

CLINICAL LEGAL EDUCATION ASSOCIATION

c/o Peter A. Joy, Washington University School of Law in St. Louis
One Brookings Drive
St. Louis, MO 63130
(314) 935-6445
fax (314) 935-5356 joy@wulaw.wustl.edu
web site: clinic.law.cuny.edu/clea/clea.html

Board of Directors

Peter A. Joy
President
Annette Appell
Vice President
Paula Galowitz
Secretary
Suzanne J. Levitt
Treasurer
Bryan Adamson
Margaret Martin Barry
Angela Olivia Burton
Stacy Caplow
Brad Colbert
Cynthia Dennis
Justine Dunlap
Carolyn Kaas
Susan Kay
Gary Palm
J.L. Pottenger, Jr.
Alex Scherr
Robert Seibel

Clinical Legal Education Association (CLEA) Testimony to the Standards Review Committee Concerning Proposed Standards 306 and Proposed Changes to Standards 301, 304, and 305

The following testimony is submitted by the Clinical Legal Education Association (CLEA). These comments pertain to proposed Standard 306 and proposed changes to Standards 301, 304, and 305. CLEA was formed in 1992 to represent the concerns of clinical legal educators with regard to development of their own professional expertise, the role of clinical legal education within law schools, and furthering the mission of law schools to prepare law students for the practice of law. The organization has over 700 members who are deeply committed to the organizational goals.

SUMMARY OF CLEA's CONCERNS

CLEA submits testimony both because its membership is committed to quality legal education and because some of the proposed changes run counter to this goal and are contradictory. By proposing to require "classroom" instruction in Standard 304, the Standards Review Committee is explicitly limiting all other out-of-classroom courses to the 11,000 minute limit which heretofore was commonly understood to apply only to externships in Standard 305. Proposed Interpretation 305-5 also makes it clear that the 11,000 minute limit would now apply not only to externships but also to "independent study," "co-curricular activities (e.g., law review, moot court)," and all classroom and non-classroom based courses "outside of the law school. These changes will limit rather than encourage law students to participate in a variety of their law schools' educational programs, which is the goal of the proposed addition of section "c" to Standard 301.

The practical effect of the changes to Standard 304 and the Proposed Interpretation 305-5 is to combine several different types of educational experiences under the same 11,000 minute limit currently applied only to externships. This will have a major effect on law schools offering "semester in practice" programs, and will lead students participating in such programs to forgo participating in co-curricular activities such as law review or moot court, supervised research, independent study, or courses outside of the law school in graduate schools which have been approved by their law schools. In the alternative, students may not avail themselves of semester in practice programs because to do so will foreclose them from participating in co-curricular activities, doing independent study with full-time law faculty, or taking other courses that are not law school classroom courses. As a result, law students will not be able to experience and be seeped in the full range of law school courses and educational programs.

CLEA also believes that the proposal to insert the word “classroom” in Standard 304 will generate confusion among law schools. As currently written, Standard 304 acknowledges that modern law school instruction includes a variety of teaching methodologies, such as clinical teaching, professional skills instruction, and legal writing. In clinical courses, the “classroom” is often in the courtroom where students represent clients under the supervision of faculty or supervising attorneys, in the clinic law office or externship placement where students meet with supervising faculty or attorneys and other law students to discuss client representation issues and receive instructional feedback, and other locations where law students interact with each other and faculty to discuss clinical course subject matter. In professional skills courses, law school instruction often takes place in non-classroom settings such as trial and moot court rooms and interview rooms where students are not engaged in traditional “classroom” instruction but rather hands-on simulations where they put theory into practice.

The materials accompanying the proposed changes do not indicate the reason or reasons for combining such a broad range of varied educational activities together under the 11,000 minute rule, or the reason for inserting “classroom” in Standard 304. Without such supporting documents or explanation, it is impossible to understand what the underlying rationale is for such changes which appear to deny law school deans and faculty the ability to make a wide variety of courses and educational experiences available to all law students.

DETAILED COMMENTS

The following section details CLEA’s comments on proposed Standard 306, and proposed changes to Standards 301, 304, and 305. CLEA’s proposals for revising the language in Sections 304 and 305 appear at the end these comments.

Proposed Standard 306 on Distance Learning

CLEA neither supports nor opposes Standard 306, though CLEA notes the following concerns regarding the present language of the proposed standard. As currently written, Standard 306 permits a “resident student” to take his or her entire three years of law school through “synchronous distance education” as long as 1) the student has video access to instructors during class, 2) the classes are interactive, and 3) the classes provide “satisfactory opportunities to interact with the professor and each other outside of class.” In elevating “synchronous distance education” to the status of “classroom courses,” the ABA appears to be stating that distance education is as effective as traditional legal education.

CLEA notes that several recent studies and legal educators suggest that distance education is not as effective as classroom courses for most students when it comes to subjects that require analytical thinking and problem solving, the two lawyering skills taught in most law school courses. For example, a study at Michigan State University found that students who took an economics course online did not perform as well as students who took the same course in a traditional classroom even though the students in the online course had more college experience

and higher ACT scores. Even Peter Martin's Memorandum to the Consultant on Legal Education,¹ Dean John Sebert, notes some of the limitations of distance learning. Professor Martin's study indicates that distance learning compares favorably with classroom courses only when limited to courses that are "content-defined and focused on a statutory domain, and with students already well grounded in the study of law[.]"²

As it is currently written, Standard 306 is not restricted to such "content-defined and focused on statutory domain" courses. The plain language of Standard 306 sets no limit on the type or number of courses a law school may offer or student may take using synchronous distance learning. Thus, a law student could take all First Year courses via the internet at an ABA approved school if Standard 306 were adopted as written. CLEA questions the wisdom of the ABA rushing to approve such a sweeping change, and wonders if there is an educationally sound basis to do so at this time.

Law schools are still relatively inexperienced with distance learning, and CLEA believes that the ABA should be vigilant for possible abuses or violations of proposed Standard 306. CLEA also believes that the Standards Review Committee should revisit proposed Standard 306 in the future and consider whether Standard 306 adequately guarantees that distance learning is a useful teaching methodology for preparing students for the practice of law.

Although CLEA has reservations about proposed Standard 306, CLEA is not opposing Standard 306 because CLEA believes that Standard 306 reflects a useful model for considering teaching methodologies that depart from the traditional classroom. By focusing on the elements of what comprise a sound educational experience for law students, the approach in Standard 306 should serve as a model for other Standards that address teaching methodologies.

Proposed Changes to Standard 301

CLEA fully supports the policy and intent behind the changes to Standard 301. The new section "c" in Standard 301 is an important improvement by requiring law schools to take steps to make all of its educational programs, co-curricular programs, and educational benefits available to all students. CLEA believes, however, that the language in Proposed Interpretation 301-2 should provide more definite guidance to law schools and persons participating in accreditation activities to allow them to monitor compliance with Standard 301 (c).

¹Dan Carnevale, *Online Students Don't Fare as Well as Classroom Counterparts, Study Finds*, CHRON. OF HIGHER EDUC., Mar. 15, 2002, at 38. In addition, many legal educators share Associate Dean Peter Winograd's view that online learning "is best left to small, upper-level courses," and that it cannot "replace what goes on in the classroom." Carlyn Kolker, *Legal Business*, LEGAL TIMES, Sept. 10, 2001. There are also concerns that school sinking into distance learning "will provide fewer traditional courses" and students will be forced to take online courses even when they prefer "the interaction in a physical classroom." Dan Kane, *Distance Learning Comes of Age*, NEWS & OBSERVER, Oct. 4, 2001, at A1.

²*A Report on the LII's Two Multi-Law School Courses Conducted via the Internet in 2000-2001*, Memorandum from Peter W. Martin, Legal Information Institute, Cornell Law School, to John Sebert, ABA Consultant on Legal Education, at <http://www.abanet.org/legaled/standards/proposed.html>.

Interpretation 301-2 states that students must have “the realistic opportunity to benefit from regular interaction with full-time faculty and other students” and from co-curricular programs and special events. How does one measure a “realistic opportunity”? For example, does this mean that every student who wishes to interact with full-time faculty must have the opportunity to do so? Does this mean that every student who meets the eligibility requirements for co-curricular activities should be able to participate? If not, then is there a particular percentage or some other measure in mind to assist law schools and the ABA Accreditation Committee in measuring what constitutes a “realistic opportunity”? CLEA believes that without clearer language both law schools and the ABA Accreditation Committee will not be able to monitor compliance, and that there will be uneven adherence and enforcement of Standard 301 in the future. CLEA urges the Standards Review Committee to modify the language of Interpretation 301-2 to provide clearer and more definite guidance to law schools.

CLEA supports proposed Interpretation 301-3. Law students attending law school on a part-time basis, in a week-end enrollment program, or in the future through a distance learning enrollment or scheduling option should be able to participate in all of a law school’s educational programs on a roughly proportional basis. CLEA is concerned, however, that the proposed changes to Standards 304 and Interpretation 305-5 contradict this goal. For example, students participating in a full range of co-curricular activities and courses outside of the traditional classroom courses will be precluded from semester in practice scheduling option unless the law school requires more than the minimum 80 semester hours of credit or reduce the number of credits awarded for semester in practice programs.

Proposed Changes to Standards 304, and 305

CLEA opposes the insertion of the word “classroom” in Standard 304. As currently written, Standard 304 acknowledges that modern law school instruction includes a variety of teaching methodologies, such as clinical teaching, professional skills instruction, and legal writing. In clinical courses, the “classroom” is often in the courtroom where students represent clients under the supervision of faculty or supervising attorneys, in the clinic law office or externship placement where students meet with supervising faculty or attorneys and other law students to discuss client representation issues and receive instructional feedback, and other locations where law students interact with each other and faculty to discuss clinical course subject matter. In professional skills courses, law school instruction often takes place in non-classroom settings such as trial and moot court rooms and interview rooms where students are not engaged in traditional “classroom” instruction but rather hands-on simulations where they put theory into practice. CLEA firmly believes that inserting the word “classroom” in Standard 304 will cause confusion at law schools and will unnecessarily elevate a particular type of law school instruction over other teaching methodologies.

CLEA believes that the ABA can play a constructive role in introducing areas of law or types of instruction into legal education that otherwise have been overlooked or underutilized by most law schools. CLEA believes that the ABA’s proposed Standard 306 reflects such an attempt. The rationale behind Standard 306, which places no limits on synchronous distance learning, applies equally to other forms of legal instruction and learning. It is a rationale that

looks at the features necessary to insure a quality learning experience, and then equates the method of learning with traditional classroom instruction. In order to be consistent with this rationale, the ABA should adopt this approach to external clinical programs as described in Standard 305. In other words, externships or field placements that meet the requirements similar to those for synchronous distance learning should be treated the same as classroom courses and synchronous distance learning. Only those externships or field placements that do not contain a classroom component and the opportunity for students to meet with faculty and other students outside of class should be treated differently.

In order for the ABA to be consistent in its approach in dealing with the variety of methodologies for law teaching, the standards should focus on the criteria for creating a good learning environment. CLEA believes that the following language is one such approach for achieving this goal, and CLEA urges the Standards Review Committee to adopt these or similar changes. The strikeout and underlined portions reflect those changes proposed by the Standards Review Committee, and the CLEA language changes that depart from those originally proposed by the Standards Review Committee are in italics.

Standard 304. COURSE AND RESIDENCE CREDIT.

(a) An academic year shall consist of not fewer than 130 days on which classes are regularly scheduled in the law school, extending into not fewer than eight calendar months. Time for reading periods, examinations, or other activities may not be counted for this purpose.

(b) A law school shall require, as a condition for graduation, successful completion of a course of study in residence of not fewer than 56,000 minutes of classroom instruction time, ~~including external study meeting the requirements of Standard 305, except as otherwise provided.~~ At least 45,000 of these minutes shall be by attendance in regularly scheduled class sessions, *in clinical courses, or in field placement courses provided they meet the requirements enumerated in Standard 305 at the law school conferring the degree, or, in the case of a student receiving credit for studies at another law school, at the law school at which credit was earned. Law schools may, however, allow credit for distance education as provided in Standard 306.*

[No other changes to Standard 304 that differ from those proposed by Standards Review.]

Standard 305. STUDY OUTSIDE THE CLASSROOM.

(a) A law school may ~~offer grant credit toward the J.D. degree for courses or a program that permits or requires student participation in studies or activities away from~~ or outside the law school or in a format that does not involve attendance at regularly scheduled class sessions.

~~(b) Not fewer than 45,000 minutes of total time credited toward satisfying the "in residence" and "class hours" requirements of the Standards shall be in attendance in regularly scheduled class sessions at the law school conferring the degree, or, in the case of a student receiving credit for studies at another law school, at the law school at which the credit was earned.~~

(bc) Residence and class hour credit granted shall be commensurate with the time and effort expended by and the quality of the educational experience of the student.

(cd) Each student's academic achievement shall be evaluated by a faculty member. For purposes of Standard 305 and its Interpretations, the term "faculty member" means a member of the full-time, part-time or adjunct faculty. When appropriate a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program.

(de) The studies or activities shall be approved in advance and periodically reviewed following the school's established procedures for approval of the curriculum.

(ef) A field placement program shall be approved and periodically reviewed utilizing the following factors;

(1) the stated goals and methods of the program;

(2) the quality of the student's educational experience in light of the academic credit awarded;

(3) the adequacy of instructional resources, including whether the faculty members teaching in and supervising the program devote the requisite time and attention to satisfy program goals and are sufficiently available to students;

(4) any classroom or tutorial component;

(5) any prerequisites for student participation;

(6) the number of students participating;

(7) the evaluation of student academic achievement;

(8) the qualifications and training of field instructors;

(9) the evaluation of field instructors;

(10) the visits to field placements or other comparable communication among faculty, students and field instructors.

(fg) Additional requirements shall apply to field placement programs:

(1) A student may not participate before successful completion of at least *28 credits toward the J.D. degree* ~~one academic year of study.~~

(2) Established and regularized communication shall occur among the

faculty member, the student, and the field placement supervisor. The field placement supervisor should participate with the faculty member in the evaluation of a student's scholastic achievement.

(3) Periodic on-site visits by a faculty member are preferred. If the field placement program awards academic credit of more than six credits per academic term, an on-site visit by a faculty member is required each academic term the program is offered.

(4) A contemporaneous classroom or tutorial component taught by a faculty member is preferred. If the field placement program awards academic credit of more than six credits per semester, the classroom or tutorial component taught by a faculty member is required; if the classroom or tutorial component is not contemporaneous, the law school shall demonstrate the educational adequacy of its alternative (which could be a pre- or post-field placement classroom component or tutorial).

(g) Credit for a field placement for resident law students may count toward the 45,000 minutes of instruction required by Standard 304(b) if it:

(1) provides access to the instructor during class sessions;

(2) is interactive;

(3) provides satisfactory opportunities for students to interact with the professor and each other outside of class sessions; and

(4) if there are field supervisors, the faculty member responsible for the course is in close contact with and aware of how field supervisors interact with students.