



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: August 30, 2023

Re: Matters for Notice and Comment: Revisions to Definitions, Standards, and Rules based on USDE Guidance and Council Accreditation Work

At its meeting on August 17-18, 2023, the Council of the Section of Legal Education and Admissions to the Bar (the “Council”) approved for Notice and Comment proposed revisions to Definitions, Standards, and Rules based on U.S. Department of Education (USDE) guidance and others identified by the Council through its accreditation work.

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/. We solicit and encourage written comments on all the proposals listed above. Please address all written comments to Bridget Mary McCormack, Council Chair and send to Fernando Mariduen a at Fernando.Mariduen a@americanbar.org by September 29, 2023. Written comments received after September 29, 2023, may not be included in the materials considered by the Council at its November 2023 meeting.

Part I: Revisions to Standards 202, 311, 313, 502, and 505 and Rule 9 based on Council Accreditation Work

Standard 202: Resources for Program

Summary: Standard 202(b) and Interpretation 202-2 requiring a law school that is part of a university to annually obtain an accounting with line-item specificity for all charges and costs assessed by the university against resources generated by the law school have been eliminated as not all universities provide such an accounting and, more importantly, such an accounting is not always the best way to assess the financial resources of the law school and the support of its university. Subsection (b) was revised to require law schools to maintain a budget reflecting the anticipated financial resources and expenses for the current and subsequent three fiscal years to better assess the law school’s financial resources and university support.

Redline: Standard 202: Resources for Program

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~~(b) A law school that is part of a university shall obtain at least annually from its university an accounting for all charges and costs assessed by the university against resources generated by the law school. A law school shall maintain a budget reflecting anticipated financial resources and expenses for the current and subsequent three fiscal years. For law schools that are part of a university, the budget must reflect any anticipated obligations of the law school to the university or of the university to the law school.~~

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Interpretation 202-2

~~A law school satisfies Standard 202(b) if the accounting identifies resources generated by the law school, all charges and costs assessed by the university, and the general disposition of any surplus or source of any deficit. The accounting must provide line item specificity with regard to resources generated and charges and costs.~~

Standard 311: Academic Program and Academic Calendar

Summary: Several revisions were made to this Standard. First, subsection (b) and Interpretations 311-2 and 311-3 were deleted because it was thought that mandating a minimum length of time to complete the J.D. degree was too protectionist and mandating the maximum length of time to complete the J.D. degree was overly paternalistic for accreditation requirements; these time limits should be left up to the considered judgment of each law school. Second, subsection (d) was revised to broaden when credits taken prior to matriculation in a J.D. program can be counted towards the J.D. but limits them to specific situations where there is an existing joint degree program at the law school and where the credits earned towards a graduate degree were earned no more than three years prior to matriculation in a J.D. program.

Redline: Standard 311: Academic Program and Academic Calendar

(a) A law school must 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 must 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)~~ (b) Credit for a J.D. degree shall only be given for coursework taken after the student has matriculated in a law school's J.D. program of study, except for:

(1) credit that may be granted pursuant to Standard 505;

(2) credit earned toward a graduate degree before the student's matriculation in a law school's J.D. program, provided that:

- (i) the student is enrolled in a law school with a joint degree program that would have allowed credit for the non-J.D. coursework had it been completed contemporaneously with the joint degree program;
- (ii) the credit would have counted toward the J.D. had the student been enrolled in the joint degree program at the time the credits were earned; and
- (iii) the credit was earned no more than three years prior to the student's matriculation in the law school's J.D. program.

(c) A law school may not grant credit toward the J.D. degree for work taken in a pre-admission program.

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Interpretation 311-2

The non-J.D. coursework can be completed in another department, school, or college of the university with which the law school is affiliated or at another institution of higher learning, provided that the courses are ones the law school would have allowed credit for had they been taken as part of its joint J.D. degree program.

Interpretation 311-2

Whenever a student is permitted on the basis of extraordinary circumstances to exceed the 84 month program limitation in Standard 311(b), the law school must place in the student's file a statement signed by an appropriate law school official explaining the extraordinary circumstances leading the law school to permit an exception to this limitation. Such extraordinary circumstances, for example, might include an interruption of a student's legal education because of an illness, family exigency, or military service.

Interpretation 311-3

If a law school grants credit for prior law study at a law school outside the United States as permitted under Standard 505(e), only the time commensurate with the amount of credit given counts toward the length of study requirements of Standard 311(b). For example, if a student has studied for three years at a law school outside the United States and is granted one year of credit toward the J.D. degree, the amount of time that counts toward the 84 month requirement is one year. The student has 72 months in which to complete law school in the United States.

Standard 313: Degree Programs in Addition to J.D.

Summary: The Council currently requires law schools to have a priority enrollment policy for J.D. students in J.D. courses that are open to non-J.D. students when it acquiesces in a substantive change to establish a non-J.D. degree program; this policy will now be codified in the Standards.

Redline: Standard 313: Degree Programs in Addition to J.D.

A law school may not offer a degree program other than its J.D. degree program unless:

- (a) the law school is fully approved;

(b) the Council has granted acquiescence in the program; ~~and~~

(c) the law school has adopted, published, and adheres to a policy that mandates priority enrollment for J.D. students in any J.D. course in which non-J.D. students are allowed to enroll unless

(1) the law school has a pedagogical purpose for the absence of such a policy and ensures that no J.D. student will be displaced by a non-J.D. student in a J.D. course; or

(2) otherwise provided by law; and

~~(e)~~ (d) the degree program will not interfere with the ability of the law school to operate in compliance with the Standards and to carry out its program of legal education.

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Standard 502: Educational Requirements

Summary: These revisions require a law school to allow an enrolled student who does not have official transcripts on file by the deadline to complete the current semester but not enroll in a subsequent semester until the law school has the student's official transcripts on file. These revisions are a change from the Council's current practice of requiring administrative withdrawal from classes if an enrolled student's transcripts are not on file by the deadline. This policy means that the student is withdrawn from class mid-semester, does not earn any credits for the semester, and likely has missed the semester's tuition refund deadline.

Redline: Standard 502: Educational Requirements

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(d) Except in extraordinary circumstances, a law school shall have on file each enrolled student's official transcripts by the following deadlines:

(1) for students matriculating in the fall, by October 15; and

(2) for students matriculating at any other time, within 4 weeks of the date classes begin.

(e) If a law school does not have an enrolled student's transcripts on file by the relevant deadline in (d), the law school shall permit the student to complete the current semester, but the law school shall not permit the student to enroll in a subsequent semester until the law school has the student's official transcripts on file.

Standard 510: Student Complaints Implicating Compliance with the Standards

Summary: There are several changes to this Standard. The substance of Interpretation 510-2 was moved to subsection (a) since the policy requirements should be in the black letter of the Standard. Interpretation 510-1 that mentioned written complaints was removed in favor of complaints submitted according to the law school's complaint policy or policies which is now in subsection (b). Subsection (b) also now states that a student complaint must allege facts implicating Standards compliance but is not required to cite a specific Standard; the law school must determine if the facts implicate compliance with the Standards. Finally, a new Interpretation 510-1 defines who a "student" is under this Standard.

This Standard is in place to comply with USDE guidance that accreditors have "procedures to assess if a

pattern of student complaints exists that would bring into question” the law school’s compliance with the Standards. The impetus for these changes is that some law schools report no Standard 510 complaints in the SEQ-SRT form for Site Visits, but other parts of the SEQ-SRT form and Site Team fact finding show students complain in other ways about Standards compliance; only then is any pattern of complaints seen. This is likely because Standard 510 is currently interpreted to put the onus on the complaining student to determine if there is a Standards compliance issue and many law schools have a separate Standard 510 complaint process that is rarely used, with no or very few complaints filed for a Site Team to review.

Redline: Standard 510: Student Complaints Policies Implicating Compliance with the Standards

(a) A law school shall ~~establish, publish, and comply with~~ adopt, publish, and adhere to a policy or policies for addressing student complaints. The policy or policies must address, at a minimum, procedures for filing and addressing complaints, appeal rights, if any, and timelines.

(b) A law school shall maintain a record of student complaints submitted ~~during the most recent accreditation period.~~ according to the law school’s complaint policy or policies that allege facts implicating the law school’s compliance with the Standards even if a specific Standard is not cited in the complaint. The law school shall determine if the alleged facts implicate a Standard. The record shall include the resolution of the complaints.

(c) A law school shall maintain a record of student complaints implicating the law school’s compliance with the Standards submitted during the most recent accreditation period. The record shall include the resolution of the complaints.

Interpretation 510-1

For the purposes of Standard 510, “student” includes prospective, current, and former students.

A “complaint” is a communication in writing that seeks to bring to the attention of the law school a significant problem that directly implicates the school’s compliance with the Standards.

Interpretation 510-2

A law school’s policies on student complaints must address, at a minimum, procedures for filing and addressing complaints, appeal rights, if any, and timelines.

Rule 9: Notice of Accreditation Decision by Other Agency

Summary: Law schools may receive letters from the USDE with information that could implicate compliance with the Standards before the Managing Director’s Office is notified by the USDE. This revision requires law schools to inform the Managing Director’s Office when they receive such a letter or other notice of finding or ruling by a legislative, regulatory, or judicial body. Finally, it requires a law school to notify the Managing Director’s Office if a decision by a governing body with authority over a law school (such as a university or university system) may have a negative and material effect on the law school’s ability to operate in compliance with the Standards.

Redline: Rule 9: Notice of ~~Aacreditation Decision~~ Decisions, Findings, or Actions by Other Agency

(a) An approved law school shall promptly inform the Managing Director of the following decisions, findings, or actions with respect to the law school:

(1) Findings by the United States Department of Education that may raise issues of compliance with the Standards, including the ability of students to receive federal financial aid;

~~(1)~~ (2) Pending or final action by State agency to suspend, revoke, withdraw, or terminate legal authority to provide post-secondary education;

~~(2)~~ (3) Decision by recognized agency to deny accreditation or pre-accreditation;

~~(3)~~ (4) Pending or final action by recognized agency to suspend, revoke, withdraw, or terminate accreditation or pre-accreditation; or

~~(4)~~ (5) Probation or equivalent status imposed by recognized agency.

(6) Any other finding or ruling by a legislative, regulatory, or judicial body that may raise issues of compliance with the Standards.

(7) Any decision by a governing body with authority over the law school that may have a negative and material effect on the law school's ability to operate in compliance with the Standards.

Part II: USDE-Related Revisions

The U.S. Department of Education (USDE) has issued updated guidance on a few topics over the last few months and the Managing Director's Office has noted several updates that need to be made to better align the Council's definitions with those of the USDE. The following revisions to the Definitions, Standards, and Rules implement the USDE guidance and ensure Council procedures are updated to account for process considerations inherent in this guidance.

There are three parts to this section:

- Part A: Alignment of "Branch Campus," "Separate Location," and "Additional Location" Definitions: Re-Numbered Definitions; Standards 102, 105, and 106; Rules 24, 25, and 29
- Part B: Revisions related to Law School Mergers – Standard 105; Rules 19-20, 24-25, & 47
- Part C: Revisions related to the USDE's 50% Threshold for Distance Education

Part A: Alignment of "Branch Campus," "Separate Location," and "Additional Location" Definitions: Re-Numbered Definitions; Standards 102, 105, and 106; Rules 24, 25, and 29

Summary: The USDE has updated its definitions of "branch campus" and "additional location." In 34 CFR 602.24(f), accrediting agencies are required to "(1) adopt and apply the definitions of 'branch campus' and 'additional location' in 34 CFR 600.2; (2) On the Secretary's request, conform its designations of an institution's branch campuses and additional locations with the Secretary's if it learns its designations diverge; and..." These revisions update the Council's definition of "branch campus" to match that of the USDE with a few tweaks to make it more relevant to the accreditation of J.D. programs. Also, the Council has a definition for "separate location" (which the USDE does not have), but it does not have a definition for "additional location" as the USDE requires. To conform with the USDE definitions, the revisions also add the USDE definition of "additional location" with a few tweaks to make it more relevant to the accreditation of J.D. programs. Both the definitions of "branch campus" and "additional location" include the "within the United States" language that is found in the definition of "separate location" but not in the USDE definitions.

Since the new USDE definition of "branch campus" eliminates the credit hour threshold (previously 2/3 of the credit hours for the degree) and the new USDE definition of "additional location" has a higher

credit hour threshold than the Council’s definition of “separate location” (50 percent of the degree vs. 16 credit hours, respectively), the Standards Committee recommended that the Council eliminate the definition of, and references to “separate location” since this is not a USDE-required definition and simply have law schools apply for acquiescence when they offer 50 percent or more of the J.D. degree at a location other than the law school’s main campus. We further recommend that questions be added to the ABA Annual Questionnaire to track schools that may be offering less than 50 percent of the J.D. degree at a location other than the law school’s main campus.

No additional changes to the Standards and Rules are needed for the updated “branch campus” definition, but a few new instances of “branch campus” were added for clarity and specificity. For the new definition of “additional location,” this term was added to the Standards and Rules that previously mentioned “separate location” since the Council will likely do a similar evaluation of the law school’s new location; however, a fact finder will be required for an additional location.

Redline: Definition (1): Additional Location (New Definition)

(1) “Additional location” means a facility that is within the United States and geographically apart from the main campus of the law school and at which the law school offers at least 50 percent of its J.D. program. An additional location may qualify as a branch campus.

Redline: Definition ~~(3)~~ (4): Branch Campus

~~(3)~~ (4) “Branch campus” means a type of separate location at which a student may earn more than two-thirds of the credit hours that the law school requires for the award of a J.D. an additional location of a law school that is within the United States and geographically apart and independent of the main campus of the law school. A location of a law school is independent of the main campus of the law school if the location (1) is permanent in nature; (2) offers courses in educational programs leading to a J.D. degree; (3) has its own faculty and administrative or supervisory organization; and (4) has its own budgetary and hiring authority.

Redline: Definition (18): Separate Location

~~(18) “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.~~

Redline: Standard 102. PROVISIONAL APPROVAL

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(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 ~~an additional location or branch campus.~~

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Redline: 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:

...

(9) Establishing a branch campus;

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

...

Redline: Standard 106: ~~SEPARATE LOCATIONS~~ ADDITIONAL LOCATIONS AND BRANCH CAMPUSES

(a) A law school that offers ~~a separate location~~ an additional location other than a branch campus shall provide:

(1) Full-time faculty adequate to support the curriculum offered at the ~~separate location~~ additional location and who are reasonably accessible to students at the ~~separate location~~ additional location;

(2) Library resources and staff that are adequate to support the curriculum offered at the ~~separate location~~ additional location and that are reasonably accessible to the student body at the ~~separate location~~ additional location;

(3) Academic advising, career services, and other student support services that are adequate to support the student body at the ~~separate location~~ additional location and that are reasonably equivalent to such services offered to similarly situated students at the law school's main location;

(4) Access to co-curricular activities and other educational benefits adequate to support the student body at the ~~separate location~~ additional location; and

(5) Physical facilities and technological capacities that are adequate to support the curriculum and the student body at the ~~separate location~~ additional location.

(b) In addition to the requirements of section (a), a branch campus must:

(1) Establish a reliable plan that demonstrates that the branch campus has achieved substantial compliance with the Standards and is reasonably likely to achieve full compliance with each of the Standards within three years of the effective date of acquiescence as required by Rule 25;

(2) Comply with instructional requirements and responsibilities as required by Standard 403(a) and Standard 404(a); and

(3) Offer reasonably comparable opportunities for access to the law school's program of legal education, courses taught by full-time faculty, student services, co-curricular programs, and other educational benefits as required by Standard 312.

(c) A law school is not eligible to establish ~~a separate location~~ an additional location or branch campus until at least four years after the law school is granted initial full approval.

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Redline: Rule 24: Application for Acquiescence in a Substantive Change

(a) Substantive changes requiring application for acquiescence include:

...

(9) Establishing a branch campus;

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

...

(d) When the Council grants acquiescence in a substantive change under Rules 24(a)(1) through 24(a)(9), the Managing Director shall appoint a fact finder subsequent to the effective date of acquiescence as provided in Rule 25(e). The Council also may direct appointment of a fact finder subsequent to the effective date of acquiescence in a substantive change under Rules 24(a)(10) through 24(a)(18) for purposes of determining whether the law school remains in compliance with the Standards. When the Council grants acquiescence under Rule 24(a)(10) in an additional location other than a branch campus ~~a separate location at which the law school offers more than 50% of the law school's program of legal education~~, the Managing Director shall appoint a fact finder to conduct a visit within six months of the effective date of acquiescence or in the first academic term subsequent to acquiescence in which students are enrolled at the ~~separate location~~ additional location.

Redline: Rule 25: Substantive Changes Requiring a Reliable Plan

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(b) The reliable plan in connection with the establishment of a branch campus under Rule 24(a)(9) shall contain information sufficient to allow the Council to determine that:

(1) The proposed branch campus has achieved substantial compliance with the Standards and is reasonably likely to achieve full compliance with each of the Standards within three years of the effective date of acquiescence;

(2) The proposed branch campus will meet the requirements of Standard 106 applicable to ~~separate locations~~ additional locations and branch campuses.

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(f) In the case of the establishment of a branch campus under Rule 24(a)(9) or an additional location other than a branch campus under Rule 24(a)(10), the fact-finding visit required in accordance with (e) shall be conducted within six months of the effective date of acquiescence or in the first academic term subsequent to acquiescence in which students are enrolled at the branch campus or additional location to verify that the branch campus or additional location satisfies the requisites of (b)(2).

Redline: Rule 29: Teach-Out Plan

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(c) A provisional or fully approved law school must submit a teach-out plan, and if practicable, teach-out agreements for approval upon occurrence of any of the following events:

(1) The law school notifies the Managing Director's Office that it intends to close, suspend, or cease to operate its approved program of legal education at the law school, an additional location, or a branch campus;

...

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

Part B: Revisions related to Law School Mergers – Standard 105; Rules 19-20, 24-25, and 47

The USDE has issued guidance outlining a two-step process for the situation in which an institution is acquired and realigned as an additional location of another institution. The first step is for the acquired institution to apply for a substantive change for a change in ownership with its institutional accreditor. The second step is the acquiring institution must apply for realignment of the acquired institution so that it becomes an additional location of the acquiring institution (this also requires a substantive change under the Council's Standards). Importantly for accreditors, separate accreditations must be maintained for Title IV purposes by each institution through each step and until the USDE approves both the change in ownership and separate location applications for the two institutions.

The Standards Committee recommends implementing this two-step process in the relevant Standards and Rules for law school mergers where the acquiring law school seeks to merge with another law school and turn it into a branch campus or additional location of the acquiring law school. Further, several Rules were amended to allow for joint fact finders and joint hearings for law schools involved in such mergers since both law schools will need to share information with each other and the Council as part of their applications for acquiescence in a substantive change for both change in ownership and establishing a branch campus or additional location.

Standard 105: Acquiescence for Substantive Change in Program or Structure

Summary: Standard 105(a)(4) was revised to meet the USDE's two-step process outlined above. Standard 105(a)(14) was revised to reflect changes to [34 CFR 602.22\(a\)\(1\)\(ii\)\(J\)](#) in terms of language and the "more than 25 percent but less than 50 percent" limitation.

Redline: 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:

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(4) Merging or affiliating with one or more approved or unapproved law schools; A proposed merger of approved law schools that will be accomplished by an approved law school acquiring another approved law school with the intent to convert the acquired law school into a branch campus or additional location requires the acquiescence of the Council in two separate applications for acquiescence:

(i) The law school to be acquired shall apply for acquiescence in a substantive change under Standard 105(a)(7) for a change in control of the school resulting from a change in ownership of the school or a contractual arrangement and

(ii) The acquiring law school shall apply for acquiescence under Standard 105(a)(9) or (10) to establish a branch campus or an additional location, as appropriate.

(iii) The acquiring law school and the law school to be acquired shall each be separately approved by the Council until the Council acquiesces in and the United States Department of Education approves the

change in ownership and branch campus or additional location applications. Once approval and acquiescence are received, the law school to be acquired will become a branch campus or additional location of the acquiring law school and have Council approval as part of the acquiring law school.

...

~~(14) Contracting with an educational entity that~~ Entering into a written arrangement under which an institution or organization is not certified to participate in Title IV, HEA programs, offers more than 25 percent but less than 50 percent of the J.D. program; that would permit a student to earn 25 percent or more of the course credits required for graduation from the approved law school;

Rule 19: Attendance at Council Meetings and Hearings

Summary: A new subpart (e) will allow two law schools that are merging to have a joint Council hearing on both of their applications for acquiescence in a substantive change (one for change in ownership, one for establishing a branch campus or additional location). A joint hearing will allow both law schools to respond to any questions or concerns the Council may have.

Redline: Rule 19: Attendance at Council Meetings and Hearings

- (a) A law school has a right to have representatives of the law school, including legal counsel, appear before the Council at a hearing regarding
 - (1) the law school's application for provisional approval,
 - (2) the law school's application for full approval,
 - (3) the law school's application for acquiescence in a substantive change under Rule 24(a)(1) - 24(a)(18) [excluding Rule 24(a)(12)(iii)], or
 - (4) whether to impose sanctions and/or direct specific remedial action on the part of the law school.

...

- (e) Law schools proposing a merger that will be accomplished by an approved law school acquiring another approved law school with the intent to convert the acquired law school into a branch campus or additional location under Standard 105(a)(4)(i)-(iii) may jointly appear at a hearing for both applications for acquiescence in a substantive change under Standard 105(a)(7) and Standard 105(a)(9) or (10), provided that the law schools waive confidentiality under Rule 47.

Rule 20: Hearings before the Council

Summary: A new subpart (e)(1) was added to explain that the Council's decisions on the substantive change applications related to a merger of law schools will not be effective until the USDE gives final approval to both law schools. Both law schools must be separately approved by the Council until the USDE approvals are communicated so that both schools remain eligible for federal financial aid in the interim. Subpart (e) was revised to better reflect that Council decisions are effective once a law school receives them.

Redline: Rule 20: Hearings before the Council

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(e) Decisions of the Council shall be effective upon receipt by the law school. ~~issuance.~~

(1) When law schools propose a merger that will be accomplished by an approved law school acquiring another approved law school with the intent to convert the acquired law school into a branch campus or additional location under Standard 105(a)(4)(i)-(iii), the Council's acquiescence in the applications for a substantive change under Standard 105(a)(7) and Standard 105(a)(9) or (10) will be effective once the United States Department of Education approves the change in ownership and branch campus or additional location applications. Until this time, both law schools shall each be separately approved by the Council.

Rule 24: Application for Acquiescence in a Substantive Change

Summary: Several changes were made to this rule. First, language was added under subpart (a) to match the language that was added to Standard 105(a)(4). Second, language was added under subpart (c) so that when an approved law school proposes to acquire another approved law school with the intent to convert the acquired law school into a branch campus or additional location, only one fact finder is needed for the two applications for acquiescence required by Standard 104(a)(4)(i)-(iii). Third, language under subsection (g)(1) was added to explain when the Council's approval of the substantive changes related to a merger of two law schools will be effective; subsection (g) was revised to be consistent with Rule 20(e) which reflects that Council decisions are effective once a law school receives them. Finally, subpart (h) was deleted as this policy is not required by the USDE and some substantive changes may be able to assist a law school in making progress towards returning to compliance.

Redline: Rule 24: Application for Acquiescence in a Substantive Change

(a) Substantive changes requiring application for acquiescence include:

...

(4) ~~Merging or affiliating with one or more approved or unapproved law schools.~~ A proposed merger of approved law schools that will be accomplished by an approved law school acquiring another approved law school with the intent to convert the acquired law school into a branch campus or additional location requires the acquiescence of the Council in two separate applications for acquiescence:

(i) The law school to be acquired shall apply for acquiescence in a substantive change under Standard 105(a)(7) for a change in control of the school resulting from a change in ownership of the school or a contractual arrangement and

(ii) The acquiring law school shall apply for acquiescence under Standard 105(a)(9) or (10) to establish a branch campus or additional location, as appropriate.

(iii) The acquiring law school and the law school to be acquired shall each be separately approved by the Council until the Council acquiesces in and the United States Department of Education approves the change in ownership and branch campus or additional location applications. Once approval and acquiescence are received, the law school to be acquired will become a branch campus or additional location of the acquiring law school and have Council approval as part of the acquiring law school.

...

(c) The Managing Director shall appoint a fact finder in connection with an application for acquiescence in a substantive change, except that no fact finder is required if the Managing Director and the Chair of the Council determine that the application does not require additional information to assist Council determination of the question of acquiescence.

(1) When law schools propose a merger that will be accomplished by an approved law school acquiring another approved law school with the intent to convert the acquired law school into a branch campus or additional location under Standard 105(a)(4)(i)-(iii), only one fact finder is required for both applications for acquiescence in a substantive change under Standard 105(a)(7) and Standard 105(a)(9) or (10).

...

(g) A law school's request for acquiescence in the proposed substantive change in organizational structure shall be considered under the provisions of Rule 25; and will become effective upon the law school's receipt of the Council's decision. ~~of the Council.~~ The decision of the Council may not be retroactive.

(1) When law schools propose a merger that will be accomplished by an approved law school acquiring another approved law school with the intent to convert the acquired law school into a branch campus or additional location under Standard 105(a)(4)(i)-(iii), the Council's acquiescence in the applications for a substantive change under Standard 105(a)(7) and Standard 105(a)(9) or (10) will be effective once the United States Department of Education approves the change in ownership and separate location or branch campus applications. Until this time, both law schools shall each be separately approved by the Council.

~~(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.~~

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Rule 25: Substantive Changes Requiring a Reliable Plan

Summary: New subparts (i) and (j) were added to the end of this rule to explain when fact finding visits are required and when they can be done jointly as part of acquiescence in the substantive changes required for a merger of law schools.

Redline: Rule 25: Substantive Changes Requiring a Reliable Plan

(i) In a case involving a proposed merger that will be accomplished by an approved law school acquiring another approved law school with the intent to convert the acquired law school into a branch campus under Rule 24(a)(4)(i)-(iii), the fact-finding visits required in accordance with (f) and (g) may be conducted jointly by one fact finder.

(j) In a case involving a proposed merger that will be accomplished by an approved law school acquiring another approved law school with the intent to convert the acquired law school into an additional

location under Rule 24(a)(4)(i)-(iii), the fact-finding visits required in accordance with Rule 25(g) and Rule 24(d) may be conducted jointly by one fact finder.

Rule 47: Confidentiality of Accreditation Matters

Summary: The revisions allow for two law schools involved in a proposed merger to waive confidentiality and appear together at one Council hearing.

Redline: Rule 47: Confidentiality of Accreditation Matters

(a) Except as otherwise provided in these Rules or Internal Operating Practices, all matters relating to the accreditation of a law school, including any proceedings, hearings, or meetings of the Council, shall be confidential.

(b) A proposed merger of approved law schools that will be accomplished by an approved law school acquiring another approved law school with the intent to convert the acquired law school into a branch campus or additional location under Standard 105(a)(4)(i)-(iii) requires the Council’s acquiescence in the applications for a substantive change under Standard 105(a)(7) and Standard 105(a)(9) or (10); however, if the law schools involved waive the confidentiality required in (a), the law schools may have a joint hearing before the Council on their applications for acquiescence in a substantive change.

Part C: Revisions related the USDE’s 50% Distance Education Threshold

At the Council’s May 11-12, 2023, meeting, the Council approved all ABA-approved law schools accepting new students to offer any part of their J.D. programs via distance education technology. The USDE recently clarified that institutions may offer distance education courses without further accreditor approval – until the institution, during an award year (defined by the USDE as the school year for which financial aid is used to fund a student’s education), offers at least 50% of a program through distance education, enrolls at least 50% of its students in at least one course offered through distance education, or offers at least 50% of its courses through distance education (“50% threshold”).

Currently, all ABA-approved law schools must apply for acquiescence in a substantive change under Standard 105(a)(12)(ii) if they grant a student more than 50% of the credit hours required for the J.D. degree through Distance Education Courses (prong 1 of the 50% threshold). Law schools that rely upon a regional accreditor for student access to federal loans (either independently or through their university) must receive regional accreditor approval before reaching the second and third prongs of the 50% threshold from their regional accreditor if they reach those prongs before applying for acquiescence in a substantive change under Standard 105(a)(12)(ii) to grant a student more than 50% of the credit hours required for the J.D. degree through Distance Education Courses (prong 1). (For law schools that are part of a university, prongs 2 and 3 are calculated at the university level and not the law school level.) Law schools that rely upon the Council for student access to federal loans must receive acquiescence from the Council in a substantive change before reaching any prong of the 50% threshold.

The following changes to the Standards and Rules have been made to account for the USDE guidance related to the 50% threshold for Distance Education and to codify when law schools need to apply for Council acquiescence in a substantive change or obtain regional accreditor approval for each of the three prongs of the 50% threshold.

Redline: 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:

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(12) The addition of courses or programs that represent a significant departure from existing offerings or methods of delivery including (i) instituting a new full-time or part-time division; (ii) changing academic policies to allow a student to earn more than 50 percent of the credit hours required for the J.D. degree through Distance Education Courses, enrolling at least 50 percent of students in at least one Distance Education Course, or offering at least 50 percent of its courses as Distance Education Courses; or (iii) establishing a new or different program leading to a degree other than a J.D. degree;

Interpretation 105-1

Standard 105(a)(12)(ii) lists three 50 percent thresholds for distance education that require acquiescence in a substantive change. However, based on guidance from the United States Department of Education, not all law schools are required to apply for acquiescence in a substantive change for all three thresholds.

- (1) All law schools must apply for acquiescence in a substantive change under Standard 105(a)(12)(ii) if they allow a student to earn more than 50 percent of the credit hours required for the J.D. degree through Distance Education Courses.
- (2) Law schools that rely upon a regional accreditor for student access to federal loans (either independently or through their university) must receive accreditor approval before their institution enrolls 50 percent or more of its students in at least one Distance Education Course or offers 50 percent or more of its courses as Distance Education Courses if either event occurs before the law school applies for acquiescence in a substantive change under Standard 105(a)(12)(ii) to allow a student to earn more than 50 percent of the credit hours required for the J.D. degree through Distance Education Courses. Documentation of this approval must be provided to the Council at least 90 days before the Council meeting at which acquiescence is sought.
- (3) Law schools that rely upon the Council for student access to federal loans must receive acquiescence from the Council for a substantive change under Standard 105(a)(12)(ii) if the law school enrolls at least 50 percent of its J.D. students in at least one Distance Education Course or offers at least 50 percent of its J.D. courses as Distance Education Courses before it applies for acquiescence to allow a student to earn more than 50 percent of the credit hours required for the J.D. degree through Distance Education Courses

Redline: Standard 306: DISTANCE EDUCATION

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(d) A law school 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)(ii). However, law schools may need to seek regional accreditor approval or Council

acquiescence in a substantive change under Standard 105(a)(12)(ii) before reaching this threshold as described in Interpretation 105-1.

Redline: Rule 24: APPLICATION FOR ACQUIESCENCE IN A SUBSTANTIVE CHANGE

(a) Substantive changes requiring application for acquiescence include:

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(12) The addition of courses or programs that represent a significant departure from existing offerings or methods of delivery including (i) instituting a new full-time or part-time division; (ii) changing academic policies to allow a student to earn more than 50 percent of the credit hours required for the J.D. degree through Distance Education Courses, enrolling at least 50 percent of students in at least one Distance Education Course, or offering at least 50 percent of its courses as Distance Education Courses; or (iii) establishing a new or different program leading to a degree other than a J.D. degree;

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(i) The decision of the Council granting acquiescence in a substantive change to change academic policies to allow a student to earn more than 50 percent of the credit hours required for the J.D. degree through Distance Education Courses, enrolling at least 50 percent of students in at least one Distance Education Course, or offering at least 50 percent of its courses as Distance Education Courses under Rule 24(a)(12)(ii) 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 change academic policies to allow a student to earn more than 50 percent of the credit hours required for the J.D. degree through Distance Education Courses, enrolling at least 50 percent of students in at least one Distance Education Course, or offering at least 50 percent of its courses as Distance Education Courses may require the law school to report to the Managing Director or the Council regularly as specified in the decision.