

## Summary of actions of the section's Council at its public meeting Nov. 19, 2021

The [Council of the ABA Section of Legal Education and Admissions to the Bar](#) met both virtually and in-person in San Francisco on Nov. 19 to consider recommendations, reports, and other issues on its [agenda](#). The Council took these actions, among others:

- Approved preliminary revisions for Standard 206 of the ABA Standards and Rules of Procedure for Approval of Law Schools. The proposed changes will now be posted for Notice and Comment. This will be the second time this year that proposed revisions to Standard 206 relating to diversity, equity, and inclusion have been approved for Notice and Comment. The first proposal was revamped based on comments received.

The revised Standard 206 aims to achieve the effective educational use of diversity as recognized in several U.S. Supreme Court decisions during the past two decades. The revisions outline three items a law school must provide in service of this goal, related to the student body, faculty, and staff, in addition to fostering an inclusive and equitable environment. While the proposal covers all persons, it focuses particularly on underrepresented groups related to race and ethnicity and cites the unique historical injustices and contemporary challenges faced by these groups.

Specifically, the revisions require a school to provide full access to the study of law and membership in the profession to all persons and particularly for underrepresented groups; notes that enforcement will be through analysis of public data collected by the law school through the ABA Annual Questionnaire; and requires an annual assessment of the inclusivity and equity of a law school's educational environment.

Also, the revisions to Standard 206 incorporate both First Amendment and religious protections consistent with the U.S. Constitution and applicable law.

- Approved several standards, bylaw and rules changes that also would go out for Notice and Comment. They include:
  - Allowing the Council's Executive Committee in bylaw Section VI, Section 2 to approve or reject teach-out plans between Council meetings due to their time sensitive nature and to align the bylaws with Rule 29 as well as the Council's current practice when the Managing Director's Office receives a teach-out plan between Council meetings.
  - Clarifying Rule 19 related to a law school's appearance at a Council accreditation hearing. The proposed change would explain that a law school does not have the right to be present for the Council's deliberations following a hearing
  - Clarifying the current credit hour limits and definitions related to Distance Education The clarifications were added to respond to recurring law school questions on Distance Education in the wake of the pandemic. The larger question of whether to modify the current credit hour limits on Distance Education was not considered at this time; it will be taken up by the Standards Committee and Council at a later date.
    - Revising Definition (7) to state that a course will be a distance education course only if students are separated from all faculty members teaching the course to align with the U.S. Department of Education's "Distance Education" definition and to remove the phrase "or each other" so that the presence of one or more remote student in an otherwise in-person course will not "convert" the course to a distance education course for the students taking the course in-person.

- Clarifying in Definition (8) that a distance education program also includes one in which students earn more than 10 credit hours of distance education during the first one-third of the student's program of legal education.
  - Revising Standard 306 (which was previously deleted and reserved) to include the U.S. Department of Education's definitions of "regular interaction" and "substantive interaction" and to provide law schools guidance on when remote participation may be used as an accommodation in an in-person course.
  - Clarifying in Standard 311(e) the current limits on Distance Education so that they are both in the Standards and in the Definitions due to law school questions received by the Managing Director's Office on this topic.
- Clarifying Standard 311(c) to help respond to frequent inquiries to the Managing Director's Office regarding whether audited courses or joint degree courses count towards the 20 percent limit in Standard 311(c). This revision clarifies that only credits that count for the JD program are included in the 20% limitation.
  - Clarifying the text of Standard 405(b), which currently requires only "an established and announced policy with respect to academic freedom and tenure. It was unclear whether a law school must also adhere to this policy. The proposal would revise the Standard to state that "a law school shall adopt, publish, and adhere to a policy with respect to academic freedom and tenure..."

After the Notice and Comment period, the earliest the approved revisions, including those to Standard 206, could be considered by the ABA House of Delegates for concurrence would be at the 2022 Annual Meeting in August. The HOD, as the policy-making body is known, can review a matter twice but final approval to change [ABA Standards and Rules of Procedure for Approval of Law Schools](#) rests with the Council.

The Council also discussed future action on a bylaw change that would allow the Council's representative from the Young Lawyers Division (YLD) to attend closed sessions of Council meetings relating to law school accreditation matters. The bylaw would also designate at least one member-at-large of the Council to be filled by someone who must have fewer than ten years of law practice at the start of the member's term.

In closed session, the Council also voted to permit law schools to accept GRE test scores from applicants in lieu of an LSAT score under Standard 503. The Council reminds schools that the use of test scores to make admissions decisions is subject to Standard 501(a)'s requirement that a school adhere to "sound admission policies and practices," and that a law school may not admit applicants who do not "appear capable of satisfactorily completing its program of legal education and being admitted to the bar." The Council also reminds schools that although Standard 503 does not prescribe the weight that law schools must give to an applicant's test score, it does require law schools to use admissions tests in a manner consistent with the test developer's current guidelines regarding the proper use of the results.

In closed session, the Council considered individual school matters. The outcomes of those matters that are not subject to the confidentiality provisions of Rules of Procedure 49-55 of the [ABA Standards and Rules of Procedures for Approval of Law Schools](#) will be publicly reported after decisions are communicated by letter to the affected schools.

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