Memorandum

To: The Council

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

Re: Proposed Standards Review Agenda for 2019-20

Date: August 9, 2019

This proposed agenda addresses two goals:

- First, consider the proposed Department of Education regulations and their impact on our Standards and Rules; and
- Second, recommend changes to the Standards and Rules the Council identified as part of the accreditation process.

The agenda was crafted, as has been our practice, with input from the Section Office and the incoming Chair of the Section.

Department of Education Proposed Regulations

In light of the proposed DE regulations, which we expect to become effective in July 2020, we recommend the following three categories for consideration of the changes:

DE Matters for Discussion:

1. Definition of Pre-accreditation. In the past, we have taken the position that we do not preaccredit law schools. Given the change in the definition we should consider whether we can maintain that position.
2. Arbitration. The Secretary does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving an adverse action to initial arbitration before initiating other legal action. The
Department wants to increase awareness of this provision. We should consider whether to include this in our process.

3. Information from other sources. (602.17(e)) The Department wants agencies to "substantiate" other information used in the review of a school. We should discuss whether our current Rule 5(a) meets this requirement (Council shall use information otherwise “deemed reliable” by the Council for its review). We should also consider whether changes are required to Rule 4(e)(4) dealing with third-party comments, and Rule 4(e)(5) dealing with complaints.

4. Credit hour. The Department removed the provisions regarding a specific type of review of credit hour policies but the definition remains. We should discuss how we would like to proceed.

5. Third-Party Comments. The Department wants agencies to take into account “and be responsive” to any comments on proposed changes to Standards. It is unclear what “be responsive” would mean in our process.

6. Non JD and Certificates (602.22). The Department has clarified that the “addition of a program of study at a credential level” applies to the addition of graduate programs by an institution that previously offered only undergraduate programs or certificates. We should discuss if we want to continue to review and acquiesce in these programs or certificates.

DE Matters Requiring a Working Group/Task Force:

1. Teach-Out. A new definition of teach-out has been added to clarify the types of activities that qualify as a teach-out. The definition prohibits an institution from engaging in misrepresentation about the nature of teach outs. In addition, the regulations (602.24) for teach-out have been revised to provide additional specificity and clarity to the requirements regarding teach-out plans and agreements. We recommend that a working group be assigned to this matter given the changes and complexity. [See Agenda items that arose as part of the accreditation process below.]

2. Enforcement of Standards. The Department has extended the period to come into compliance to four years (602.20). In addition, the Department wants written policies for granting good cause extensions, and written policies for evaluating and approving monitoring reports (what we would consider report backs). We recommend that a working group be assigned to this matter since it will require the preparation of written policies as well as consideration of the extension of time. [See Agenda items that arose as part of the accreditation process below.]

DE Matters that can or will require updates to Standards and Rules:

1. Maintenance of Records (602.15(b)(2)). The Department has removed the requirement that an agency maintain all correspondence related to a
decision letter. We may want to consider removing the requirement of maintaining other correspondence from IOP 7.

2. Self-Study (602.17(b)). The Department refined the regulation on self-study to focus on continuous improvement. The self-study process now must assess an institution’s or program’s success in meeting its mission and objectives. We will need to revise Standard 204 to meet the new requirements.

3. Student Verification for Distance Education (602.17(g)). The Department has removed the language regarding the methods for verifying identity. We can do the same.

4. Variance (602.18). The Department has provided safe harbors to agencies in support of innovation and to address hardship without jeopardizing recognition as an accreditor. This is similar to our rule on variance. We may want to consider revising the variance standard to address undue hardship without the requirement of innovation.

5. Retroactive application of accrediting decisions (602.18). The Department wants agencies to publish any policies for retroactive application of an accreditation decision. We should clarify that decisions will not be retroactive or develop a policy that meets the regulations.

6. Notice to Department (602.20). The Department has identified certain requirements that an agency is not responsible for enforcing but if an agency identifies potential instances of non-compliance, it must notify the Department. The areas cover program participation agreements, financial responsibility, administrative capacity, security and crime data, and disclosure of information. (668.14, 668.15, 668.16, 668.41, 668.46)

7. Substantive Change (602.22). The Department has limited changes regarding mission to substantial changes. Items noted in Rule 24(a)(12) to (14), (16), and (17) can now be approved by senior staff and not the Council.

8. Sequencing of Approvals (602.23). The Department wants an agency to maintain written materials describing the procedures for applying for accreditation or substantive changes and the sequencing of those steps relative to applications or decisions required by a state or the Department.

9. Appeal. The Department removed “reversal” as an option for the appeals panel. We will need to revise our Standard accordingly and may be able to implement this change as part of the current language out for notice and comment.

10. Notice of Decisions (602.26). The Department is giving agencies longer than 30 days to provide notice of a final decision of probation or equivalent status. The Department also changed the 24 hour notice requirement to one business day to clarify notice is not required on weekends or holidays. Updates will need to be made to IOP 5.

**Agenda items that arose as part of the accreditation process**

As you know, the Council and the office identified a number of matters when applying the Standards and Rules and requested the SRS to make recommendations
with respect to the appropriate Standards and Rules. Please note that some of the DE proposed changes outlined above are implicated in the following list.

1. Teach-out. This work would include both the DE matters and addressing plans beyond the process of approving a proposed teach-out plan.
2. Enforcement of Standards. This work would include the extension of time to come into compliance under new DE regulations and whether to incorporate “warning status.”
3. Variances. Under this topic, the SRS would consider updating variance rules to address hardship and discuss whether the Council can exclude certain standards from variances (including Standard 306).
4. Substantive Change. This would include determining what changes could be handled by staff under the new DE regulations and whether branch campuses should be eliminated.
5. Transparency. This would include the new DE requirements on notice of decisions, as well as whether to provide additional notices to the public.
6. Concrete Actions. This item would focus on reviewing Standard 206 and Interpretation 206-2 with respect to the following language “totality of the law school’s actions and the results achieved” to determine if additional guidance is necessary in light of revised Standard 316.

We envision SRS working groups to tackle each of these topics. We note that some items may benefit from round table discussions with a wider group of interested parties, possibly setting aside some designated times during open sessions to accommodate the roundtable discussions, which would be planned by the office with assistance from the Section leadership and SRS.