RESOLVED, That the American Bar Association House of Delegates concurs in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Definitions, Standards, and Rules of the *ABA Standards and Rules of Procedure for Approval of Law Schools*, that change the approval process for distance education programs to a substantive change process (Standard 105 and Rule 24) as required by the U.S. Department of Education, rather than the current variance process (Standard 107).

Definitions
Standard 105. Acquiescence for Substantive Change in Program or Structure
Standard 306. Distance Education
Standard 311. Academic Program and Academic Calendar
Standard 511. Verification of Student Identity
Rule 24. Application for Acquiescence in Substantive Change
DEFINITIONS:

As used in the Standards, Interpretations, and Rules of Procedure:

…

(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.

(6)(8) “Full-time faculty member” means an individual whose primary professional employment is with the law school, who is designated by the law school as a full-time faculty member, who devotes substantially all working time during the academic year to responsibilities described in Standard 404(a), and whose outside professional activities, other than those described in Standard 404(a), if any, do not unduly interfere with his or her responsibilities as a full-time faculty member.

(7)(9) “Governing board” means a board of trustees, board of regents, or comparable body that has ultimate policy making authority for a law school or the university of which the law school is a part.


(9)(11) “Interpretations” mean the Interpretations of the Standards for Approval of Law Schools.

(10)(12) “J.D. degree” means the professional degree in law granted upon completion of a program of legal education that is governed by the Standards.

(11)(13) “Managing Director” means the Managing Director of the Section of Legal Education and Admissions to the Bar of the American Bar Association.
“President” means the chief executive officer of a university or, if the university has more than one administratively independent unit, of the independent unit. If a law school is not part of a university, “president” refers to the chief executive officer of any entity that owns the law school, if there is such a person, or else the Chair of the Board of Directors of the law school. “Probation” is a public status indicating that a law school is not being operated in compliance with the Standards and is at risk of having its approval withdrawn.

“Rules” mean the Rules of Procedure for Approval of Law Schools.

“Section” means the Section of Legal Education and Admissions to the Bar of the American Bar Association.

“Separate location” means a physical location within the United States: (1) at which the law school offers J.D. degree courses, (2) where a student may earn more than sixteen credit hours of the school’s program of legal education, and (3) that is not in reasonable proximity to the law school’s main location.

“Standards” mean the Standards for Approval of Law Schools.

“University” means a post-secondary educational institution, whether referred to as a university, college, or by any other name, that confers a baccalaureate degree (and may grant other degrees).

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.
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.
109A

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.

…

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.
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.

(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; and

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

...

(h) A Law School shall not receive acquiescence in a substantive change if the law school is on probation or receives a finding of significant non-compliance with one or more Standards under Rule 11(a)(4), has been subject to such action by the Council over the prior three academic years, or is under a provisional certification under Title IV of the Higher Education Act of 1965, as amended, unless the law school can show the substantive change will assist the law school in making progress toward achieving full compliance.

(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.
The Council of the Section of Legal Education and Admissions to the Bar (Council) submits to the House of Delegates (HOD) for its concurrence the attached changes to the Definitions, Standards, and Rules of the ABA Standards and Rules of Procedure for Approval of Law Schools¹.

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the Council of the Section of Legal Education and Admissions to the Bar files a resolution to the HOD seeking concurrence of the HOD in any actions of the Council to adopt, revise, or repeal the ABA Standards and Rules of Procedures for Approval of Law Schools. The HOD may either concur with the Council’s decision or refer the decision back to the Council for further consideration. A decision by the Council is subject to a maximum of two referrals back to the Council by the HOD. The decision of the Council following the second referral shall be final.

The amendments were approved by the Council for Notice and Comment during its meetings held on February 20-22, 2020. The Council received ten written comments on the proposed changes. The Council approved the amendments at its meeting on May 14-15, 2020.

Definitions

Standard 105. Acquiescence for Substantive Change in Program or Structure

Standard 306. Distance Education

Standard 311. Academic Program and Academic Calendar

Standard 511. Verification of Student Identity

Rule 24. Application for Acquiescence in Substantive Change

Currently, if a law school wants to start a distance education program, the law school must request a variance under Standard 107 (the process used to implement a change that is beyond what is permitted by the current Standards). The Department of Education recently communicated to the Section that starting a distance education program is considered a substantive change by the Department of Education, thus the approval of a distance education program must be handled as a substantive change under Standard 105 and Rule 24. The first step to make these changes is to add distance education as a substantive change under Standard 105 and Rule 24.

The second step in making these changes is to delete Standard 306, Distance Education. The language currently in Standard 306(a), providing the definition of “distance education” would be moved under 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

¹ “2019-2020 ABA Standards and Rules of Procedure for Approval of Law Schools,”
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.

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.

Respectfully submitted,

Diane F. Bosse
Chair, Council of the Section of Legal Education and Admissions to the Bar
August 2020
GENERAL INFORMATION FORM

Submitting Entity: Section of Legal Education and Admissions to the Bar

Submitted By: Diane F. Bosse, Chair

1. Summary of Resolution.

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Definitions, Standards, and Rules of the ABA Standards and Rules of Procedure for Approval of Law Schools, that change the approval process for distance education programs to a substantive change process (Standard 105 and Rule 24) as required by the U.S. Department of Education, rather than the current variance process (Standard 107).

2. Approval by Submitting Entity.

The amendments were approved by the Council for Notice and Comment during its meetings held on February 20-22, 2020. The Council received ten written comments on the proposed changes. The Council approved the amendments at its meeting on May 14-15, 2020.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The amendments modify the existing ABA Standards and Rules of Procedure for Approval of Law Schools.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

N/A.


N/A.
7. **Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.**

The Council will notify ABA-approved law schools and other interested entities of the approved changes to the *ABA Standards and Rules of Procedure for Approval of Law Schools*. The Council and the Managing Director's Office will prepare guidance memoranda and training materials regarding the revised Definitions, Standards, and Rules.

8. **Cost to the Association. (Both indirect and direct costs)**

Not applicable.

9. **Disclosure of Interest.**

Not applicable.

10. **Referrals.**

ABA Entities
ABA Diversity and Inclusion Center (and related groups)
ABA Law Student Division
ABA Section Directors and Delegates
ABA Standing and Special Committees, Task Forces, and Commission Chairs
ABA Young Lawyers Division
Conference of State Delegates
Minority Caucus
National Caucus of State Bar Associations

Non-ABA Entities
AccessLex Institute
American Association of Law Libraries
Association of American Law Schools
Association of Legal Writing Directors
Clinical Legal Education Association
Conference of Chief Justices
Deans and Associate Deans of Law Schools
Law School Admission Council
National Association for Law Placement
National Association of Bar Executives
National Conference of Bar Examiners
National Conference of Bar Presidents
SBA Presidents
Society of American Law Teachers
University Presidents
11. Name and Contact Information. (Prior to the meeting. Please include name, telephone number and e-mail address)

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12. Name and Contact Information. (Who will present the Resolution with Report to the House? Please include best contact information to use when on-site at the meeting)

Joan S. Howland  
Associate Dean and Professor  
University of Minnesota Law School  
Ph: (612) 625-9036  
Email: howla001@mnu.edu

The Honorable Solomon Oliver, Jr.  
Judge  
U.S. District Court for the Northern District of Ohio  
Ph: (216) 357-7171 / Cell: (216) 973-6496  
Email: solomon_oliver@ohnd.uscourts.gov
EXECUTIVE SUMMARY

1. **Summary of the Resolution**

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2020 to Definitions, Standards, and Rules of the *ABA Standards and Rules of Procedure for Approval of Law Schools*, that change the approval process for distance education programs to a substantive change process (Standard 105 and Rule 24) as required by the Department of Education, rather than the current variance process (Standard 107).

2. **Summary of the Issue that the Resolution Addresses**

The resolution addresses Definitions, Standards, and Rules of the *ABA Standards and Rules of Procedure for Approval of Law Schools*, that change the approval process for distance education programs to a substantive change process (Standard 105 and Rule 24) as required by the U.S. Department of Education, rather than the current variance process (Standard 107).

The proposal moves the approval process for distance education programs under substantive change. (Standard 105 and Rule 24) as required by the U.S. Department of Education, and remove it from the variance process (Standard 107).

3. **Please Explain How the Proposed Policy Position will address the issue**

The proposal moves the approval process for distance education programs to the substantive change process under Standard 105 and Rule 24 of the *ABA Standards and Rules of Procedure for Approval of Law Schools*, thus responding to the Department of Education’s communication to the Section that starting a distance education program is considered a substantive change and approval of a distance education program must be handled as a substantive change.

4. **Summary of Minority Views**

None.