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 Counsel

DATE: May 6, 2020

SUBJECT: Preliminary Recommendations on Proposed Changes to Definitions, Standards and Rules related to Distance Education

At its meeting held on February 20-22, 2020, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Definitions, Standards and Rules of Procedure of the ABA Standards and Rules of Procedure for Approval of Law Schools that appear below. These changes move the approval of distance education programs under substantive change and remove it from the variance process.

A. Definitions

B. Standard 105

C. Standard 306

D. Standard 311

E. Standard 511

F. Rule 24

G. Criteria for Programs Offered by ABA -Approved Law Schools in a Location Outside the United States

H. Criteria for Accepting Credit for Student Study at a Foreign Institution
Comments were due by April 17, 2020. We received ten comments. One comment addressed the definition of distance education. One comment recommended allowing 100% of classes to be distance education. Eight comments asked for an extension of time to comment. We agreed to extend the time for comment until May 8, 2020. This Memorandum provides our preliminary recommendations, based on the comments received on or before April 17, 2020. The Standards Review Subcommittee will review any additional comments submitted by May 8, 2020 and provide final recommendations at the May 2020 Council meeting. The Council’s Notice and Comment Memorandum is attached as Appendix A. The ten comments received on or before April 17, 2020 are attached as Appendix B.

A. Definitions

Summary: The language currently in Standard 306(a), providing the definition of “distance education” has been moved under Definitions adding a definition for “Distance Education Course” and “Distance Education J.D. Program.” The language currently in Standard 306(e) regarding the amount of credit that can be granted for distance education has been included in the new definitions for distance education.

Comments Received: We received one comment regarding our changes to the definitions. The commenter proposed the following:

Distance education course” means one in which a majority of the students are separated from the faculty member or each other for more than one-third of the instruction and the instruction delivery 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.

The commenter noted that the original language might be overbroad in that a course would be classified as distance education when it is taught live in a classroom but where internet videoconferencing is offered to students to be remote on a limited basis, but results in some students being remote for all class sessions.

The commenter also recommended the addition of the following interpretation:

A live, classroom course with the instructors and J.D. students in the same physical place is not a distance education course for J.D. students when non-J.D. students participate remotely and synchronously though technology such as internet videoconferencing even if all such non-J.D. students do so for more than a third of the class sessions.

The commenter explained that if a school has a small number of remote LLM students attending virtually a large class of physically present JD students, it turns the course into distance education for all of the JD students even though no JD student is remote.

Preliminary Recommendation: The purpose of this change was to move the process of approval of a distance education program to the substantive change process from the variance process. As a result,
the subcommittee did not consider any changes to the material terms of distance education, but only the process for approval. The subcommittee recommends that the Council approve the change as recommended and take up consideration of any material changes at a later time.

B. Standard 105. Acquiescence for Substantive Change in Program or Structure

**Summary:** Instituting a distance education program has been added as a substantive change under Standard 105 requiring a law school to submit an application for acquiescence before starting such a program.

**Comments Received:** None.

**Preliminary Recommendation:** Approve the proposed changes as drafted.

C. Standard 306. Distance Education

**Summary:** Standard 306, Distance Education has been deleted in its entirety. The language currently in Standard 306(a), providing the definition of distance education has been moved under Definitions. The language currently in Standard 306(b), addresses approving distance education courses as part of a law school’s regular curriculum approval process. Because all courses (distance or not) are approved as part of a law school’s regular curriculum approval process, the language in Standard 306(b) is unnecessary. The language currently in Standard 306(c) requires a law school to have the technological capacity, staff, information resources, and facilities necessary to assure the quality of distance education. Because the Standards have requirements for technology, staffing, information resources, and facilities, this language is already covered by other Standards. The language currently in Standard 306(d) addresses when distance education may count toward the 64 credit hours of regularly scheduled classroom sessions under Standard 311, including that learning outcomes are consistent with Standard 302. Proposed language has been added to Standard 311, noting that credit hours earned through distance education may count toward the 64 credits. The requirements of Standard 302 on learning outcomes applies to the entire law school and does not exclude distance education, thus, Standard 306(d) is unnecessary. The language currently in Standard 306(e) regarding the amount of credit that can be granted for distance education has been included in the new definitions for distance education. The limitation of 10 distance education credits in the first year has been moved to a new Standard 311(e). The language currently in Standard 306(f) regarding the verification of student identity has been moved to a new Standard 511 under Student Services.

**Comments Received:** None.

**Preliminary Recommendations:** Approve the proposed changes as drafted.

D. Standard 311. Academic Program and Academic Calendar

**Summary:** Due to the deletion of Standard 306, proposed language has been added to Standard 311, noting that credit hours earned through distance education may count toward the 64 credits in regularly scheduled classroom sessions or direct faculty instruction.
Comments Received: None.

Preliminary Recommendation: Approve the proposed changes as drafted.

E. Standard 511. Verification of Student Identity

Summary: Due to the deletion of Standard 306, a new standard has been added to address verification of student identity in distance education courses.

Comments Received: None.

Preliminary Recommendation: Approve the proposed changes as drafted.

F. Rule 24. Application for Acquiescence in Substantive Change

Summary: Instituting a distance education program has been added as a substantive change under Rule 24, requiring a law school to submit an application for acquiescence before starting such a program. The Council also wanted to maintain some of the requirements that have been imposed when granting a variance for distance education like reporting and time limits. This language has been added to the proposed changes in Rule 24.

Comments Received: None.

Preliminary Recommendation: Approve the proposed changes as drafted.

G. Criteria for Programs Offered by ABA-Approved Law Schools in a Location Outside the United States

Summary: Due to the deletion of Standard 306, reference to that standard in the criteria was deleted.

Comments Received: None

Preliminary Recommendation: Approve the proposed change as drafted.

H. Criteria for Accepting Credit for Student Study at a Foreign Institution

Summary: Due to the deletion of Standard 306, reference to that standard in the criteria was deleted.

Comments Received: None

Preliminary Recommendation: Approve the proposed change as drafted.
MEMORANDUM

TO: Interested Persons and Entities

FROM: Diane Bosse, Council Chair
       Barry A. Currier, Managing Director of Accreditation and Legal Education

DATE: March 17, 2020

SUBJECT: ABA Standards and Rules of Procedure – Matters for Notice and Comment - Cancellation of Public Hearing

At its meeting held on February 20-22, 2020, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to the Standards and Rules of Procedure of the ABA Standards and Rules of Procedure for Approval of Law Schools that appear below. These changes move the approval of distance education programs under substantive change and remove it from the variance process.

A. Definitions
B. Standard 105
C. Standard 306
D. Standard 311
E. Standard 511
F. Rule 24
G. Criteria for Programs Offered by ABA-Approved Law Schools in a Location Outside the United States
H. Criteria for Accepting Credit for Student Study at a Foreign Institution

All proposed revisions and accompanying explanations are published on the Section’s website:
http://www.americanbar.org/groups/legal_education/resources/notice_and_comment/.
We solicit and encourage written comments on all the proposals listed above. A hearing on the proposed changes was scheduled for Wednesday, May 13, 2020 at 1 p.m. However, due to COVID-19, the hearing has been cancelled and the written comment deadline has been extended to April 17, 2020. Please address all written comments on the proposals to Diane Bosse, Council Chair. Please send comments to Mary Kearin (mary.kearin@americanbar.org) by Friday, April 17, 2020.

Written comments received after Friday, April 17, 2020, may not be included in the materials considered by the Council at its May 14-16, 2020 meeting.

PROPOSED CHANGES TO DEFINITIONS, STANDARDS, RULES, AND CRITERIA
FOR DISTANCE EDUCATION

Explanation of Changes:

The first step in the proposal is to add distance education as a substantive change under Standard 105 and Rule 24.

The second step in the proposal is to delete Standard 306. The language currently in Standard 306(a), providing the definition of “distance education” would be addressed in the definitions, adding a definition for “Distance Education Course” and “Distance Education J.D.”

The language currently in Standard 306(b) addresses approving distance education courses as part of a law school’s regular curriculum approval process. Because all courses (distance or not) are approved as part of a law school’s regular curriculum approval process, it does not appear that the language in Standard 306(b) is necessary.

The language currently in Standard 306(c) requires a law school to have the technological capacity, staff, information resources, and facilities necessary to assure the quality of distance education. Because the Standards have requirements for technology, staffing, information resources, and facilities, it appears this language is already covered by other Standards.

The language currently in Standard 306(d) addresses when distance education may count toward the 64 credit hours of regularly scheduled classroom sessions under Standard 311, including that learning outcomes are consistent with Standard 302. Proposed language has been added to Standard 311, noting that credit hours earned through distance education may count toward the 64 credits. It appears that the requirements of Standard 302 on learning outcomes applies to the entire law school and does not exclude distance education, thus it does not appear that a separate section such as Standard 306(d) continues to be necessary.

The language currently in Standard 306(e) regarding the amount of credit that can be granted for distance education has been included in the new definitions for distance education. The limitation of 10 distance education credits in the first year has been moved to a new Standard 311(e).
The language currently in Standard 306(f) regarding the verification of student identity has been moved to a new Standard 511 under Student Services.

The Council also noted that it would like to maintain some of the requirements that have been imposed when granting a variance for distance education like reporting and time limits. This language has been added to the proposed changes in Rule 24.

Please note these recommendations for Notice and Comment will also involve minor amendments to both sets of criteria for Foreign Programs, more specifically, deleting references to Standard 306.

**A. Redline of Recommended Additions to Definitions:**

Definitions:

(6) “Distance education course” means 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.

(7) “Distance Education J.D. Program” means a program where a law school grants a student more than one-third of the credit hours required for the J.D. degree for distance education courses.

**B. Redline of Recommended Additions to Standard 105:**

Standard 105. ACQUIESCENCE FOR SUBSTANTIVE CHANGE IN PROGRAM OR STRUCTURE

(a) Before a law school makes a substantive change in its program of legal education or organizational structure, it shall obtain the acquiescence of the Council for the change. A substantive change in program or structure that requires application for acquiescence includes:

(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 full-time or part-time division, instituting a Distance Education J.D. Program, or establishing a new or different program leading to a certificate or degree other than a J.D. degree.

**C. Redline of Recommended Deletion of Standard 306:**

Standard 306. DISTANCE EDUCATION

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

(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(a) 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 may grant a student up to one-third of the credit hours required for the J.D. degree for distance education courses qualifying under this Standard. A law school may grant up to 10 of those credits during the first one-third of a student’s program of legal education.

(f) 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 as required by Standard 306(f) 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.

D. Redline of Recommended Changes to Standard 311

Standard 311. ACADEMIC PROGRAM AND ACADEMIC CALENDAR

(a) A law school shall require, as a condition for graduation, successful completion of a course of study of not fewer than 83 credit hours. At least 64 of these credit hours shall be in courses that require attendance in regularly scheduled classroom sessions or direct faculty instruction.

(b) A law school shall require that the course of study for the J.D. degree be completed no earlier than 24 months and, except in extraordinary circumstances, no later than 84 months after a student has commenced law study at the law school or a law school from which the school has accepted transfer credit.

(c) A law school shall not permit a student to be enrolled at any time in coursework that exceeds 20 percent of the total credit hours required by that school for graduation.
(d) Credit for a J.D. degree shall only be given for course work taken after the student has matriculated in a law school's J.D. program of study, except for credit that may be granted pursuant to Standard 505. A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

(e) A law school may grant up to 10 credit hours required for the J.D. degree for distance education courses during the first one-third of a student’s program of legal education.

Interpretation 311-1

(a) In calculating the 64 credit hours of regularly scheduled classroom sessions or direct faculty instruction for the purpose of Standard 311(a), the credit hours may include:

(1) Credit hours earned by attendance in regularly scheduled classroom sessions or direct faculty instruction;

(2) Credit hours earned by participation in a simulation course or law clinic in compliance with Standard 304;

(3) Credit hours earned through distance education in compliance with Standard 306; and

(4) Credit hours earned by participation in law-related studies or activities in a country outside the United States in compliance with Standard 307.

E. Redline of Recommended Addition of Standard 511:

Standard 511. VERIFICATION OF STUDENT IDENTITY

A Law School shall verify that a student who registers for any distance education course is the same student that academically engages in the course.

F. Redline of Recommended Changes to Rule 24:

Rule 24: Application for Acquiescence in Substantive Change

(a) Substantive changes requiring application for acquiescence include:

(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 full-time or part-time division, instituting a Distance Education J.D. Program, or establishing a new or different program leading to a certificate or degree other than a J.D. degree.

... 

(i) The decision of the Council granting acquiescence in a substantive change to institute a Distance Education J.D. Program under Rule 24(a)(12) may be for a term certain and can be extended once, with the extension being for either a further term certain or indefinite, but subject to revocation.
(j) The decision granting acquiescence in a substantive change to institute a Distance Education J.D. Program may require the law school to report to the Managing Director or the Council regularly as specified in the decision.

G. Redline of Recommended Changes to Criteria for Programs Offered by ABA-Approved Law Schools in a Location Outside the United States:

Criteria for 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 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.
65. 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.

...
advisor must be a faculty member or a law school administrator who has the training or experience to permit effective approval and monitoring of foreign study by law students.

(b) The student and the academic advisor shall develop a written plan to define the educational objectives a student seeks to achieve during a period of study abroad. The plan shall specify the methods to be used in evaluating the student’s attainment of those objectives. If changes occur, such as a course change or cancellation, the student and the academic advisor shall reexamine the written plan to determine whether the approved foreign study continues to satisfy the stated educational objectives.

5. The law school must ensure that course materials and methods of evaluation of student performance are satisfactory for the award of credit at the law school.

6. The law school must ensure that a student approved for foreign study under these Criteria is proficient in the language of instruction.

7. The law school must ensure that any student who studies at a foreign institution has reliable access to library resources that are adequate to meet the educational objectives of the course of study.

8. The law school must offer students at or shortly after the conclusion of the period of study abroad an opportunity to evaluate in writing the faculty, courses offered and the experience at the foreign institution.

9. The law school must ensure that there is a contact person at the foreign institution and must provide the contact information for that person to each student studying at the foreign institution.

B. The foreign institution. The foreign institution must be:

1. Government sanctioned or recognized, if educational institutions are state regulated within the country;

2. Recognized or approved by an accrediting agency, if such an agency exists within the country; or

3. Chartered to award first degrees in law by the appropriate authority within the country.

C. Academic Credit

1. Credits toward the J.D. degree for all foreign study shall not exceed one-third of the credits required for the J.D. degree at the law school.

2. A law school shall award credit consistent with the requirements of Standard 310 regarding the determination of credit hours for coursework, and should make reasonable efforts to determine appropriate comparability between the foreign course and the regular law school curriculum.

3. The law school shall ensure that no credit is given for field placements (e.g., in a law firm, government office, or corporation) unless the field placement is consistent with the requirements of Standard 304(d).
4. The law school shall ensure that no credit is given for distance education unless the courses are consistent with the requirements of Standard 306.
April 17, 2020

Diane Bosse, Council Chair
Council of the Section of Legal Education and Admissions to the Bar
c/o Mary Kearin (mary.kearin@americanbar.org)

Dear Council Chair Bosse:

This letter is to offer comments to propose changes to the definition of “distance education course” or the interpretation of that definition.

By way of introduction and background, next month completes my eighteenth year as a professor at the University of Houston Law Center. During these years, I have been a co-Director of our highly-ranked intellectual property law program. Originally an electrical engineer, I worked full-time in enterprise software for nine years before law school. My background, generally, is here: http://www.law.uh.edu/faculty/main.asp?PID=545, and here: www.gregvetter.org. My full CV is here: http://www.law.uh.edu/faculty/gvetter/documents/GregVetterCV.pdf

June of this year will mark my third year as our Associate Dean for Academic Affairs, reporting to Dean Leonard M. Baynes. Although I have always taught my courses using a high degree of technology in the classroom, during my time as Associate Dean I have increasingly worked on issues related to technology in the classroom and distance education.

With this background, I write to express my general support for the proposed revisions to the ABA Standards and Rules of Procedure for Approval of Law Schools (“Standards”) in relation to distance education decided upon by the Council at its February 2020 meeting and thereafter promulgated for Notice and Comment.

Further, I write to propose two changes in the definition of distance education, or in the interpretation of that definition. The need for my desired changes existed before the current coronavirus/COVID-19 situation, but the situation shows how law schools can benefit from greater flexibility and leeway with distance education.

Both of my changes work from a conceptual paradigm that I learned during my attendance on 9/7/2019 at the ABA Site Evaluation Conference via presentations from and conversations with Bill Adams. I have attached to this letter an email exchange I had with Mr. Adams after the conference. That conceptual paradigm is that the entire course “stands or falls” as distance education for all students in the course. In other words, the definition provides a status to the course as a whole, which then applies to all its students. I am proposing changes within that paradigm, but I would also be interested in a reexamination of that paradigm. Applying the categorization of the course experience as distance education on a student-by-student basis, rather than a course-by-course basis, would have many benefits in my estimation. Those benefits would include greater flexibility and leeway for law schools to creatively use technology to benefit students and be responsive in challenging times like we are currently experiencing.
Proposed Slight Alternation in the Definition of Distance Education

For reasons explained below, I propose the addition of several words to the definition of “distance education course” as shown in double-underline:

“Distance education course” means one in which a majority of the students are separated from the faculty member or each other for more than one-third of the instruction and the instruction delivery 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.

There is a potential interpretation of the original definition that is overbroad, which I expect is unintended: potentially classifying a course as distance education when it is taught live, in a classroom, but where synchronous internet videoconferencing is offered to students to be remote on a limited basis, but which results in some students (typically differing each session) being remote for all class sessions.

An example is this hypothetical course:

- 28 class sessions in a semester, with the instructor teaching live in a physical classroom, and most students physically present in that same classroom.
- 60 J.D. students enrolled in the course, only J.D. students are in the course.
- Each student has 3 “passes” in a semester where they can attend the live class session via synchronous internet videoconferencing.
- As a result of 60 students having 3 passes, assume at least one student is always remote for each of the 28 class sessions.
- The course is taught in a room fully equipped with internet videoconferencing capabilities: students who are remote can see, hear and engage in the class discussion and when speaking to the class are displayed on the room projection systems.
- Although no one student is near the one-third limit (nor can be with only 3 passes), this course potentially literally fits into the original definition of distance education because more than a third (indeed all) of the class sessions have technology interposed between the instructor and some of the students.

I seek either a definition modification or interpretation to avert this potential overbroad interpretation. Even if my proposed definition alteration misses the mark, I would be pleased for the opportunity to work on the problem. I would also be pleased to work with any opportunity to evaluate a student-by-student paradigm for the distance education definition as opposed to categorization on a course-by-course basis.
This hopefully unintended and overbroad potential interpretation has several policy harms:

- it diminishes the ability for internet videoconferencing to contribute to students’ capacities to manage life during law school; to the extent instructors offer the scenario of the hypothetical class above it enables students to “manage life” when events happen yet remain better connected to the classroom experience;
- it may artificially skew schools to favor asynchronous distance education over synchronous distance education;
- to the extent an instructor has operated a class like the hypothetical course, the occasional appearance of a few students on internet videoconferencing classifies the entire course as distance education, using up the allotment of courses in that category for many students in the course who never appeared remotely nor opted for a distance education course;
- the potential interpretation is counter-intuitive to the likely original intentions of the distance education definition and thus may not allow the full benefit of the ABA Standard’s distance education policies to be expressed.

My second comment is structurally related to the first comment above, but involves a class that mixes J.D. and LL.M. students.

Proposed Interpretation for the Definition of Distance Education Course in Relation to Mixed J.D. / non-J.D. Courses

A live, classroom course with the instructors and J.D. students in the same physical place is not a distance education course for J.D. students when non-J.D. students participate remotely and synchronously though technology such as internet videoconferencing even if all such non-J.D. students do so for more than a third of the class sessions.

This comment admittedly seeks to reverse the interpretation I received in an email exchange with Bill Adams during September of 2019, which I have attached to this letter.

The reason I seek the interpretation above is that otherwise a school that has a small number of synchronous remote LL.M. students attending virtually in a large class of physically present J.D. students will induce the categorization of the course as one of distance education for all of the J.D. students, even if none of the J.D. students were ever electronically remote during the course. This creates an artificial incentive to partition the two groups of students when there are many pedagogical benefits of mixing the two student communities in a course.
I have completed the form for participation in the open session videoconference call at the May 15, 2020 meeting for 3:30 p.m. CST. I would be pleased for any opportunity to speak directly about the concepts in this letter of comment. I appreciate the Council’s consideration of this submittal and thank it for all its work in service to legal education.

With warm regards,

[Signature]

Greg R. Vetter

CC: Leonard M. Baynes, Dean, University of Houston Law Center

Thanks for looking into it!

Greg R. Vetter  
Associate Dean for Academic Affairs  •  HIPLA Professor of Law  •  Co-Director - Institute for Intellectual Property & Information Law (IPIL)  
University of Houston Law Center (UHLC)  •  4604 Calhoun Rd.  •  Houston, TX 77204-6060  
w) 713-743-3596  •  (m) 713-213-0360  •  gvetter@uh.edu  •  www.linkedin.com/in/ProfGregVetter  •  www.law.uh.edu/faculty/gvetter  
www.law.uh.edu/faculty/gvetter/documents/GregVetterCV.pdf

Dear Greg,

I am glad that you found our conference helpful.

Unfortunately, after consulting with my colleagues, we don’t feel that the class you describe can avoid being considered a distance education course under the language of the Standard. It doesn’t restrict itself based upon the status of the students.

I am sorry that I can’t provide the response that you hoped for.

Have a good weekend,

Bill

William E. Adams, Jr.  
Deputy Managing Director  
Section of Legal Education and Admissions to the Bar  
American Bar Association  
312.988.5103  
william.adams@americanbar.org
I’ve been our Associate Dean for a little over two years and three months. I have examined standard 306 a few times during that period, so I’m glad that you mentioned in one of your presentations the way that it works.

From the explanation I heard, I understand that, unless the student’s course participation via interposing technology is due to an accommodation (typically disability related), a single student participating via technology for more than a third of the course class sessions will trigger a status of distance education for the course for all students in the course. As a result, all students in the course would need to count the credits toward their distance education cap even if only a subset of the students use interposing technology. In this paragraph, I mean the term “students” to include only J.D. students. Let me call this the “taint” approach: a single J.D. who is remote with interposing technology will taint the entire course J.D. population with distance education credits.

We have under our LL.M. degree program courses that sometimes have both J.D. and LL.M. students in the audience. Let me pose my question as a hypothetical: an upper-level intellectual property law course has 11 J.D. students and 4 LL.M. students. It is a standard, live, instructor is in the room with the students, course. But, 2 of the 4 LL.M. students want to take the entire course synchronously with interposing technology. Most of our Law Center rooms have good internet videoconferencing capability for students to be synchronously remote and a few of our faculty members use this (in the less than one-third of the class sessions mode for a particular student) for alleviating what would otherwise be student absences.

I would hope that in my intellectual property law course example that the fully remote LL.M. students would not sweep the course into a distance education status or all the J.D. students in the course. In other words, I would hope that the use of interposing technology for an LL.M. synchronously remote student would not “taint” the course for the J.D. students. That hope, however, is my question.

Thanks and warm regards,
Greg
Your proposal is too minimal. 100% online JD's need to be accredited by the ABA. Look at how many PHD and EDD programs that are fully online are already accredited by regional agencies! Stop your stringent regulations. You are choking the legal profession. Allow programs to be creative, think outside the box.

Russell Kane
The ABA is so ridiculous and way behind the times.

If PhD and EdD programs are regionally accredited then why not JD? Also, LLM programs already are fully online. Tell the ABA to stop choking innovation and get out of the 20th century!!!

Right now, only THREE programs are 70% online/30% in person as an option, requiring occasional one week residencies and/or long weekends:

Hamline
Syracuse
Dayton

All three are successful.

A few others offer the option of weekend only:

Touro-two Sundays a month
Denver-two weekends a month
Seton Hall-ditto
Faulkner...

And a few more...

All successful.

But we need fully online!!!

TRINITY
CONCORD
ST FRANCIS
NWCU
ABRAHAM LINCOLN

All have decent bar passage rates and good infrastructure. Give them a chance!!!

Russell Kane
Dear Ms. Kearin,

I’m writing to request an extension of the comment period deadline for the proposed changes to the ABA distance education rules. In these extraordinary times, with legal educators working overtime to transition classes online and support students in crisis situations, more time is needed to consider and respond to these important proposed changes.

Thank you for your consideration of this request.

All the best,
Kate Rowan

Kate Rowan
Assistant Dean for International and Graduate Programs
Director of the General LLM Program
Legal Skills Faculty
SUNY Buffalo Law School
416 O’Brien Hall
Buffalo, NY 14260
(716) 645-3107
katrinro@buffalo.edu
Dear Ms. Kearin:

I am writing to echo what you have probably heard from a number of other law professors -- I'm requesting an extension of time for the submission of public comment on the ABA's proposed revisions to the distance education standards. Many of us are struggling to keep up with the demands of keeping our courses going during the current emergency and some of us are actually ill and need time to recover before being able to submit our comments. In addition, since most of us are in the midst of living in the distance learning environment for the first time, an extension of time will allow us to have more experience under our belts and thus be more informed when we submit our comments. If at all possible, an extension beyond the semester and the grading period would be optimal. Most law schools end their semesters in May and grading is mostly done by the end of the May, so a deadline in June would accommodate most people's needs.

Thank you for your consideration.

Lise Gelernter  
Teaching Faculty  
University at Buffalo School of Law  
O'Brian Hall  
Amherst, New York 14260  
gelernt@buffalo.edu  
716-645-5540
April 17, 2020

Mary Kearin
American Bar Association
via email mary.kearin@americanbar.org.

Re: ABA Proposed Revisions to Distance Education Standards

Dear Ms. Kearin

My name is Jamila A. Lee and I am the president of the Minority Bar Association of Western New York (MBAWNY). On behalf of our executive board, I am writing to ask you to consider extending the time to provide comments on the proposed revisions to the ABA Standards for Legal Education. If these provisions are approved, law schools would be allowed to provide 64 out of 83 credits (90 credits in NY) through distance (i.e. online) education. I believe that the ABA should extend the time for public comment on these revisions until the end of June 2020. Right now, these comments are due today, April 17th.

Legal educators and administrators have been working many additional hours to provide online education and online services to all students. Also, many of us and many of the students are struggling with financial burdens, illness, isolation issues, childcare and eldercare issues, and all of the other challenges that the Covid-19 pandemic has brought with it. We believe that extending the deadline through the end of June will let everyone who has been impacted get through an unprecedented time period before having to comment on a critical aspect of legal education. I know the MBAWNY membership would also like the opportunity to comment as we are heavily involved with our law school community, especially the students. This extension will also provide all of us, including the courts and practicing attorneys, time to reflect upon the proposals and our current experience.

In order to properly consider changes to distance education, I believe it is important for all of us to pause and truly digest what is being proposed during this time.

I greatly appreciate your time and consideration in this matter.

Best Regards,

[Signature]
Dear Committee Members:

I write in my capacity as the director of the Clinical Legal Education Program and Vice Dean for Advocacy and Experiential Learning of the University at Buffalo School of Law, The State University of New York. With our public focus, our law school has invested in experiential learning both to educate our students, and serve our community and world. The vast majority of our students engage in credit-bearing service-learning during their time at our institution. These experiences make our graduates both more practice-ready and more attuned to access-to-justice needs.

I offer these thoughts with respect to the request for comments on proposed accreditation rule changes, and urge you to do two things. First, please extend the comment periods to accommodate the fact that so many of us in legal education have been putting in 12-14 hour days 7 days a week to keep up with our obligations during the COVID-19 online shift and will be doing so for the balance of the month. Second, I implore that the Committee move with great care on any changes to standards with respect to distance learning. While law schools including UB have worked hard to successfully transition to online work, it has been particularly hard in most (but not all) parts of our experiential learning realm. I have heard similar issues raised by other clinical and experiential teachers and leaders this past month.

At this point, educating future attorneys is more effectively conveyed through at least some classroom interaction and direct work. Online work calls for a significant adjustment in experiential teaching. Current best practices in legal education in this area may be adaptable to levels of distance learning, but not without deeper study and assessment of impacts. Therefore, I highly recommend the ABA proceed cautiously and not implement anything permanent without study of the consequences.

In closing, I hope you extend the comment deadlines for both the pending rule changes and suggested changes for next year, so you can gather more input. I also hope you allow for time to assess outcomes from this unprecedented time of online teaching before making major permanent changes in rules about online learning.

With Appreciation,

Kim Diana Connolly, Professor of Law
Vice Dean for Advocacy and Experiential Education
Director, Clinical Legal Education
University at Buffalo School of Law
State University of New York
email: kimconno@buffalo.edu
Ms. Kearin,

I am writing to add my voice to the chorus of law faculty asking for an extension on the comment period for the ABA Proposed Revisions to the Distance Education rules. The past month has been a time of non-stop reaction to the current pandemic as law faculty have had to become proficient in distance learning technologies almost overnight.

I am a law professor who is enthusiastic about the possibilities of distance learning within legal education, but all of us have been forced to adapt to distance learning under the worst possible circumstances. I fear that any comments submitted in the current rush will unfairly reflect widespread frustration with the conditions under which most of us have had our first exposure to distance education. We need a few additional weeks to digest the lessons of the past few weeks so we can comment more constructively.

Thank you for your attention. Best regards,

James G. Milles
Vice Dean for Undergraduate Studies
Professor of Law
University at Buffalo School of Law
419 O'Brian Hall
Buffalo, NY 14260
jgmilles@buffalo.edu
(716) 645-5543
Pronouns: he, him, his
Dear Ms. Kearin:

I am writing to ask for clarification on the attached documents. I, along with others at my law school and our community, would like to respond to the proposed revisions to the ABA Standards on Distance Education. However, the notice states that all comments must be received by tomorrow, Friday, April 17. The ABA memo to interested persons asks for input by May 1. Does this May 1st date include the previous memo about the distance education standards? Either way, I am writing to request that the time for comments on distance education be extended until the end of June 2020.

Legal educators and administrators have been working many additional hours to provide online education and online services to students. Also, many of us and many of our students are struggling with illness, isolation issues, and all of the other challenges that the Covid-19 pandemic has brought with it. For example, I fell ill and am trying to recover from double pneumonia. I believe that extending the deadline through the end of June will let legal educators, administrators, and students get through an unprecedented semester and exam period before having to comment on a critical aspect of legal education. This extension will also allow legal educators and professionals to reflect upon our current experience. In order to properly consider changes to distance education, I believe it is important for all of us to pause and truly digest our hard-earned experience during this time.

I greatly appreciate your time and consideration in this matter.

Best regards,

Bernadette Gargano
Vice Dean of Student Affairs
Director of Legal Analysis, Writing, and Research
Legal Skills Faculty

University at Buffalo School of Law
State University of New York
313 John Lord O’Brien Hall
gargano@buffalo.edu
716.645.6223 (o)
716.645.5940 (f)
www.law.buffalo.edu
Dear Ms. Giggetts:

Thank you for your quick response. That does help clarify the deadline. I am certainly not opposed to having online education in response to the pandemic or as a part of legal education in general. I am just trying to figure out whether the revisions will have long-term impact on how law schools will be able to provide legal education. As a faculty member and administrator who works closely with students, I want to make sure that all interested persons have a full opportunity for comments before a wholesale change allowing up to 64 online credits occurs.

Best regards,

Bernadette Gargano
Vice Dean of Student Affairs
Director of Legal Analysis, Writing, and Research
Legal Skills Faculty

University at Buffalo School of Law
State University of New York
313 John Lord O’Brien Hall
gargano@buffalo.edu
716.645.6223 (o)
716.645.5940 (f)
www.law.buffalo.edu

From: Giggetts, Stephanie <Stephanie.Giggetts@americanbar.org>
Sent: Thursday, April 16, 2020 5:59 PM
To: Gargano, Bernadette <gargano@buffalo.edu>; Kearin, Mary <Mary.Kearin@americanbar.org>
Subject: RE: Comments regrading the Revisions to the ABA Standard

Ms. Gargano,

Thank you for your comment. The March 17, 2020 memo was a memo that was originally sent out on March 9th, giving interested parties 30 days to respond to the changes we are making regarding the “approval” of distance education programs. The Department of Education has informed us that we cannot “approve” distance education programs using our variance process under Standard 107, but instead need to “approve” them as a substantive change under Standard 105 and Rule 24. This
change only deals with the process of “approval” and is meant to get us into compliance with Department of Education regulations, not to address distance education as a whole. Since we are unable to hold a public hearing, we extended the comment period until April 17, 2020. We certainly could consider an extension of time to comment, but we would need the comments by May 8, 2020 at the latest so that the Council could consider them at its May meeting.

The April 6, 2020 memo is a memo we send out each year to interested parties asking that they submit items for the Council to consider in the upcoming year regarding suggested changes to the ABA Standards and Rules for approval of law schools. We are soliciting comments on changes you might think we need to make. The deadline to respond to that memo is May 1st. The Council will not consider those suggestions until its August meeting so an extension until the end of June 2020 would be fine.

I hope this answers your question and clarifies what we are doing. Please feel free to contact me with additional questions or comments.

Stephanie Giggetts
Accreditation Counsel
Section of Legal Education and Admissions to the Bar
American Bar Association
321 N. Clark St.
Chicago, IL 60654

T: (312) 988-5210
F: (312) 988-5681
Stephanie.Giggetts@americanbar.org

From: Gargano, Bernadette <gargano@buffalo.edu>
Sent: Thursday, April 16, 2020 2:29 PM
To: Kearin, Mary <Mary.Kearin@americanbar.org>
Subject: Comments regrading the Revisions to the ABA Standard
Importance: High

Dear Ms. Kearin:

I am writing to ask for clarification on the attached documents. I, along with others at my law school and our community, would like to respond to the proposed revisions to the ABA Standards on Distance Education. However, the notice states that all comments must be received by tomorrow, Friday, April 17. The ABA memo to interested persons asks for input by May 1. Does this May 1st date include the previous memo about the distance education standards? Either way, I am writing to request that the time for comments on distance education be extended until the end of June 2020.

Legal educators and administrators have been working many additional hours to provide online education and online services to students. Also, many of us and many of our students are struggling with illness, isolation issues, and all of the other challenges that the Covid-19 pandemic has brought
with it. For example, I fell ill and am trying to recover from double pneumonia. I believe that extending the deadline through the end of June will let legal educators, administrators, and students get through an unprecedented semester and exam period before having to comment on a critical aspect of legal education. This extension will also allow legal educators and professionals to reflect upon our current experience. In order to properly consider changes to distance education, I believe it is important for all of us to pause and truly digest our hard-earned experience during this time.

I greatly appreciate your time and consideration in this matter.

Best regards,

Bernadette Gargano
Vice Dean of Student Affairs
Director of Legal Analysis, Writing, and Research
Legal Skills Faculty

University at Buffalo School of Law
State University of New York
313 John Lord O'Brian Hall
gargano@buffalo.edu
716.645.6223 (o)
716.645.5940 (f)
www.law.buffalo.edu
Dear Ms. Kearin,

I am a professor here at SUNY Buffalo School of Law and I completely agree with Bernadette’s comments below as I am sure most of our faculty do as well. We have all had multiple issues in the past month from dealing with a son going into work as a graduate medical student to a CoVid19 hospital in NYC to students whose parents have died and others who have become very sick.

Please extend the date for comments as most of us are swamped with work right now. I appreciate your consideration of this request for an extension.

Best,
Rebecca French

Begin forwarded message:

From: "Gargano, Bernadette" <gargano@buffalo.edu>
Subject: Comments regrading the Revisions to the ABA Standard
Date: April 16, 2020 at 3:29:02 PM EDT
To: "mary.kearin@americanbar.org" <mary.kearin@americanbar.org>

Dear Ms. Kearin:

I am writing to ask for clarification on the attached documents. I, along with others at my law school and our community, would like to respond to the proposed revisions to the ABA Standards on Distance Education. However, the notice states that all comments must be received by tomorrow, Friday, April 17. The ABA memo to interested persons asks for input by May 1. Does this May 1st date include the previous memo about the distance education standards? Either way, I am writing to request that the time for comments on distance education be extended until the end of June 2020.

Legal educators and administrators have been working many additional hours to provide online education and online services to students. Also, many of us and many of our students are struggling with illness, isolation issues, and all of the other challenges that the Covid-19 pandemic has brought with it. For example, I fell ill and am trying to recover from double pneumonia. I believe that extending the deadline through the end of June will let legal educators, administrators, and students get through an
unprecedented semester and exam period before having to comment on a critical aspect of legal education. This extension will also allow legal educators and professionals to reflect upon our current experience. In order to properly consider changes to distance education, I believe it is important for all of us to pause and truly digest our hard-earned experience during this time.

I greatly appreciate your time and consideration in this matter.

Best regards,

Bernadette Gargano
Vice Dean of Student Affairs
Director of Legal Analysis, Writing, and Research
Legal Skills Faculty

University at Buffalo School of Law
State University of New York
313 John Lord O’Brian Hall
gargano@buffalo.edu
716.645.6223 (o)
716.645.5940 (f)
www.law.buffalo.edu
From: Nils Olsen
To: Kearin, Mary
Cc: Bernadette Gargano
Subject: Fwd: Extension of time to respond to proposed distanced learning standards
Date: Friday, April 17, 2020 12:16:34 AM

I prepared this request from my phone and would like to correct an overactive spell check.

Nils Olsen

Sent from my iPhone

Begin forwarded message:

From: Nils Olsen <slinneslo2@aol.com>
Date: April 17, 2020 at 12:12:44 AM CDT
To: mary.kearin@americanbar.org
Cc: Bernadette Gargano <gargano@buffalo.edu>
Subject: Extension of time to respond to proposed distanced learning standards

There is simply not enough time to respond to questions of changing long-standing ANA Accreditation standards for legal education, especially of any changes extend beyond the closures mandated by the pandemic. I request an additional thirty days to comment.

R Nils Olsen Jr
Dean and Professor Emeritus
University at Buffalo
The State University of New York

Sent from my iPhone