MEMORANDUM

To: Council
From: Standards Review Subcommittee (SRS)
Date: February 1, 2019
Re: Recommended changes to Rules

This is the second of two memoranda to the Council for consideration at its February 2019 meeting. This Memorandum addresses proposed changes to the Rules the Council tasked the SRS to review this year with a focus on minor revisions and clarification. The Rules are 11, 12, 13, 24, 29, 30-36, and 37-39. Changes to Rules 11 and 12 require the addition of a definition that is discussed below. The SRS also considered and addressed changes to the nominating process.

Rule 11: Proceedings to Determine Compliance with Standards in General

Proposed Revision:

(a) In a proceeding to determine accreditation status or compliance with the Standards within the jurisdiction of the Council under Rule 2, the Council may:

(1) Conclude that the law school is in compliance with a Standard or all of the Standards;

(2) Request or gather further information that will enable the Council to determine compliance with one or more Standards;

(3) Conclude that the Council has reason to believe that a law school has not demonstrated compliance with the Standards;

(4) Conclude that the law school is not in compliance with a Standard;

(5) Conclude that a law school is in compliance with the Standards but should be placed on Warning; or

(6) Direct the Managing Director to appoint a fact-finder.

(b) In the event the Council requests or gathers further information or appoints a fact finder in accordance with 11(a) upon receipt of the law school’s response or any fact-finding report, the Council must find the law school in compliance or not in compliance with the Standards for which information was requested or gathered, absent clearly articulated special circumstances. In the
event of such special circumstances, the Council may request or gather further information pursuant to 11(a)(2), 11(a)(3), or 11(a)(6).

**Rule 12: Determinations of Compliance**

**Proposed Revision:**

(a) A determination that the law school is in compliance with all of the Standards means that the law school remains an approved law school.

(b) In finding a law school in compliance with a Standard, the Council may couple the finding with a determination that the law school shall be placed on Warning, requiring public notice that the law school is on Warning, and additional reporting under Rule 6 or the appointment of a fact finder under Rule 8.

(c) The approval status of a law school is not affected while an appeal from a decision of the Council is pending.

**Definitions:**

**Proposed Revision:**

“Warning” means that while the law school is now in compliance with a Standard, the Council has reason to believe that the law school is at risk of being out of compliance with the Standard in question.

**Explanation:**

The Subcommittee discussed the addition of a sanction that would alert a law school to serious compliance issues but would not be as severe as probation. Some accreditors refer to this as being on “notice” or “warning.” After some review, the Subcommittee decided to add a status to Rule 11 and 12, allowing the Council to conclude that a law school is in compliance with the Standards but placing them on “warning” if the Council had reason to believe the law school was at risk of being out of compliance with the Standards. This would provide public notice of the law school’s status but would not trigger the 2-year compliance clock.

**Rule 13: Actions on Determinations of Noncompliance with a Standard**

**Proposed Revision:**

(a) Following a determination by the Council of non-compliance with a Standard in accord with Rule 11(a)(4), the Council shall:

   (1) Require the law school to bring itself into compliance and submit information by a specific date to demonstrate that it has come into compliance with the Standard; and
(2) Direct that representatives of the law school, including any person specifically designated by the Council, appear at a hearing to determine whether to impose sanctions and/or direct specific remedial action in connection with the law school’s non-compliance with the Standard.

(b) The period of time by which a law school is required to demonstrate compliance with a Standard shall not exceed two years from the date of determination of noncompliance, except as provided for in subsection (c).

(c) For good cause, the Council may extend the date of compliance.

Explanation:

Rule 13 currently provides that the Council can extend the date of compliance for good cause shown, “upon the request of the law school.” The Council believes it should have the power to extend based on its findings and conclusions and that it does not require a request of the law school so that language has been deleted.

In addition, the Council has imposed sanctions “and” directed specific remedial action. Therefore, the language in Rule 13(a)(2) has been change to “and/or.”

Rule 24: Application for Acquiescence in Substantive Change

Proposed Revision:

(a) Substantive changes requiring application for acquiescence include:

(1) Acquiring another law school, program, or educational institution;

(2) Acquiring or merging with another university by the parent university where it appears that there may be substantial impact on the operation of the law school;

(3) Transferring all, or substantially all, of the program of legal education or assets of the approved law school to another law school or university;

(4) Merging or affiliating with one or more approved or unapproved law schools;

(5) Merging or affiliating with one or more universities;

(6) Materially modifying the law school’s legal status or institutional relationship with a parent institution;

(7) A change in control of the law school resulting from a change in ownership of the law school or a contractual arrangement;

(8) A change in the location of the law school that could result in substantial changes in the faculty, administration, student body, or management of the law school;
(9) Establishing a branch campus;

(10) Establishing a separate location other than a branch campus;

(11) A significant change in the mission or objectives of the law school;

(12) The addition of courses or programs that represent a significant departure from existing offerings or method of delivery since the latest site evaluation including instituting a new fulltime or part-time division;

(13) The addition of a permanent location at which the law school is conducting a teach-out for students at another law school that has ceased operating before all students have completed their program of study;

(14) Contracting with an educational entity that is not certified to participate in Title IV, HEA programs, that would permit a student to earn 25 percent or more of the course credits required for graduation from the approved law school;

(15) Establishing a new or different program leading to a certificate or degree other than the J.D. degree;

(16) A change in program length measurement from clock hours to credit hours;

(17) A substantial increase in the number of clock or credit hours required for graduation, and

(18) Establishing a distance education program in which a law school will grant a student distance education credit for the J.D. degree not permitted under Standard 306.

Explanation:

After a discussion with the Managing Director, it was decided it may be prudent to remove the process of implementing a distance education program from Standard 107, Variances, and move it to Standard 105 and Rule 24, making it a substantive change that requires acquiescence of the Council. Previous discussions with the Department of Education seem to suggest some discomfort with handling distance education under the variance standard. Making it a substantive change would streamline the review process for a distance education program and simplify the review process by the Department for adding Distance Education back into the scope of authority for the Council.

As a result, the proposed standard would require acquiescence if the law school wants to offer distance education beyond what is allowed by Standard 306, Distance Education.

**Rule 29: Teach-Out Plan**
Proposed Revisions:

Rule 29: Teach-Out

(a) If a provisional or fully approved law school or branch is closing, suspending, or ceasing to operate its approved program of legal education, the law school shall promptly provide notice to the public, the Managing Director, the appropriate state licensing authority, and the United States Department of Education of the action.

(b) A provisional or fully approved law school must submit a teach-out plan for approval upon occurrence of any of the following events:

(1) The law school notifies the Managing Director’s Office that it intends to close, suspend or cease operations of the law school or a branch campus;

(2) The Council acts to withdraw, terminate, or suspend, the accreditation of the law school;

(3) The United States Secretary of Education notifies the Managing Director’s Office that the Secretary has initiated an emergency action against an institution, in accordance with section 487(c)(1)(G) of the HEA, or an action to limit, suspend, or terminate an institution participating in any title IV, HEA program, in accordance with section 487(c)(1)(F) of the HEA, and that a teach-out plan is required;

(4) A state licensing or authorizing agency notifies the Managing Director’s Office that an institution’s license or legal authorization to provide an educational program has been or will be revoked.

(5) The Staff of the Managing Director’s Office, in consultation with the Executive Committee of the Council determines that the law school is at risk of sudden closure, suspension, or ceasing of some or all of its operations because it is in financial distress, under governmental investigation, or facing other significant challenges.

(c) The law school shall submit the teach-out plan required by paragraph (b) to the Managing Director’s Office within the time specified by the Managing Director. Upon submission of the teach-out plan, the law school must cease recruiting students, accepting deposits, and admitting new students.

(d) The Council, may require a law school to enter into a teach-out agreement as part of its teach-out plan if the law school will not be able to teach out its own students prior to its closure as a law school.

(e) A law school must submit the “Teach-Out Plan Approval Form,” as adopted by the Council, and address each item in the form.

(f) If the Council requires a law school to submit a teach-out agreement as part of a teach-out plan, the law school must submit the “Teach-Out Agreement Approval Form,” as adopted by the Council, and address each criterion in the form.
(g) The Staff of the Managing Director’s Office, in consultation with the Executive Committee of the Council shall either approve or deny the teach-out plan submitted in accordance with (b) and (c).

(1) Approval of the teach-out plan may be conditioned on specified changes to the plan.

(2) If the teach-out plan is denied, the law school must revise the plan to meet the deficiencies identified and resubmit the plan as directed, after receiving notice of the decision.

(h) Upon approval of a teach-out plan of a law school or branch that is also accredited by another recognized accrediting agency, the Managing Director’s Office shall notify that accrediting agency within 30 days of its approval.

(i) Upon approval of a teach-out plan, the Managing Director shall within 30 days notify all recognized agencies that accredit other programs offered by the institution of which the law school is a part.

(j) For a law school that is suspending or reducing operations, the Council may withdraw approval from the law school if it ceases to operate as an educational institution, if its legal authorization to operate and grant degrees is terminated, or if the Council determines, based on its review, that what remains of the law school no longer in compliance with the Standards as required to sufficiently provide students with a quality legal education.

(k) In the event a law school closes without an approved teach-out plan or agreement, the Managing Director’s office will work with the United States Department of Education and the appropriate State agency, to the extent feasible, to assist students in finding reasonable opportunities to complete their education without additional charges.

Explanation:

The subcommittee agreed to review Rule 29, USDE regulations, and the approaches and rules of other accreditors regarding school closures and teach-out plans; propose any changes that would facilitate the management and process of law school closures and teach-out arrangements and serve well the interests of students, schools, the public, and the accreditation process.

VII. Appeals Process (Currently Rules 30-36)

Proposed Revisions (Rules 30-39):
Rule 30: Notice of Appeal of Decisions of the Council

(a) A Law School may appeal decisions of the Council specified in Rule 3 by filing a written Notice of Intent to Appeal within 10 days of the date of the electronic transmission of the decision letter from the Council.

(b) If a law school is required to file a Teach-Out Plan subsequent to the decision of the Council, the time line to file the appeal is stayed until the Teach-Out Plan is filed pursuant to the timetable set by the Managing Director and approved by the Council.

Rule 31: Grounds for Appeal

(a) The grounds for an appeal are limited to the following:

(1) The decision of the Council was arbitrary and capricious and not supported by the evidence on record; or

(2) The decision of the Council was inconsistent with the Rules of Procedure, and that inconsistency prejudiced the decision.

Rule 32: Membership of Appeals Panel and Proceeding Panel

(a) The Appeals Panel shall consist of at least five persons appointed by the Chair of the Council. Members shall serve a one-year term beginning at the end of the Annual Meeting of the Section and continuing to the end of the next Annual Meeting of the Section or until replaced. Appeals Panel members are eligible to serve consecutive terms or non-consecutive multiple terms.

(b) Every member of the Appeals Panel shall be:

(1) A former member of the Council; or

(2) An experienced site evaluator.

(c) Members of the Appeals Panel shall be:

(1) Experienced in and knowledgeable about the Standards, Interpretations and Rules of Procedure; and

(2) Subject to the Conflicts of Interest Policy, as provided in IOP 13.

(d) The Appeals Panel shall include at least one person who can fill the following roles:

(1) an academic;
By virtue of background and experience, some members may appropriately serve in more than one role. The roles that members can fulfill shall be determined each year when the Panel is appointed.

(e) Within 20 days of the date of the Notice of Intent to Appeal, if it is within the scope of authority of the Appeals Panel, the Managing Director shall appoint three members of the Appeals Panel to hear the appeal. The appointed members shall be known as the Proceeding Panel. The Managing Director shall designate one member of the Proceeding Panel as chair. The Managing Director shall also appoint a staff person who will serve as Liaison and provide support to the Proceeding Panel.

(f) For law schools for which the Council is the institutional accreditor, the Managing Director shall appoint an academic, an administrator, and a representative of the public to serve on the Proceeding Panel. For law schools for which the Council is the programmatic accreditor, the Managing Director shall appoint a legal educator, a practitioner or member of the judiciary, and a representative of the public to serve on the Proceeding Panel.

(g) In the event a member of the Appeals Panel cannot be appointed to participate in a decision on appeal so as to ensure that the Proceeding Panel meets the requirements of Rule 32, the Managing Director shall appoint to the Proceeding Panel another person that is not a member of the Appeals Panel who meets those requirements.

(h) Members of the Proceeding Panel will receive training prior to the hearing regarding its responsibilities and in the Standards, Interpretations, and Rules of Procedure.

(i) Within 30 days of the date of the Notice of Intent to Appeal, the Managing Director shall notify the law school of the Liaison and members of the Proceeding Panel and shall afford the law school an opportunity to present objections regarding conflict of interest; Such objections shall be ruled on by the Managing Director.

Rule 33: Designation of the Record

(a) Within 30 days of the date of the Notice of Intent to Appeal, the Managing Director shall deliver to the Liaison, the Record on Appeal.
(b) The Record on Appeal shall be:
   (1) The record before the Council;
   (2) The decision letter from which the appeal is taken; and
   (3) The transcript of the hearing before the Council.

(c) The Liaison shall deliver an electronic copy of the Record on Appeal to the law school.

Rule 34 Filing of Written Appeal

(a) A law school shall file electronically, a written appeal with the Liaison and Council within 30 days of the date of the letter to the law school reporting the decision of the Council, unless that time period has been extended.

(b) The written appeal shall include:

   (1) A statement of the grounds upon which the appeal is based; and
   (2) Documentation in support of the grounds upon which the appeal is based.

(c) The written appeal and supporting documentation may not contain or refer to any new evidence, nor may the law school refer to any new evidence in its written appeal or arguments to the Proceeding Panel unless the only remaining deficiency cited by the Council in support of an adverse decision is the law school’s non-compliance with a Standard dealing with financial resources for the law school. In that case, the process set out in Rule 41(e) applies to new financial information that the law school may want to submit with its appeal.

(d) The Managing Director’s Office shall identify any evidence in the law school’s written appeal that it believes was not in the record before the Council and the Liaison shall communicate that information to the law school within 30 days of the date of the law school’s written appeal. The law school may send a response to the Liaison within 10 days of the date of the Liaison’s communication with citations to the record that supports its position that the evidence is in the record before the Council. The Proceeding Panel shall determine whether any of the matters identified by the Managing Director’s Office are new evidence that shall not be considered in the resolution of the Appeal.

Rule 35: Council’s Response to the Appeal

The Council’s written response to the law school’s written appeal shall be filed by the Council with the law school and the Liaison within 30 days of the date of the law school’s written appeal.

Rule 36: Scheduling of Hearings
(a) The Managing Director shall refer the appeal to the Proceeding Panel within 45 days of receipt of a written appeal if it is within the scope of authority of the Appeals Panel. In referring the appeal, the Liaison shall provide the Proceeding Panel with copies of:

1. The written appeal;
2. The Council’s response;
3. The decision of the Council; and
4. The record before the Council, including any transcript of hearing.

(b) The Managing Director, in consultation with the Chair of the Proceeding Panel, shall set the date, time, and place of the hearing.

1. The hearing shall be held within 45 days of the Managing Director’s referral of the appeal to the Proceeding Panel.

2. The Managing Director shall inform the law school of the date, time, and place of the hearing at least 30 days in advance of the hearing, unless the law school agrees to the hearing on less than 30 days’ notice.

**Rule 37: Burdens**

The appealing law school has the burden of demonstrating that the Council’s decision was arbitrary and capricious, and not supported by the evidence on record, or inconsistent with the Rules of Procedure and that inconsistency prejudiced the decision.

**Rule 38: Hearing Protocol**

(a) The Chair of the Proceeding panel shall conduct the hearing. The Proceeding Panel may ask questions of the law school, the Council, and the staff of the Managing Director’s Office

(b) The hearing will be a closed proceeding and not open to the public.

(c) The law school shall have a right to have representatives, including legal counsel, appear at the hearing, any of whom shall be allowed to make any statement or presentation or to respond to any questions directed to the law school by the Proceeding Panel

(d) The Council shall have a right to have representatives, including legal counsel, appear at the hearing, any of whom shall be allowed to make any statement or presentation on behalf of the Council or to respond to any questions directed to the Council by the Proceeding Panel.

(e) The Managing Director or designee shall be present at the hearing. The Managing Director may designate additional staff to be present at the hearing.
(f) The hearing shall be transcribed by a court reporter and a transcript of the hearing shall be provided to the Proceeding Panel, the Council, and the law school.

**Rule 39: Decision of the Proceeding Panel**

**Proposed Revisions:**

(a) The Proceeding Panel shall issue a written decision no later than 30 days following the hearing. The decision shall state specifically the grounds upon which it is based.

(b) The Proceeding Panel, following a hearing, has the authority to:
   
   (1) Affirm the decision of the Council;
   
   (2) Reverse the decision of the Council and enter a new decision;
   
   (3) Amend the decision of the Council; or
   
   (4) Remand the decision of the Council for further consideration.

(c) The decision of the Proceeding Panel shall be effective upon issuance. If the Proceeding Panel remands a decision for further consideration or action by the Council, the Proceeding Panel shall identify specific issues that the Council must address.

(d) Decisions by the Proceeding Panel under (b)(1), (2) and (3) are final and not appealable.

(e) When the only remaining deficiency cited by the Council in support of an adverse decision is a law school’s failure to meet the Standards dealing with financial resources for a law school, the law school may request a review of new financial information that was not part of the record before the Council at the time of the adverse decision if all of the following conditions are met:

   (1) A written request for review is filed with the Office of the Managing Director within 30 days after the date of the letter reporting the adverse decision of the Council to the law school;
   
   (2) The financial information was unavailable to the law school until after the adverse decision subject to the appeal was made; and
   
   (3) The financial information is significant and bears materially on the financial deficiencies that were the basis of the adverse decision by the Council.

(f) The request to review new financial information will be considered by the Council at its next meeting occurring at least 30 days after receipt of the request.

(g) A law school may request review of new financial information only once and a decision made by the Council with respect to that review does not provide a basis for appeal.

**Explanation:**
The Standards Review Committee agreed to update and improve Rules 30 to 36 relating to procedures for an appeal based on best practices and lessons learned by recent appeals. A timeline has been attached as Appendix 1 to make it easier to follow the timing of events.

The Standards Review Committee also considered whether the Rules should be amended regarding the opportunity of a law school to seek further review of a Council decision other than decisions covered by the appeals process in Rules 30-36, in light of the fact that the prior structure provided for an appeal to the Council of Accreditation Committee decisions, which the new structure eliminates. The Standards Review Subcommittee does not recommend adding this process. The Department of Education regulations do not require an additional process. Adding another layer of appeal will lengthen the decision process which is what we were trying to shorten by merging the Accreditation Committee into the Council.

**Rule 37: Complaints in General**

Proposed Revisions (Rule 40):

(a) The United States Department of Education procedures and rules for the recognition of accrediting agencies require a recognized accrediting agency to have a process for the reporting of complaints against accredited institutions that might be out of compliance with the agency’s accreditation standards. This is the process for the Council with regard to law schools having J.D. programs approved by the Council.

(b) The process for Complaints under these Rules is designed to bring to the attention of the Council, and the Managing Director facts and allegations that may indicate that an approved law school is operating its program of legal education out of compliance with the Standards.

(c) This process is not available to serve as a mediating or dispute-resolving process for persons with complaints about the policies or actions of an approved law school. Neither the Council nor the Managing Director will intervene with an approved law school on behalf of an individual with a complaint against or concern about action taken by a law school that adversely affects that individual. The Council will, as a part of this process, provide no individual relief for any person, nor will it order any specific action by a law school with respect to any individual.

**Rule 39: Disposition of Complaints**

Proposed Revision (Rule 41):

(a) The Managing Director, upon receiving a complaint submitted in accordance with Rule 37 shall proceed as follows:
The Managing Director shall acknowledge receipt of the complaint within 14 days of its receipt.

The Managing Director shall determine whether the complaint alleges facts that raise issues relating to an approved law school’s compliance with the Standards. This determination shall be made within six weeks of receiving the complaint. If the Managing Director concludes that the complaint does not raise issues relating to an approved law school’s compliance with the Standards, the matter will be closed.

If the Managing Director determines that the complaint may raise issues relating to an approved law school’s compliance with the Standards, the Managing Director will send the complaint to the law school and request a response within 30 days. The Managing Director may extend the period for response if, in the judgment of the Managing Director, there is good cause for such an extension.

The Managing Director will review any response to a complaint within 45 days of receipt. If the response establishes that the law school is not out of compliance with respect to the matters raised in the complaint, the Managing Director will close the matter.

(b) If the law school’s response to a complaint does not establish that it is in compliance with the Standards on the matters raised by the complaint, the Managing Director, in consultation with the Chair of the Council, may appoint a fact finder to investigate the issues raised by the complaint and the law school’s response.

(c) If the law school’s response to a complaint does not establish that it is in compliance with the Standards on the matters raised by the complaint, then the Managing Director shall refer the complaint, along with the law school’s response, the fact-finder’s report, if any, and any other relevant information, to the Council for further action in accordance with these Rules.

(d) If a law school that is the subject of a complaint is due to receive a regularly scheduled sabbatical site evaluation within a reasonable amount of time after the complaint is received, usually within one year, the complaint may be handled as part of the sabbatical site evaluation.

Explanation:

Rule 37 provides that if a law school that is the subject of a complaint is due to receive a site visit within one year of receiving the complaint, the complaint may be handled by the site team. Staff discussions conclude that this provision should be moved to Rule 39 since it deals with the disposition of a complaint.

ARTICLE VIII, Nominating Committee-Bylaws

Proposed Revision:

Section 1. Membership, Terms, and Qualifications.

The Nominating Committee (Committee) shall consist of eight members. Six members of the Committee shall be appointed by the Chair of the Section, in consultation with the Managing Director, from the Section membership and shall serve one three-year term, and no member shall
be eligible for reappointment. The terms of one-third of the appointed members shall expire each year. Notwithstanding this term limitation, each Immediate Past Chair of the Section shall serve a two-year term on the Nominating Committee and shall act as Chair of the Nominating Committee in the second year of his or her term on the Committee. Membership on the Committee should include legal educators, practitioners and members of the judiciary. Terms commence at the adjournment of the meeting at which the election occurs.

Section 2. Nominations for General Elections.

The Managing Director shall solicit nominations from the membership of the Section to fill vacancies on the Council. One or more candidates may be nominated by the Nominating Committee for each position to be filled by election as provided in these Bylaws. The Nominating Committee shall report the identity of each nominee and shall include a brief statement of his or her activities in the Section, in legal education, and in the legal profession. The Nominating Committee shall submit its report to Section members no later than 60 days prior to the election. The report may be submitted to Section members by written notice, by e-mail or other digital communication, and/or publication on the Section website, as the Council may direct.

Explanation:

The SRS considered whether the Council nominating process should be updated and improved. The Subcommittee did discuss the suggestion that the Managing Director get an equal number of appointments to the Nominating Committee as the Chair. The Managing Director is the professional charged with day-to-day responsibility for running the organization and may have superior knowledge of candidates. However, concern was raised that the staff might be set up as a counterweight or rival to Council. The Subcommittee decided to leave the responsibility with the Chair, in consultation with the Managing Director.