AMERICAN BAR ASSOCIATION

ADOPTED BY THE HOUSE OF DELEGATES

AUGUST 3-4, 2020

RESOLUTION

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 Standards 102, 103, and 105 of the ABA Standards and Rules of Procedure for Approval of Law Schools:

Standard 102. Provisional Approval
Standard 103. Full Approval
Standard 105. Acquiescence for Substantive Change in Program or Structure
STANDARD 102. PROVISIONAL APPROVAL

(a) The Council shall grant provisional approval to a law school if at the time the school seeks such approval it demonstrates that it has achieved substantial compliance with the Standards and presents a reliable plan for bringing the law school into full compliance with each of the Standards within three years after receiving provisional approval. In order to demonstrate that it has a reliable plan to come into full compliance with the Standards within three years after receiving provisional approval, a law school must clearly state the specific actions that it plans to take to bring the school into full compliance and demonstrate that there is a reasonable probability that such actions will be successful. A provisionally approved law school may apply for full approval no earlier than two years after receiving provisional approval and must obtain full approval within five years after receiving provisional approval.

(b) The Council may withdraw provisional approval if the Council determines that the law school is no longer in substantial compliance with the Standards, is not making adequate progress toward achieving full compliance with each of the Standards, or is no longer able to demonstrate that there is a reasonable probability that the school will achieve full compliance with each of the Standards within the allotted time frame.

(c) If five years have elapsed since the law school was provisionally approved and the Council has not granted full approval, provisional approval shall terminate, except that the Council may extend provisional approval to allow the law school to complete a teach-out plan. Before the end of the five-year period in an extraordinary case and for good cause shown, the Council may extend the time within which the law school must obtain full approval.

(d) A provisionally approved law school shall not offer a post-J.D. degree program or other non-J.D. degree program, offer a program in a country outside the United States, or seek to establish a separate location.

(e) A provisionally approved law school shall state that it is provisionally approved in all of its printed and electronic materials describing the law school and its program and in any other publication that references the law school’s approval by the Council.
(f) A law school seeking provisional approval shall make its status clear in any printed and electronic materials describing the law school and its program and in any other publication that references the law school's approval status. At a minimum, the law school shall state the following in all such communications:

The law school is not currently approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association and makes no representation to any applicant that it will receive approval from the Council before the graduation of any matriculating student.

(g) A law school seeking provisional approval shall not delay conferring a J.D. upon a student in anticipation of obtaining approval. An approved law school may not retroactively grant a J.D. degree as an approved school to a student who graduated from the law school before its approval.

STANDARD 103. FULL APPROVAL

(a) The Council shall grant full approval to a provisionally approved law school if at the time the school seeks such approval it demonstrates that it is in full compliance with each of the Standards. Plans to achieve full compliance with any Standard are not sufficient to demonstrate full compliance.

(b) A law school granted approval under this Standard remains approved unless the Council withdraws that approval.

(c) Once a law school is granted full approval, the Council shall not reclassify the law school as a provisionally approved law school unless, following the loss of approval, the law school reapplies for provisional approval.

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:

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 school resulting from a change in ownership of the school or a contractual arrangement;

(8) A change in the location of the school that could result in substantial changes in the faculty, administration, student body, or management of the school;

(9) Establishing a branch campus;

(10) Establishing a separate location;

(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 full-time or part-time division; or establishing a new or different program leading to a 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) The addition of graduate programs of study by an institution that previously offered only undergraduate degrees or certificate programs. Establishing a new or different program leading to a 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.; and

(18) The addition of each direct assessment program.
(b) The Council shall grant acquiescence only if the law school demonstrates that the change will not detract from the law school’s ability to remain in compliance with the Standards.

(c) A law school may not apply for 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.
REPORT

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 Standards of the ABA Standards and Rules of Procedure for Approval of Law Schools\(^1\).

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 November 21-23, 2019. A public hearing was held on February 19, 2020. The Council received one written comment on the proposed changes and no one testified at the public hearing on the proposed changes. The Council approved the amendments at its meeting on February 20-22, 2020.

Standard 102. Provisional Approval
Standard 103. Full Approval

In the past, the Council has taken the position that it does not preaccredit law schools. The new Department of Education regulations include the following revised definition:

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\text{Preaccreditation means the status of accreditation and public recognition that a nationally recognized accrediting agency grants to an institution or program for a limited period of time that signifies the agency has determined that the institution or program is progressing toward full accreditation and is likely to attain full accreditation before the expiration of that limited period of time.}
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Given the revised definition, the Council believes that provisional approval is preaccreditation, and the proposed changes allow the Council to meet additional requirements under the Department of Education regulations for preaccreditation, including allowing schools that are denied provisional approval to maintain accreditation in order to teach out students, and preventing schools from moving from accredited status to preaccredited status.

Standard 105. Acquiescence for Substantive Change in Program or Structure

The Department of Education has added two items (the addition of graduate programs of study by an institution that previously offered only undergraduate programs or certificates, and the addition of each direct assessment program) that must be included in the

definition of substantive change. The Department of Education also added additional items of substantive change that a school on probation or equivalent status must seek prior approval. The proposed language prevents a school on probation or a school that has received a finding of significant non-compliance with one or more standards under Rule 11(a)(4), from applying for a substantive change, unless the law school can show that the substantive change will assist the law school in making progress toward achieving full compliance.

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 Standards 102, 103, and 105 of the ABA Standards and Rules of Procedure for Approval of Law Schools.

2. Approval by Submitting Entity.

The amendments were approved by the Council for Notice and Comment during its meetings held on November 21-23, 2019. A public hearing was held on February 19, 2020. The Council approved the amendments at its meeting on February 20-22, 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 Standards.

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

Not applicable.


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  
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University of Minnesota Law School  
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The Honorable Solomon Oliver, Jr.  
Judge  
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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 Standards 102, 103, and 105 of the ABA Standards and Rules of Procedure for Approval of Law Schools.

2. Summary of the Issue that the Resolution Addresses

The resolution addresses Standards 102, 103, and 105 of the ABA Standards and Rules of Procedure for Approval of Law Schools, and addresses changes necessary due to new Department of Education regulations.

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

The proposals amend the 2019-2020 ABA Standards and Rules of Procedure for Approval of Law Schools.

4. Summary of Minority Views

None.