

Society of American Law Teachers SALT

Public Advocacy Center, Room 223

Touro Law Center

225 Eastview Drive, Central Islip NY 11722

631 650 2310

www.saltlaw.org

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Statement on Outcome Measures

Submitted by Society of American Law Teachers

For the April 2, 2011 meeting of the Standards Review Committee

SALT welcomes the opportunity to submit additional comments on the proposed standards on Outcome Measures and the opportunity to address the SRC on this topic at the April Open Forum. SALT appreciates the subcommittee's willingness to listen to many different constituencies and its attempt to draft standards that incorporate suggestions and perspectives offered by individuals and groups engaged in legal education and interested in the standards.

As we have noted in previous statements, SALT supports the move to include measures of learning outcomes and the incorporation of outcomes that relate more explicitly to the skills of lawyering and the values of the legal profession. We believe that such standards will help ensure that all law graduates understand the profession's values; will help move legal education toward a more integrated approach in which students understand the intersection of doctrine, theory, skills, ethics and professionalism; and will lead to active engagement of law faculty in on-going and meaningful discussions about curriculum, pedagogy, and assessment. Commendably, the standards will force legal educators to engage in critical thinking about teaching and improving student learning and they shift the focus from what students are taught to what students learn. They also ensure that the profession's values and obligation to serve those who cannot afford counsel are clearly communicated to law students. SALT particularly appreciates the subcommittee's adoption of some of SALT's suggestions regarding the transition to the new standards, specifying that, initially, compliance with the outcome measures standards will focus on the seriousness of the school's efforts to establish and assess student learning outcomes, not upon attainment of a particular level of achievement for each learning outcome. Focusing initially on process rather than results, and providing for a transition period, allows schools the opportunity to adapt gradually to the new requirements while they develop their understanding of learning outcomes and assessment.

The current draft outcome measures standards are an important positive step forward in the academy's quest to improve the quality of legal education. SALT submits this statement because it believes the standards can do even more to ensure that law graduates become effective, responsible, self-reflective and ethical members of the profession. This statement addresses both issues raised at the last SRC meeting with regard to the draft standards and issues SALT believes warrant further discussion.

Should a School's Mission and Goals be Incorporated in the Learning Outcome Standards?

One issue that was debated at the last Standards Review Committee meeting was whether the standards should require a school to tie its learning outcomes to its stated mission and goals. A school's mission is mentioned in two places in Chapter 3. First, Interpretation 302-2 notes a law school should consider its mission when it determines the list of skills, beyond those mandated, that it regards as "sufficient for effective, responsible, and ethical participation in the legal profession." Second, proposed standard 302(b)(5) states that in addition to the learning outcomes identified in 302(b)(1) – (4), schools must also identify "any other learning outcomes the school identifies as necessary or important to meet the needs of its students and to accomplish the school's mission and goals." SALT endorses the current draft's retention of the language that incorporates a school's mission into these standards.

One reason to include a reference to a school's mission in the outcome measures standards is that the Department of Education regulations seem to require just that. Department of Education Regulations state that, to be a "reliable authority regarding the quality of the education or training provided by the institutions or programs it accredits," an accrediting agency's standards must "effectively address the quality of the institution or program in the following areas: (i) Success with respect to student achievement in relation to the institution's mission . . ." 34 C.F.R. § 602.16 (a)(1) and (a)(1)(i). It is also sensible to ask schools to tailor their identified learning outcomes to the particular mission the school has identified for itself.

However, we believe that requiring each school to develop its learning outcome measures in light of its mission may not go far enough. A cursory review of law school websites indicates that most schools have broadly worded mission statements that are unrelated, except in the most expansive sense, to the school's program of legal education. On the other hand, schools' web pages do reveal differences in educational approaches. For example, some schools promote themselves as providing students with significant experiential learning opportunities, some note that they provide students with an inter-disciplinary and theoretical perspective, while some advertise that their students have significant opportunities for both experiential learning and inter-disciplinary study. Given that proposed Standard 302 is drafted to give schools tremendous freedom to define their own learning outcomes, a school's particular vision about legal education and the opportunities it promises students should shape the list of "other professional skills" it identifies as "sufficient for effective, responsible and ethical participation in the legal profession" pursuant to Standard 302(b)(3) as well as the additional learning outcomes to be identified under 302(b)(5).

Proposed standard 302(b)(5), the subsection that explicitly requires schools to consider their learning outcomes in light of their mission and goals, was originally proposed as a way to ensure that schools consider their learning outcomes not only in the context of their broadly worded missions, but also in the context of what a school promises prospective students about the legal education that the school provides. Requiring schools to tie their additional learning outcomes to what schools tell students they will experience complements the goals of proposed Standard 509, which seeks to ensure that schools provide accurate consumer information, and proposed Standard 206 and its accompanying interpretations, which requires schools to assess their effectiveness in light of their established mission,

vision and goals. Assuming the SRC wants schools' learning outcomes to be aligned with what schools promise students they will deliver, SALT respectfully suggests that 302(b)(5) should be amended to refer to the school's "educational" mission, that a reference to the school's educational "vision" be added,¹ and that an interpretation be added to note that the school's educational mission, vision, and goals will be gleaned from the school's website, marketing and other descriptive materials.

Should the Standards Add Additional Requirements To Encourage Schools to Integrate Doctrine, Theory, Skills and Ethics?

Both the Carnegie Foundation Report and the Best Practices book criticize legal education for how it "silos" doctrine, theory, skills and ethics instead of developing a curriculum that helps students understand how these concepts are integrated into the problems lawyers are asked to solve. As the Carnegie Report notes, the failure to provide students the opportunity to merge doctrine, skills, and professional ethics hinders students' development of a meaningful professional identity. Proposed Standards 302 and 303 have the opportunity to address this critique by ensuring that schools take seriously their obligation to give students opportunities to experience the intersection of doctrine, theory, skills and ethics with an eye toward producing law graduates who are effective, ethical and responsible newly licensed lawyers. It is with this background that we suggest changes to proposed standards 302, 303 and 304.

Suggestions for Changes to Standard 302(b)

- 1. Expand 302(b)(2)'s list of required professional skills to include communication with people from diverse backgrounds, working collaboratively, and engaging in self-reflective learning.**

The SRC has spent a considerable amount of time debating what skills should be mandated as skills all law students must master. SALT believes the SRC correctly rejected the idea of mandating law schools establish learning outcomes with respect to skills, such as oral advocacy, that are tied to a specific career path. However, by identifying a very limited set of mandated skills in 302(b)(1) – essentially naming only the skills that have been taught for the last 100 years at virtually all law schools– SALT believes the SRC is missing an important opportunity to ensure that future lawyers are better prepared to enter an ever changing profession.

Today's effective lawyers must have strong communication skills and must be able to work in a collaborative environment. They must also be able to communicate effectively with people from diverse backgrounds and must have the necessary self-reflective learning skills that will enable them to engage in the life-long learning the profession requires. These are skills that all lawyers, regardless of career path, must possess. Thus, it should not be left to schools to determine whether these skills make it to the list of a school's self-designated learning outcomes. By adding these skills to the mandated list, the

¹ Section 302(b)(5) would then refer to "any other learning outcomes the school identifies as necessary or important to meet the needs of its students and to accomplish the school's educational mission, vision, and goals."

SRC not only acknowledges what the studies about effective lawyering indicate², it also sends a signal to law schools that they must develop a program of legal education that equips graduates to work with clients and colleagues in today's multi-cultural world. SALT thus renews its request that the SRC require that all law schools teach their students to communicate effectively with people from diverse backgrounds, to work collaboratively, and to be self-reflective lawyers by changing 302(b)(2) (i) to read:

(b) The learning outcomes shall include competency as an entry-level practitioner in the following areas: . . .

(2) the professional skills of:

(i) legal analysis and reasoning, critical thinking, legal research, problem solving, written and oral communication in a legal context, self-reflective thinking and analysis, communication with people from diverse backgrounds, and working collaboratively and . . .

2. Change "sufficient for" to "important to" in Standard 302(b)(3).

Proposed standard 302(b)(3) requires schools to self-identify their additional learning outcomes. As written, it states that schools must identify "a depth in and breadth of other professional skills sufficient for effective, responsible, self-reflective³ and ethical participation in the legal profession." SALT respectfully suggests that the SRC consider changing "sufficient for" to "important to". This changes the emphasis, so that schools would identify not just the skills that are minimally necessary but those that they think are important and valuable.

Suggestions for Changes to Standard 303

1. Amend 303(a) to include multiple learning experiences that integrate doctrine, skills and professionalism.

SALT recognizes that any requirement that schools provide an upper-level faculty-supervised course that integrates doctrine, theory, skills and ethics and engages students in the performance of one or more skills beyond those traditionally taught is a step forward in legal education and it applauds the SRC for including this "input measure" into the revised proposed standards. However, as the Carnegie Report notes, learning to be a lawyer should be a progressive process in which students learn the fundamental doctrine and then experience how that doctrine intersects with various lawyering skills, as well as lawyers' ethical and professional obligations. Law students become equipped to be effective, ethical and

² See e.g., Marjorie M. Shultz and Sheldon Zedeck, *Final Report, Identification, Development and Validation of Predictors for Successful Lawyering*, available at:

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1442118&rec=1&srcabs=1353554

³ "self-reflective" is omitted in the version that is redlined to the current standards but included in the version that is redlined to the January draft. We assume the subcommittee intends to include this phrase and inadvertently omitted it from the redline to current standards. SALT supports continuing to include this phrase because it reinforces the need for students to learn to be self-reflective practitioners, as noted in the discussion of suggested changes to Standard 302(b)(3).

responsible lawyers through educational experiences that require them to grapple with problems that arise when representing clients. This learning experience simply cannot happen in one required course, unless perhaps that course is a live-client clinic where students address real clients' problems under the direct supervision of clinical legal faculty. SALT strongly believes that the Standards should require live-client clinical experiences for all students, but recognizes that, for now, the SRC believes it is not in a position to mandate this. Thus, SALT reiterates its request that the SRC at least require multiple experiences that require students to grapple with real-world problems, and that the SRC propose phasing in a requirement of live-client work in the future.

2. Require at least three credit hours for the course described in proposed standard 303(a)(3).

At the last SRC meeting, there was some debate about whether the course described in proposed standard 303(a)(3) should have a minimum credit-hour requirement. If proposed standard 303(a)(3) continues to require only one course, SALT respectfully urges the SRC to require the course be worth a minimum of three credit hours. Standard 303(a)(3) is the one standard that explicitly recognizes the need to ensure law students have at least some experience implementing their doctrinal learning before they are allowed to represent real clients. If only one course is required, it cannot adequately be less than three credit-hours if students are to have the opportunity to meaningfully experience how doctrine, skills, theory, ethics and professionalism intersect.

In addition to the pedagogical challenges in accomplishing what the standard requires in less than a three credit-hour course, the course must offer sufficient credit to warrant the amount of work it will require of students. The proposed standard anticipates that students will engage in work throughout the semester upon which they will get feedback and have an opportunity to engage in self-reflection, which will demand considerable time and effort. The credit value should match the effort required so that students will be adequately rewarded for their efforts, which will encourage them to put in the time demanded for effective learning. It would also send precisely the wrong message to students if the one course that focuses on integrating doctrine, skills, theory and ethics is worth fewer credit-hours than most upper level classes in specialized doctrinal areas.

Thus, both because the content demands it and because the message to students and schools should be that this course is at least as important as other doctrinal courses, SALT respectfully suggests that 303(a)(3) require: "one faculty-supervised rigorous course of at least 3 credit-hours. . ."

3. Clarify the skills required to be taught in the 303(a)(3) course.

SALT is concerned that if there is only one required course that integrates doctrine, theory, skills and professionalism, Standard 303(a)(3) does not require enough to accomplish the objectives. As drafted, 303(a)(3) simply requires that students take one course that engages them in performance of one or more of the professional skills "a school identifies as being sufficient for effective, responsible, self-reflective and ethical participation in the legal profession," beyond the skills identified in Standard 302(b)(1)(2) and (4). What skills will qualify? Can this course be really meaningful if only one additional skill is taught? SALT suggests that 303(a)(3) might better accomplish what we believe is the underlying

purpose of this standard, i.e. to expose students to a wider range of skills than are traditionally taught and to show them how lawyers integrate knowledge, theory, doctrine and skills, if it were re-worded. Thus, SALT respectfully suggests that the SRC consider revising 303(a)(3) to read:

One faculty supervised 3 credit hour rigorous course that integrates doctrine, theory, skills and ethics and engages students in performance of one or more of the multiple professional skills that the school has identified pursuant to 302(b)(3) as being important to the effective, responsible, self-reflective and ethical participation in the legal profession. The course shall be (1) a simulation course, (ii) a live client clinic, or (iii) a field placement complying with [formerly numbered] Standard 305(e).

4. Draft language that makes clear that the input requirements of 303(a) do not satisfy the requirement that schools take seriously their obligation to establish a curriculum that produces graduates who have competency in all the learning outcomes identified in Standard 302.

In the most recent draft, the subcommittee deleted the following sentence from Interpretation 303-2: “Satisfying Standard 303(a)(3) does not, by itself, satisfy 302(b).” At the last SRC meeting, no one seemed to disagree with the substance of the statement. Instead, the concern was that this sentence might have an unintended effect on other standards where the accompanying interpretation did not explicitly state that compliance with one standard did not obviate the need to satisfy another standard.

SALT understands this concern. However, the substance of the deleted sentence is important. For decades, inputs have been the governing accreditation standard. Schools understand how to comply with input requirements, such as a required course. On the other hand, most schools are unfamiliar with the general concept of identifying learning outcome measures and measuring students’ progress toward achieving them. It might not be unreasonable for a school to assume that if it complied with the input measure under 303(a)(3) by requiring each student to complete the experiential course, it satisfied its obligation under 302(b) to establish learning outcomes and under 303(a) to offer a curriculum designed to produce graduates competent in those learning outcomes.

To deal with the SRC’s concern, and to ensure that schools do not believe they have complied with all the curricular requirements by creating the course required by 303(a)(3), SALT respectfully suggests that the last sentence of Interpretation 303-2 read:

“Satisfying Standard 303(a)(3) does not, by itself, satisfy a school’s obligation to offer a curriculum designed to produce graduates who have attained competence in the learning outcomes identified in Standard 302.”

This language clarifies what we believe to be the point of the deleted sentence – compliance with the single input measure is not sufficient to show that the school has established reasonable learning outcomes and created a curriculum designed to ensure students can attain competence in them. However, by eliminating the explicit cross-reference, the sentence alleviates the concern that schools

might argue that when there is no cross-reference, compliance with one standard obviates the need to comply with others.

Suggestions for Changes to Standard 304

1. Make explicit that students should receive meaningful feedback about their educational achievement

Current Standard 304 states:

“A law school shall apply a variety of formative and summative assessment methods across the curriculum to provide meaningful feedback to students.”

SALT believes that ensuring that schools use formative and summative assessments to help students understand their progress toward satisfying the school’s learning outcomes is an important addition to the accreditation standards. However, we think that slight re-wording might clarify the purpose of this standard. Implicit in this standard is that students receive “meaningful feedback” about their educational achievement. This implicit message might be better stated explicitly. Thus, we suggest that the SRC consider amending this standard to read:

“A law school shall provide meaningful feedback to students about their educational achievement, using a variety of formative and summative assessment methods across the curriculum.”

Conclusion

SALT believes the suggestions outlined above would strengthen the accreditation standards and support the SRC’s efforts to move the academy in a direction consistent with the insights gleaned from the MacCrate Report, the Carnegie Report, and Best Practices. We appreciate the Subcommittee’s ongoing solicitation of input and willingness to consider suggestions. We hope that you find these suggestions helpful.