Memorandum

To: The Council
From: The Standards Committee
Date: August 3, 2022
Re: Proposed 2022-2023 Standards Committee Agenda

On June 1, 2022, the Managing Director’s Office posted a memo welcoming suggestions for revisions to the ABA Standards and Rules of Procedure for Approval of Law Schools that the Council might consider during the 2022-2023 Council year and included a July 1, 2022, response deadline. Two public comments were submitted; they are included as Appendix A.

This memo is divided into three parts. Each part will detail suggestions for the 2022-2023 Standards Committee Agenda (the “Agenda”) in the following order: 1) the two public comments received, 2) issues raised with the Council or Managing Director’s Office in 2021-2022, and 3) needed clean-up in the Standards and Rules found in 2021-2022.

Part 1: Agenda Suggestions from Public Comments Received

The two public comments contained recommendations for Standards 303(a)(3), Standard 304, and Standard 316 as well as two recommendations not directly related to the Standards.


Summary: Two comments requested that the current six required credits of experiential learning be increased to 15 credits. Both groups requesting these increases have made the request in prior years. One comment noted that benefits to increasing the number of experiential credits include addressing the need for legal services in underserved communities, furthering the connection between experiential education and antiracist education, and decreasing the comparative gap in supervised professional practice that law students have as compared to students in other professional graduate school programs.

Recommendation: We recommend the Strategic Review Committee consider this proposal.

2. Proposed Revisions to Standard 304: Experiential Courses: Simulation Courses, Law Clinics, and Field Placements
Summary: One comment recommended revisions to this Standard to clarify that both faculty members and site supervisors are obligated to supervise and provide feedback to students participating in field placements. These clarifications (with revised wording included in the comment) will more accurately reflect the true nature of the relationships among students, faculty members, and site supervisors in field placements, and will affirm that, while different from that of a site supervisor, the supervision and feedback from a faculty are also important.

Recommendation: We recommend that the Standards Committee consider these revisions.

3. Proposed Revisions to Standard 316: Bar Passage

Summary: Two comments received dealt with Standard 316. One asked that the Council evaluate the extent to which 1L transfer students affect law school bar passage outcomes and reliable ways to account for the effects of 1L transfers in the Standards. Second, the other comment asked the Council, in light of its review of the standardized test requirement in Standard 503, to remove Standard 316 so that law schools and state bar authorities may explore innovative paths to licensure that allow greater access to the profession than reliance on a single standardized test that has never been shown to be valid or reliable. In place of Standard 316, the comment recommended using Standard 315 as a flexible approach to assessing competence in a law school’s program of legal education while reducing reliance on a one-size-fits-all bar exam and addressing restricted access to the legal profession, particularly for marginalized groups.

Recommendation: We recommend that an ad-hoc group consisting of a few Managing Director’s Office staff and a few members of the Council’s Standards and Strategic Review Committees work together to determine whether to revise Standard 316 to account for transfer attrition, the best way to collect information on 1L transfer students, and how this may impact bar passage rates under Standard 316. We also recommend that the Standards Committee review the current language of Standard 316 with an eye towards ensuring that 1) it can account for alternative lawyer licensing pathways and 2) that, as written, it does not unduly dissuade law schools and state bar authorities from exploring alternative lawyer licensing pathways for fear of not meeting accreditation requirements.

4. Other Agenda Suggestions

Summary: Two other agenda suggestions were provided. First, one comment asked the Council to collect and disseminate data from law schools about both the percentages of scholarship aid and average amounts of such aid, both broken down by gender and race to provide a clearer picture of the true cost of legal education. Another comment asked the Council to increase the transparency of the deliberations of the Council, Standards Committee, and Strategic Review Committee via more substantive Council discussion in open session and open sessions at Committee meetings so that affiliates can draft comments that take into account the motivation and justification behind the proposed changes.

Recommendation: As to the first suggestion, the Council’s Questionnaire Committee has already planned to undertake this data collection. As to the second suggestion, the Council continues to consider the requests for more transparency and ways it can make open session more substantive and potentially interactive.

Part 2: Agenda Suggestions Based on Issues Raised with the Council or Managing Director’s Office

Needed revisions to the Standards and Rules are sometimes found when the Council conducts law school accreditation reviews and when the Managing Director’s Office receives multiple questions from law
schools about a particular part of a Standard or Rule. The following Standards, Rules, and Internal Operating Practices (IOPs) have been identified as needing revisions:

- **Standards**
  1) **Standard 309/Standard 404(a)(2):** Is an Interpretation to Standard 309 on academic advising needed to clarify what law schools must provide in terms of academic advising? Also, review Standard 404(a)(2) as to faculty responsibilities for academic advising (what is faculty participation in academic advising, informal vs. formal academic advising, is it sufficient for the faculty to establish an academic advising protocol that is administered by law school administrators, is it sufficient for academic advising to be done by only non-tenure line faculty, etc.)
  2) **Standard 307 and 505:** Clarify these Standards so they are easier to understand/apply in terms of the credit limits for study outside the U.S.
  3) **Standard 311(d):** Examine the extent to which the Standard requires students to re-take a course taken prior to enrolling in a J.D. program. For example, is there a better way to handle a situation where a student took a law school course as part of a previously completed master’s degree (not a joint degree) and now must pay re-take the same course as a J.D. student?
  4) **Standard 502(d):** Administrative withdrawal of law students who do not produce official transcripts by October 15 causes harm to students in several ways: they are unable to get a refund of their tuition, they lose the law school credit hours they are in the process of earning, and their withdrawal may hurt their ability to make academic progress for purposes of financial aid eligibility. Further, students who are unable to obtain a transcript due to a financial “hold” tend to be students of color and students from low socioeconomic backgrounds, which limits access. The Standards Committee proposes reviewing potential solutions, including possibly requiring administrative withdrawal of students at the end of the first semester to avoid these issues, not allowing students to start another semester until they can produce a transcript, and not counting students without transcripts on October 15 in the Annual Questionnaire.
  5) **Standard 505(b)(3) and Interpretation 509-3:** Review the definition of “conditional scholarship” and consider adding it to the list of Standards definitions. In reviewing the definition, consider adding that scholarships “conditioned” on a lack of law school honor code violations are not conditional scholarships for ABA purposes. Also consider whether to require law schools to report on non-renewable 1L scholarships or expanding the definition of conditional scholarships to include non-renewable 1L scholarships.

- **Rules**

  **Rule 51(b)(7):** This Rule deals with public notice of a “law school’s significant non-compliance with one or more Standards under Rule 11(a)(4).” This rule was implemented based on now-rescinded guidance from the U.S. Department of Education. If the Council wants to continue providing such public notice, it is best to delete “significant” and refer to “non-compliance with a core Standard...” Also, where might it be best to list the core Standards? In this Rule or in an IOP?

- **IOPs**

  Create a new IOP defining which organizations are affiliates of the Council.

**Part 3: Agenda Suggestions Based on Needed Clean-Up in the Standards and Rules**

As the Standards and Rules are revised, sometimes clean-up is needed in other parts of the Standards and Rules to account for those revisions. The Managing Director’s Office has indicated that the following Standards, Rules, and IOPs require clean up:
• Standards
  
  **Standard 304(d)(ii) and Interpretation 304-1:** Use the phrase “when appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program” in only one of these two locations.

• Rules
  
  **Rule 24(b)(3):** changing the phase “self-study” to “law school self-assessment” to match the terminology changes made to the documents required for Site Visits.

  **Rule 32(d):** better clarifying which categories of appeals committee members can comprise an appeal panel.

• Internal Operating Practices (IOPs)
  
  **IOP 18:** As this explains good cause extensions of time to come into compliance with the Standards, this should now be incorporated into the Rules, perhaps where IOP 18 is currently referenced in Rule 13(c).
COMMENT OF THE SOCIETY OF AMERICAN LAW TEACHERS (SALT) 
ON 2022-2023 STANDARDS COMMITTEE AGENDA 

JULY 1, 2022

SALT is grateful to the Council’s work, and appreciates the opportunity to comment on the upcoming agenda to improve the ABA Standards and Rules for Procedure for Approval of Law School (“standards”). We write to highlight three issues the Council might consider during the 2022-2023 Council year.

We specifically urge the Council to consider the following matters in the upcoming year:

1. SALT reiterates our request that the council increase and make robust its experiential learning requirement. In March 2013, the Council adopted the requirement of six experiential credits for the first time, while articulating a plan to increase the requirement to fifteen credits after a period in which law schools could adjust to providing six. It is timely to revisit this issue in light of past expectations and subsequent experience.

2. SALT encourages the Council to undertake an inquiry into the extent to which transfers of 1Ls affect law schools’ bar exam outcomes. Further, we ask that the Council consider reliable ways to account for those effects in the standards.

3. To provide a clearer picture of the true cost of legal education, SALT urges the Council to collect and disseminate data about not only the percentages of scholarship aid provided by a school broken down by race and gender, but also the average amounts of such aid, similarly broken down by race and gender.

Thank you again for the opportunity to comment on your agenda. We look forward to collaborating with the Council on efforts to improve legal education and the legal profession.

SUBMITTED ON BEHALF OF THE SOCIETY OF AMERICAN LAW TEACHERS BY

Olympia Duhart  
Co-President

Allyson E. Gold  
Co-President
To: Leo Martinez, Council Chair of the ABA’s Section of Legal Education and Admissions to the Bar  
Joe West, Council Chair-Elect and  
William E. Adams, Managing Director of Accreditation and Legal Education

From: Clinical Legal Education Association (CLEA)

Date: July 2022

Re: Matters for Notice and Comment: ABA Standards 501 and 503; 2022-23 Agenda

The Clinical Legal Education Association, the nation’s largest association of law professors, submits to the Council of the American Bar Association’s Section of Legal Education and Admissions to the Bar the following proposals for consideration by the Strategic Planning Subcommittee during the 2022-2023 year.

Proposal #1: Amend Standard 303(a)(3) to require every J.D. student to complete the equivalent of at least 15 credit hours of experiential coursework.

For many years now, CLEA has supported a 15-credit hour requirement for experiential courses, defined as law clinics, field placements, and simulation courses. As we have noted previously, every other profession requires that at least one quarter, and up to one half, of a graduate’s pre-licensing education be in supervised professional practice, and a majority further require a period of post-professional school apprenticeship before licensing. The professional education training and licensing of lawyers falls far behind other professions. Judged by comparison, fifteen credits of law school education, which amounts to about one sixth of a law student’s total credit hours, is a modest requirement.

The COVID-19 pandemic has changed the course of legal work for good. CLEA recognizes that there are efficiencies to be gained by remotely conducting certain activities within legal practice areas. Attorneys now more than ever need to hone their technological skills, as well as their skills for working collaboratively and effectively remotely. If law students are not exposed to this new world of hybrid legal work, they will not be prepared to hit the ground running after passing the bar. In addition, lawyers have called for law graduates who are ready to practice law and repeated ABA studies and other research have shown the need to significantly enhance the professional skills training of students in law schools.
The current economic challenges in the wake of the pandemic put into stark relief the need for legal services, especially free legal services. This moment in time presents a unique opportunity for law students in externships and clinics to fill the growing need for legal services in underserved communities, while concomitantly being trained to do exceptional legal work. Finally, antiracist reforms in our legal system call on all of us to craft a different approach to legal education which addresses oppression in our system. Expanding the experiential coursework credit requirement will enable students to perform legal work that centers clients from Black communities and communities of color and advances movements for justice on behalf of marginalized groups.

There is an increasing recognition of the connection between experiential education and antiracist education with its focus on service to Black and other communities of color. The growth of racial justice clinics in recent years and expanded scholarship on movement lawyering by clinical professors are tangible markers of the acknowledged importance of systemic change in our profession. The work of CLEA and SALT to deepen our commitments to racial justice in clinical legal education is visible each year at our conferences and, as early as 2018, when CLEA held a Town Hall with Law for Black Lives and the Latinx Network for Justice. Amending Standard 303(a)(3) to require every J.D. student to complete the equivalent of at least 15 credit hours of experiential coursework will help address these deficiencies.

Proposal #2: We support the proposed changes to Standard 503 and urge the Council to eliminate Standard 316, opting instead for the metric articulated in Standard 315.

CLEA welcomes and supports the proposed change to Standard 503 that would eliminate the requirement of using a standardized test for admission to law school. In its memo outlining the change, the Council acknowledged the difficulties in determining whether a particular standardized test is “valid and reliable.” The Council’s understanding of these challenges and its openness to different and non-standard admissions criteria reflect a growing recognition that traditional standardized tests can discourage or exclude diverse applicants.

As the Council considers changes to Standard 503, we encourage consideration of a similar change to Standard 316, which requires a 75 percent bar passage rate within two years of graduation. The narrow language of Standard 316 suggests that the bar examination is “valid and reliable” and at least implicitly discourages law schools from exploring other ways to gauge success of their legal education programs post-graduation. The bar exam has never been proven to be a valid or reliable barometer of professional aptitude, and should not be used as a proxy for the success of a program of legal education. A growing national movement is revisiting reliance on the bar
examination as the only means to licensure in part because of concerns about the reliability of a single standardized test to capture the nuanced question of who is competent to practice law. Alternative paths to licensure have been in place for many years in Wisconsin and New Hampshire. This year Oregon took the first steps to approving new paths to practice.

Standard 315 already outlines methods that may be used to determine whether students have attained competency in the law school’s program of legal education. These include, among others: evaluation of student learning portfolios; student performance in courses that appropriately assess a variety of skills and knowledge; placement rates; and assessment of student performance by attorneys, judges, and alumni. Relying on Standard 315’s flexible approach to assessing competence would reduce reliance on a one-size-fits-all bar exam and effectively address restricted access to the legal field, particularly of marginalized groups. Removing Standard 316 would give law schools and state bar associations the freedom to explore innovative paths to licensure that allow greater access to the profession than reliance on a single standardized test that has never been shown to be valid or reliable.

Proposal #3: Increase transparency of decision-making by providing meaningful opportunities for affiliates to observe Strategic Planning Subcommittee meetings.

CLEA urges the Council, once again, to increase the transparency of the deliberations of the Council and its Strategic Planning and Standards Subcommittees. As we enter the fifth year of the consolidated Council structure, we want to reiterate that the Council’s open sessions have grown exceedingly perfunctory, suggesting that all real deliberations occur in previously-held closed sessions. In addition, the Council’s affiliates continue to be shut out of all Strategic Planning and Standards Subcommittee deliberations. If affiliates are to serve their function and collaborate effectively with the Council as it reviews and revises the Standards, these sessions must not take place exclusively behind closed doors.

While we appreciate that the Council intends to invite affiliates to participate in roundtable discussions on several potential Standards changes, these conversations cannot take the place of the ability to observe the Standards Review process and deliberations. To draft comments on standard changes that are helpful to the Council, it is important to understand the motivation and justification behind those proposed changes. We have been told by Council members that most of the work of the Strategic Planning and Standards Subcommittees is conducted by telephone and email, prior to the short open sessions of Council meetings. Since the onset of the COVID-19 crisis, we
all have come to rely on remote forms of communication, such as Zoom videoconferencing. At a minimum, affiliates could join such sessions as silent observers.

We urge the Council to conduct more of its deliberations in open session. More specifically, we encourage the Strategic Planning and Standards Subcommittees to incorporate open sessions into its agenda. Only in this way can affiliates participate in any meaningful way in the work of the Council.

**Proposal #4: Amend Standard 304 to clarify that in field placement courses both faculty members and site supervisors have obligations to supervise and to provide feedback to students.**

CLEA believes two aspects of Standard 304 should be revised, for the purpose of conveying the principle that both faculty members and site supervisors are responsible for (1) student supervision and (2) providing feedback to students.

304(a)(4) currently states that experiential courses must “provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor....” (Emphasis added.)

CLEA proposes that this language be changed to “or, for a field placement, feedback from a faculty member and, for work performed at the placement, a site supervisor.”

304(d) currently states: “A field placement course provides substantial lawyering experience ... under the supervision of a licensed attorney or an individual otherwise qualified to supervise...” (Emphasis added.)

CLEA proposes that this language be changed to “under the supervision of a faculty member and, at the field placement, under the supervision of a licensed attorney or an individual otherwise qualified to supervise...”

The proposed language more accurately reflects the true nature of the relationships among students, faculty members, and site supervisors in field placements. The supervision and feedback that the faculty member offers the student is distinct from that provided by the site supervisor, but it is nevertheless a critical component of the faculty member’s role.

In 2018, when the Council was in the process of streamlining Standards 303 and 304, CLEA proposed that Standard 304 include the following language: “A field placement course provides direct supervision of the student’s performance by a faculty member
and site supervisor.” CLEA noted at that time that including the requirement of direct supervision of student performance by a faculty member would emphasize the need for instruction, supervision, and feedback on student performance from faculty.

Moreover, other portions of Standard 304 reflect the recognition that both site supervisors and faculty members have obligations related to feedback and supervision. In particular, Standard 304(d)(i) provides that each field placement must include “a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and opportunities for performance, feedback and self-evaluation; and (B) the respective roles of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student’s academic performance...” Modifying the language in 304(a)(4) and 304(d), as CLEA has proposed, will ensure consistency.