

To: Hon. Mary McCormack, Chairwoman, ABA Council  
From: Martin Pritikin, Dean and Vice President, Purdue Global Law School  
Date: February 22, 2024  
Re: Proposed revisions to Standards 102 and 306 and related Standards

Dear Honorable Chairwoman McCormack:

On behalf of Purdue Global Law School (“PGLS”), I write in support of the proposed revisions to Standards 102 and 306, which would enable a fully online law school to apply for and potentially obtain provisional and then full ABA approval. I previously submitted comments on a related proposal to revise Standards 701 and 702, which would eliminate the physical campus requirement. I will endeavor not to repeat those points here except where relevant.

### **I. The Case for Online Law School**

This is an idea whose time has come—as many have openly recognized recently.

For example, on January 17, 2024, the editorial board of the Connecticut Law Tribune wrote an op-ed titled “Fully Online Law School—The Time Has Come to Accept It.”<sup>1</sup> The article concludes:

There is much to be gained with in-person interaction, but the opportunities for those otherwise foreclosed from a law school education and admission to the bar outweigh the limitations of a full time online education. And many of those limitations can be reduced or eliminated if we work at it.

So, too, on February 15, 2024, the Indiana Supreme Court amended its Rules for Admission to the Bar and the Discipline of Attorneys to create a path for graduates of non-ABA approved law schools to petition for waivers of the ABA legal education requirement so that they can sit for Indiana’s bar exam. This move was in no small part in response to PGLS’ arguments and evidence that fully online law schools can help ameliorate the access to justice crisis in rural and other underserved areas.

Also in February, the ABA Young Lawyers Division issued a report to the YLD Assembly proposing that the Assembly adopt a resolution urging the ABA to “consider (a) amending Standards 306 and 311 to allow for potential accreditation of an all-online law school curriculum in a post-pandemic world and (b) amending the Standards for Approval of Law Schools to allow accreditation of an all-online law school curriculum.”

The arguments in favor of online law school have been made a number of times, but several key ones can be summarized here:

- Fully online law schools provide critical opportunities for non-traditional students who, due to work or family commitments, geography, military service, physical limitations, or other life circumstances, simply cannot attend an in-person program even part-time.

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<sup>1</sup> Available at <https://www.law.com/ctlawtribune/2024/01/17/fully-online-law-school-the-time-has-come-to-accept-it/?slreturn=20240118105023>.

- Campus-based law schools either cannot or will not offer their online programs for less tuition than their in-person programs. *Only* a fully online law school can make a serious dent in the high cost of legal education—and thus the law student debt crisis.
- The pandemic showed the legal profession that most of the functions of a lawyer—including depositions and trials—can be conducted remotely if need be. It stands to reason that if one can *be* a lawyer online, one should be able to study to *become* a lawyer online.
- Fully online education has been embraced in a variety of other fields that arguably benefit from face-to-face interaction at least as much as law does, including social work. By allowing for approval of online law schools, the ABA would merely be catching up to other professions, not moving beyond them.

In the interests of efficiency, the remainder of this comment will address (1) potential objections to approving fully online law schools, and (2) related Standards that may warrant revision or clarification if the ABA is serious about allowing online law schools to seek approval.

## II. Responses to Potential Objections

### *Objection #1: Some Traditional Students Did Not Like Their Schools' Shift Online*

As an illustration, one law student submitted a public comment stating, in part: “I was the first graduating class to fully experience law school during Covid-19. My courses were half in-person and half fully remote, and from personal experience this was a horrible way to learn.”

This perspective is understandable. But in fairness, there is a world of difference between professors and students being *suddenly and unexpectedly forced* to teach and learn online due to a world pandemic, on the one hand, and faculty *intentionally designing* curriculum to be online and students *knowingly choosing* the online format from the outset, on the other. Online course development and teaching is a specialized field, and there is a growing body of literature about best practices that can guide future efforts. When the pandemic struck in 2020, most law professors had never been trained in how to develop online curricula or deliver content online effectively. So it is no surprise that many students were less than thrilled with the results.

Yet even with those obstacles, most faculty were apparently a quick study. An AccessLex and Gallup study reported that in 2021, 57% of law students taking classes mostly or fully online rated them as “excellent”; just one year later, 72% did.<sup>2</sup> The gap between “excellent” ratings of in-person and online classes also shrank considerably, with a 19-point differential in 2021 (76% for in-person vs. 57% online) closing to just a six-point gap in 2022 (78% in-person vs. 72% online).<sup>3</sup>

The traditional law student is typically a recent college graduate without dependents whose circumstances permit them to attend law school full-time and even move near campus if necessary. Presumably, most such students will continue to opt for a traditional in-person educational experience even if an online option is available. But many of them will pay dearly for

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<sup>2</sup> See <https://www.accesslex.org/news-tools-and-resources/gallup-and-accesslex-institute-release-part-two-study-law-students-views>.

<sup>3</sup> *Id.*

that privilege: the average 2023 program tuition for ABA schools (excluding Puerto Rico) was \$143,494, excluding fees and living expenses. By contrast, fully online PGLS program tuition is 65% less, at \$49,860. Students who cannot fit a traditional education into their lives or budgets, or who simply find the online format pedagogically superior, should have a choice.

*Objection #2: Oral Advocacy and Argument Cannot Be Taught Online*

This objection may stem from an assumption that online education is necessarily *asynchronous* education, i.e., that it is conducted entirely at the student's own pace, without live, face-to-face interaction with faculty or peers.

I would agree that an *entirely* asynchronous program of legal education is not ideal, and would even question whether the ABA should approve such a program. However, online education that includes a meaningful *synchronous* component—where faculty and students are “together” in a live, face-to-face setting—can reproduce most if not all of the benefits of being literally in the same room together. In fact, in some ways, remote live classes may be superior.

First, some students—particularly women, people of color, or other minoritized communities—may feel less intimidated and thus more comfortable participating in an online setting, where they are not physically in the same room with their colleagues.

Second, online classes typically allow participation by both audio/video and text chat. This allows a combination of both “off the cuff” audible responses from some students as well as more carefully considered written comments from others. Students can even be assigned to rotating audio or text “panels” to facilitate both “fast” (extemporaneous) and “slow” (deliberate) thinking.<sup>4</sup> Adept faculty can monitor the chat box while also taking audible comments, which actually allows *more* participation than if the professor can only call on one student at a time, as in a traditional setting. The professor can also choose which text comments to follow up on in order to steer the discussion in the desired direction.

Third, an ostensible weakness of online classes—their difficulty in accommodating large class sizes—is arguably a strength, in that it forces online schools that are serious about pedagogy and student-teacher interaction to limit class sizes. Most video conference platforms cannot show more than 48 tiles at a time. In-person classrooms where professors traditionally conduct Socratic dialogue can accommodate far larger groups of 100 or more. (In my own 1L courses as a student at Harvard Law School, section sizes of 135 students were routine.) But one of the principal benefits to a law school in utilizing the Socratic method—that it enables one professor to teach many students at once, thus requiring fewer faculty and improving the bottom line—is hardly a benefit to students: while one student is “stating the case” or being questioned by the professor, the other 99 are spectators. At PGLS, doctrinal course sections are capped at 50 students, and writing and skills courses are capped at 25.

Our professors are all counseled to make their live classes as interactive as possible, in accordance with the “flipped classroom” model. Live class time is valuable and should *not* be used primarily for lecture. Instead, professors engage in Socratic dialogue just like in traditional classes; they have students engage in role playing and problem solving; and they assign students to form virtual breakout groups and discuss and report back on their analysis. These are best practices for *any* law school, not just an online law school.

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<sup>4</sup> See Daniel Kahneman, “Thinking, Fast and Slow” (Farrar, Straus and Giroux, 2103).

We also provide direct instruction and opportunities to practice oral advocacy. Students in our Advanced Legal Analysis and Writing-Litigation course draft and orally argue a summary judgment motion. Students in my Evidence course both draft and orally argue motions *in limine*. We offer electives in Trial Advocacy and ADR & Technology, and field an award-winning moot court team whose members practice online and meet each other for the first time in person at the national competition itself.

The data supports the conclusion that online law school can prepare students to be effective oral advocates as well as, or better than, the in-person model. PGLS is one of the only non-ABA law schools to participate in the nationwide Law School Survey of Student Engagement. PGLS students rated their experience more highly than the overall (mostly ABA) cohort on a variety of metrics, including the following:

<b>LSSSE Category<sup>5</sup></b>	<b>Purdue Global Law School</b>	<b>All Respondents</b>
I often asked questions and contributed to class discussions. (4-pt. scale)	3.28	2.82
My law school experience prepared me to speak clearly and effectively. (4-pt. scale)	3.10	2.86
I was satisfied with the quality of my relationships with faculty members. (7-pt. scale)	5.76	5.27

### *Objection #3: Students Will Not Have a Sense of Community*

Admittedly, it is more challenging to create a sense of student community in an online setting than at a brick-and-mortar campus. In part, however, this is due not to the nature of online learning but to the characteristics of students who choose to attend law school online.

PGLS currently offers only a part-time program. (We have petitioned our accrediting body, the Committee of Bar Examiners of the State Bar of California, for approval to offer a full-time program as well; they have not yet ruled on the petition.) Students usually choose a fully online part-time law degree program like PGLS because they are older (our average entrant is 43) and have significant outside work and/or dependent care commitments (40 to 50 hours per week on average, according to our students' LSSSE responses). Such students will have far less time or interest in socializing with classmates than traditional full-time students in their 20s. Indeed, when I taught at a brick-and-mortar ABA law school, our part-time evening students showed up just in time for classes to start and left as soon as they ended. They rarely participated in extracurricular activities, even though opportunities to do so were made available to them.

All that being said, it is true that even for students who want a sense of community, creating that is harder in an online setting. But it can be done. At PGLS, we have an online orientation course that includes a live seminar where students can meet faculty, staff, and each other. We encourage our 1L students to form study groups, just like at traditional law schools, and a number of them do so. Some form lifelong friendships, and several have even opened law firms together. We have a student networking platform, GetSet, which enables students to identify and communicate with classmates in their geographic vicinity or who share similar interests or

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<sup>5</sup> Figures shown are averages of 1L to 4L responses.

circumstances. Our Student Bar Association provides mentoring sessions and other resources for newer students. Our faculty have “drop-in” office hours and conduct virtual “brown bag” sessions with small cohorts of students to get to know them and answer their questions. We offer several different webinar series, including a quarterly “Coffee with the Dean,” a Distinguished Speaker Webinar series, and a Raising the Bar CLE series. We have an alumni directory and our graduates can join the Purdue Alumni Association. (Two of our graduates have even served on the PAA board of directors.)

We also provide opportunities for the law school community to meet in person. We hold in-person graduation ceremonies thrice yearly in different cities, and invite not just graduates but also any students, alumni, faculty, and staff in the vicinity to come to a post-graduation celebration. We host a post-bar exam reception in February and July in California. And we conduct in-person mixers in a dozen or more cities across the country. We have alumni volunteers in each major metro area or region who coordinate meet-ups among students and graduates.

Even with all these efforts, the sense of community at an online law school will probably never be the same as it is at a campus-based law school. But some aspiring law students may value the lower cost and accessibility of the online model over the ability to network or socialize in person. While online law school shouldn’t be the *only* option, it should be *an* option.

### **III. Additional Standards That May Warrant Revision or Further Interpretation**

#### **A. Retention**

As I discussed in detail in my comments to the proposed revisions to Standards 701 and 702, the existing Interpretation of Standard 501 pertaining to attrition presents a particular problem for online law schools.

Interpretation 501-3 specifies that “[a] law school having a cumulative non-transfer attrition rate above 20 percent for a class creates a rebuttable presumption that the law school is not in compliance with [Standard 501].” This Interpretation does not distinguish between *voluntary* non-transfer attrition (drops or withdrawals) and *involuntary* non-transfer attrition (academic disqualification).

While it is reasonable to expect an online law school not to disqualify more than one in five students it admits, it is not realistic to expect an online law school to limit disqualifications *and* drops to 20%.

It may be that at campus-based schools, high levels of voluntary attrition are unusual and inherently suspect. But in an online setting, where the opportunity cost of trying law school is so much lower, drops are more commonplace and more likely to be innocuous, particularly where they occur early in the program, before students have spent much time or money.

This is certainly the case at PGLS. The vast majority of voluntary attrition (as well as involuntary attrition) occurs in the first two terms. By that point, students will have spent approximately \$4,000 to \$8,000 in tuition and four to eight months of their time on law school. None of them will have moved or been required to quit a job to attend law school, so the secondary impacts of having tried law school will be relatively minimal. While four-figure student debt is not trivial, servicing that debt will rarely create a significant long-term burden.

To be clear, PGLS faculty and staff do not encourage students to voluntarily drop as a ploy to minimize disqualification statistics. In fact, we provide a variety of support resources to help students not only with their academics but with time management and motivation. As part of our admissions process, we advise students about the expected workload and ask them to describe how they expect to manage that load on top of their outside work and dependent care responsibilities. We address time management and related skills in our orientation program. If a student fails significantly behind, professors and/or student support advisors reach out to offer assistance or advice about how to get back on track. We have a Professor of Academic Support who makes himself available for one-on-one consultations with students. And we give students access to a free bank of supplemental study materials designed by our faculty. Despite all these efforts, more than a quarter students typically withdraw before even making it to their first term finals.

I had previously suggested that Interpretation 501-3 be revised to provide that a law school having a cumulative *involuntary attrition rate* (or alternatively, an *academic dismissal rate*) above 20 percent creates a rebuttable presumption of noncompliance. Without such a change to Interpretation 501-3, online law schools will be forced to rely on being able to rebut the presumption of noncompliance with Standard 501. But there is no guidance provided in the Interpretations as to what type or quantum of evidence would rebut the presumption of non-compliance. It doesn't seem fair or practical to invite fully online law schools to pursue ABA approval by demonstrating compliance with the Standards when the Standards include Interpretations that nearly guarantee that fully online law schools will be presumed to be noncompliant.

At a minimum, if the ABA is unwilling to revise Interpretation 501-3 along the lines suggested, I would propose that the ABA draft a new Interpretation that provides further guidance on the standards for and/or factors to be considered in determining whether the presumption of noncompliance has been rebutted. Such factors could include: if much of the voluntary attrition occurs very early in the program; if average tuition or other costs incurred by those who voluntarily withdraw are relatively low; if the school takes measures to try to support student success and persistence prior to their withdrawal; and the absence of direct or circumstantial evidence that the school is actively encouraging students to voluntarily withdraw in lieu of being academically dismissed.

## **B. Tenure**

As I noted previously, it is not clear if the ABA Standards require a law school seeking provisional or full approval to have a system of tenure, or whether it is sufficient to offer all full-time faculty a "form of security reasonably similar to tenure," such as presumptively renewable long-term contracts (along with analogous protections for academic freedom). Fully online law schools are less likely than their campus-based counterparts to have a pre-existing tenure system, and so if online law schools are to be permitted to pursue ABA approval, it would be helpful to better understand what changes they will be required to make.

## **C. Non-JD Programs**

I would respectfully suggest that the ABA lift its restriction on schools seeking provisional approval offering a non-JD program.

Standard 102(d) provides that "[a] provisionally approved law school shall not offer a post-J.D. degree program or other non J.D. degree program...." Similarly, Standard 313 provides that "[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 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.” These Standards appear to presume that a law school applying for provisional approval is a relatively new, start-up school, and that “adding” a non-JD program to its JD offering may threaten its fledgling JD program.

However, in the case of PGLS, we have been offering our fully online, non-licensure-based Executive Juris Doctor (EJD) program in tandem with our fully online JD program for 25 of the school’s 26 years. EJD students make up about 20% of our student body. They seek the advanced legal training and skills that come with a traditional law school education to help them in their existing careers but do not intend to practice law. For some of our EJD students, who may be in their 40s, 50s, or 60s when they enroll, the EJD allows them to fulfill a lifelong dream of getting a law degree without having to worry about the hurdle of passing the bar exam, and in less time and for less money. (The EJD is a 72-credit, 3-year part-time program with total program tuition of \$37,080, as compared to the 92-credit, 4-year part-time JD program with total program tuition of \$49,680.)

The Committee of Bar Examiners of the State Bar of California has acquiesced in our offering the EJD, upon a finding that it does not interfere with our ability to operate the JD program in compliance with California’s standards, not just once but twice—first when we originally launched the EJD program in 1999, and again when we earned California accreditation in 2020. I am aware of at least one other fully online law school that offers a similar non-licensure-based alternative JD program.

Not only doesn’t the EJD program interfere with our ability to operate our JD program, but it actually provides an important concrete benefit to our JD program—namely, broadening the number of electives we can offer our JD students. California’s Rules for Accredited Law Schools provide that JD students in state-accredited law schools must take all of the subjects tested on the California bar exam. But since EJD students are not eligible to sit for the bar, they need not take all of those classes, and so have substantially more room in their schedule for electives than JD students. Although, as stated, EJDs make up only about 20% of our student body, they make up a higher proportion of students in our elective courses. As a result, we are able to offer our JD students a broader array of electives than we economically could if only JD students were enrolled in them.

It would be a shame if PGLS were forced to choose between retaining its EJD program and pursuing ABA approval—and would actually work to the detriment of our JD program and students.

In light of the above, I believe that Standard 102(d) should be revised to reflect that “[a] provisionally approved law school shall not offer a post-J.D. degree program or other non J.D. degree program *unless (a) the Council grants acquiescence in the program; (b) the degree program will not interfere with the ability of the law school to operate in substantial compliance with the Standards and to carry out its program of legal education; and (c) the degree program will not likely interfere with the ability of the law school to come into full compliance with the Standards within the time necessary for approval.*” In addition, Standard 313 subpart (a), which limits non-JD programs to fully approved law schools, should be deleted.

## Conclusion

I want to once again commend the ABA Council for seriously considering these important issues. As always, if I can be of any assistance in answering any questions the Council may have or providing further information, please do not hesitate to contact me.

Sincerely,



Martin Pritikin  
Dean and Vice President  
Purdue Global Law School