

Clinical Legal Education Association

October 25, 2012

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Leigh Goodmark, CLEA President
Univ. of Balt. Law School
Baltimore, MD 21201
410-837-5639
lgoodmark@ubalt.edu

Jeffrey E. Lewis
Dean Emeritus and Professor of Law
Chair, ABA Standards Review Committee
Saint Louis University School of Law
3700 Lindell Blvd.
St. Louis, MO 63108

Re: Student Outcomes and Related Curricular Provisions of Chapter 3 - Program of Legal Education

Dear Dean Lewis:

The Clinical Legal Education Association (CLEA) submits this comment to the Outcomes Subcommittee of the Standards Review Committee (SRC). CLEA has been actively engaged with the work of the SRC from the beginning. We share the view, so well-articulated by the Special Committee on Outcome Measures and so well developed in *Best Practices for Legal Education*, that a turn toward more effective student learning outcome measures is intellectually sound and would improve our educational programs. Coupled with the strengthening of skills education, better student assessment points the way forward for legal education.

Enthusiastic though we are about the promise of new Standards that would feature outcome measures and promote greater practice readiness among our graduates, we are concerned about the direction that recent drafts have taken. In this comment, we note how recent drafts have omitted the earlier requirement that students be provided with opportunities to develop professional judgment consistent with the values of the legal profession. In addition, the newest proposal deletes all references to the acquisition of professional values as a mandatory learning outcome. Lastly, the most recent draft of Standard 310 (currently Standard 305) regarding "Study Outside the Classroom" reduces the role of faculty in the oversight and evaluation of field placement programs. All of these changes are inconsistent with the goals set out at the start of the comprehensive review, fly in the face of the many current calls to strengthen students' readiness for contemporary legal practice and threaten to undo more than four years of careful work by so many.

Learning Outcomes Required for Graduation

Many have noted the significant gap between the skills taught in the current law school curriculum and the skills needed for entry-level practice. As noted in *Educating Lawyers* (commonly referred to as "The Carnegie Report"), preparation for the legal profession includes learning in three areas: cognitive skills, practical skills, and professional values. Law schools have traditionally over-emphasized cognitive learning to the exclusion of both practical skills instruction and the inculcation of professional values, although the trend toward greater attention to professional skills and role-based values in mandatory curricula is encouraging. In addition, those concerned with how the accelerated structural changes to the legal profession affect our new graduates point out the immediate need to equip our students with personal development tools, such as reflection in action, in order to effectively and continually learn from experience.

The proposed shift to learning outcomes in the Standards provides an opportunity to better bridge this gap by requiring a minimum level of competency by law graduates in well-established lawyering skills and professional values that pertain to all client representation. The most recent proposed changes to Chapter 3 fail to take advantage of this opportunity to correct the problem of an overemphasis on the acquisition of knowledge and development of cognitive skills and a de-emphasis of the practical skills and values of the profession.

Despite the importance of practical lawyering skills, the most recent draft of proposed changes to Chapter 3 focuses the mandated learning outcomes exclusively on the skills of legal analysis and reasoning, leaving the identification of which “other professional skills” should be included in the curriculum to individual schools. Although Proposed Interpretation 302-1 suggests certain lawyering skills that schools might consider in determining learning outcomes for “other professional skills,”¹ the skills identified as optional in Interpretation 302-1 are not optional in the practice of law; on the contrary, they are the building blocks of legal practice in any setting.

The ABA has long recognized such skills as essential to legal practice, at least since the 1992 publication of this Section’s widely-discussed report, *Legal Education and Professional Development-An Educational Continuum* (commonly known as the MacCrate Report). In the two decades that have followed, teaching materials and methodologies for the essential lawyering skills and values identified in the MacCrate Report have been developed and disseminated and many schools have expanded their curricula to embrace skills instruction. Law schools can no longer claim that practical considerations prevent them from offering skills programs to their students, as experience has proven that such programs can be provided both effectively and efficiently. The Accreditation Standards should ensure that all schools are adequately preparing students for the practice of law by requiring learning outcomes for clearly identified lawyering skills.

Other recent changes made by this Committee contribute to the counter-productive trend to focus learning outcomes on the cognitive skills already over-emphasized in traditional legal education by eliminating references to the third important leg of the professional training stool: professional values. For example, this Committee has omitted language from its earlier proposed draft that would have required schools to mandate “the exercise of professional judgment consistent with the values of the legal profession and professional duties to society.” Moreover, recent drafts have deleted references to the acquisition of professional values, including justice, fairness, candor, honesty, integrity, professionalism, respect for dignity and the rule of law, and the responsibility to ensure that adequate legal services are provided to those who cannot afford them, as a necessary part of legal education.

Changes to Rules on Externships

We also note our concerns about proposed changes to the requirements for field placement programs. Recent drafts would substitute a requirement of “regular contact” between the law school and field placement supervisor for the current requirement of site visits or their equivalent. The proposed changes also lower the number of academic credits sufficient to trigger the “regular contact” requirement to three or more academic credits per semester from the current trigger of four or more academic credits. This change from a four to three credit threshold also applies to the separate requirement for “opportunities for student reflection” that must be contemporaneous.

¹ The skills identified in Proposed Interpretation 302-1 are “interviewing, counseling, negotiation, fact development and analysis, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.”

While these changes would, in our view, generally strengthen field placement programs, they are coupled with the most troubling aspect of the proposed changes: explicit permission for non-faculty members to manage the new “regular contact” requirement as well as implicit permission for non-faculty members to oversee the seminar component. Specifically, the new proposed language permits either a faculty member or a “law school administrator” to maintain contact with field placement supervisors and to “assure the quality of the student’s educational experience.” Standard 310(e)(5). The proposed change also fails to specify that only faculty members should have responsibility for the reflective component. Standard 310(e)(7).

Experience tells us that faculty involvement remains critical to all aspects of the field placement experience. Assuring that field supervisors provide quality educational experiences to students constitutes a core task of field placement pedagogy. The task requires substantial insight into and judgment about the practice, the individual supervisor, and the student, all within the learning goals of the field placement program: a quintessentially pedagogical function. Assuring high quality “opportunities for student reflection” also requires the judgment and insight characteristic of skilled teaching. Our best available data indicates that more than three-quarters of all schools implement this requirement in a seminar setting.

Standard 310 should reflect the fact that field placement programs offer a distinct and challenging form of clinical pedagogy. To ensure that faculty, and not administrators, bear the responsibility to design and deliver this pedagogy, CLEA proposes the following changes to the current version of Standard 310(e):

(e) A field placement program shall include:

... (4) a method through which a faculty member will for selecting, training, evaluateing, and communicateing with field placement supervisors;

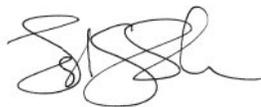
(5) for externships that award three or more semester hours (or equivalent quarter hours), regular contact between the faculty supervisor or ~~law school administrator~~ other staff under the faculty member’s supervision and the site supervisor to assure the quality of the student educational experience, including the appropriateness of the supervision and the student work. Regular contact includes in person visits and other methods of communication that will assure the quality of the student educational experience;

... (7) opportunities for student reflection on their field placement experience, through a seminar, regularly scheduled tutorials, or other means of guided reflection taught by a faculty member. Where a student can earn three or more semester hours (or equivalent quarter hours) in the program for fieldwork, the seminar, tutorial, or other means of guided reflection must be provided contemporaneously.

We urge the Subcommittee and the full SRC to return to the stronger and promising version of these provisions that was under consideration before the “second look” began. The outcomes and related curricular provisions were among the most promising and well developed of that group of proposals.

Thank you for this opportunity to comment on these significant matters.

Sincerely,



Leigh Goodmark
CLEA President, 2012