MEMORANDUM

To: The Council of the Section of Legal Education and Admissions to the Bar

From: Pamela Lysaght, Standards Review Subcommittee Chair
       Stephanie Giggetts, Accreditation Council

Date: August 9, 2019

Re: Preliminary Recommendations on Proposed Changes to the Criteria for Foreign Programs Offered by ABA-Approved Law Schools

The Council, at its May 2019 meeting, approved for Notice and Comment a number of proposed changes to the Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States and the Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools. Comments were due by July 17, 2019. A hearing is scheduled on these proposed changes on Wednesday, August 21, at 1:00 p.m. at the Park Hyatt Chicago. This Memorandum provides our preliminary recommendations, based on the comments received. The Standards Review Subcommittee will review these preliminary recommendations and present final recommendations at the August 2019 Council meeting. The Notice and Comment Memo, which contains a detailed explanation of the changes and redlined versions, is attached as an Appendix. The comment received is available on the Section’s website and is hyper-linked in this document.

(https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/)

Summary of Proposed Changes: The proposed changes will merge the Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States and the Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools. This change will result in one set of Criteria for programs operated by an ABA-approved law school outside of the U.S. (Criteria for Programs Offered by ABA-Approved Law Schools in a Location Outside the United States) and one for students enrolling at a non-U.S. institution and earning credit toward their J.D. (Criteria for Accepting Credit for Student Study at a Foreign Institution).

Comments Received: One. The Section’s Managing Direction submitted a comment suggesting an edit for clarification:
After receiving an inquiry into the proposed changes to Criterion III.B.2.b., the staff discussed the retention of complaints and student evaluations as required by the Criteria. The draft circulated for Notice and Comment attempted to bring complaint retention in line with the requirements of Standard 510; however, the requirement to retain student evaluations for a period of 10 years seemed overly burdensome. The staff’s proposed revisions are below.

**Criterion III.B.2.b. (Draft Circulated for Notice and Comment)**

(b) The law school must retain student evaluations and a record of student complaints submitted during the most recent accreditation period. The record shall include the resolution of the complaints.

(b) The law school must retain student evaluations and any student complaints for a period of five years for review by sabbatical site teams.

**Criterion III.B.2.b. (Proposed Revision)**

(b) The law school must retain student evaluations for three years preceding its regular comprehensive site evaluation for review by site teams. The law school must also retain a record of all student complaints submitted during the most recent accreditation period. The record shall include, including the resolution of the complaints.

**Preliminary Recommendation:** The Managing Director’s comment provides greater clarity and is consistent with the intent of the proposed changes. Moreover, it is a non-substantive change. We recommend approving the draft as amended by the Managing Director’s comment.
MEMORANDUM

TO: Interested Persons and Entities
FROM: Jeffrey Lewis, Council Chair
Barry A. Currier, Managing Director of Accreditation and Legal Education
DATE: June 17, 2019

SUBJECT: ABA Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States– Matters for Notice and Comment

At its meeting held on May 16-18, 2019, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to the Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States of the ABA Standards and Rules of Procedure for Approval of Law Schools.

All proposed revisions and accompanying explanations are published on the Section’s website: http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html.

We solicit and encourage written comments on the proposals listed above. A hearing on the proposed changes is scheduled for Wednesday, August 21, 2019, at 1 p.m. The hearing will be held at the Park Hyatt Chicago (800 N. Michigan Ave., Chicago, IL 60611).

Please address written comments on the proposals to Dean Emeritus and Professor Jeffrey Lewis, Council Chair. Please send comments and requests to speak at the hearing to Mary Kearin (mary.kearin@americanbar.org) by Monday, July 17, 2019.

Requests to speak at the hearing received after July 17, 2019, will be accommodated if possible. Written comments received after July 17, 2019, may not be included in the materials considered by the Council at its August 22-24, 2019 meeting.
Explanation of Changes

The proposed changes will merge the *Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States* and the *Criteria for Approval of Foreign Semester and Year-Long Study Abroad Programs Established by ABA-Approved Law Schools*. This change will result in one set of Criteria for programs operated by an ABA-approved law school outside of the U.S. (*Criteria for Programs Offered by ABA-Approved Law Schools in a Location Outside the United States*) and one for students enrolling at a non-U.S. institution and earning credit toward their J.D. (*Criteria for Accepting Credit for Student Study at a Foreign Institution*).

The Summer/Intersession Criteria and the Semester/Year-Long Criteria were nearly identical prior to the last revision to the Summer/Intersession Criteria in 2016. The key differences, and how the proposed changes reconcile those differences, are outlined below.

1. The number of faculty required:
   a. Summer/Intersession: required at least one tenured, tenure-track, or full-time faculty member from the ABA-approved law school and a program director; however, these could be the same person.
   b. Semester/Year-Long: required a program director who must be a tenured, tenure-track, or full-time faculty member from the ABA-approved law school and, in addition to the director, at least one person from the law school who is either a tenured, tenure-track, or full-time faculty member; a full-time administrator who works with study abroad or international programs; or a full-time visiting professor. (This is relatively new—the Criteria used to require another member of the full-time faculty to serve as the second person onsite.)
   c. The proposed Criteria would require one tenured, tenure-track, or full-time faculty member from the ABA-approved law school.

2. The library resources:
   a. Summer/Intersession: “if course materials...are not self-contained, then adequate library resources must be available.”
   b. Semester/Year-Long: “the program must have or must provide acceptable access to a library and study facility adequate for its academic program…”
   c. This proposed Criteria tracks the requirements of the existing Summer/Intersession Criteria, which the Council felt was appropriate in light of the way technology now provides access to many library resources.

3. Required Site Visits:

   The proposed Criteria would move Semester/Year-Long programs in line with the current Summer/Intersession program requirements, resulting in the following:
a. Programs would only be subject to a site visit in their second year of operation (for new programs) or if there were any issues that came to the attention of the Council through questionnaires, the sabbatical site visit process, student complaints, etc.

b. Programs offered to a law school’s own students (not open to students from other law schools) and not cosponsored with another ABA-approved law school, would not require ABA-approval or a site visit in the second year of operation.
Criteria for Foreign Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States

These Criteria apply to summer, intersession, semester, and year-long programs offered by ABA-approved law schools in a location outside of the United States. Programs in which students enroll in an institution outside the United States to receive credit toward the J.D. degree are governed by the Criteria for Accepting Credit for Student Study at a Foreign Institution.

These Criteria recognize that the primary responsibility for determining the quality of the educational experience that students receive during a study abroad experience rests with the faculty and administration of the law school.

The ABA Standards and Rules of Procedure for the Approval of Law Schools shall apply to study abroad programs except as modified by the Criteria or by necessary implication.

I. Criteria Applicable to All Summer and Intersession Programs Offered by ABA-Approved Law Schools in a Location Outside the United States

A. Educational Program

1. The dean and faculty of the law school are responsible for formulating and administering the educational program.

2. The faculty must approve the academic content of the educational program in the same manner as the curriculum of the law school’s on-campus program.

3. The academic content of the educational program must meet the same standards, including evaluation of student performance, as the on-campus program of the law school.

4. The number of students enrolled shall not exceed the number appropriate for the academic content of the educational program, available facilities, the number and availability of faculty members, the administrative support structure, and any special educational program goals.

5. Students must be provided with the name and contact information of the program director or another responsible person on-site who can be reached at all times during the program.
6. The law school shall offer students at or shortly after the conclusion of the program an opportunity to evaluate in writing both the overall program and the faculty and courses offered in the program.

7. The law school may include participants other than those earning credit toward the J.D. degree, provided that such participation does not detract from the law school’s ability to maintain a program that meets the requirements of these Criteria and the Standards.

B. Academic Credit

1. Length of program
   
   (a) The educational program must provide adequate time for class preparation, reflection and intellectual maturation similar to that provided in the regular semester.

   (b) The number of credits a student may receive in the program must comply with Standard 310 regarding credit hours and in no event shall a student receive more than 1.5 semester credit hours for each week of the program.

2. Instruction Conducted in a Foreign Language
   
   (a) When instruction is offered in a foreign language with consecutive English interpretation, the time expended in class is not commensurate with class time spent when instruction is in English. For purposes of Standard 310 compliance, classes in which consecutive interpretation is needed may not count more than fifty (50) percent of actual class time expended.

   (b) When instruction is offered in a foreign language with simultaneous English interpretation, the time expended in class is commensurate with class time spent when instruction is in English.

3. If credit is given for field placements, the educational program must meet the requirements of Standard 304.

4. If credit is given for distance education courses, those courses and credits must comply with the requirements of Standard 306.

5. Educational Visits
   
   (a) The program shall include at least two visits that relate to the socio-legal environment in the host country.
(b) Time or a portion of the time allocated for visits may not be counted toward the requirements of Standard 310 regarding credit hours unless the content of the visit is academic in nature and specifically related to the class for which the credit is being awarded.

6. If course materials, including all case, statutory, and text materials needed for full understanding of the course and completion of assignments, are not self-contained, then adequate library resources must be available.

C. Physical Facilities

1. The faculty shall be provided with office space adequate to achieve the purposes of the program.

2. Classrooms must provide adequate seating with writing surfaces for students, sufficient lighting, and adequate soundproofing.

3. Equipment necessary for the teaching of scheduled courses and administration of the program must be provided.

4. If course work depends upon library facilities, then those facilities must be convenient and accessible to students during normal working hours.

5. Adequate facilities for studying must be available to students.

D. Refund Policies

1. The law school must adopt and publish policies regarding the circumstances and timing of the refund of monies advanced by students.

2. If changes are made in the course offerings or other significant aspects of the program, those changes must be communicated promptly to any registrant who has paid a deposit or registered for the program, and an opportunity must be provided for that person to withdraw.

E. Disclosures

The following information must be communicated to students no later than 30 days prior to the date when the students’ deposits become nonrefundable.

1. Dates, location(s), description of the program, and anticipated enrollment;

2. The nature of the relationship with the foreign institution, if any, other than the provision of facilities and minimal services;
3. Description of each course and number of credit hours;

4. Schedule of classes with days and times for each class;

5. Requirements for student performance and method of evaluating student performance;

6. Enrollment limitations on any courses offered and criteria for enrollment, including prerequisites, if any;

7. Descriptive biography of the on-site program director;

8. Descriptive biographies, including academic credentials and experience, of each faculty member responsible for teaching a course;

9. Contact information of an informed person at the law school;

10. Complete statement of all tuition, fees, anticipated living costs, and other expected expenses;

11. Information regarding the cost and availability of housing made available by the program; or, if the program does not provide housing, information on the availability, approximate cost, and location of housing in the same area;

12. The extent to which the country, city, and facilities are accessible to individuals with disabilities;

13. Circumstances under which the program is subject to cancellation, how cancellation will be communicated to the students, what arrangements will be made in the event of cancellation, and information about any prior cancellations, if any;

14. Relevant State Department Travel Information, including Travel Advisories and Warnings; and

15. Refund policies, in accordance with Standard 509(c)(1).

II. Additional Criteria Applicable to Co-Sponsored Programs and Programs Open to Students from Other ABA-Approved Law Schools

A. Faculty Oversight

1. The sponsoring law school(s) shall assign at least one tenured, tenure-track, or full-time faculty member from the law school (or one of the co-sponsoring law
schools) to the foreign summer or intersession program who will be present onsite for the duration of the program.

2. A visiting professor to a sponsoring law school is not considered a full-time faculty member for purposes of this provision.

3. The faculty member assigned to fulfill subsection A.1. may also serve as the program director.

4. The faculty member assigned to fulfill subsection A.1. must be well qualified by experience with the sponsoring law school (or one of the co-sponsoring law schools) to provide leadership and appropriate faculty oversight of the program for the sponsoring law school(s).

5. The requirement of a continuous presence of a tenured, tenure-track or full-time faculty member from the sponsoring law school(s) may be satisfied by having different faculty members from the sponsoring law school(s) participating in the program at different times as long as each fulfills subsection A.1. and one such faculty member is on site at all times.

B. Program Director

1. The sponsoring law school(s) must provide a program director who will be present onsite for the duration of the program and who must be appointed with the approval of each of the sponsoring law schools.

2. The same person may serve as both the program director and as the faculty member assigned to fulfill subsection A.1.

3. The requirement of a continuous presence of the program director may be satisfied by having more than one program director at different times as long as one program director who fulfills subsection B.1. is on site at all times and there is provision for continuity of administration and oversight.

4. The director may not participate concurrently in another program.

5. The director shall have had some experience with the same or a similar program or possess a background that is an adequate substitute for such experience.

C. Program Faculty and Administration

1. Faculty members who are not from the sponsoring law school(s) shall possess academic credentials equivalent to those of the faculty at the sponsoring law school(s) and must be approved to teach in the program in the same manner as required for an adjunct faculty appointment at the sponsoring law school(s).
2. All faculty teaching in the program must be able to communicate effectively with the students in the language of instruction used in the program.

3. The program director or at least one member of the faculty or on-site staff must:
   (a) Be fluent in both English and the language of the host country, and
   (b) Be familiar with the country in which the program is offered.

4. The program must have a staffed administrative office or other mechanism in place that is convenient to students and through which the students may communicate effectively with staff and faculty in a timely manner.

D. Academic Requirements

1. A substantial portion of the educational program must relate to the socio-legal environment of the host country or have an international or comparative focus.

2. The sponsoring law school(s) determines the academic criteria for admission to the program.

3. The sponsoring law school(s) must obtain a letter or other documentation certifying the current good standing of each enrolled student not from the sponsoring law school(s).

E. Disclosures

1. In addition to the disclosure requirements of Part I.E., co-sponsored programs and programs open to students from other ABA-approved law schools in accordance with Section II must include a statement that acceptance of any credit or grade for any course taken in the program, including externships and other clinical offerings, is subject to determination by the student’s home school.

2. Programs operated in accordance with Section II must post all required disclosures on the program’s website no later than 30 days prior to the date when the students’ deposits become nonrefundable.

III. Procedures

A. Programs Offered in Compliance with Part I

Note: This section applies to law schools offering programs that are not open to students from other ABA-approved law schools. All other programs, including co-sponsored programs, are covered by section B.
1. A law school offering a program in compliance with Part I of these Criteria is not required to seek approval prior to operation of the program.

2. The law school must retain student evaluations and any student complaints for a period of five years for review by sabbatical site teams. Student evaluations and a record of student complaints submitted during the most recent accreditation period. The record shall include the resolution of the complaints.

3. The law school shall complete an Annual Questionnaire in the form specified by the Council.

4. The Council may ask for further information or direct a site visit of a program in any year where responses to the Annual Questionnaire suggest that the program is out of compliance with these Criteria. Examples of actions or changes that might trigger this review include:

   (a) Failure to timely file the annual questionnaire;

   (b) Submitting an incomplete questionnaire; or

   (c) A persistent pattern of complaints by students in the program regarding the quality of the educational experience or the administration of the program.

5. If the Council has reason to believe that a law school is not operating in compliance with these Criteria, the Council shall proceed with an action under Rule 11 of the Rules of Procedure.

B. Programs Offered in Compliance with Part II

Note: This section covers law schools offering programs that are open to students from other ABA-approved law schools and law schools offering programs that are co-sponsored with other ABA-approved law schools.

1. New Programs

   (a) A law school seeking to establish a new program under Part II of these Criteria must submit a New Program Questionnaire in the year preceding the first offering of the new program by October 1 for Summer programs and March 1 for Intersession programs at least six months prior to the anticipated start date of the program.

   (b) On the basis of the written submission, the Council will determine whether to approve the program for its first year of operation. Approval will be granted only if the law school demonstrates that the proposed program complies with the Criteria.
(c) If the Council grants approval, the program will be evaluated with a site visit during its second year of operation. The Council will then determine whether to approve the program for further operation on the basis of the site evaluation and written materials submitted by the law school.

(d) A law school may not advertise or market any program prior to submitting a request for approval of the program. Any advertising or marketing that is done prior to program approval must clearly indicate that the program is pending approval by the Council.

2. Monitoring of Approved Programs

(a) The law school shall complete an Annual Questionnaire in the form specified by the Council.

(b) The law school must retain student evaluations and a record of student complaints submitted during the most recent accreditation period. The record shall include the resolution of the complaints.

(b) The law school must retain student evaluations and any student complaints for a period of five years for review by sabbatical site teams.

(c) A law school shall provide written notice of any changes in an approved program that do not require approval under Section III.B.3. The Council will determine if additional information is needed to evaluate the program’s compliance with the Criteria. Examples of changes that generally do not require approval by the Council include:

(i) Change in the number of credit hours offered;

(ii) Change in lead sponsoring school; or

(iii) New agreements to co-sponsor the program with another ABA-approved law school.

3. Request for Approval of Significant Change in Existing Program

(a) A law school seeking to make a significant change in an existing program must submit a Significant Change Questionnaire in the year at least six months prior to the implementation of the proposed change no later than October 1 for Summer programs and March 1 for Intersession programs.

(b) The Council will review the information submitted concerning the proposed change and determine if additional information is necessary and if a site visit may be required to evaluate the program’s compliance with the Criteria in light of the changes in the program.
(c) Examples of changes that require approval by the Council include, without limitation:

(i) Change in program location;

(ii) Significant changes in program administration on-site;

(iii) Significant increase in the enrollment expectations for the program; or

(iv) Adding a new field placement program or a substantial increase in the enrollment in an existing field placement program.

4. Additional Review

(a) The Council may ask for further information or direct a site visit of an approved program in any year where responses to the questionnaire suggest that the program is out of compliance with these Criteria or that the program has so substantially changed its focus or operation that its compliance with the Criteria cannot be determined without further information and, potentially, a site visit.

(b) Examples of actions or changes that might trigger this review include:

(i) Failure to timely file the annual questionnaire;

(ii) Submitting an incomplete questionnaire;

(iii) Number and nature of the concerns raised in the most recent review of the program;

(iv) Failure to notify the Office of the Managing Director of a change as required in Part III.B.2(c) or Part III.B.3; or

(v) A persistent pattern of complaints by students in the program regarding the quality of the educational experience or the administration of the program.

5. Withdrawal of Approval. If it is determined that a program is operating out of compliance with these Criteria, approval may be withdrawn by the Council in accordance with Rule 11(a)(4) of the Rules of Procedure for Approval of Law Schools.

6. Expiration of Approval. If an approved program is not offered in two consecutive years, approval is withdrawn and the sponsoring law school(s) must reapply for
approval of the program as a new program. This requirement may be waived by the Council for good cause shown.