

C L E A

Clinical Legal Education Association

TO: Barry Currier, Managing Director
ABA Section of Legal Education

CC: The Honorable Solomon Oliver, Jr., Council Chair
Dean Joan Howland, Chair-Elect

FR: The Clinical Legal Education Association

RE: Proposed Elimination of Interpretation 305-3 to Current Standard 305

DT: February 26, 2014

We write about the pending proposal to eliminate Interpretation 305-3 to current Accreditation Standard 305. We understand that the Standards Review Committee referred this proposal to the Council for further action at its March meeting. With this letter, we ask that the Council reject this proposal until it provides notice and seeks comment about the proposal in accordance with its own operating practices.

The proposed elimination of Interpretation 305-3 significantly changes the Standard relating to field placement programs. As detailed in CLEA's comments to the Standards Review Committee on this issue, permitting law schools to provide credit for compensated work would severely harm both the quality of field placement courses and the range of clinical courses available to law students.

Such a significant change should not occur without full notice from and an opportunity for interested parties to offer comments to the Council. The proposal to remove Interpretation 305-3 from the Standard has never appeared in any "Notice and Comment" document circulated by the Council or by the Standards Review Committee. The document posted on the ABA's website with respect to Standard 305 and its interpretations is dated September 6, 2013. It contains the full text of other revisions to the Standard; but it contains no mark-up or other revision of Interpretation 305-3 (other than a change in numbering). No public mention of this proposal occurred at the October 2013 meeting, nor was any request for notice and comment circulated before the February 2014 meeting.

The Council's internal operating practices require notice and comment on any change to an Interpretation. Practice 9 requires the Council to provide "notice of proposed revisions or additions to the Standards, Interpretations and the Rules of Procedure of the Council to deans of approved law schools, chief justices, and directors of state bar admission authorities" and permits comment by "interested parties." For any proposed change that arises as part of an ongoing review process, Practice 11 also requires the Council to ensure "circulation for notice and

comment from interested constituencies.” The Practice requires the Council to make proposed revisions available to the public on the Section website and through publication in Syllabus.

The Council would fail in its responsibility to provide transparency and full participation to interested constituents if it accepted the SRC’s recommendation without soliciting notice and comment on this issue. It is not enough to say (as the Transcript of the February 2014 Committee meeting seems to suggest) that Standard 305 is up for review, and thus any proposed change to an interpretation would be automatically included, regardless of how late that change was proposed or how narrowly it was circulated. Routine administrative practice and basic fairness both suggest that the Council should provide notice of each change specifically, particularly a change as important as the one under consideration.

The Committee and the Council have ample reason to know that this proposal has received significant opposition from within the legal academy: comments from both CLEA and the Society of American Law Teachers have so indicated. Consistent with its longstanding practice, we ask that the Council reject this proposed change until it follows its own practices and elicits full notice and comment.