MEMORANDUM

TO: Council

FROM: Pam Lysaght, Standards Review Subcommittee Chair
       Stephanie Giggetts, Accreditation Counsel

DATE: July 27, 2020

RE: Recommendations on Proposed Changes to the Standards and Rules

At its meeting held on May 14-15, 2020, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Rule 2 of the ABA Standards and Rules of Procedure for Approval of Law Schools. The proposed change will authorize the Council to act quickly to address an emergency impacting multiple law schools—either regionally or nationally. Examples of emergencies include, but are not limited to, weather disasters and pandemics. In such emergency situations, law schools may need to respond in ways that could violate a standard. An example was when many law schools needed to abruptly shift from routine in-class scheduling of courses to distance learning due to the COVID-19 pandemic of 2020. This proposed change would permit the Council to provide temporary relief from a rule or the requirements of a standard to allow law schools to...
respond to the emergency. Such changes would be effective only for the duration of the extraordinary circumstance and only to the extent specifically provided.

This proposed amendment to Rule 2 is not intended for an individual law school facing an extraordinary circumstance. Those requests would be made through the variance process [Standard 107].

Comments Received: One commenter recommended an amendment to the proposed language that would read “[t]he policies and procedures adopted should allow for adjustments to the needs of individual schools affected by those extraordinary circumstances.” The commenter noted that although multiple schools may be impacted by a given set of extraordinary circumstances, individual schools within the group may be affected in different ways and may confront particular needs. The commenter noted that the processing of individual requests under Standard 107 may prove to be cumbersome and untimely.

Similarly, a second commenter noted that although the Council recognizes individual law schools have and can be expected to confront emergencies not experienced regionally or nationally, it forces an individual school confronting extraordinary circumstances to negotiate a cumbersome variance process. The commenter proposed that the Council further amend Rule 2 to allow a single law school faced with an emergency to avail itself of a swifter and more efficient procedures by seeking temporary relief from the application of specific standards from the Managing Director (if the Managing Director granted the relief, notice would be given to the Council and the Council would affirm, reject, or modify the relief).

Recommendations: As noted above, the proposed change was not intended for an individual law school facing extraordinary circumstances but was intended to allow the Council to act quickly to address an emergency impacting multiple law schools—either regionally or nationally. We think it is fair to consider an expedited process for individual law school emergencies, but believe we need to get this rule in place in August to address events that may take place in Fall 2020 or Spring 2021. Consideration of an expedited process for individual law schools could be placed on the 2020-2021 agenda. As a result, we recommend approval of the proposed change as drafted.