCLUSION

A law school shall demonstrate by concrete action a commitment to:

- (a) Providing full opportunities for the study of law and entry to the profession by members of underrepresented groups, particularly racial and ethnic minorities;**
- (b) Having a student body, faculty, and staff that are diverse with respect to gender, race, and ethnicity; and**
- (c) Providing an environment that is inclusive with respect to race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, and disability.**

Interpretation 206-1

The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity, or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 206. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 206 by means other than those prohibited by the applicable constitutional or statutory provisions.

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As used in Standard 206(c), an inclusive environment is intended to connote an environment that is welcoming with respect to individuals regardless of race, color, ethnicity, religion, national origin, gender, gender identity, sexual orientation, age, or disability. While the forms of concrete action required to demonstrate a law school's commitment to an inclusive environment under this Standard are not specified, they may include periodic assessment of progress towards having an inclusive environment; the portrayal of the law school as inclusive to potential students, faculty, and staff; support of affinity groups; provision of mentoring opportunities; and support of pro bono and externship opportunities that reflect a commitment to an inclusive environment. The determination of a law school's satisfaction of such obligations is based on the totality of the law school's actions.

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. 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)] 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. SIMULATION COURSES, LAW CLINICS, AND FIELD PLACEMENTS

- (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) 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.**

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

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).

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 304. 303(a)(3).

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.**

(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 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 simulation course provides substantial experience not involving an actual client that 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.

(c) A law clinic provides substantial lawyering experience that involves advising or representing one or more actual clients or serving as a third-party neutral.

(d) 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) 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) 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;

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

(iv) 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) 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) 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

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 304.

NEW DEFINITION

Distance Education Course is a course that uses technology to deliver instruction to students who are separated from the faculty member for more than a de minimus portion of the course and to support regular and substantive interaction between the students and the faculty member, either synchronously or asynchronously. The technology may include:

(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).

Standard 306. DISTANCE EDUCATION

~~(a) — A law school may grant a student up to 50% of the credit hours required for the J.D. degree through distance education courses. 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)(a) 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.~~

~~(e)(b) A law school shall have the technological capacity, staff, information resources, and facilities necessary to assure the educational quality of a distance education course.~~

~~(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.~~

~~(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.~~

~~(g)(c)~~ 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

Methods to verify student identity 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.

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

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.

NEW DEFINITION

Distance Education Course is a course that uses technology to deliver instruction to students who are separated from the faculty member for more than a de minimus portion of the course and to support regular and substantive interaction between the students and the faculty member, either synchronously or asynchronously. The technology may include:

- (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).*

Standard 306. DISTANCE EDUCATION

- (a) A law school may grant a student up to 50% of the credit hours required for the J.D. degree through distance education courses. 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.**
- (b) A law school shall have the technological capacity, staff, information resources, and facilities necessary to assure the educational quality of a distance education course.**
- (c) 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

Methods to verify student identity 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 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.**

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 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.**