

C L E A

Clinical Legal Education Association

CLINICAL LEGAL EDUCATION ASSOCIATION (CLEA) COMMENT ON DRAFT STANDARD 303(a) (3) & PROPOSAL FOR AMENDMENT TO EXISTING STANDARD 302(a) (4) TO REQUIRE 15 CREDITS IN EXPERIENTIAL COURSES

July 1, 2013

The Clinical Legal Education Association (CLEA), an association of more than 1,000 law teachers, requests that the Council of the American Bar Association (ABA) Section of Legal Education and Admissions to the Bar (Council) adopt an accreditation standard that requires every J.D. student to complete the equivalent of at least 15 semester credit hours after the first year of law school in practice-based, experiential courses, such as law clinics, field placements, or skills simulation courses, with at least one course in a law clinic or externship. Fifteen hours of professional experience (representing about one-sixth of a law student's total credit hours) are certainly the minimum necessary to ensure that law school graduates are competent to begin practicing law. Other professions require that at least one quarter, and up to more than one half, of a graduate's pre-licensing education be in role in supervised professional practice. Law, in contrast, requires only a single credit of experiential learning out of an average of 89 total credits – a dismal 1% of a law student's preparation for practice.

CLEA submits this request both as a comment on the Standards Review Committee's April 2013 draft Accreditation Standard 303(a)(3) and as a formal proposal pursuant to Standard 803(d) to amend current Standard 302(a) (4).¹ Under 803(d), we understand that the Standards Review Committee (SRC) is required to develop a recommendation concerning this proposal and to report it to the Council for its consideration.²

¹ Standard 803(d) reads in full: "Proposals for amendments to the Standards, Interpretations or Rules may be submitted to the Consultant, who shall refer the proposal to the Standards Review Committee or other appropriate committee. The committee to which any such proposal is referred shall report its recommendation concerning that proposal to the Council within twelve months after the proposal had been referred to the Committee."

² We again urge that the Standards Review Committee engage directly in dialogue with other stakeholders in legal education as it proceeds in the comprehensive review of the Standards. Such engagement would assure that the Section is in compliance with the federal requirement to afford all relevant constituencies a meaningful opportunity to provide input into the development of accreditation standards. 34 C.F.R. § 602.21(b) (4). (Notably, the U.S. Department of Education guidance anticipates that accrediting agencies will have "agendas and/or minutes of meetings held to evaluate the standards . . . showing the active involvement of constituents." U.S. Dept. of Education, "Guidelines for Preparing/Reviewing Petitions and Compliance Reports" at 54.) Regardless of the DOE requirements, we believe that actual dialogue with constituent groups will result in a better product at the end of the comprehensive review.

Repeated ABA studies have shown the need to enhance significantly the professional skills training of students in law schools. The ABA's own 2004 *After the JD* survey found that professional skills training was rated by new lawyers as the most helpful law school experiences in successfully transitioning to practice. A long line of reports by ABA special committees, beginning with the 1979 *Report and Recommendation of the Task Force on Lawyer Competency: The Role of Law Schools* (Compton Report) and including the 1992 *Report of the Task Force on Law Schools and the Profession* (MacCrate Report), have urged much greater attention to professional experiences in law school curricula. Just two years ago, the ABA House of Delegates passed a resolution calling on "legal education providers to implement curricular programs intended to develop practice ready lawyers including, but not limited to enhanced capstone and clinical courses that include client meetings and court appearances."³ The Delegates called on the ABA's constituent bodies to consider these necessary requirements for the success of future lawyers as they carry out their responsibilities.

However, the Council has done very little to address these persistent calls for reform from the ABA's own members. Current ABA Standard 302(a)(4) requires that schools require each law student to receive "substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession." Yet today, twenty years after the MacCrate Report, students can still graduate from an ABA-approved law school and sit for the bar having met this professional skills requirement through merely one credit of skills training.⁴ While the SRC's April 2013 draft would slightly increase that requirement—to three credits out of the 89 credits schools on average require for a J.D.—that would still represent less than 4% per cent of the graduate's three-year course load, a shockingly insignificant amount of skills training for a professional.⁵

We are in a time of change and challenge in the legal profession and in legal education. As Section leadership knows, the failure of the Standards to ensure that law graduates are capable of practicing law has led state bar admissions officials to consider imposing practice skills requirements of their own for the licensing of attorneys. For example, the State Bar of California is poised to mandate that all applicants for the California bar have completed the kind of professional training that we are proposing here. The ABA is the regulator. It should be leading here, not following. In the absence of more rigorous accreditation requirements, law schools and law students will be left with a patchwork of state licensing requirements and ABA accreditation will be worth far less to law students.

³ ABA House of Delegates, Resolution 10B (Aug. 2011).

⁴ ABA Consultant's Memo # 3 (Mar. 2010) ("What is "substantial instruction" in other professional skills? . . . At least one solid credit (or the equivalent) of skills training is necessary.") (emphasis in original).

⁵ The latest draft of proposed Standard 303(a)(3) would require "every student to complete satisfactorily at least . . . "one or more experiential course(s) totaling at least three semester credits (or their equivalent quarter hours) after the first year. An experiential course or courses must be: (i) simulation course(s); or (ii) faculty supervised clinical course(s); or (iii) field placements. To satisfy this requirement, a course must be primarily experiential in nature and must: (i) integrate doctrine, theory, skills, and legal ethics and engage students in performance of one or more of the professional skills identified in Standard 302; (ii) develop the concepts underlying the professional skills being taught; (iii) provide multiple opportunities for performance; and (iv) provide opportunities for self-evaluation."

We have analyzed the clinical education requirements for other professionals. These demonstrate that our proposal that approximately one-fourth of a law student's upper-level credits be experiential courses is a modest requirement. Even with the adoption of this proposed standard, law school graduates would still fall behind other professions in pre-licensing professional skills education, as the following requirements in other professions show:

Medicine: Medical school education consists of two years of classes and then two years of professional experience (one-half of each student's medical education) in clinical rotations.⁶

Veterinary: The required curriculum for all veterinarian students must include a minimum of one academic year (or at least one-quarter of a student's veterinary medical education) in hands-on clinical education.⁷

Pharmacy: Pharmacy school students are required to spend no fewer than 300 hours in the first three years of their education and at least 1,440 hours (36 weeks) in the last year in clinical settings.⁸

Dentistry: To meet the requirement that graduates possess the skills and values to begin the practice of general dentistry, dentistry students spend over 57% of their time in actual patient care over the course of their four-year education.⁹

Social Work: Masters of Social Work students must accrue at least 900 hours, or 18 of their required 60 academic credit hours (approximately one-third), in field education courses, the "signature pedagogy" of social work professional education.¹⁰

Architecture: Architectural school students must take at least 50 of their 160 total required semester credit hours (approximately one-third) in design studio courses.¹¹

Nursing: Pre-licensing educational requirements for registered nurses vary by state. For example, California requires that the curriculum at an approved pre-licensure registered nursing program shall provide not less than 18 of its 58 semester units (approximately one-third) in clinical practice courses.¹² An approved program in Texas is expected to

⁶ Molly Cooke, David M. Irby and Bridget C. O'Brien, "A Summary of *Educating Physicians: A Call for Reform of Medical School and Residency*" (2010).

⁷ "Accreditation Policies and Procedures of the American Veterinary Medical Association," Section 7.9, Standard 9.

⁸ Accreditation Council for Pharmacy Education, "Accreditation Standards and Guidelines for the Professional Program in Pharmacy Leading to the Doctor of Pharmacy Degree," Guidelines 14.4 & 14.6.

⁹ American Dentistry Association, "Accreditation Standards for Dental Education Programs" Std. 2-4; Massachusetts Bar Association, "Report of the Task Force on Law, the Economy, and Underemployment - Beginning the Conversation" 4 (2012).

¹⁰ Council on Social Work Education, "Educational Policy and Accreditation Standards," Educ. Policy 2.3., Accreditation Std. 2.1.3 (2012).

¹¹ National Council of Architectural Registration Boards, "NCARB Education Standard."

¹² 16 Cal. Code of Regulations § 1426.

have a ratio of classroom learning to clinical learning experiences of 1 to 3, or one hour of didactic instruction to three hours of clinical experiences.¹³

Thus, for other professions, at least one quarter, and in some cases over one half, of a student's required education must be in professional skills or clinical courses, as compared to the proposed SRC requirement of less than one twenty-fifth. Judged against other professions, CLEA's request to require fifteen law school units in law clinics, field placements, or simulated practical skills courses is a modest and critical step toward achieving in legal education the level of professional experience required in the education of other licensed professions.

It cannot be claimed that it is too difficult or expensive to deliver a comprehensive experience-based education to every student. Many of CLEA's members teach in schools that have worked hard and successfully to find cost-effective ways to achieve this goal. For example:

City University of New York (CUNY): All students must take a 12-to-16-credit faculty-supervised law clinic or field placement and a 4-credit lawyering skills seminar, for a required total of at least 16-20 experiential credits.

University of District of Columbia: All students must enroll in a 7-credit law clinic in their second year and a second 7-credit clinic in their third year, as well as a required moot court course, for a total of at least 16 required experiential credits.

Washington & Lee: The much-publicized, revamped third-year curriculum requires 20 academic credits in simulated or real-practice experiences that include one law clinic or externship, three problems-based electives, and two skills immersion courses. The professor who oversees the program recently explained that a review of the first few years showed that "the new curriculum is not more expensive to run than the prior third year curriculum, nor the current first or second year curricula."¹⁴

Thus, public and private schools, schools in urban and rural areas, schools whose students primarily work after graduation in the same area and those seeking to work across the country, schools with part-time programs, and schools with significant tuition and those charging among the lowest in the country have all found ways to already meet the 15-credit proposal, including mandating that each student take a law clinic or externship. The fact that other schools have not made this effort is no reason not to move legal education forward. It is, rather, a reason to compel that effort.

In addition to urging the adoption of the 15-credit requirement, we also propose that the ABA amend the accreditation standards to require that each student obtain experience in a practice setting through a law clinic or externship course. Supervised real world practice is the best way for students to learn to integrate the legal theory they learn in the classroom into

¹³ Texas Board of Nursing, "Rules and Regulations Relating to Nurse Education, Licensure and Practice," § 215.9(c).

¹⁴ Email from Professor James Moliterno, Washington & Lee School of Law, to Jon Streeter, California State Bar (May 30, 2013).

effective practice and is critical to embedding the values of our profession. As the dean of UC-Irvine recently stated, “there is no way to learn to be a lawyer except by doing it,” pointing out that “it is unthinkable that medical schools could graduate doctors who had never seen patients or that they would declare that they just wanted to teach their students to think like doctors.”¹⁵

Seventeen law schools already mandate some form of clinical education, and at least a dozen more guarantee a clinical opportunity to all their students.¹⁶ And the programs of these thirty schools are not the only evidence that a clinical requirement is both feasible and practical. According to ABA data, 139 law schools (or 69%) already have the law clinic and externship course capacity to provide each of their J.D. students with a clinical experience.¹⁷ Another 11 law schools already offer enough law clinic or externship course positions for 90% of its students, and another 16 offer enough slots for 80%. Since 83% of law schools either already are or are easily capable of ensuring that every student have a clinical experience, implementing a clinical requirement is immediately feasible.

Moreover, the claim that experiential learning in practice settings is too expensive is made without empirical support. Preliminary research comparing the average tuition at schools that require or guarantee each student a law clinic or externship with tuition at schools that do not reveals that tuition is not statistically higher at the seventeen schools with a clinical mandate than at those without that requirement. That data is illustrated in Chart 1, attached to this letter. Similarly, tuition is not statistically higher at schools that guarantee a clinical experience than at schools that do not, as illustrated by Chart 2. The data suggests that the predominant determinant of tuition differences among schools is U.S. News ranking, not clinical learning.

The Council has a duty, as the agency approved by the U.S. Department of Education for the accreditation of law schools, to ensure that its standards meet the training needs of law students and the interests of the public. One or even three credits of professional training during law school cannot develop the skills necessary to represent clients competently. It is time to stop hoping that individual law students will have the opportunity and will choose to take the courses necessary to develop the professional skills needed for the competent, ethical practice of law. It is time to ensure, as do other professions, that all students have the education they need to enter practice.

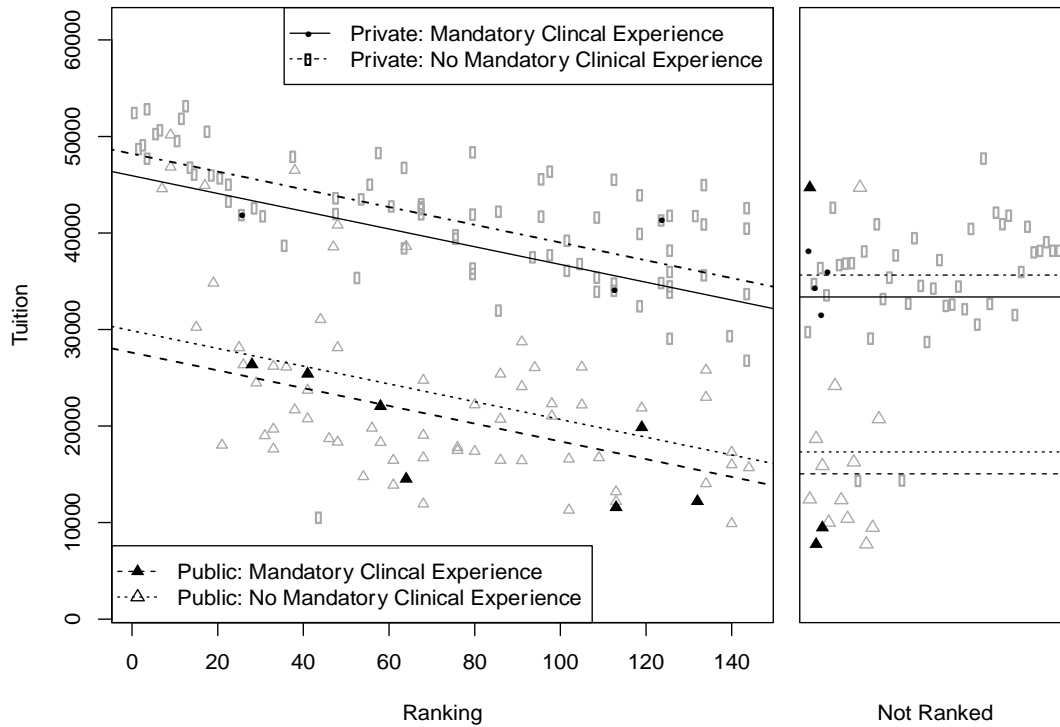
We appreciate your consideration of our request. We look forward to helping the Section develop and implement a new accreditation standard requiring that each J.D. student complete at least 15 semester credit hours, including a law clinic or externship, in practice-based, experiential courses.

¹⁵ Law School Survey of Student Engagement, “2012 Annual Survey Results” (foreword by Erwin Chemerinsky).

¹⁶ Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Legal Education and the Legal Profession in Crisis: The Need for Expanded Experiential Legal Education and Required Clinical Education for All Law Students*, 43 WASH. U. J.L. & POL’Y (forthcoming fall 2013).

¹⁷ See ABA-LSAC OFFICIAL GUIDE TO ABA-APPROVED LAW SCHOOLS (2013) (comparing for each of the 201 ABA-approved law schools the sum of the “# of positions available in faculty supervised clinical courses” plus “# of field place positions filed - full-time & part-time” with “JD Enrollment 1st-year #”).

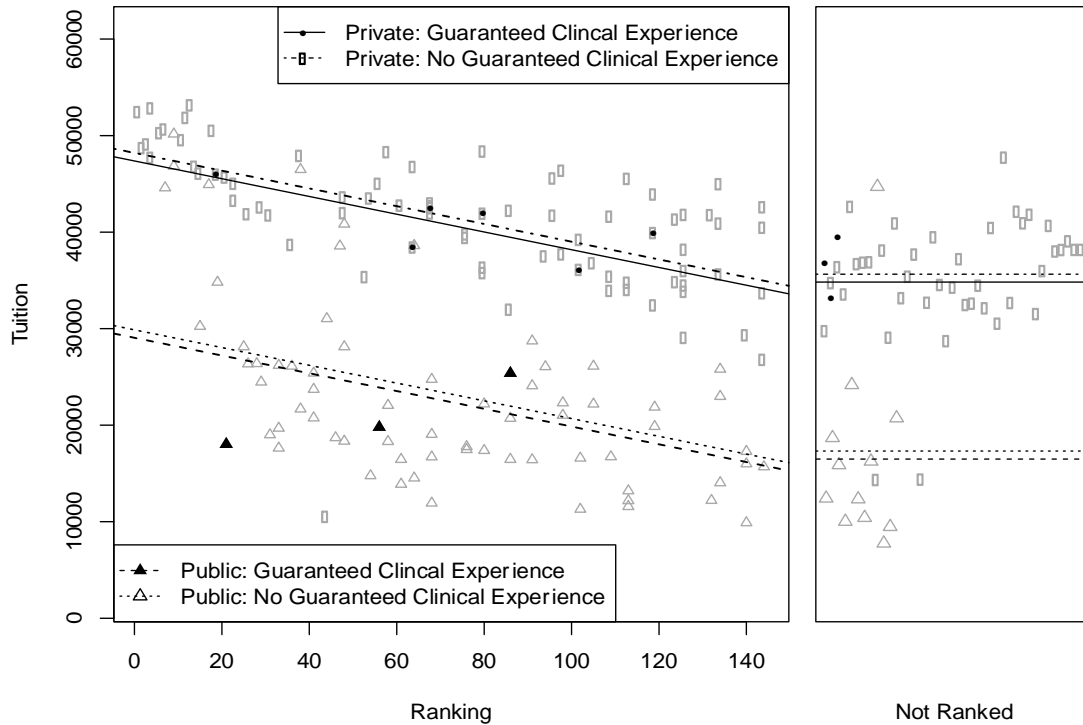
Chart 1: Effect of Mandatory Clinical Experience on Tuition



(prepared by Prof. Robert Kuehn, Washington Univ. School of Law (June 2013))

sources: ABA-LSAC Official Guide to ABA-Approved Law Schools (2013); Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Legal Education and the Legal Profession in Crisis: The Need for Expanded Experiential Legal Education and Required Clinical Education for All Law Students*, 43 Wash. U. J.L. & Pol’y (forthcoming fall 2013).

Chart 2: Effect of Guaranteed Clinical Experience on Tuition



(prepared by Prof. Robert Kuehn, Washington Univ. School of Law (June 2013))

sources: ABA-LSAC Official Guide To ABA-Approved Law Schools (2013); Karen Tokarz, Antoinette Sedillo Lopez, Peggy Maisel & Robert Seibel, *Legal Education and the Legal Profession in Crisis: The Need for Expanded Experiential Legal Education and Required Clinical Education for All Law Students*, 43 Wash. U. J.L. & Pol'y (forthcoming fall 2013).