



Section of Legal Education
and Admissions to the Bar

Managing Director's Guidance Memo

Standards 303(a)(3), 303(b), and 304

March 2015

Standard 303. CURRICULUM

(a) A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:

(3) one or more experiential course(s) totaling at least six credit hours. An experiential course must be a simulation course, a law clinic, or a field placement. 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.

(b) A law school shall provide substantial opportunities to students for:

- (1) law clinics or field placement(s);....

Interpretation 303-1 A law school may not permit a student to use a course to satisfy more than one requirement under this Standard. For example, a course that includes a writing experience used to satisfy the upper-class writing requirement [see 303(a)(2)] cannot be counted as one of the experiential courses required in Standard 303(a)(3).

Standard 304. SIMULATION COURSES AND LAW CLINICS

(a) A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:

- (i) direct supervision of the student's performance by the faculty member;
 - (ii) opportunities for performance, feedback from a faculty member, and self-evaluation;
- and

- (iii) a classroom instructional component.
- (b) A law clinic provides substantial lawyering experience that (1) involves one or more actual clients, and (2) includes the following:
- (i) advising or representing a client;
 - (ii) direct supervision of the student’s performance by a faculty member;
 - (iii) opportunities for performance, feedback from a faculty member, and self-evaluation; and
 - (iv) a classroom instructional component.

Background

This memorandum provides general guidance on the requirement in Standard 303(a)(3) that schools offer a curriculum that requires each student to complete “one or more experiential course(s) totaling at least six credit hours,” the requirement of 303(b)(1) that law schools “shall provide substantial opportunities to students for . . . law clinics or field placement(s),” and Standard 304(a) that defines “simulation course.”

New Standard 303(a)(3), which is discussed below, replaces the requirement in former Standard 302(a)(4) that “each student receive substantial instruction in . . . other professional skills generally regarded as necessary for effective and responsible participation in the legal profession.”

Guidance provided in Consultant’s Memo 3 (Revised)” issued in August 2013 relating to former Standard 302(a)(4) is no longer relevant and is replaced by this Guidance Memorandum.

New Standard 303(a)(3) changed the “other professional skills requirement” of former Standard 302(a)(4) in three fundamental ways. First, Standard 303(a)(3) changes to focus from “substantial instruction” to a focus on number of credit hours; it makes express and increases the number of credit hours schools must require each student to satisfactorily complete. Second, the new Standard requires the proscribed number of credits to be earned in “experiential courses.” And finally, the new Standard specifies that the “experiential courses” must be a simulation course, a law clinic, or a field placement.

Although Standard 304(a) specifies that the experiential courses must be a simulation course, a law clinic, or a field placement, it does not mandate that the school offer all three types of courses. The Standards do not require that simulation courses be offered, nor do they mandate that a law school offer *both* field placement and clinics. Standard 303(b)(1) does, however, mandate that a law school “shall provide substantial opportunities to students for law clinics *or* field placement(s).”

This memorandum provides guidance on the most common questions relating to the application of Standards 303(a)(3), 303(b)(1), and 304(a):

- What portion of a course must provide “simulation” experience in order for the course to qualify as a “simulation course” under Standard 304(a)? What is necessary to meet the requirement of “substantial experience” in 304(a)?
- Can course components be utilized to satisfy the six credit requirement of 303(a)(3)?
- Can credits earned for mock trial, moot court, and similar activities qualify as a “simulation course”?
- Can a simulation course offered as part of the first-year curriculum count toward the

- requirement of experiential courses totaling at least six credit hours?
- Can a course that requires a substantial, traditional scholarly paper qualify as a “simulation course”?
- For students who complete multiple semesters of clinic work, must each semester include a “classroom instructional component”?
- What is meant by “substantial opportunities” in Standard 303(b)’s requirement of “substantial opportunities . . . for law clinics or field placement(s)”?

What portion of a course must provide “simulation” experience in order for the course to qualify as a “simulation course” under Standard 304(a)? What is necessary to meet the requirement of “substantial experience” in 304(a)?

Standard 303(a) states the basic curricular requirement for experiential courses. It provides, in relevant part: **“A law school shall offer a curriculum that requires each student to satisfactorily complete at least the following: . . . (3) one or more experiential course(s) totaling at least six credit hours.”** Standard 303(a)(3) further requires that **“An experiential course must be a simulation course, a law clinic, or a field placement,”** and specifies that **“To satisfy this requirement, a course must be primarily experiential in nature”**

Standard 304(a), in relevant part, defines a simulation course as one that **“provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member”**

GUIDANCE:

Standard 303 uses the terms “experiential course(s)” and “simulation course,” rather than language such as “courses offering experiential or simulation opportunities or experiences.” The Standard also requires that to qualify as an experiential course, “a course must be primarily experiential in nature.” “Primarily” means essentially, mostly, chiefly. It suggests more than simply inserting an experiential component into an existing class, without regard to whether that component makes up a majority (51%) of the class minutes. “Primarily” is used to indicate the main purpose of something. The experiential nature of the course should, in this sense, be the organizing principle of the course, and the substantive law or doctrinal material that is part of the course should be incidental to it, not the other way around. Taken as a whole, the language used in the Standard suggests that to qualify as an experiential or simulation course, the course must be easily identifiable as such. It seems likely the Council and the Accreditation Committee will expect the character of courses that the school holds out as meeting the requirement to be clearly experiential and will not engage in “minute counting” in order to qualify a particular course.

By meeting the requirement that a course be primarily experiential in nature, the requirement that the course provide “substantial experience” likely is also met, as long as the course also includes “direct supervision of the student’s performance by the faculty member” and “opportunities for performance, feedback from a faculty member, and self-evaluation” as further required by the Standard.

Can course components be utilized to satisfy the six credit requirement of 303(a)(3)?

GUIDANCE:

Inserting skills components in otherwise doctrinal courses will not satisfy Standard 303(a)(3). First, it is unlikely that inserting some skills instruction or skills exercises in a substantive course can meet the express requirement of Standard 303(a)(3) that “a course must be primarily experiential in nature.” Also, utilizing skills components in otherwise doctrinal courses runs counter to the change of the new Standard from a focus on “substantial instruction” to a focus on a prescribed number of “experiential courses.” Former Interpretation 302-1 explained that schools could “satisfy the requirement for substantial instruction in professional skills in various ways, including, for example, requiring students to take one or more courses having substantial professional skills components.” That Interpretation is eliminated in the revised Standards; schools must offer “experiential courses.” Skills labs and other “mini-courses” attached to doctrinal courses may be utilized to satisfy the Standard, but it will be important that they have a separate course designation (title; course number, etc.) and a separate syllabus so that they can be appropriately reviewed and assessed.

Can credits earned for mock trial, moot court, and similar activities qualify as a “simulation course”?

Standard 304(a) defines a simulation course: **“A simulation course provides substantial experience not involving an actual client, that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a set of facts and circumstances devised or adopted by a faculty member, and (2) includes the following:**

- (i) direct supervision of the student's performance by the faculty member;**
- (ii) opportunities for performance, feedback from a faculty member, and self-evaluation; and**
- (iii) a classroom instructional component.”**

GUIDANCE:

The answer to the question posed is “it depends.” The Council and the Accreditation Committee are aware that many law schools grant academic credit to students based on participation in moot court, mock trial, and similar activities. Participation in such activities, in and of itself, does not qualify as completing a simulation course. While these activities often comply with subsection (1) by providing “substantial experience not involving an actual client that is reasonably similar to the experience of a lawyer advising or representing a client,” and include the direct supervision of the student's performance by the faculty member and feedback from a faculty member required by subsection (2)(i) and (ii), a “classroom instructional component is also required.” Such a component likely requires more than a series of required faculty-supervised practices. Schools that wish to have these student experiences count toward the six-credit experiential learning requirement will be required to show how these direct supervision, feedback, and classroom component requirements are met.

To qualify as an experiential course, a simulation course must meet the requirements of Standard 303 as well as Standard 304. While a series of required faculty-supervised practices may provide the “multiple opportunities for performance,” and “opportunities for self-evaluation” required by Standard 303(a)(3)(iii) and (iv), subsections 303(a)(3)(i) and (ii) require that the course “integrate doctrine, theory, skills, and legal ethics” and “develop the concepts underlying the professional skills being taught.” That requires a fairly rigorous “classroom instructional component,” ideally including assignments, learning outcomes, and assessments as

with other classroom experiences. The classroom component need not, however, meet the requirement of “not less than one hour of classroom or direct faculty instruction . . . per week for fifteen weeks” for each credit granted for the experience. Standard 310(2) provides that “for other academic activities as established by the institution, including simulation,” the credits awarded are based on “at least an equivalent amount of work” as required by the definition of class hours in Standard 310(1). Thus, because some of the credit in these activities is earned by participating in the activity itself, the “classroom instructional component” need not make up a prescribed number of class hours, but must be sufficiently structured and rigorous as described above to meet the requirements of Standard 303(a)(3) in particular.

Can a simulation course offered as part of the first-year curriculum count toward the requirement of experiential courses totaling at least six credit hours?

GUIDANCE:

Standard 303 does not limit experiential courses to upper-level courses. Although Standard 305(e)(6) requires that participation in field placements be limited to students who have “successfully completed instruction equivalent to 28 credit hours toward the J.D. degree,” and first-year students are generally prohibited from participating in clinics by school academic rules and state student certification rules, a school is not prohibited from offering a simulation course as part of the first-year curriculum. Provided the course meets the requirements discussed in the other portions of this memo, a simulation course offered during the first year can count toward the requirement of experiential courses totaling at least six credit hours in Standard 303.

Can a course that requires a substantial, traditional scholarly paper qualify as a “simulation course”?

Standard 304’s definition of a simulation course is set out above.

Guidance:

A traditional writing or seminar course that requires a substantial, traditional scholarly paper does not seem to fit the definition of “experiential course” or “simulation course,” and a school desiring to count such courses in the required six credits of experiential learning courses will have the burden of showing how and why such a course should count. These courses do not “provide multiple opportunities for performance” or “provide opportunities for self-evaluation” as required to qualify as an “experiential course” under Standard 303(a)(3)(iii) and (iv). Opportunities for performance and self-evaluation are also required under the definition of a simulation course in Standard 304(a).

The language of the Standard suggests that the intent in including simulation courses within the experiential course definition is to ensure that a simulation course provides experiences similar to those that a student would be encountering in a clinic or field placement. Traditional seminar courses do not do that. Standard 304’s definition of a simulation course (the only way a paper course could qualify) says that it must provide “substantial experience . . . reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks.” A scholarly paper is not “reasonably similar” to a typical experience of a lawyer advising or representing a client.

These sorts of scholarly papers should be distinguished from research and advocacy papers that lawyers may write in connection with work done by a lawyer involved in lobbying or representing or working for an advocacy group. Courses designed to simulate the work of these lawyers and groups may count as an experiential course, but then could not count as a legal writing experience; Interpretation 303-1 prohibits using a course to satisfy more than one requirement under Standard 303.

For students who complete multiple semesters of clinic work, must each semester include a “classroom instructional component”?

In order to qualify as an “experiential course” and to count toward the requirement of six credit hours of experiential courses, Standard 304(b)(2)(iv) requires that a law clinic include **“a classroom instructional component.”**

GUIDANCE:

Some clinical programs permit students to participate in clinics in multiple semesters. Each semester typically is a separate course. In that case, Standard 304(b)(2)(iv) requires “a classroom instructional component” for each course. While meetings between the faculty member and individual students will not satisfy the classroom component requirement, a regular meeting of all students with the faculty member devoted largely to discussion of the cases the students are handling, including ethical and other practice issues arising from those cases, and to skills development likely will suffice to meet the classroom instructional component of the Standard.

What is meant by “substantial opportunities” in Standard 303(b)’s requirement of “substantial opportunities . . . for law clinics or field placement(s)”?

Standard 303(b) states, in relevant part: **“(b) A law school shall provide substantial opportunities to students for: (1) law clinics or field placement(s).”**

GUIDANCE:

The requirement of revised Standard 303(b) that a school offer substantial opportunities to students for law clinics and field placements carries forward with more specificity the requirement of previous Standard 302(b) that a school “offer substantial opportunities for . . . live-client or other real-life practice experiences . . .” The requirement does not mean the school must guarantee each student both a field placement and a clinic opportunity, or even guarantee each student can enroll in one or the other. Instead, a school must offer sufficient opportunities so that a student desiring at least one of those experiences has a realistic chance of enrolling in such a course prior to graduation.

The Managing Director’s Office will issue Guidance memoranda from time-to-time when new Standards or Interpretations have been adopted or when, in the course of the Office’s dealings with schools about compliance with the Standards, a number of schools are asking for clarification or direction regarding a particular Standard, Interpretation or reporting requirement. The Office does its best to provide helpful guidance, but we remind schools that we do not have the authority to bind the Council or the Accreditation Committee. That said, the Council and the Accreditation Committee understand the necessity of providing guidance and will take that guidance into account in any determination about a school’s operating in compliance with the Standards.