



June 28, 2021

Council of the Section of Legal Education and Admissions to the Bar
American Bar Association
321 N. Clark Street, 19th Floor
Chicago, IL 60654

Dear Council Members:

The Clinical Legal Education Association (“CLEA”), the nation’s largest association of law professors, submits this comment to the Council of the American Bar Association’s Section of Legal Education and Admissions to the Bar (“the Council”) in response to the addition of proposed Standard 303(c) and to reiterate its support of proposed Standard 303(b) given its recent revision.

As proposed, Standard 303(c) would require law schools to “provide training and education to law students on bias, cross-cultural competency, and racism” at the beginning and at some point before the end of law school. CLEA generally supports Standard 303(c), but we urge the Council to make four changes to the draft and its associated Interpretation:

- to clarify that training in antiracism should not be limited to clinics and field placements;
- to use a single term, “antiracism,” instead of several different terms (cross-cultural competency, bias, and racism);
- to require law schools to offer at least one course that provides substantial instruction in antiracism; and
- to encourage the teaching of antiracism pervasively throughout the curriculum, not just once or twice.

First, CLEA suggests that **training in antiracism should not be limited to clinics and field placements**. Proposed Standard 303(c) mandates that after the antiracism training and education that takes place at the start of the program of legal education, for those students enrolled in law clinics or field placement courses, “the second occasion for training and education will take place before or concurrent with their enrollment in clinical or field placement courses.” To be sure, clinics and field placements bring students into contact with clients and practices where the impact of racism, bias, and lack of cultural awareness can have concrete, harmful consequences. But not all students take a clinic or field placement course to satisfy the experiential education requirement.

CLEA acknowledges the special need for antiracist training for students who come into contact with clients and causes outside the law school. Many clinical and field placement courses already address antiracism. The theory and practice of teaching antiracism in clinics and field placement courses is a pervasive topic of discussion in the national clinical community.

While clinics and field placements should reinforce antiracist training and education, they should not be the only or first courses in which students are provided antiracist training and education after law school orientation. Requiring the teaching of antiracism throughout the curriculum and a required course focused on antiracist training and teaching would meet such a goal. Below, CLEA suggests revisions that address those concerns. If the suggestions described next are adopted, CLEA sees no need to clarify the last sentence of Standard 303(c) to ensure that law schools do not limit instruction in antiracism to clinic and field placements.

Second, CLEA suggests **the Standard should use a single term, antiracism, as the focus of this instruction.** As written, proposed Standard 303(c) and Interpretations 303-6 and 303-7 use the terms “bias,” “cross-cultural competency,” and “racism” interchangeably and inconsistently. Interpretation 303-6 mentions “the importance of *“cross-cultural competency”* only. Interpretation 303-7 then states that “Standard 303(c) may be satisfied by: (1) Orientation sessions for incoming students on *bias, cross-cultural competency, and racism*; (2) Guest lectures or trainings by experts in the areas of *bias, cross-cultural competency, and racism*; (3) Courses on *racism and bias* in the law; or (4) Other educational experiences that train students in *cross-cultural competency*.” Interpretation 303-7 uses the disjunctive “or,” implying that any one of the four is sufficient, while Standard 303(c) uses the conjunctive “and,” implying that all are required. These inconsistencies provide, at best, confusing guidance on exactly what topics must be addressed.

Standard 303(c) should use a single term to refer to all three topics: “antiracism.” This term is widely used and consistent with the language used in the Law Deans Antiracist Clearinghouse Project.¹ Teaching antiracism would include, yet go beyond, teaching about bias, cultural competency, and racism. The use of a single term would make the curricular goal clear. In their recent article, *Antiracism, Reflection, and Professional Identity*, Professors Capulong, King-Riles, and Mills argue that “our academy’s current approach to teaching professional values largely ends with the promotion of diversity and cross-cultural competence, which, while laudable, does not go far enough.”² Teaching antiracism would require law schools to (1) identify racism, bias, and discrimination throughout our legal systems, (2) teach students about culturally competent and antiracist lawyering, and (3) also provide graded opportunities for practice.

To this end, and specifically, CLEA proposes that:

-- references in Standard 303 to “bias,” “cross-cultural competency,” and “racism” be replaced with the single term “antiracism”; and

¹ Law Deans Antiracist Clearinghouse Project, <https://www.aals.org/antiracist-clearinghouse/> (last visited June 23, 2021), explaining that “antiracist work requires deans to lead our law schools according to visionary statements and actions that demonstrate a commitment to delivering on an antiracist program of legal education.”

² Andrew King-Ries, et al, *Antiracism, Reflection, and Professional Identity*, 18 *Hastings Race and Poverty L.J.* 3, 4 (2021).

-- a definitional sentence be added either to proposed Standard 303(c) or to Interpretation 303-7 that states: “Training in ‘antiracism’ includes training in bias, cross-cultural competency, and racism.”

Third, **the new Standard should require at least one course that provides “substantial instruction” in antiracism.** In its current form, the draft Standard only requires “training and education.” Interpretation 303(7) in turn provides a laundry list of examples – orientation lectures, trainings by experts, and guest lectures – that are unlikely to transform how a law student engages in antiracist lawyering. There is no requirement that any of these offerings involve practice, feedback from an instructor, or evaluation, including a grade.

CLEA submits that, to be effective, training in antiracism must include guided and evaluated activities over time. Law students need consistent exposure to experiences that will foster awareness of their own biases and to incorporate antiracist practices into their casework and professional roles post-graduation. In establishing the AALS Antiracism Clearinghouse the AALS Deans issued a call to action: “we must listen and learn from each other’s experiences, lead our communities by example, audit our schools to ensure progress toward racial equality (with an understanding that race cannot be neatly segregated from socioeconomic class), influence policy, and iterate our commitment to the fight for racial equality, all to demonstrate our resolve to eradicate racism in the United States.”³

Requiring at least one course that provides “substantial instruction” in antiracism is consistent with other requirements in the Standards. For example, Standard 303(a) requires “one course . . . in professional responsibility that includes substantial instruction in rules of professional conduct, and the values and responsibilities of the legal profession and its members” and “one or more experiential course(s) totaling at least six credit hours.” Similarly, Standard 304(a) defines an experiential course as one that is “primarily experiential in nature” and that includes “opportunities for student performance, self-evaluation, and feedback.” Requiring substantial instruction in antiracism will assign this topic the same importance as professional responsibility, the values of the profession, and experiential training.

Fourth, **the Standard should require that antiracism be taught pervasively** throughout the curriculum, not at just at two points of a student’s legal education or in one course. As proposed, Standard 303 requires “training and education” on “bias, cross-cultural competency, and racism” at only two points in time: the start of the program of legal education and once again before graduation.

As to these third and fourth suggestions, CLEA proposes that:

-- the following new language be added to the fourth paragraph of proposed Standard 303(c), just before the phrase “For students engaged . . .”:

“This training and education shall include at least one course that provides substantial instruction in antiracism.”

³Law Deans Antiracist Clearinghouse Project, *supra* note 2.

-- Interpretation 303-7 be revised as follows:

Standard 303(c) requires that law schools offer at least one course that provides substantial instruction in antiracism. Law schools should also encourage the teaching of antiracism pervasively throughout the curriculum, through such methods as:

- (1) Orientation sessions for incoming students on antiracism;
- (2) Guest lectures or trainings by experts on antiracism;
- (3) Opportunities to reflect and practice antiracist lawyering skills; and
- (4) Other educational experiences that train students in antiracism.

Law schools must demonstrate that all law students have received education and training in antiracism.

Finally, CLEA supports the Council's revision of Standard 303(b), given the addition of proposed Standard 303(c). Using the term "antiracism" in 303(c) would complement the revised professional identity standard well. As CLEA noted in our prior comment on the new professional identity language, racial identity and professional identity are intricately linked: "[g]iven the central role that racial identity plays in the formation of personal identity, it should also play a central, and explicit, role in professional identity, particularly for legal professionals responsible for the quality of justice from a system that has, for so long, been racially unjust."⁴

For these reasons, CLEA urges the Council to revise the language of proposed Standard 303(c) to require "education and training in antiracism," throughout the curriculum, including through a required course.

Sincerely,

Lauren Bartlett and Anjum Gupta
CLEA Co-Presidents,
on behalf of the Board of Directors

⁴ Andrew King-Ries, et al., *supra* note 1, at 28.