



AMERICAN BAR ASSOCIATION

Legal Education and
Admissions to the Bar

Memorandum

To: Interested Parties and Entities

From: Bridget Mary McCormack, Council Chair
William Adams, Managing Director of Accreditation and Legal Education

Date: January 23, 2024

Re: Matters for Notice and Comment: Standards 102 and 306
Deadline: March 25, 2024

At its meeting on November 17-18, 2023, the Council of the Section of Legal Education and Admissions to the Bar (the “Council”) directed the Strategic Review Committee (SRC) to propose Standards and Rules changes that would make a fully online law school eligible for provisional and full ABA-approval without the need to submit a substantive change application under Standard 105(a)(12). The SRC identified two Standards requiring revisions to accomplish this goal: **Standard 102** on Provisional Approval and **Standard 306** on Distance Education.

All proposed revisions and accompanying explanations are published on the Section’s website at https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/. These possible changes should be assessed for their potential to expand access, reduce costs, and promote innovation in legal education.

We solicit and encourage written comments on all the proposals listed above. The comment period will be 60 days instead of the usual 30 days. Please address all written comments to Bridget Mary McCormack, Council Chair, and send electronically, in .pdf format, to Fernando Mariduená at Fernando.Mariduená@americanbar.org by March 25, 2024. Written comments received after March 25, 2024, may not be included in the materials considered by the Council at its May 2024 meeting. These comments will be considered before generating a more firm proposal, which will itself likely be subject to further Notice and Comment.

In addition to comments on the proposals for revisions to Standards 102 and 306, we encourage written comments regarding any further revisions to specific Standards and Rules necessary to allow a fully online law school to seek ABA-approval, as well as the advisability of allowing a fully online law school to seek ABA-approval. Any comments received on this topic will also potentially be incorporated into a future proposal.

Because of the significance of this change and the potential for disruption to existing schools, the SRC anticipates that this proposal may go through more than one round of Notice and Comment before a final proposal is ready to be promulgated.

Standard 102: Provisional Approval

Summary: This Standard was revised to allow a fully online law school to seek ABA-approval, starting with provisional approval. A law school wishing to seek ABA-approval as a fully online law school must indicate this at the time it applies for provisional approval; if not, the law school must wait until it receives full ABA-approval and then apply for and receive Council acquiescence in a substantive change under Standard 105(a)(12)(i)-(ii).

Redline: 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.
- (h) A law school with a program of legal education that is delivered partially or wholly via Distance Education Courses may seek provisional approval without the need for a substantive change application under Standard 105(a)(12), so long as the method of delivery is indicated to the Council at the time the law school seeks such approval, and the law school provides all information requested by the Council for such programs. Otherwise, the law school will not be permitted to deliver its program of legal education via Distance Education Courses beyond the limits noted in Standard 105(a)(12)(ii), unless and until it obtains full approval and receives acquiescence in a substantive change.

Interpretation 102-1

Plans to achieve substantial compliance with any of the Standards are not sufficient to demonstrate substantial compliance.

Standard 306: Distance Education

Summary: A few changes were made to this Standard. In subsection (d), language was added to differentiate between a law school that was initially approved as a fully online law school and one that was not for purposes of acquiescence in a substantive change to exceed the current limits related to Distance Education. Also, in subsection (d), language was revised to match previously made changes to Standard 105 regarding the current limits related to Distance Education. Finally, a new subsection (e) was added to explain that a fully online law school can seek ABA-approval as a cross-reference to Standard 102(h) on Provisional Approval.

Redline: Standard 306: Distance Education

- (a) Each Distance Education Course for which a law school grants credit toward the J.D. degree must:
 - (1) Provide regular interaction between a student and a faculty member that includes:
 - (i) the opportunity for substantive interactions with the student on a predictable and scheduled basis commensurate with the length of time and the amount of content in the course as defined by Standard 310(b);
 - (ii) monitoring the student’s academic engagement and success; and
 - (iii) ensuring that the faculty member is responsible for promptly and proactively engaging in substantive interaction with the student when needed on the basis of such monitoring or upon request by the student.
 - (2) Provide substantive interaction in each Distance Education Course that engages students in teaching, learning, and assessment, consistent with the content under discussion, and includes at least two of the following:
 - (i) providing direct instruction;
 - (ii) assessing or providing feedback on a student’s coursework;

- (iii) providing information or responding to questions about the content of a course; or
 - (iv) facilitating a group discussion regarding the content of a course.
 - (3) Use appropriate and readily accessible technology that effectively supports the learning outcomes of the course; and
 - (4) Ensure that students, faculty, and others involved in the course receive appropriate training and support for the technology used.
- (b) A law school that contracts with parties outside of the law school for the delivery of Distance Education Courses shall actively ensure the effectiveness and quality of the Distance Education Courses offered through such an arrangement.
- (c) Remote participation in a non-Distance Education Course by a student as an accommodation provided under law (such as the Americans with Disabilities Act) or under exceptional circumstances must not cause the course to count towards the distance education credit limits in subsection (d) for that student. The law school must document all instances in which it permits a student's remote participation in a non-Distance Education Course for which the credits will not be counted toward the credit hour limits in subsection (d).
- (d) A law school not initially approved to deliver its program of legal education wholly via Distance Education Courses may grant a student up to 50 percent of the credit hours required for the J.D. degree through Distance Education Courses without applying for acquiescence in a substantive change under Standard 105(a)(12)(i) or (ii). However, a law school ~~law schools~~ may need to seek ~~regional accreditor approval or~~ Council acquiescence in a substantive change under Standard 105(a)(12)(~~ii~~)(iii) before reaching this threshold as described in Interpretation 105-1.
- (e) A law school with a program of legal education that is delivered partially or wholly via Distance Education Courses may seek provisional approval without the need for a substantive change application under Standard 105(a)(12), so long as the method of delivery is indicated to the Council at the time the law school seeks such approval, and the law school provides all information requested by the Council for such programs. Otherwise, the law school will not be permitted to deliver its program of legal education via Distance Education Courses beyond the limits noted in Standard 105(a)(12)(ii), unless and until it obtains full approval and receives acquiescence in a substantive change.