

**C L E A**  
Clinical Legal Education Association  
<http://cleaweb.org>

July 8, 2013

Jeffrey E. Lewis  
Chair, Standards Review Committee  
Dean Emeritus and Professor  
Saint Louis University School of Law  
3700 Lindell Blvd.  
St. Louis, MO 63108  
By email to [lewisje@slu.edu](mailto:lewisje@slu.edu)

Dear Dean Lewis:

The Clinical Legal Education Association (CLEA)<sup>1</sup> has closely followed the work of the Standards Review Committee of the Council on Legal Education of the ABA Section on Legal Education and Admission to the Bar since planning of the current comprehensive review began in 2008. We have been particularly attentive to Chapter 3, Program of Legal Education and have long supported provisions that would sharpen legal education's focus on direct student engagement with real-world problems and better assessment of student outcomes.<sup>2</sup>

Much has happened over the past five years. If clouds were gathering when the review began, the storm has now broken and lashes legal education. The need to better prepare students for practice is urgent and we cannot continue as we were. Several of the largest state bar associations have urged that more and better clinical legal education is an important part of responding to the challenges we face.<sup>3</sup> On July 1, 2013 CLEA filed a [request](#) with the Council seeking adoption of a much more significant skills requirement than that proposed in the SRC meeting materials for the July meeting. This Committee also received additional comment in June on proposed changes to Standard 315, [Bar Passage](#).

This comment focuses on curricular issues in proposed Chapter 3, posted for the July 12-13 meeting. In our view, the draft is far too modest. While it gestures toward several helpful changes, it falls short of setting a minimal standard to guarantee every law school graduate is able to give value to clients, communities and the profession. That goal is only achievable with more serious commitments to skills training and assessment.

We offer these observations on proposed Standards 302-305 and 313:

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<sup>1</sup> CLEA has more than 1000 dues-paying member faculty. CLEA believes that clinical legal education is fundamental to the education of lawyers.

<sup>2</sup> CLEA's special regard for assessment is reflected in its signature Best Practices Project and [strong interest](#) in the [Report of the Special Committee on Outcome Measures](#). Two current members of the SRC sat on that Special Committee.

<sup>3</sup> See the [Report of the New York State Bar Association Task Force on the Future of the Legal Profession](#), [Illinois State Bar Association Special Committee on the Impact of Law School Debt on the Delivery of Legal Services](#) and the [State Bar of California Task Force on Admissions and Regulation Reform](#).

## Proposed Standard 302

The draft for the July meeting makes modest changes from the April draft but they continue to weaken the Standard. The draft omits the consumer friendly requirement that schools “publish” the learning outcomes chosen.

More fundamentally, the provisions are not well structured, given the problem addressed, and will prove hard to administer. The proposed standard has three particular requirements and two catch all provisions. It requires that student learning outcomes include: 1) knowledge of law; 2) analytic and research competency; and 3) ethical judgment. The two catch all provisions are 4) other skills and 5) any other outcomes related to the law school’s mission. We think it unfortunate that most of the skills needed for professional life are relegated to a catch all phrase. That phrase, in turn, is glossed in an interpretation with an open ended set of examples.

The CLEA urges that the skills list currently in proposed Interpretation 302-1 be reworked into the body of the Standard and account for our [October 1, 2009](#) comment on Standard 302. This change would better reflect legal education’s recognition that we must better integrate theory and practice. The marketplace does not value the black letter educated lawyer as it once did, although the structure of the proposed Standard persists in imagining a much narrower legal education than the one we must provide. Our students must be good at a lot of different things if they and we are to prosper.

## Proposed Standard 303

The July draft is helpful in explicitly referencing “the professional skills identified in Standard 302,” as the required subjects of the three credits but an explicit reference to 302(a)(4) is needed to give schools a bright line against double counting courses with the argument that legal reasoning is a professional skill. This also could be achieved by putting a more comprehensive list of skills into the Standards at 302(a)(4) and directly referencing that provision.

We also express concern about the elimination of a requirement for faculty evaluation in 302(a)(3)(iii) and its replacement by only “opportunities for self-evaluation.” Law schools owe their students more and varied feedback. This is an efficient way to provide another kind of useful student assessment.

We note with interest the new relationships among standards 303, 304 and 305. While concerned about striking the word “faculty” from 303(a)(3), it seems significant that the proposed definition of simulation courses, clinics and field placements are specific about the role of faculty in both simulations and law clinics and address the issue of feedback. It is quite important that faculty control over the academic portions of these credit bearing courses be maintained. This is a foundational issue in accreditation and we will express some concern about this issue in regard to field placements.

### Proposed Standard 304

We appreciate the effort to clarify and codify the kinds of programs that are subject to the various regulations. But we worry that imposing too rigid a scheme on a diverse and rich array of programs could have unintended consequences.

In particular, we are concerned about the consistent use of nomenclature throughout the Standards. As [Prof. Robert Kuehn noted in his January 2013 letter](#), it would be clearest if the phrase “law clinic” were used in Standard 304 and throughout the Standards to denote a faculty taught academic course in which students have responsibility for actual, ongoing cases, matters or projects with consequences in the real world. In this taxonomy, courses using contextualized materials and exercises in role would be “simulation” courses while academic offering in which credit was granted for legal work performed in settings in which non-faculty have responsibility for legal cases, matters or projects would continue to be called “field placements.” The phrase “clinical program” would be reserved for the set of law clinic and field placement courses available at a law school. A “clinical course” would be any course that meets the definition of a field placement or clinic.

We also note that if the term "clinical" in Standard 304 only denotes a law clinic, then full-time faculty that teach in field placement programs would no longer be included in Standard 405(c)'s requirement for the treatment of full-time clinical faculty. We assume the Committee did not intend this result and offer this as another reason why the phrase "law clinic" should be used instead in the Standards.

In addition, we suggest that the use of the word “assessment” in place of “feedback” in 304(a)(2) and (b)(3) would be more consistent with the language of proposed Standard 313.

We also note that the new language of proposed Standard 304 includes the word “internal” in the title, a word also included in Interpretation 310-2(a)(2). That is confusing in our view, as we don’t see a distinction between “internal” and “external” simulation courses. All simulations courses, regardless of how they are structured or located, should have the features in the proposed standard. We suggest that the word “internal” be struck from the title and from Interpretation 310-2.

### Proposed Standard 305

Proposed Standard 305 lowers the threshold for increased supervision of field placement programs and we think that a salutary change. The affirmation of faculty control over the evaluation of academic achievement is also significant.

The field placement supervisors who met together at the recent AALS Clinical Education Section meeting in May 2013 expressed their concern that proposed Standard 305 would allow a "faculty supervisor or law school administrator" to be in charge of the regular contact with the site supervisors to assure that students' educational needs were being met in the placements. The group unanimously agreed that faculty should assure that field supervisors provided high quality educational experiences to students, not administrators without faculty oversight. They urged the

Committee to adopt language proposed in CLEA's comment of [October 2012](#), which would require regular contact by "the faculty supervisor or other staff under the faculty member's supervision."

That group shared the concern about consistent nomenclature and urged that care be taken to ensure that the clinical faculty includes all those charged with academic responsibility for law clinics and field placements.

### Proposed Standard 313

CLEA has long been critical of the current state of assessment of student learning in legal education. In our [Best Practices Project](#) and in our close involvement in the comprehensive review, we have urged that schools be required to provide every student with more and more varied assessment of his or her work. Better assessment will improve our students' preparation for the profession. Assessment was seen as one of the key ideas shaping the comprehensive review at the outset of the process, as evidenced by the ABA's July 2008 [Report of the Special Committee on Outcome Measures](#). [Early Committee drafts](#) would have required schools to bring law school assessment in line with contemporary best practices for student feedback. But many worried that law school would be hamstrung by these requirements and the drafts were weakened, ignoring the many sophisticated approaches to assessment already flourishing across legal education.

CLEA [continues to urge, as it did in July 2010](#), that the earlier, more robust version of the proposed standard on student assessment was the right choice for legal education. The current version will likely require no change whatsoever in a system that is widely regarded as deeply flawed. Even today, most law students receive little feedback beyond their final grades and some line editing on a very few written projects. We have the tools and resources to offer students so much more and it would bring real benefit to them, legal education and our profession.

CLEA continues to follow the work of the SRC with great interest and appreciate this and all our opportunities to share our ideas with you.

Thank you,



Katherine Kruse  
CLEA President