

# CLEA

## Clinical Legal Education Association

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December 11, 2008

ABA Council of the Section on Legal Education and Admissions  
to the Bar  
Office of the Consultant  
Attn: Becky Stretch  
American Bar Association  
321 N. Clark Street, 21<sup>st</sup> Floor  
Chicago, IL 60610

Dear Members of the Standards Review Committee:

We submit this letter for consideration at the Standards Review Committee meeting that will take place on January 9, 2009, in San Diego. Specifically, we write to express our opposition to the proposed elimination of Interpretations 402-1 and 402-2, which aim to articulate the faculty resources necessary to provide a meaningful legal education to all students.

It is simply premature at this time to eliminate these interpretations. Indeed, this Committee, in its May 23, 2008, Report to the Council on Student-Faculty Ratio, was split in a 4-3 vote in its recommendation to eliminate these interpretations. The Committee recognized the potential considerable harms that could result from these recommendations. Although the Committee mentions some possible alternatives to elimination, it ultimately rejects them, even though with regard to one potential alternative – replacing these interpretations with a new interpretation – it recognizes the difficulty of the task “without more time for

consultation with the Accreditation Committee.”<sup>1</sup>

As the Report highlights, and as Legal Writing Institute details in its submission, the potential costs of eliminating these interpretations at this moment outweigh the undefined benefits. Indeed, we share the Legal Writing Institute’s concerns that the Committee has failed fully to consider the possible alternatives to and consequences of eliminating these interpretations, has failed to assess the impact that eliminating these interpretations would have on the transparency and consistency of accreditation procedures; and has failed fully to consider the resources that institutions have invested to follow these interpretations.

We also share the concerns about eliminating the Interpretations raised in the Standards Review Committee Report on Student-Faculty Ratio. As stated in that Report:

...there are obviously arguments in favor of continuing to produce a student-faculty ratio, as evidenced by the fact that three committee members voted to continue to calculate and publish a student-faculty ratio. First, schools may have put considerable effort and resources into improving the student-faculty ratio, so we ought not to eliminate the ratio without giving more careful thought to the different ways in which schools might be relying on the ratio. Second, even though the student-faculty ratio may not give us dispositive answers to the question whether a law school’s faculty is sufficiently large, it does provide a starting point for inquiry, and we ought not to eliminate it until we have developed better output measures that we might use in lieu of this traditional input measure. Third, to the extent that Interpretation 402-1 encourages schools to give more faculty members (e.g., legal writing faculty) security of position to that they count in the ratio, that is a good thing. And fourth, we may invite a range of potential unintended consequences if we eliminate the student-faculty ratio as an isolated question without a full assessment of all of Chapter Four of the Standards.<sup>2</sup>

Moreover, the Standards Review Committee is about to undergo the task of redesigning the Standards to focus on outcome measures. The issues regarding faculty-student ratio relate directly to outcomes. Specifically, the amount and types of resources devoted to teaching students are directly connected to the various outcomes that we anticipate this Committee will recommend. Accordingly, this Committee should first address, flesh out and define the various outcome measures, and then consider the extent to which the faculty-student ratio needs to be reshaped to meet those outcomes.

The Proposal’s compromise position, which seeks to retain the goals of the student-faculty ratio while eliminating the guidelines for its enforcement, ignores the fact that these guidelines were the result of the Accreditation Committee’s frustration in having to implement a Standard that was highly subjective and subject to criticism on the grounds of arbitrary enforcement. Without these guidelines, the Standard will either lose its teeth

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<sup>1</sup> Standards Review Committee, Report on Student-Faculty Ratio, May 23, 2008 at 6.

<sup>2</sup> *Id.* at 4-5.

for lack of enforcement or give rise to a new round of subjective enforcement and resultant acrimony. The likely result will be the loss of the benefits to legal education that have resulted from the effective implementation of Standard 402.

On the substantive merits of the Proposal, the educational benefits from the existing flexible cap on the student-faculty ratio are obvious. What is not, perhaps, clear to many is the critical role of the cap in light of the fact that an increasing number of law schools are shifting the teaching of the fundamentals of law to adjunct faculty so that full-time faculty can generate more research. We recognize, of course, the critical role adjunct faculty often play in preparing students for law practice. Full-time law faculty are, nevertheless, critical not only in working with adjunct faculty to promote their pedagogical effectiveness, but, most important, in assuring that law students are schooled in the fundamentals of legal reasoning that are the special province of full-time law faculty. Regardless of their reasons, law schools' outsourcing of the teaching of the fundamentals that law students need to know to become competent and ethical lawyers will rise exponentially if Standard 402 is weakened in the ways the Proposal suggests.

As a result of its close knowledge of the historical effect of the Standards on the teaching of clinical and skills courses, CLEA is also particularly concerned with the effect of the Proposal on the teaching of such courses. Eliminating the interpretations to 402 at this time, particularly before this Committee works through the issues relating to outcome measures, would discount faculty who teach clinical and skills courses. As the Committee report explains, Interpretation 402-1 creates incentives for schools to provide security of position to faculty who teach clinical and skills courses, "so that they may count in the ratio."<sup>3</sup> As a result, the ratio helps ensure that schools hire, train and retain full-time faculty who teach the skills necessary for students to link traditional legal education with law practice.

Indeed, there is a connection between Interpretations 402-1 and 402-2, and Standard 405(c) and Interpretation 405-6, to the extent that all of these provisions, in various ways, theoretically work to provide security of position for faculty who teach clinical courses. However, despite these various provisions, the majority of faculty who teach in clinical programs are not treated as "full-time equivalent teachers" at their institutions, because they are not tenured, are not on the tenure-track, or do not have protections that are "reasonably similar to tenure." As we explained in our submission to the Council on July 18, 2008,

Data gathered by the Center for the Study of Applied Legal Education's (CSALE) 2007-2008 Survey of Applied Legal Educators shows that Nationwide only thirty-one percent (31%) of respondents, all of whom teach in clinical programs, were on any form of tenure track, whether separate from or unitary with other faculty. The remainder is comprised of adjunct faculty (13%), staff attorneys (2%), and contract faculty (52%). Of the contract faculty, fifty-five percent (55%) are working under contracts of three years or less. Only thirty-one (31%) of the one or

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<sup>3</sup> *Id.* at 5.

two-year contracts are “presumptively renewable;” fifty percent (50%) of the three-year contracts are.<sup>4</sup>

As a result, eliminating these interpretations would have the unintended consequence of unraveling the security of position protections currently afforded to faculty who teach skills-based courses.

All of the organizations concerned about issues relating to the quality of legal education, along with this Committee and the Council, should collaborate on ways to rethink the critical issues regarding faculty-student ratio. However, these issues cannot be isolated from the broader outcome measures issues that this Committee has begun to consider. In sum, we urge the Committee not to recommend the elimination of these Interpretations at this time. Rather, the Committee should focus its immediate efforts on its charge from the Council to redesign the Standards towards outcome measures. In addition, the Committee should fully consider the consequences of eliminating these Standards, as well as all possible alternatives to doing so.

Sincerely,

Michael Pinard,  
President, CLEA

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<sup>4</sup> Statement of the Clinical Legal Education Association on the Report of the American Bar Association Council on Legal Education’s Special Committee on Security of Position, Jul. 18, 2008 at 2, *citing* Taskforce on Clinicians in the Academy, AALS Section on Clinical Legal Education, Preview of the CSALE 2008 Survey of Applied Legal Education.