

C L E A

Clinical Legal Education Association

COMMENT OF CLINICAL LEGAL EDUCATION ASSOCIATION ON PROPOSED REVISIONS TO ABA STANDARD 403(a)

July 5, 2017

The Clinical Legal Education Association, with more than 1,300 dues-paying members, is the nation's largest association of law professors. CLEA submits this comment to the Council of the Section of Legal Education and Admissions to the Bar regarding proposed modifications of ABA Accreditation Standard 403, governing the instructional role of full-time faculty. The proposal before the Council would delete the second sentence of 403(a), thus eliminating the requirement that full-time faculty be primarily responsible for teaching students after the first year of law school and allowing schools to determine that part-time faculty should teach the entirety of the upper-class curriculum. This change should be rejected because it would significantly dilute the critical role of full-time faculty and cause serious harm to the quality of legal education.

Standard 404 identifies the “core responsibilities” of full-time faculty, including law school governance, curriculum development, teaching, student consultation, assessing student learning, and service to the law school, the university, the profession, and the public. Performance of these responsibilities creates a culture of intentional, service-connected teaching that has significant value for all law students and for the profession. Current Standard 403(a), which requires that full-time faculty teach either a majority of all credit hours or two-thirds of student contact hours, reinforces the importance of full-time faculty in sustaining this culture. But the proposed revision to Standard 403 would eliminate any requirement that professional educators teach any upper-level courses, potentially turning over instruction to those whose primary professional commitments may lie outside of legal education.

Although the current Standards correctly focus on outputs, such as the requirement to identify and assess student achievement of learning outcomes, the Standards also maintain an equally appropriate focus on inputs, including the requirement of 403(b) that law schools “ensure effective teaching by persons providing instruction to its students.” Mandating that full-time faculty teach at least a majority of courses offered by a law school represents an appropriate regulation of inputs.

Part-time faculty have no specific obligations under the ABA Standards. While adjunct faculty may add value to a law school's curriculum, they are often engaged in full-time employment outside the law school and their responsibilities are limited to teaching individual courses. Adjunct faculty members do not participate in law school governance; many are poorly compensated for their teaching and none have job security. To maintain the quality of legal education, full-time faculty with the responsibilities outlined in Standard 404 should be teaching and available to students in all years of law school.

The proposed change to Standard 403 also runs counter to the recent positive revisions to Standards 301, 302, 303, 304, and 314, which include, among other things, new requirements that law schools identify and assess learning outcomes and that students complete at least six credits of experiential coursework, as well as new definitions of law clinic, simulation course and field placement course. Additionally, the requirements for field placements courses were recently moved into Standard 304, a recognition that these courses fall within the category of “experiential,” and greater faculty oversight of the field placement experience is now required. If more than two-thirds of the curriculum were taught by adjunct or part-time faculty, the ability to achieve these new requirements would be severely curtailed. Outcome evaluation takes time and an understanding of intentional course design, achievable learning objectives, and strategies that permit accurate assessment of success.

Experience has shown that reduced regulation does not necessarily lead to innovation or to greater effectiveness. Allowing a majority of courses to be taught by individuals who are not full-time teachers jeopardizes the ABA’s commitment to assuring high-quality programs of legal education. Such a move makes little sense in a time of public controversy over whether law schools provide sufficient value for tuition paid. The requirement in Standard 403(b) that law schools ensure effective teaching by all faculty is not a sufficient safeguard. Moreover, the ABA’s assessment of the quality of teaching at any particular school would occur only once every seven years during a site visit, resulting in minimal oversight of the effectiveness of instruction.

Finally, we observe that there is particular irony to this proposal, in that there is also currently pending before the Council after notice and comment a related but very different proposal from the Standards Review Committee. This one makes explicit the role and responsibility of the full-time faculty in the governance and curriculum of a law school (Standard 201), in selecting the dean (Standard 203), and in conducting “ongoing evaluation of the law school’s program of legal education, learning outcomes, and assessment methods; and shall use the results of this evaluation to determine the degree of student attainment of competency in the learning outcomes and to make appropriate changes to improve the curriculum” (Standard 315). It is hard to imagine how the requirements of these standards can be met by a faculty only sufficient in size to teach something less than the first year of the curriculum.

Because the proposed change could result in a significant deterioration of the quality of teaching, curricula, and self-assessment, the ABA should maintain the current requirement that full-time faculty teach more than half of the credit hours offered or two-thirds of student contact hours at each school. Students deserve an education in which teaching, evaluation, and curricular development by full-time faculty predominates. The Council should acknowledge the importance of a full-time law school faculty, demand that it has the primary role in teaching and ensuring effective law school outcomes, and reject the proposed change to Standard 403(a).