

TO: Council of the ABA Section of Legal Education and Admissions to the Bar
FROM: Clinical Legal Education Association
Society of American Law Teachers
DATE: February 20, 2019
RE: Transparency and Collaboration in Council Decision-Making

The Clinical Legal Education Association (CLEA) and the Society of American Law Teachers (SALT) appreciate the hard work of the Council in overseeing legal education and admission matters critical to the legal profession. We likewise appreciate and value our role as affiliates to the Council and the opportunity this role provides to share our insights and experience regarding the ABA Standards and Rules of Procedure for Approval of Law Schools. To enable us to serve this function and collaborate effectively with the Council as it reviews and revises the Standards, we urge the Council to increase transparency in its processes and engage in meaningful dialogue with all interested constituencies before making decisions that affect law schools and the legal profession.

We have been concerned by a lack of transparency in Council decision-making over the past several years. For instance, in 2016 SALT sent a letter to the Council objecting to a Standards Review Committee closed-door meeting to plan its agenda for the year and urging the Council to encourage more collaboration and transparency. Now that the Standards Review and Accreditation Committees have been consolidated into the Council, we grow increasingly alarmed by the dramatically limited opportunities for open exchange. Open meetings of the Standards Review Committee have vanished along with the Committee. We understand there is a subcommittee of the Council working on reviewing the standards, but the Council has not directly informed affiliates of the existence or membership of the subcommittee let alone invited affiliates to attend. In contrast, between July 2017 and April 2018, a typical year, the Standards Review Committee scheduled twenty-four hours of open meeting time over four two-day meetings.¹

Moreover, time devoted to open session during Council meetings has dwindled precipitously. During each of the two multi-day meetings² held since the consolidation, the Council held open session for three hours or less. The open session time during the meeting on September 14, 2018, took up about 1 hour and 25 minutes, and during the meeting on November 16, 2018, took up about 2 hours and 45 minutes.³ Much of the limited open session time has been spent on routine oral reports, including affiliate reports. Very little debate about proposed changes to the ABA Standards has occurred in open session. An agenda item on “Standards Matters” (no other detail given) scheduled for the September 14, 2018, open session was skipped without explanation. We later learned that the item referred to the proposed changes to Standard 316 and had been moved to closed session, contributing to our impression that the Council has begun to conduct much of its substantive consideration of proposed changes to the ABA Standards behind closed doors.

These processes are neither sound nor appropriate for the ABA’s consideration of changes to law

¹ During the same period, July 2017 through April 2018, the SRC also held hearings on Standards revision proposals in July 2017 and April 2018, as well as a three-hour invitational roundtable that provided an opportunity to discuss larger issues facing legal education with SRC members and other interested organizations.

² These meetings took place in September and November 2018.

³ Affiliate representatives were also invited to lunch, and we appreciate that opportunity for informal interaction, but it is not a substitute for observation of the Council meetings, which involve conversations among all of the members rather than a few.

school accreditation standards. The process deficiencies run afoul of the Department of Education (“DOE”) Regulations governing accrediting agencies such as the ABA. DOE regulations require that accrediting agencies implement a program of review of their accreditation standards that “involves all of the agency’s relevant constituencies in the review and affords them a meaningful opportunity to provide input into the review.”⁴ Moreover, on a practical level, more open and collaborative processes, although sometimes harder to manage, result in much better and much better accepted outcomes. We urge the Council to address the ABA Standards and other matters of great concern to constituents during open sessions and make it a practice to hear and collaborate with concerned constituents.

The Council’s process regarding Resolution 105 is an example of the Council’s failure to involve constituencies in its review of the Standards and to create a meaningful opportunity to provide input. Specifically, at the September meeting, the Council discussed Standard 316 during closed session. At the November meeting, the Council’s discussion of Standard 316 during open session consisted solely of a summary report of the information posted to its website. The Council did not openly deliberate the merits of proposed changes to Standard 316 or discuss potential objections to the proposed changes in light of information gathered after the first rejection by the House of Delegates, and the Council did not invite comment from affiliates and other interested constituencies on the prospect of sending the proposal to the House of Delegates for a second time.⁵ Council affiliates and other concerned constituencies had no avenue to provide meaningful input to the Council. We had no other option but to raise our objections to Resolution 105 directly with the delegates who overwhelmingly agreed with us and decidedly defeated the Resolution by a vote of 334 to 88.⁶

For the reasons stated above, CLEA and SALT urge the Council to create a more transparent, collaborative process. We are heartened to see Standard 316 on the agenda for the February 22 open session and look forward to a productive discussion there. In this moment, the Council can reaffirm its commitment to transparency and collaboration by choosing to include affiliates and other constituents in discussions about how to move forward with strengthening Standard 316. We hope we can work together, with other interested groups, to understand the root causes and best solutions regarding these and other challenges we face in preparing lawyers to join the profession.

At the Council meeting on Friday, February 22, Kendall Kerew will be representing CLEA and Denise Roy will be representing SALT. Kendall and Denise would be happy to discuss a more collaborative process with you and can be reached at:

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⁴ U.S. Department of Education Regulations, 34 C.F.R. §602.21 (b)(4)

⁵ Concerned constituencies provided written and oral comments objecting to the Standard 316 proposal when it was originally put out for notice and comment. Those comments were given scant attention at the SRC and Council open sessions and it took rejection of the proposal by the House of Delegates to prompt additional Council efforts to consider those concerns. As detailed here, the additional efforts, though a step forward, were again insufficient.

⁶ Those that spoke or wrote in opposition included two past ABA Presidents, the Young Lawyers Division, the Law Student Division, the ABA Goal III entities, the Hispanic National Bar Association, the Society of American Law Teachers, and CLEA.