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Clinical Legal Education Association

<http://cleaweb.org>

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April 24, 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

Re: The Standards Review Committee's Process

Dear Dean Lewis:

The Clinical Legal Education Association (CLEA) writes to express its continued concern with the last-minute posting of proposed new regulations to be discussed at meetings of the ABA Council's Standards Review Committee. As you know, we have urged you in person at every meeting of the Committee that you have chaired to post proposals sufficiently in advance of meetings to permit Council affiliates and other stakeholders to provide the Committee with comments. You have on each occasion undertaken to make proposed changes available in the future in a timely way. Unfortunately, the Committee's deeply flawed process has grown even worse, making it impossible for stakeholders to participate and leading to inadequate consideration by the Committee of the impacts of its proposals.

More than two years ago, on November 4, 2010, we wrote to the then-chairs of the Council and Committee noting how the Committee's comprehensive review process excluded stakeholders and provided no time for interested persons to review and comment on Committee drafts. We urged that the Committee post all drafts at least three weeks prior to a meeting so that interested persons could provide input. We also urged the Committee to allow comments from Council affiliates at its meetings. At that time, and in subsequent communications, we were assured that the process would be more timely and inclusive.

Given this background, we were dismayed that this week more than one hundred pages of Committee drafts were made available on Monday for a

CLEA is the nation's largest association of law teachers, representing over 1000 dues-paying faculty at over 180 law schools. CLEA is committed to legal education that trains law students to be competent, ethical practitioners and to promoting access to legal representation. Its membership consists of law professors who teach students in their role as lawyers and who devote their energy and attention to identifying, teaching, and assessing proficiency in the skills and values essential to lawyering.

Katherine Kruse, CLEA President, Hamline University School of Law, 1536 Hewitt Ave., MS-D2017, Saint Paul, MN 55104, 651-523-2472, kkruise02@hamline.edu

meeting to begin on Friday. Our preliminary review suggests that these new drafts differ significantly from both the current Standards and the drafts discussed at the Committee's last meeting. It is extremely difficult for any person or organization to digest the newest drafts and analyze their impacts in four days. It is impossible for an organization like ours that undertakes a consultative process when commenting on drafts. We suspect that the members of the Committee, who like us are busy volunteers (and some of whom, unlike us, are not deeply involved with legal education), also find it difficult to master the content and implications of a hundred pages of proposals in only a couple of days.

The Committee's comprehensive review process therefore remains unfair to important stakeholders in legal education who have highly relevant information and experience to share. It impedes sound decision making, and remains contrary to the requirement in the U.S. Department of Education's regulations that the Council's constituencies be afforded a "meaningful opportunity to provide input into the review [of accreditation standards]." 34 C.F.R. §602.21(b)(4). Providing draft standards only four days before a meeting and failing otherwise to provide any opportunity to participate in the Committee's deliberations denies stakeholders any opportunity, much less a meaningful opportunity, to provide input into the Committee's understanding of the issues. It also deprives the Committee itself of what might be useful advice.

Although we have had insufficient time to evaluate these late-posted drafts and their potential impacts, we are confident in voicing our rejection of the characterization of the version of "Alternative A" to Standard 405 that was posted on Monday. In a January 7, 2013 memorandum to the Committee, the Chapter 4 Working Group stated: "Alternative A is intended to provide editorial changes to Section 405 for the purpose of clarifying the present language without changing the substantive provisions of the Section." Contrary to this representation, Alternative A instead is a wholesale repudiation of the longstanding understanding of current Standard 405. Most notably, it deletes the reference to tenure in current Standard 405(b). As we noted in our January 11, 2013, letter to the Committee, the unanimous faculties of over 70 law schools and the deans of 18 law schools, all deans of color, among many others, sent resolutions opposing the very proposed changes to security of position that the authors of Alternative A now declare to be a mere "clarification."

As we urged in our January letter, the Committee should do what it has been asked to do. It should develop an alternative proposal that addresses only the few key concerns with existing Standard 405 that the Council has asked the Committee to address. In particular, proposed Alternative A does not clarify the imprecise language in Interpretation 405-6 that the Committee unanimously proposed in 2007 be amended, and it fails to address the vague, unenforceable "reasonably similar" phrase in Interpretation 405-8 that at present fails to ensure all full-time clinical and legal writing faculty meaningful participation in faculty governance. CLEA has already provided the Committee with a proposed clarification of Standard 405 that meets the goal of amending the Standard in the way that the Council has requested, and we attach it again here.

Even more recently, you posted to the Committee's web site on Tuesday a completely revised draft of the proposed bar passage standard. The proposal contains not even a redlining to the current standard much less a memorandum setting out the rationale for the proposal. A quick comparison of this proposal with the current bar passage standard reveals two major changes. First, it would eliminate jurisdiction-specific measures of relative pass rates and impose a flat nationwide percentage requirement. Second, it would raise the current ultimate bar pass rate from 75% to 80%, again without providing any data to support the need for this percentage increase. It has not studied the effect of such a proposal on law school diversity. We believe that this proposal would both impede the development of innovative legal education and reduce even further the participation of people of color in the profession. The posted proposal is silent on these questions.

We also have noted several apparently significant changes in Chapter 3, including a surprisingly

restrictive definition of a law school clinic. We would hope that the Committee would value the views of the Clinical Legal Education Association on such a proposal. But again, we have insufficient time for useful comment.

We understand that the Committee faces a complex and demanding task. We appreciate the efforts of its members. As long and consistent observers of your process, we know there are many difficult issues and practices involved. But our observations compel us to conclude that all too often Committee decisions are made with imperfect understanding of potential impacts and insufficient input from knowledgeable, affected stakeholders.

As we did back in November 2010, we strongly urge the Committee to adopt a process that makes drafts for review available at least three weeks in advance of the meeting and allows stakeholders to be heard during the Committee's meeting deliberations. Until such an approach is implemented, we believe the Committee should not move forward with any discussion of the latest drafts of the standards we have addressed here.

Sincerely,

A handwritten signature in cursive script that reads "Katherine Kruse".

Katherine Kruse
CLEA President

cc: Dean Kent Syverud
Chair, ABA Council of Legal Education

Barry Currier
Managing Director, ABA Council