



HANDBOOK
FOR
NEW CLINICAL TEACHERS

2023

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WELCOME

Dear New Clinicians,

On behalf of the Clinical Legal Education Association (“CLEA”) we congratulate and welcome you to an exciting, rewarding career as a clinical legal educator.

CLEA is an all-volunteer advocacy group and serves as an independent voice for clinicians on critical issues, including those concerning the accreditation of law schools and the participation of clinicians in the academy. CLEA also serves as a sponsoring organization for a number of initiatives: for example, its Best Practices in Pedagogy Committee has inspired the publication of both *Best Practices for Legal Education* and *Building On Best Practices: Transforming Legal Education in a Changing World*, and currently offers the *Teaching Justice Webinar Series*; CLEA’s Faculty Equity and Inclusion Committee provides resources aimed at diversifying the experiential faculty community; CLEA’s Externships Committee supports externship faculty via surveys, videos, and conference planning. CLEA also sponsors community-building activities, regional conferences, and annual awards to clinic students across the country, for Outstanding Advocate for Clinical Teachers and for Excellence in a Public Interest Case or Project.

CLEA and the AALS Clinical Section jointly publish the *Clinical Law Review* and sponsor the annual Clinical Writers Workshop at New York University Law School each fall. Historically, CLEA and the AALS have alternated each year in hosting training meetings for new clinical teachers. In odd years, CLEA hosts the New Clinicians Conference before the start of the AALS Conference on Clinical Legal Education. In even years, the AALS offers a New Clinical Teachers Workshop at the Conference.

If you have not done so already, we hope that you will become a CLEA member. We aim to offer important opportunities to connect with others in the clinical community and to access resources to advance your career as a clinical legal educator. And of course, we all benefit from the new ideas and vision that you, our newest members, bring to the clinical community.

G.S. Hans
Cornell Law School
2023 Co-President, CLEA

Lynnise Pantin
Columbia Law School
2023 Co-President, CLEA

CLEA MISSION STATEMENT

CLEA is among the largest independent organizations of law professors in the United States with over 1800 members.

CLEA exists to advocate for clinical legal education as fundamental to the education of lawyers. CLEA and its members seek to:

- Foster excellent teaching and scholarship by clinical educators;
- Integrate clinical teaching and extend its methods into the legal education program of every law school;
- Reform legal education so as to prepare law students for excellent and reflective law practice;
- Advance regulation of legal education that insures the continued vitality of clinical education in law schools; and
- Pursue and promote justice and diversity as core values of the legal profession.

BRIEF HISTORY OF CLINICAL LEGAL EDUCATION

Until the late 1800s, most American lawyers were trained through an apprenticeship model. That began to change with the development of the “case method” of teaching in the late 1800s, which has become closely identified with Christopher Columbus Langdell, the dean of the Harvard Law School from 1870 to 1895. Under this method, legal training was based on reading judicial decisions with the goal of extracting and analyzing legal principles and reasoning. The goal was to teach students how to “think like a lawyer.” This model soon swept away other models of lawyer training to become essentially the only acceptable means of preparing lawyers. As the case-based method became more established, law schools gained academic legitimacy and found a place within the university—they were no longer considered mere “trade schools.” As they increased in academic respectability, law schools moved farther away from practical education.¹

The case-based method was a source of criticism almost from the very beginning²—not necessarily criticism of the method itself, but rather of the exclusive reliance on this method for teaching young lawyers. The dominance of the case-based method left almost no room in the law school curriculum for practical training. As a result, critics doubted the ability of law schools to prepare lawyers for practice and called for more focus on the practical side of legal education as well as a better connection between law schools and the actual practice of law.³ One famous critique argued that “students trained under the Langdell system are like future horticulturalists confining their studies to cut flowers, like architects who study pictures of buildings and nothing else.”⁴

Throughout the late 1800s and early 1900s, there were several student-led initiatives to start student-staffed legal aid offices, with the goal of supplementing doctrinal training. But the growth of clinical education faced several challenges. Resource-intensive clinical work was not a priority for law schools with persistent resource shortages. At the same time, law schools looking for academic credibility and professional legitimacy were actively trying to distance themselves from the old apprenticeship model and to rid themselves of the label of “trade school.”

Although by mid-century the issue of practical training was an important one in American legal education, by 1959 there were no more than 35 schools offering “clinical” opportunities for students.⁵ Only five of these were serious enough about clinical education to give teaching credit to professors for teaching clinics. Around the country, “the level of faculty involvement and supervision varied greatly, and clinical experiences existed on the fringes of the law school curriculum.”⁶ Although it was certainly present to a small degree, clinical education was a sideshow in American legal education for the greater part of the 20th century.

Things began to change quickly in the 1960s. Law student and faculty dissatisfaction with legal education was growing, and there were demands for relevance from law schools during a time of particularly notable social change in America. Criticism of legal education persisted in influential quarters.

At the same time, and no doubt central to the proliferation of clinical legal education programs, funding to expand clinical education became more readily available. Suddenly, law schools had access to private and then government funding to help establish law school clinics. This infusion of money had the intended effect: within a very short time, clinics had spread to a majority of U.S. law schools. In 1971, 85 law schools had clinics of some type. By 1997, when the last of the funding was discontinued, at least 147 law schools had law clinics.⁷ The metamorphosis of clinical legal education from novelty program to an accepted—and expected—element at any law school trying to attract top students was complete.

An important consequence of the explosive growth of clinics was the creation of a critical mass of clinical professors. Where before there were only a few lonely outliers doing clinical work, suddenly there was a large cohort of new clinical professors engaged in teaching and in serious thinking about clinical education. Under these conditions, clinicians developed a body of scholarship about issues such as teaching in a clinical setting, improving and implementing the supervisory process, and experiential learning theory. A common vocabulary developed, and with it an articulation of the goals of clinical education. In this atmosphere of experimentation, study and sharing, a particular clinical methodology developed.⁸ In short order, clinical education began to move from the fringes of legal education to “an area of legitimate scholarly inquiry.”⁹ Today, virtually every American law school has clinicians on the faculty. Multiple journals are devoted to clinical education, and clinical scholarship regularly appears in other journals. With the blossoming of clinical scholarship, “clinical legal education gained a more permanent place in law schools.”¹⁰

Once they were given the chance to flourish, clinics gained a solid place in the mainstream of American legal education. Given the long American tradition of marginalization of—or even outright hostility to—practical education, it might have been expected that without sustained outside funding, clinics would disappear. Somewhat surprisingly, however, that did not happen. Although the foundation and government money was undoubtedly instrumental in the initial establishment of many clinics, after the funding stopped, the number of clinical teachers increased, along with job security and status for clinical faculty. As of 2020, there were over 1,500 distinct law clinics in 179 U.S. law schools.¹¹

YOU CAN LEARN MORE HERE:

- ❖ Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1 (2000).
- ❖ Peter Joy and Robert Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN L. REV. 183 (2008).

BRIEF DESCRIPTION OF RELEVANT ABA STANDARDS

The American Bar Association (ABA) is the accrediting body for all U.S. law schools, including development of accreditation standards. The ABA has delegated much of the work on this (except for final approval of rules) to the Council on Standards for Legal Education, which constantly reviews and updates [Standards](#). The Council regularly reviews the Standards in response to developing issues in legal education and at the urging of affiliate organizations, including CLEA. Every piece of the Standards can affect clinical legal education, so we urge every clinician to read them, but a few are more relevant than others.

1. **Standard 405(c): Security of Position**

One of the most significant Standards for clinical legal education is Standard 405(c), which permits different treatment of clinical faculty and describes the requirements for security of position for this group of law faculty. Standard 405(c) establishes standards for security of tenure, etc. for “full-time clinical faculty” in particular:

A law school shall afford to full-time clinical faculty members a form of security of position reasonably similar to tenure, and non-compensatory perquisites reasonably similar to those provided other full-time faculty members. A law school may require these faculty members to meet standards and obligations reasonably similar to those required of other full-time faculty members. However, this Standard does not preclude a limited number of fixed, short-term appointments in a clinical program predominantly staffed by full-time faculty members, or in an experimental program of limited duration.

Interpretation 405-6 of Standard 405(c) explains that this Standard requires “a separate tenure track or a program of renewable long-term contracts,” which are contracts of at least 5 years that are presumptively renewable.¹² And it is still the case that at most U.S. law schools, clinical faculty are on a separate tenure track such as “clinical tenure” or are on long-term contracts.

As for clinical faculty participation in the governance of the law school, Interpretation 405-8 requires a law school to “afford to full-time clinical faculty members participation in faculty meetings, committees, and other aspects of law school governance in a manner reasonably similar to other full-time faculty members.”

The Standards do not define “full-time clinical faculty,” but they do define “clinic” in Standard 304(c) as providing “substantial lawyering experience that involves advising or representing one or more actual clients or serving as a third-party neutral.”

The Standards’ relatively narrow definition of “clinic” does not include field placements courses (which are themselves defined in Standard 304(d)), and Standard 405(c) is silent about faculty who are exclusively focused on field placements. In practice, these faculty members frequently have much less security of position or rights to participate in the law school than “full-time clinical faculty” as defined by the Standards.

Since 2007, CSALE has conducted regular surveys of clinic and externship faculty, including status, security of position, and participation in law school governance. The results of these triennial surveys are [here](#).

The history of Standard 405 is one of controversy – “no other accreditation issue has been as contentious as the ABA’s efforts to secure reasonably similar treatment of clinical faculty with their classroom faculty counterparts” – and gradual progress toward greater security of position for clinical faculty as clinical legal education has become more integrated into legal education.¹³

Standard 405(c) has been stable for many years, and law schools and the ABA appear to have reached a shared understanding about how to comply with it. However, Standard 405(c) has been the focus of renewed attention recently, as advocates for legal writing faculty have questioned their exclusion from the protections of Standard 405(c). With the increased number and role of externship-focused faculty, it is likely that the ABA will be asked to review the security and participation of these faculty members as well in the near future.

2. Standard 303: Curriculum

The Standards address the role of clinics in the curriculum in a few different places, establishing a definition of what is a clinic and what is a field placement, how many experiential hours students must take before graduation, and the timing of the new requirement that law students receive education on bias, racism, and cross-cultural competency.

a. 303(a)(3): Six Experiential Learning Credit Hours

Standard 303 was revised in 2015 to require law schools to require students to take at least 6 hours of “experiential” courses, defined as “a simulation course, a law clinic or a field placement,” which are themselves defined by Standard 304.¹⁴ Clinics are not required, but most law schools (at least 179, per the 2020 CSALE survey) offer at least one clinic as part of their curriculum.

At the time of the discussion about this revision of Standard 303, CLEA and other organizations pushed for a requirement that 15 credit hours be experiential, to put legal education more in line with other professional schools. Recently, CLEA has renewed its 15-hour proposal in conversations with the Council.

b. 303(c): Bias, Cross-cultural Competency, and Racism

Standard 303(c) was revised in 2022 to include a requirement that law schools,

“provide education to law students on bias, cross-cultural competency, and racism:

- (1) at the start of the program of legal education, and
- (2) at least once again before graduation.

For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement course.”

While CLEA has been supportive of this addition to the curriculum, there has been some confusion as to what the new Standard actually requires, as well as some concerns about possibly mandating an increased teaching burden on clinical faculty, who may be tasked with implementation of the Standard. However, it is likely that most clinicians already provide the required education, and anecdotally many clinicians believe that the clinic is a proper home for this type of education. See the [Matters of Special Concern](#) section below for further discussion of how to address bias, cross-cultural competency, and racism in clinical teaching.

GOALS OF EXPERIENTIAL EDUCATION

The pedagogy of clinical legal education focuses on teaching students the skills and values necessary for their careers as lawyers.¹⁵ Clinical legal education also “aims to teach students to approach lawyering as theory-driven practice” and to frame each lawyering activity with intentionality and reflection.¹⁶ This is true for many in-house law clinics, as well as many field placement programs.

In law clinics, students are supervised by law professors and represent a limited number of clients in specialized areas of law. In field placements (sometimes also referred to as externships), practicing attorneys outside of the law school supervise law students, with law school administrators and professors partnering with field placement supervisors to ensure a quality educational experience for students. Both clinics and field placements provide students with the opportunity to confront situations of the sort that lawyers face in practice and the opportunity to see and work with lawyers as they practice on a day-to-day basis in a real-world setting. Although there are exceptions, in most externship programs students are given less responsibility for client representation than is available through an in-house clinic. However, externships can provide students with more opportunities to explore career interests in a variety of legal settings and to build a professional network.

Many potential learning goals for clinical legal education have been identified by clinical law teachers and scholars.¹⁷ Broadly, these clinic learning goals fall into several broad categories, including: developing professional identity; lawyering skills and process; learning to learn; and social justice.¹⁸ These goals are each described below.

Developing Professional Identity

New lawyers must learn how they want to behave as a lawyer.¹⁹ They must figure out how they will interact with clients, walk through the halls of a courthouse, decide which cases they will and will not take on, and more. In clinics and externships, students are learning about professional identity by inhabiting the role of a lawyer. Students “learn what the profession expects of them, they also learn that they have many opportunities to decide for themselves how they want to behave as a lawyer.”²⁰ Specifically, students begin to learn in clinics and field placements which of their decisions are dictated by the rules of professional conduct and where they may exercise discretion to interpret the rules. This can be a transformative time, with students exploring and linking their personal values and aspirations with those of the profession.²¹

Lawyering Skills and Process

All clinics and field placements attempt to teach students lawyering skills²² and process. Students may exercise research, drafting, interviewing, client counseling, cross-cultural, trial skills and more, during the course of a semester. Students also learn about the process of lawyering. For example, students may learn about setting goals, planning, doing, and reflecting afterward. Before engaging in experiential learning courses, many students think that lawyering skills are the only focus of a clinic or externship. However, clinical legal pedagogy emphasizes that skills and process are only one part of the learning goals for these courses.

Learning to Learn

It is important for law students not only to learn, but to gain an understanding of how their learning process takes place.²³ This is referred to as “learning to learn” in clinical legal pedagogy.²⁴ Understanding the learning process is important for adult learners; this helps students generalize from lessons learned and skills gathered in one circumstance and transfer those lessons and skills to a different set of circumstances.²⁵ Law students who are learning to learn in clinic and field placements are also thought to be able to more easily recognize when they have options and when they need to make choices in lawyering, and how to make intentional choices in the face of uncertainty.²⁶

Social Justice

Lastly, another broad goal of clinical legal education is to expose students to social justice lawyering.²⁷ Professor Carolyn Grose has described the social justice goal of clinical legal education as “twofold: first, to expose students to the underbelly of the legal system, and its place and role in society; and second to challenge them to think critically about that system and their place in it.”²⁸ Working with real clients and practicing lawyers necessarily exposes students to systemic problems in the U.S. legal system. For example, relatively simple tasks such as filling out a form that requires a social security number of an undocumented client require critical thinking and often lead to deep reflection on discrimination and other challenges of the legal system.

YOU CAN LEARN MORE HERE:

- ❖ SUSAN BRYANT ET AL., *TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY* (2014).

- ❖ ALICIA ALVAREZ AND PAUL TREMBLAY, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE (2021).

- ❖ J.P. OGILVY, ET AL., LEARNING FROM PRACTICE (2007).

TYPES OF CLINICS

Most law school clinics focus on one or more substantive areas of law, e.g., community economic development, criminal justice, housing, public benefits, education, juvenile rights, workers' rights, immigration, civil rights, health, family law, environmental law, entrepreneurship, and more. However, in addition to different substantive areas of law, clinics also employ different lawyering approaches to address community needs in those substantive areas of law. Some broad non-exhaustive categories of law school clinics are:

Civil Legal Services

In community legal services clinics, students represent low-income clients who are facing court appearances or other litigation-related matters including appearances in administrative hearings, specialized courts, and mediation proceedings. These clinics primarily utilize the model of individual client representation and operate in areas in which legal services organizations have traditionally operated. Examples of community legal services clinics include disability law clinics, family law clinics, general civil clinics, and housing law clinics.

Criminal Law-Related Clinics

In criminal law-related clinics, students generally represent defendants in criminal cases on the state or federal level at various stages from bail through appeals. Prosecution-side clinics tend to operate more often as externships through the local prosecutor's office.

Transactional Clinics

In transactional clinics, students assist individuals, small businesses, and/or cooperatives in matters involving corporate, commercial, and transactional law. Examples of transactional clinics include entrepreneurship clinics, economic development clinics, real estate clinics, and intellectual property law clinics.

Project-Based Advocacy Clinics

The project-based advocacy clinical model engages students to solve legal problems through the use of legal interventions other than litigation. Projects may include drafting legislation and lobbying for legislative change, providing training to community residents, publishing reports that advocate for policy changes, or developing structures that allow clients to self-advocate. Policy-oriented clinics may represent and/or assist organizations or coalitions in legislative or policy advocacy efforts through drafting of legislation, conducting legal research and writing, and

otherwise supporting advocacy efforts. Examples of advocacy clinics include gender justice clinics, access to justice clinics, and social justice clinics.

Clinics Serving Specialized Populations

Some clinics focus on serving the needs of particular communities and employ a number of modalities to do so, depending on the needs of the target population. Examples of Specialized Population clinics include elder law clinics, veterans clinics, prison re-entry clinics, and immigrants' rights clinics.

Community and Movement Lawyering Models

Community or movement-lawyering focused clinics may represent organizations or coalitions and support such entities in building power amongst their members and the community. Community or movement goals will differ from community to community and movement to movement; thus, clinic directors will often meet with community-based organizations when developing their clinic to understand community needs and see what different advocacy efforts are taking place in a particular area of law or on behalf of a particular community.

Hybrid Models

Hybrid or mixed-model clinics employ both litigation-based strategies and project-based components to further the interests of clients and community groups.

YOU CAN LEARN MORE HERE:

- ❖ Anna E. Carpenter, *The Project Model Of Clinical Education: Eight Principles To Maximize Student Learning And Social Justice Impact*, 20 CLINICAL L. REV. 39 (2013).
- ❖ American Bar Association, [Public Interest Clinics](#).

CLINIC STRUCTURE

The law clinic course combines a seminar, fieldwork, supervision, and assessment, to provide students with opportunities to build knowledge and skills and reflect upon lessons learned.

I. Seminar

In the seminar, students engage in classroom learning, usually based around readings and simulation problems. Students also often engage in rounds during the seminar component of the law clinic course, where they meet to discuss cases and projects and learn from the experiences of other students.

The ABA—the accrediting body for law schools—requires that law clinics have a “classroom instructional component.”²⁹ The ABA does not provide guidance, however, for how many class hours need to take place or what the substance of the classes should be. Each law school has set its own policies regarding the timing of classes and the contents of each class, and the clinic syllabus is generally left up to individual clinical teachers. Some law clinic seminars are less than 1 hour per week, while others devote more than 4 hours per week to the classroom component.³⁰ Some law schools combine the classroom component and the fieldwork for the purposes of the clinic syllabus and grading, others do not. The contents of clinic seminars vary, and not just because of these timing differences. There are endless topics that could be covered in the seminar. However, almost every clinic devotes some classroom time to lawyering skills instruction, rounds, and substantive law. Other popular classroom topics include simulations, procedural law and rules, ethics and professional responsibility.³¹

II. Rounds

Most law clinics devote some classroom time to rounds. Rounds are facilitated classroom conversations in which students discuss their cases or projects, apply and test lawyering theory, and reflect on lessons learned from their classmates’ experiences. Rounds can provide students with opportunities to present cases and give and get professional advice, but also engage in honest and supportive dialogue that can lessen the stresses of law practice. Students like rounds and often identify these classes as a major source of learning.³²

There are generally five stages of rounds, described in detail below.

Stage 1: Description

Presenter focuses on description and avoids analysis to the extent possible. Other group participants develop the description through questions about the facts. At this stage

the group focuses on information about what happened, to whom by whom, what was said or not said, what was the result, intended result, etc. and does not yet focus on why something happened. The why inquiry begins during the next stage.

Stage 2: Problem Identification or Clarification

This stage identifies or clarifies the issue or problems. Important questions during this stage include: what is the problem? Why is this occurring? Why was it not successful? A brainstorming approach is commonly used to help identify a variety of explanations to these questions. Another common tool is to engage in Parallel Universe Thinking about the meaning of someone's behavior. However, postpone solution identification and instead focus on generating multiple potential problems and their causes, even if contradictory.

Stage 3: Goals

The presenter identifies his/her goals in solving or exploring the issue. What are they trying to accomplish? Other participants can be invited to add additional goals. What would they want in similar circumstances?

Stage 4: Problem-Solving and Lawyering Strategies

This stage focuses on identifying and developing strategies for the defined problems. The group should focus on a particular hypothesis about what is causing the problem and refine solutions to the problem. Hopefully, if time permits, the group can address a few problems. The group or the presenter may choose the most likely source of the problem.

Stage 5: Lessons Learned

This stage is focused broadly on answering questions such as: What have we learned from this conversation? What would we do that is the same or different in this case and in others as a result of this conversation? How can we improve the learning from this conversation (evaluation of rounds itself)?

Most often faculty facilitate rounds, but it can be useful to allow students to facilitate and hold rounds, with or without faculty present. Most facilitators aim to progress through the stages, one at a time, allowing the discussion to briefly return back to add additional facts, but do not allow the discussion to skip ahead or give short shrift to any stage before it is thoroughly discussed.

In preparation for rounds, faculty and students may consider setting ground rules to improve these discussions. Some possible ground rules include requiring each student to actively participate as an obligation to peers, requiring that student facts and student insights remain confidential, and that students should aim to support their colleagues and willingly give and receive feedback with that in mind.

Each clinical faculty member can format rounds differently, depending on custom and learning goals. These stages and strategies described above are just a suggestion and there are other modes and formats that might work better for your program.³³

III. Fieldwork

Through fieldwork, law clinic students complete real legal work on behalf of real clients. The clinical teacher chooses legal matters and projects in which students learn how to inhabit the role of lawyer in practice and at the same time build students' understanding of how the law and legal systems operate. Many clinics seek to provide legal services that help fulfill unmet individual or community needs and that protect rights and interests of specific clients. Some law clinics assign law students just one case or one project at a time. Others explicitly plan for students to work with multiple potential and accepted clients. Many law clinics are interdisciplinary and involve direct collaboration among service providers, including lawyers, law students, social workers, organizers, scientists, health professionals, policy advisors, and more.

Clinic students are generally allowed to carry out a wide range of work—almost all lawyering tasks that come up in practice—including giving legal advice, making arguments in court, and signing legal documents. Depending on the law student practice rules in your state,³⁴ supervising attorneys may need to accompany students to court and simultaneously sign legal documents. However, law students can be first chair trial lawyers and accomplish a great deal of lawyering tasks independently. New clinical teachers will likely worry about when and how to allow students to take the lead on legal matters. There is no one way to do this, and the Supervision section below should provide more insight on this dilemma.

YOU CAN LEARN MORE HERE:

- ❖ David F. Chavkin, *Matchmaker, Matchmaker: Student Collaboration in Clinical Programs*, 1 CLINICAL L. REV. 199 (1994).
- ❖ Margaret Martin Barry et al., *Clinical Education for This Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 6 (2000).
- ❖ Sara R. Benson, *Beyond Protective Orders: Interdisciplinary Domestic Violence Clinics Facilitate Social Change*, 14 CARDOZO J.L. & GENDER 1 (2007).
- ❖ Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505 (2012).

- ❖ Patience Crowder, *Designing a Transactional Law Clinic for Life-Long Learning*, 19 LEWIS & CLARK L. REV. 413 (2015).
- ❖ Stephen R. Miller, *Field Notes from Starting a Law School Clinic*, 20 CLINICAL L. REV. 137 (2013).

SUPERVISION

Clinical education would not exist without supervision. Students come to know lawyering best by doing it under intentional, reflective faculty supervision. Without the guidance and structure of supervision, student learning from the assumption of responsibility for the legal matters of clients is chaotic and diffuse. Within the supervisory structure, students and teachers build respectful, challenging, and supportive relationships through which students learn about themselves as lawyers and as learners.³⁵

Supervision Style: Nondirective and Directive Supervision

Clinicians have long grappled with the question of how much guidance to give students and how much responsibility to give students over their own decisions in their cases and their clinical learning experience.³⁶ Many aim to give clinic students as much responsibility as possible and to intervene as little as possible in their representation of clients – this is called a *nondirective* approach. In nondirective supervision, the supervisor uses questions to guide the student and resists telling them what to do or imposing the instructor’s own views on the student.³⁷ In *directive* supervision, the supervisor carefully leads the student through the process, employing explicit instructional methods such as modeling the desired performance or giving clear instructions about what to do and why.³⁸ Directive supervision involves more telling and showing than asking questions.³⁹

The benefits of nondirective supervision include increased student motivation and enhanced student learning.⁴⁰ Through nondirection, students take ownership of their matters, leading to increased motivation to work hard, reflect on what has happened, and try to learn what is necessary to provide quality legal representation.⁴¹ While nondirective supervision is the gold standard of clinical teaching, it is not always practical or warranted in every situation.⁴² A common reason for more directive supervision is to prevent potential harm to clients.⁴³ When a student is unable or unlikely to provide high quality representation, the clinician must choose whether to let the student act independently or intervene to provide a high standard of representation.⁴⁴ Complex cases might also require more directive supervision as might expediency.⁴⁵

As a practical matter, clinicians use a mix of nondirective and directive supervision. Sharing your plan for supervision with students will help them understand your expectations of them and decrease their frustration when supervision is nondirective and they are not being told what to do. It is helpful to explain how much time they will have with their supervisor(s) so that they can plan accordingly. This creates both a better course experience, while also developing excellent professional habits.

Stages of Supervision

Clinical teachers engage students in four stages of supervision:⁴⁶

1. Planning by student for an activity;
2. Conference between student and teacher reviewing the student's activity plan;
3. Performance of the activity by student with observation by teacher; and
4. Post-activity analysis and evaluation by student and teacher.

In the planning phase, asking students to give some thought to the question of “how do I start?” before giving answers or guides allows the student to assume the role of attorney and the responsibility that comes with it.⁴⁷ The clinical teacher should allow the student to confront her own lack of knowledge and begin grappling with the hesitation and awkwardness of setting out to blaze her own trail—that is where real self-learning begins.⁴⁸

Before the student undertakes an activity, the teacher and student review the plan together. They discuss the contents of the plan, the goals, how the student developed the plan, and the student's and teacher's reactions to the student's ideas.⁴⁹ There is often some form of practice or simulation of the activity planned by the student with the teacher's participation.

Next, the student performs the activity with the teacher observing. The teacher actively observes the student, noting their verbal and nonverbal communications, the substance of the issues they address and skills they use, whether they adhered to their plan, how they reacted to the unplanned, etc.⁵⁰ Greater detail in the teacher's notes, with specific instances noted, will lead to better feedback during the final post-activity analysis stage.⁵¹ Note that there are varying approaches to the observation stage of supervision. Some clinical instructors are not present for all student-client meetings and instead watch a recording or rely on students' notes and reflections on the meeting and provide feedback accordingly.

Finally, the teacher and student together engage in analysis and evaluation after the activity has occurred. Here, the most important analysis and evaluation of the activity is that of the student herself, as it establishes and develops her life-long skills of self-reflection and self-directed learning.⁵² The following section describes reflection in more depth.

YOU CAN LEARN MORE HERE:

- ❖ William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463 (1995).
- ❖ SUSAN BRYANT, ELLIOTT S. MILSTEIN, ANN C. SHALLECK, TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY, Chs. 9-11 (2014).
- ❖ Serge Martinez, *Why Are We Doing This? Cognitive Science and Nondirective Supervision in Clinical Teaching*, 26 KAN. J. L. & PUB. POL'Y 24 (2016).

REFLECTION

Experiential learning is about providing students with opportunities to work through what it means to be a lawyer generally, and what it means to *them* to be a lawyer more particularly. One does not get from the general to the specific without reflection. Without reflection, an experience that a student might have working with a client or on a matter simply becomes a trope of what a particular area of practice is like. With reflection added in, the experience allows a student to understand how they – with their biases, baggage, and beliefs – fit into the narrative of what it means to be a lawyer. It helps them to develop their professional identity. The ABA addresses reflection in the Interpretation to Rule 303-5 saying in part:

The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.⁵³

Clinic and field placements/externships are the spaces in the law school curriculum where such intentional development of professional identity via reflection is naturally achieved. And to make sure that this is the case, the American Bar Association requires that law clinics and field placements provide “faculty guided means for reflection.” But what does reflection mean?

A narrow concept of reflection perhaps puts the emphasis on supervision times with students, where a clinician may intentionally ask their students to discuss a particular piece of a case or client interaction, seeking insight and feedback from the student about what that experience was like. These conversations can become forced and at times can supplant the student narrative of the experiences for those of the clinician. What we as clinicians may see as the takeaway may not be the takeaway that is the most impactful for the student. Teaching and encouraging students to take the lead in reflection in supervision can lead to more impactful and authentic learning. This might be incorporated by having students pick a theme or topic for a supervision meeting or by having a section of supervision devoted to reflection.

Another common practice for reflection is having students journal about their experiences. Journals can be online or physical old-school composition books. Students can be provided general prompts or more specific prompts. You might require students to write a certain length or have no confines on the finished product. If we are truly incorporating the variety of learning styles of students, then one might consider the option to create visual depictions other than words for prompts or allowing students to create an audio or video journal. Journals can also serve as a way

to pass down knowledge between groups of students in progressive journals. These are journals that get passed between semesters and each subsequent semester is able to add to the journal, but also see what their predecessors were thinking and feeling. Students often feel they are going at it alone. A journal that allows the passage of knowledge and reflection can also provide great comfort to students knowing that they aren't alone in particular thoughts or feelings. With any journal, one should consider how and when it will be turned in and what feedback will look like.

Because of the nature of the work that we do, more immediate opportunities for reflection are often needed and called for. Opportunities for immediate reflection can come in the hallway after a court hearing or in a conference room after a particularly difficult client meeting. Some of the most productive spaces for genuine reflection are during those times when students are simply sitting around the clinic space with a supervisor talking about cases and the like in a more informal setting. The physical barriers are removed that place the clinician or supervisor in a position of control. Clinic faculty should make use of student spaces to create these other opportunities for reflection.

In all reflection comes the reality that you will likely have to address issues of bias and all the “isms.” In order for students to grow from reflecting on experiences that might be triggering or hurtful or harmful, it is critical that you leave space and time for the discussions and lead those discussions with intentionality and focus. Discussing the obvious bias of the judge against your client that your student may or may not have caught is probably not a conversation you will have in the hallway of the courthouse, but it will be a conversation that you will need to have close in time to the event and a conversation that you create space and time for. These can be challenging conversations to have, but we do a disservice to our clients, our students, and the legal system if we sidestep these necessary conversations.

Ultimately to grow from reflection and to truly use it to help develop the professional identity we are called on to help suss out, it must be authentic, engaging, and not feel contrived. Not only do students grow in reflection, but we do as well. Make space and time to reflect with students about your work as well. They need to hear about our failures as much as our successes. We learn from them as much as they learn from us. The common mantra in clinical legal education is “plan, do, reflect.” Perhaps it should really be “plan, do, reflect, and grow.” Happy Growing!

YOU CAN LEARN MORE HERE:

- ❖ Beryl Blaustone, Teaching Law Students to Self-Critique and to Develop Critical Clinical Self Awareness in Performance, 13 CLINICAL L. REV. 143 (2006).

- ❖ Victor M. Goode, *There Is A Method(Ology) to This Madness: A Review and Analysis Of Feedback in the Clinical Process*, 53 OKLA. L. REV. 223 (2000).
- ❖ Carolyn Grose, *Uncovering and Deconstructing the Binary: Teaching (and Learning) Critical Reflection in Clinic and Beyond*, 22 CLINICAL L. REV. 301 (2016).
- ❖ Wallace J. Mlyniec, *Where to Begin? Training New Teachers in the Art of Clinical Pedagogy*, 18 CLINICAL L. REV. 505 (2012).
- ❖ Gowri J. Krishna, Kelly Pfeifer, Dana Thompson, *Caring for the Souls of Our Students: The Evolution of a Community Economic Development Clinic During Turbulent Times*, 28 CLINICAL L. REV. 243 (2021).
- ❖ Neil Hamilton, *The Foundational Skill of Reflection in the Formation of A Professional Identity*, 12 ST. MARY'S J. LEGAL MAL. & ETHICS 254 (2022).

ASSESSMENT

Assessment is important for many reasons: it will help you clarify how your course is furthering your school's mission. You can learn which of your learning outcomes were achieved, and you will have a better understanding of what your students learned. Most importantly, it will help you become a better teacher and improve your course. Assessment can be incorporated into other elements of your course. If one of your learning outcomes involves students developing a greater sensitivity to social justice issues, you can devise reflective writing assignments that address that issue and will also serve as a measure of how your students are changing over the course of the semester. Mid-semester and final semester performance evaluation tools can provide for a wider range of assessment including performance, professionalism, and overall professional growth.

Forms of Assessment

ABA standard 314 instructs that a law school use “both formative and summative assessment methods in its curriculum to measure and improve student learning and provide meaningful feedback to students.” The structure of clinical legal education perhaps makes the questions surrounding assessment more complicated than in other law school courses. Law clinics are usually not set up in a way that allows for having a single cumulative assessment at the end of the semester – final exams are rare to non-existent in the clinical space. Instead, clinicians must determine the best methods to both (1) formatively assess students and (2) determine a final grade for each student.

Formative Assessments

Formative assessments are designed to provide students with feedback at various points throughout the semester and to provide the instructor with insight into a student's learning and performance over time (“growth assessments”). Formative assessments provide an opportunity for an instructor to provide real-time feedback to students throughout the semester, which creates a space for students to practice internalizing critique, adjusting, and improving.

Formative assessments come in many forms. Some examples of these include quick writes (where students are given a prompt followed by a short period of time to write a response); reflection or journal entries that are submitted periodically throughout the semester; creating or contributing to a blog or podcast; completing homework assignments; responding to prompts on discussion boards; assigning students to lead in-class discussion; or conducting individual meetings or conferences with students. Formative assessments need not be graded, but are perhaps most useful when students receive (relatively) immediate and specific feedback.

Cumulative/Summative Assessment

A cumulative or summative assessment is one that occurs at the culmination of a semester or project and is meant to measure the overall performance of the student. Grading rubrics are often used for summative assessments, both to ensure that the same criteria is applied across students and also to provide students with notice of what will be expected of them and what will impact the “grade” that they will receive for the clinic. In clinical work, summative assessments are often not solely a result of the quality of the final deliverable in the case or project work; instead, summative assessments factor in the process toward completing the project as well (along with any number of other factors).

Self-Assessment and Peer Review

A third form of assessment available for clinicians involves students receiving horizontal evaluation (as opposed to vertical evaluation from instructor to student). The most common forms of horizontal evaluation are self-assessments and peer review. Self-assessments can be guided or informal, and can be formative and/or cumulative. Peer review is a method through which students receive critique from their peers in the clinic. Value accrues on both sides of the peer review arrangement – a student receiving critique learns (among other things) how their work is being received by others. The student giving critique learns how to provide constructive feedback in a professional context. On both sides of the equation, students learn to use the missteps – and triumphs – of their peers as a tool to inform their own work.

Grading

Grading of work done in clinics falls into three general categories: fully graded, pass/fail, or a mix of the two. Under fully graded models, clinical seminars and fieldwork are graded with number and/or letter grades in the same way in which doctrinal courses are graded. Potential advantages to fully graded clinics are that this structure may signal to students that clinical work is on par with doctrinal and other graded work. Additionally, students may also devote more time and energy to courses that are graded. Potential disadvantages include students focusing on grades to the detriment of clients. Fully graded structures could also lead to competition among students (particularly if a curve is implemented).

In pass/fail grading, students are either given a “pass” or “fail” for seminar and clinic work, or some iteration on the pass/fail system (e.g., “high pass/low pass,” “S+/S-,” etc.). Advantages of a pass-fail grading scheme include that it does not require the clinician to isolate individual students’ contribution when they have worked in a team; it discourages competition among

students; and it may encourage students to develop an internal metric for performance and success, instead of seeking external validation. Disadvantages include the possibility that students may devote less time and effort to courses that are not graded, and that grades may also serve as leverage to encourage student performance.

Some clinics use a combination of pass/fail grading and letter grading. One frequently occurring structure is that fieldwork is graded on a pass/fail basis, while the seminar component of the clinic is graded using the same system as other law school seminars.

YOU CAN LEARN MORE HERE:

- ❖ Carol Springer Sargent and Andrea A. Curcio, *Empirical Evidence that Formative Assessments Improve Final Exams*, 61 J. LEGAL EDUC. 379 (2012).
- ❖ Stacy Brustin & David Chavkin, *Testing the Grades: Evaluating Grading Models in Clinical Legal Education*, 3 CLINICAL L. REV. 299 (1997).
- ❖ Julie Ross and Diane Donahoe, *Lighting the Fires of Learning in Law School: Implementing ABA Standard 314 by Incorporating Effective Formative Assessment Techniques Across the Curriculum*, 81 U. PITT. L. REV. 657 (2020).

CLINIC SETUP

In addition to the substantive planning for your course, you must consider structural and curricular concerns. These may be specific to or limited by the law school or program where you teach. It is a good idea to consult with other experiential colleagues or your associate deans about any limits or requirements. Consider what pre- or co-requisites are necessary for students in your course. Do students need a foundational knowledge in a particular area or can that information be obtained contemporaneously? How many credit hours will be given for your course? Will this include both the fieldwork and class time or is credit given separately for each portion? What is the ratio of fieldwork to classroom time?

Many of these questions may have answers pre-determined by the academic regulations at your institution. It may be possible to make changes to your course but often that requires committee and/or faculty approval. Again, consultation with your experiential colleagues or a mentor is recommended.

This section outlines several considerations that a clinician may want to consider when initially designing and setting up a clinic:

Case/Client Selection

When designing a clinic, particularly with respect to case selection, the clinic director often has multiple goals – fulfilling client needs and goals, pedagogical goals for students, desire to address community needs, or to use the clinic’s work to further community movements. Law school clinics are operated by supervising attorneys and law students who are bound by the rules of professional responsibility for lawyers in their state and ethical duties to clients, so they have the duty of zealous advocacy, loyalty, and competency among others to their clients. In this sense, once the clinic agrees to represent clients, the work is being driven by client goals and while other goals the clinic may have often factor into how the clinic does its work, those goals are typically not fulfilled at the expense of the client representation or such that it will prejudice a client.

One way to find clients/matters is for the clinic director to immerse themselves in the target communities. Making connections with local legal services providers, social services organizations, political leaders, community leaders, and civic organizations will allow a clinician to identify the kinds of matters they would like the clinic to take on and the types of clients they would like the clinic to serve.

Short-Term or “Small Case” Model

“The short-term matter is time-bound such that a student can see the work through from beginning to end and is characterized by a high level of student ownership of the work, including the relationship with the client.”⁵⁴

Long-Term or “Big Case” Model

“The long-term matter typically lasts longer than any one student’s involvement in the clinic, such that each student will work only on one or more discrete pieces of a given matter.”⁵⁵

Assigning Cases

Another big decision that clinicians must make is whether or not to assign cases to students individually or to pairs or teams of students. In addition, law clinics vary in terms of the total credits that a student can receive for fieldwork. The most common number of credits that students receive for fieldwork is 3 credits, but some clinics award 8 or more credits for fieldwork.⁵⁶ It is also important to keep in mind that at least 42.5 hours of student work are required per credit received.⁵⁷

Prerequisites and Corequisites

Some clinics have pre-requisite or co-requisites based on court or state bar requirements for law students to be able to represent clients under clinical supervision or to appear in court cases. For appearance in court, some states require that students be certified by their institutions, which might require students to have taken a course in evidence or trial advocacy, for example. Clinics may also choose to have prerequisites or corequisites that involve substantive areas of law; however, many clinics choose to forgo requirements of this nature and instead ensure that students learn the substantive areas of law that they are practicing in while doing the clinical work itself, in a clinic seminar, or through both means.

Length of Clinic

Semester-Long

In a semester-long (or quarter-long) clinic, students are given the opportunity to work on cases, projects, or matters for a single semester, without the possibility of extension. These clinics generally focus on short-term matters or continuing matters that can easily be transitioned across semesters. Some advantages of this model are that semester-long clinics may be easier for students to integrate into their schedules; the matters are often structured so that students can experience the full arc of the case or project; and extensive summer supervision coverage is oftentimes

unnecessary because matters have been resolved over the course of the semester. Some disadvantages are that students are unable to engage in “big cases” or matters, and that setting up short-term projects often involves significant foundational work by faculty supervisors.

Semester-Long + Advanced Component

In clinics that offer an advanced component, students are given the opportunity to enroll in an “advanced” or second level of the clinic in the semester following the one in which they initially participated in a clinic, or in a subsequent semester. In some versions of this arrangement, students do not take a seminar as part of the advanced clinic, but only participate in the fieldwork; in other iterations, the clinician may offer an advanced seminar to accompany the advanced clinic. An advantage of this model is that it allows students who are particularly invested in their fieldwork to see it through to the end stages.

Year-Long

In year-long clinics, students enroll for a full academic year. These clinics often focus on long-term or “big case” projects. The advantages of having a year-long clinic are clear: students can immerse themselves in more complex cases or matters; it can lessen the burden on clinical faculty to lay extensive foundations for cases or matters; and students may be able to develop deeper relationships with clients, impacted groups, and fellow students. One of the disadvantages of a year-long clinic is that it may require a student to commit a large number of credit hours to participating in the clinic. This commitment may discourage students who might otherwise be drawn to a clinical experience. Another disadvantage may be that offering a year-long clinic means that there may be fewer overall clinic seats available for students.

Learning Outcomes

In order to be intentional about what you want students to learn in a course, you must set learning outcomes and objectives at the outset of your planning. It may be helpful to distinguish between objectives and outcomes. Objectives are usually determined by what you want to teach or achieve while outcomes generally are focused on what you expect students to have learned by the end of the course. Examples of outcomes include:

- Students will be competent to conduct an initial interview.
- Students will be able to identify professionalism challenges and develop coping strategies.
- Students will demonstrate competence in preparing and conducting a misdemeanor trial.

Outcomes vary greatly based on the type of course, location of your school/community, the skills and passions that you bring to your teaching, as well as many other factors. Whatever particular learning outcomes you may identify, we wish to emphasize the importance of setting learning outcomes as well as your own teaching and practice objectives as the foundation for shaping most, if not all, of the decisions you will make for your course.

No matter what goals you set for your course, they should be communicated clearly to students. This not only aids in student learning but also will enhance your ability to assess whether these objectives are being met. Transparency also helps manage student expectations and builds stronger relationships with your students.

Note that ABA Standard 302 discusses learning outcomes for law schools.⁵⁸ It will probably be helpful to think about those outcomes and the extent to which your course furthers student competency in those areas.

In *Constructing a Clinic*, Philip Schrag provides the following list of learning goals/objectives that clinicians may want to consider:

- **Responsibility.** To teach students to accept and assume responsibility for matters of great importance to real clients.
- **Doctrine.** To teach students about a new area of law.
- **Service.** To provide free legal services to people in need.
- **Problem-solving.** To improve students' problem-solving abilities.
- **Collaboration.** To teach collaboration.
- **Cross-cultural awareness.** To help law students to learn by interacting closely with people from other cultures.
- **The role of emotions.** To engage with the emotional aspects of being a lawyer.
- **Coping with facts.** The tendency in most law school courses to take facts as given and study only law and policy suggests another goal, because in clinical practice it quickly becomes clear that developing a legal theory is only one step, and usually not the most important one.
- **Values.** To create opportunities for students to think about their own social values.
- **Ethics.** To encourage students to struggle with challenging ethical issues while working on cases.
- **Creativity.** To enhance students' creativity.
- **Authority.** To teach students to exercise authority.

- **Learning to learn.** To help students to study their own learning processes so that they can continue to use the insights they have gained long after the brief clinical experience has ended.
- **Traditional skills.** To give students experience, guidance, and detailed personal feedback as they execute such standard legal activities as interviewing, case planning, investigating facts, counseling, legal writing, witness examination, and oral argument.
- **Students' goals.** In addition to institutional teaching goals like these, and any personal goals of the instructors, clinics will inevitably also work on goals that the students identify before or during the clinical experience.⁵⁹

Case/Matter Management Systems

Clinicians must determine what system they will use for tracking student time and storing case or project information. Because clinic credits approximate an expected number of work hours, it is critical for students and clinicians to have a way to track and report time. Students also need a way to create and maintain case files, and to store client data, that conforms with professional expectations and legal requirements (including confidentiality requirements). Many clinicians use commercially-available case management software, some of which is provided free or at low cost to law clinics.

YOU CAN LEARN MORE HERE:

- ❖ Kele Stewart, *How Much Clinic for How Many Students?: Examining the Decision to Offer Clinics for One Semester or an Academic Year*, 5 J. MARSHALL L.J.1, 6 (2011).
- ❖ Stephen R. Miller, *Field Notes from Starting a Law School Clinic*, 20 CLINICAL L. REV. 137 (2013).
- ❖ Patrick C Brayer, *A Law Clinic Systems Theory and the Pedagogy of Interaction: Creating a Legal Learning System*, 12 CONN. PUB. INTEREST L. J. 49 (2012).
- ❖ Philip G. Schrag, *Constructing a Clinic*, 3 CLINICAL L. REV. 175, 184–85 (1996).
- ❖ Paul Reingold, *Why Hard Cases Make Good (Clinical) Law*, 2 CLINICAL L. REV. 545 (1996).

EXTERNSHIPS

Introduction to Externships

Externships are governed by ABA Standard 304. All experiential courses, including simulation courses, law clinics, and field placements, must satisfy 304(a), which requires these courses to be experiential in nature as well as do the following:

- (1) integrate doctrine, theory, skills, and legal ethics, and engage students in performance of one or more of the professional skills identified in Standard 302;
- (2) develop the concepts underlying the professional skills being taught;
- (3) provide multiple opportunities for performance;
- (4) provide opportunities for student performance, self-evaluation, and feedback from a faculty member, or, for a field placement, a site supervisor;
- (5) provide a classroom instructional component; or, for a field placement, a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection; and
- (6) provide direct supervision of the student's performance by the faculty member; or, for a field placement, provide direct supervision of the student's performance by a faculty member or a site supervisor.

Additionally, externships must comply with Standard 304(d), which states:

A field placement course provides substantial lawyering experience that (1) is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks in a setting outside a law clinic under the supervision of a licensed attorney or an individual otherwise qualified to supervise, and (2) includes the following:

- (i) a written understanding among the student, faculty member, and a person in authority at the field placement that describes both (A) the substantial lawyering experience and of faculty and any site supervisor in supervising the student and in assuring the educational quality of the experience for the student, including a clearly articulated method of evaluating the student's academic performance;

(ii) a method for selecting, training, evaluating and communicating with site supervisors, including regular contact between the faculty and site supervisors through in-person visits or other methods of communication that will assure the quality of the student educational experience. When appropriate, a school may use faculty members from other law schools to supervise or assist in the supervision or review of a field placement program;

(iii) evaluation of each student's educational achievement by a faculty member; and (iv) sufficient control of the student experience to ensure that the requirements of the Standard are met. The law school must maintain records to document the steps taken to ensure compliance with the Standard, which shall include, but is not necessarily limited to, the written understandings described in Standard 304(d)(i).

Helpful Terminology

The ABA standards use the term *field placements* to refer to the type of experiential course offering in which a student works in a setting outside of the law clinic under the supervision of a licensed attorney or otherwise qualified individual. The term *externships* is commonly used interchangeably with field placements. Similarly, the standards use the term *site supervisor* or *field supervisor* for the person at the externship field office who supervises the student.

One question that gets asked often is the difference between an externship and an internship. Both are typically experiences that provide a student with hands-on training in a workplace. However, in the context of legal education, an externship usually refers to a work experience for which the student earns academic credit, whereas an internship does not necessarily involve academic credit.

Common Features of Externships

A signature characteristic of an externship course is the tripartite relationship between the student, the faculty member, and the site supervisor. The three participants work as a team to ensure the student receives a quality educational experience. As such, the standards require that a written understanding between these participants define the respective roles of each, including a clearly articulated method of evaluating the student's academic performance, and describe the substantial lawyering experience and opportunities for performance that the externship will provide. These agreements are often called a *Memorandum of Understanding*. Examples can be found on the [Lextern website](http://Lextern.org), *LexternWeb.org*, which is a legal externship resources website.

Law schools are required to maintain records to document compliance with the standards, including keeping, at a minimum, the written understandings. Other documentation might include course syllabi, reflection assignments, site supervisor training materials, lists of externship offices, communications with site supervisors, evaluations of site supervisors, etc.

Another signature characteristic of an externship course is reflection. Indeed, it is a key pedagogy for experiential learning. Usually, reflection is assigned as coursework that accompanies the externship work. Since the standards require that an externship course have a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection, these are the primary ways that a faculty member facilitates and/or assigns reflection. Additional discussion of these is in Section III.

Standard 303(c) requires externship courses to include education to law students on bias, cross-cultural competency, and racism before, concurrently with, or as part of enrollment in the course. Most often, this education occurs in the coursework that accompanies the externship work. Additional discussion of this is in Section III.

Externship Program Considerations

The types of externship programs that exist are as wide and varied as the law schools that have them. Some schools limit their externships to judicial offices, prosecutor's offices, or public defender offices. Some schools allow for-profit placements, like at law firms or in-house counsel departments. Some schools permit paid externships. Some schools allow international and semester away externships. Some schools allow students to work virtually, separated from the field placement.

None of these models is right or wrong. Important considerations in deciding upon the type of externships that will be offered include the resources the law school can devote to the program, the availability of varied placements to the school's students, the mission alignment between the school and the placements, the student to faculty ratio, the number of credits allowed per externship, and the like.

Additional program development considerations include the number of field hours required per credit hour, whether the fieldwork should be in a separate course from the coursework, and whether the course is graded or ungraded. The Center for the Study of Applied Legal Education (CSALE) maintains empirical data from ABA accredited law schools about program design so that legal educators can make informed decisions.

Site Supervisor Selection, Training, Evaluation & Communication

Under standard 304(d)(ii), externship programs must have “a method for selecting, training, evaluating and communicating with site supervisors.” This section addresses each of these requirements in turn.

Selecting

Different programs may have different approaches to reviewing placements. In some programs, there are “pre-approved placements” where the placement has an ongoing relationship with the law school. There may also be student-initiated placements, where students locate an internship that meets their interests and seek approval from the law school. For many sites, there may be a site supervisor designated by the placement itself. The externship clinician, therefore, will likely need to review both the placement and its proposed supervisor to determine that the experience will provide a quality educational experience. In other situations, the law school may reach out to attorneys or judges that they believe will be good field supervisors.

Whatever the placement approval process is, the experience must be, first and foremost, a substantial lawyering experience that is reasonably similar to the experience of a lawyer advising or representing a client or engaging in other lawyering tasks under supervision. To review a placement for academic credit, therefore, one should ask for details about the nature of the work, the supervisor’s plan for providing assignments and feedback to the extern, and some background on the supervisor’s work experience. It is helpful to spend some time talking with field supervisors about the work that a student would do, and understand why they seek to mentor and train a law student. These early conversations can establish an ongoing relationship and dialogue through the remainder of the externship.

Training

The law school should explain to field supervisors the requirements for all experiential courses under Standard 304(a)(1)-(4) & (6). Pre-externship site approval meetings can provide an opportunity to provide an overview of the externship program goals, structure, and ABA requirements. In addition to these conversations, some programs provide supervisor handbooks outlining information about their program. These handbooks can also provide tips on providing assignments and feedback to students. Finally, some programs hold periodic CLEs for the supervisors in the program, or circulate recorded CLEs prepared by other schools. These materials are often shared on the LEXTERN listserv.⁶⁰

Evaluating

To meet the “evaluating” prong, programs have several options. You may choose to ask the student to provide a formal evaluation of the placement on a pre-set form. Many law schools share their evaluation forms on [LexternWeb](#). Faculty will also gain a sense of the quality of the educational experience through review of timesheets, reflection essays, or class discussion. This continuous evaluation throughout the semester allows a faculty member to provide support to the student or site supervisor, if needed.

Communicating

Periodic communications with site supervisors are helpful. They serve to both maintain the relationship with the supervisor and remind the placement that the law school is a source of support during the externship. Faculty may also wish to send emails over the course of the semester to let the supervisors know the topics that they are covering in the accompanying course component. While site visits are no longer required under the ABA guidelines, some externship clinicians conduct site visits in person. Others meet with site supervisors by Zoom during the semester. Another option for communicating with site supervisors is to meet with the supervisor and the student at the midterm.

The Classroom Instructional Component, Regularly Scheduled Tutorials, or Other Means of Ongoing, Contemporaneous, Faculty-Guided Reflection

Under Standard 304(a)(5), externship programs must “provide...a classroom instructional component, regularly scheduled tutorials, or other means of ongoing, contemporaneous, faculty-guided reflection.”

Many schools satisfy 304(a)(5) by offering an in-person, synchronous externship seminar. However, some seminars are asynchronous, on-line, or a combination. The ABA allows much flexibility for how to structure the instructional component, such as the tutorial method, which is usually defined as a series of individual meetings and assignments between the student and a faculty member. No matter what a school chooses, the ABA requires the instruction to be “contemporaneous,” and it must have “faculty-guided reflection.”

Seminar Structure. If a school decides to offer a seminar, they are faced with a number of important choices. First, they must consider whether to separately credit the classroom instruction or combine the hours of instruction with the externship hours. If separately credited, they must decide how much credit to offer, typically 1 or 2 credits. If not separately credited, they must decide how to allocate the hours required for the total credit between the fieldwork and the

instructional components. Such decisions are driven by internal considerations about grading, graduation requirements, and other school-specific guidelines.

Second, they must decide whether to grade the seminar. The choice about grading might drive the first choice about credit.

Third, they must decide whether to offer classroom instruction in a general seminar covering all externships, or whether to offer a topic-specific seminar, such as criminal practice, public interest, corporate counsel, government, or judicial placements. This choice might be driven by the number of students participating in externships, as well as the resources available to hire seminar instructors with a particular expertise.

Fourth, while the seminar must be contemporaneous with the externship, schools can choose to frontload some of the content or may choose to have regular meetings throughout the externship's duration.

For all of these choices, CSALE survey data can shed light on what other schools are doing in similar circumstances.

Seminar Topics. The topics covered in the seminars or tutorials at various schools are as numerous as the schools themselves. However, there are a few things that all externship programs, no matter how the material is delivered, can agree that students should receive.

Goal Setting. Before a student begins, students should identify what they are hoping to learn from the experience. Beyond the law they hope to learn, they should be urged to consider the professional skills they can gain, the values they hope to explore, the professionals they hope to meet, and so on. These goals should be revisited throughout the semester for students to assess their progress toward their goals or to encourage new goals.

Reflection. The ABA mandates that externship programs have “faculty-guided reflection.” There are numerous ways to encourage students to be reflective practitioners, but some options include: goal setting, journals or reflection papers, oral presentations, class discussions, discussion boards, discussion partners, mid-semester reviews, interviews with attorneys at the placement, and externship rounds. ABA 304(a)(3) requires externships to provide multiple opportunities for performance, and different students prefer different practices, so a program will likely choose several ways to encourage reflection during the externship experience.

Bias, Cross-Cultural Competency, and Racism. The ABA requires law schools to provide students with education on “bias, cross-cultural competency, and racism” in 303(c), and

this education must happen at the start of law school and at least once again before graduation. For students engaged in clinics or externships, the “second educational occasion” must happen either before, during, or in the clinic or externship itself. As such, externship courses will almost certainly need to include this education. For a broader discussion of the opportunities and challenges, as well as teaching suggestions, see the [Matters of Special Concern](#) section of this handbook, as well as the book resources below.

Professional Identity Formation. The ABA, in 303(b)(3), requires law schools to provide “substantial opportunities” to students for “the development of a professional identity.” An externship is an ideal place for students to explore their professional identity because they are seeing legal practice firsthand.

Ethical Considerations. Legal ethics is specifically mentioned as a topic that externships must cover in 304(a)(1), and there are many important reasons for doing so: the students are handling real cases in a professional setting and need to protect confidential client information, including from participants in the seminar (which is confusing since such sharing is allowed in the in-house clinic seminar); students must be aware of conflicts of interest, both for their future careers, but also among students in the seminar; students must understand the rules related to the unauthorized practice of law and the student practice rules; and there might be special ethical requirements, such as those for judicial placements and prosecutors.

Other Topics. Beyond these basics, externship seminar topics run the gamut from teaching skills, like client interviewing, trial skills, research and writing, to other professional matters, such as well-being, networking, business development, communication, obtaining feedback, and so on. To decide, an externship program should determine the program’s goals and work backward to find topics and teaching techniques that support those goals. For more on course design, teaching techniques, and specific exercise suggestions beyond the two books below, be sure to look at [Teacher’s Manual to Learning From Practice](#), which has a wealth of resources. LexternWeb is also a wonderful repository of helpful materials. Finally, do not hesitate to ask externship colleagues via LEXTERN listserv, as everyone is generous with their suggestions and materials.

YOU CAN LEARN MORE HERE:

- ❖ GILLIAN DUTTON, KENDALL KEREW, KELLY TERRY, AND CYNTHIA WILSON, “Selecting, Training and Evaluating Site Supervisors,” Ch. 4 in *EXTERNSHIP PEDAGOGY AND PRACTICE* (2023).

- ❖ GILLIAN DUTTON, KENDALL KEREW, KELLY TERRY, AND CYNTHIA WILSON, “Designing and Executing Externship Programs,” Ch.3 in EXTERNSHIP PEDAGOGY AND PRACTICE (2023).
- ❖ CAROLYN WILKES KAAS, CYNTHIA BATT, DENA BAUMAN & DANIEL SCHAFFZIN, “Delivering Effective Education in Externship Programs,” Ch. 5.F.3, in BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD (2015).
- ❖ [Externship Bibliography](#)
- ❖ [Top Ten Resources for New Externship Clinicians](#)
- ❖ GILLIAN DUTTON, KENDALL KEREW, KELLY TERRY, AND CYNTHIA WILSON, EXTERNSHIP PEDAGOGY AND PRACTICE (2023).
- ❖ LEAH WORTHAM, ALEXANDER SCHERR, NANCY MAURER, AND SUSAN L. BROOKS, LEARNING FROM PRACTICE: A TEXT FOR EXPERIENTIAL EDUCATION (2016).

MATTERS OF SPECIAL CONCERN

The ABA Standards were recently revised to require law schools to address matters of special concern, including bias, cross-cultural competency, racism, well-being, and professional identity. Experiential teachers have long addressed these topics, and there are many resources available. The revised standards, as explored further below, contemplate that law schools will provide education and significant opportunities to students on these matters over their law school career and across clinics, externships, courses, co-curricular, and professional development activities.

Bias, Cross-Cultural Competence, and Racism

ABA Standard 303(c) states, “A law school shall provide education to law students on bias, cross cultural competency, and racism: (1) at the start of the program of legal education, and (2) at least once again before graduation. For students engaged in law clinics or field placements, the second educational occasion will take place before, concurrently with, or as part of their enrollment in clinical or field placement courses.”⁶¹ Interpretation 303-6 highlights the “importance of cross-cultural competency professionally responsible representation and the obligation of lawyers to promote a justice system that provides equal access and eliminates bias, discrimination, and racism in the law should be among the values and responsibilities of the legal profession to which students are introduced.” Interpretation 303-8 “does not prescribe the form of content of the education on bias, cross-cultural competency, and racism,” and 303-7 allows law schools to implement this education in a number of ways including orientation, lectures, courses, and other educational experiences so long as the law school demonstrates its students “participate in a substantial activity designed to reinforce the skill of cultural competency and their obligation as future lawyers to work to eliminate racism in the legal profession.”

The revised standard complements the Preamble to the Model Rules of Professional Conduct that outline a lawyer’s responsibility to promote equal access to the justice system.⁶² Bias (explicit and implicit), discrimination (overt and subtle), and racism (systemic and structural manifestations of bias and discrimination) can impede the legal system’s fulfillment of its pledge of equal justice under the law.”⁶³

Opportunities and Challenges in Teaching Bias, Cross-Cultural Competency, and Racism

Experiential teachers have been teaching these topics for many years, and there is a rich community of resources. Students want opportunities to talk about these topics, which they might not have in other courses and law school experiences. “A student-centered approach will bring the school’s goal into focus: the graduation of law students who are well-educated on cross-cultural com-petency, bias, discrimination, and racism in the law.”⁶⁴ By having conversations about bias,

cross-cultural competency, and racism, we are raising awareness. We are also normalizing conversations about these topics, which remain divisive for some.⁶⁵

Learning outcomes will likely “include cognitive and technical skills of the sort traditionally developed in law school courses, contextualized to the issues relevant to cross-cultural competency, bias, discrimination, and racism in the law. They also will include competencies of a different nature, focusing on a lawyer’s relational skills (e.g., communication), personal development skills (e.g., reflection, self-awareness), and other essential competencies (e.g., teamwork and collaboration).”⁶⁶ Experiential courses lend themselves to help students explore bias, cross-cultural competency, and racism through case, client, and fieldwork. This standard also presents experiential teachers with the opportunity to collaborate with other faculty, staff, and administrators “enterprise-wide” to implement this standard effectively.⁶⁷

Challenges in teaching bias, cross-cultural competency, and racism include: fear of misspeaking; feeling ill-equipped with tools and vocabulary, or not being entitled to discuss these topics; not having enough time, etc.

YOU CAN LEARN MORE HERE:

- ❖ Anne Gordon, *Cleaning Up Our Own Houses: Creating Antiracist Clinical Programs*, 29. CLINICAL L. REV. 49, 49 (2023).
- ❖ ABA, [Implicit Bias Initiative](#).
- ❖ University of Iowa, [Implicit Bias Training and Resources](#).
- ❖ CLEA, [Teaching Justice Webinar Series](#).

Diversity, Equity, and Inclusion & Critical Race Theory

Addressing race in experiential teaching is no less scholarly or rigorous than any other aspect of the law or legal practice. Race is not about how people feel but how systems and individuals act and the consequences of those actions. There is a wealth of scholarship on DEI and CRT, and like anything else we teach, we should be intentional about integrating these topics into our syllabi and skills modules.

Helpful Terminology

Critical race theory (CRT) involves the ways we talk about how race shapes and affects the laws. Diversity, Equity, and Inclusion (DEI) is a way in which we talk about how race shapes and affects the ways that individuals and organizations interact with each other. Diversity includes “characteristics such as race, ethnicity, gender, age, ability, and sexual orientation with a focus specifically on diversity in the sense of including persons with the aforementioned characteristics who have traditionally been marginalized or excluded from mainstream American institutions.”⁶⁸ “Diversity is important because it allows institutions to engender goodwill by demonstrating to all citizens that they are a part of society’s key institution such as a corporation, university, or government.”⁶⁹ Inclusion refers to “all members of society are reflected with the institutions that govern a society.”⁷⁰ DEI (and the lack of) is a perennial issue in the legal profession.

Opportunities and Challenges in Teaching DEI & CRT

Law students often learn to situate race as a colorblind ideology: lawyers don’t see race; lawyering norms are objective, and race “is a neutral, apolitical description, reflecting merely ‘skin color’ or country of ancestral origin.”⁷¹ Under this colorblind ideology, “race is unrelated to social attributes such as culture, education, wealth, or language. Race is decontextualized from historical conditions that create advantage or disadvantage.”⁷² Colorblind ideology thus leaves attorneys and students without the language to identify and talk about race in a productive way and may cause anxiety in how to broach these topics in conversations and law practice.⁷³

CRT offers lenses through which we can help students frame legal and non-legal problems concerning race, inequality, and power; and CRT acknowledges the connection between race (or membership in any traditionally subordinated group) and the law.⁷⁴ “The goals of framing are to (a) provide students with *alternative* lenses through which to identify and evaluate issues of race, power, inequality; (b) provide students with a *language* and *frameworks* to talk about structural racial inequality and interpersonal attorney-client dynamics.”⁷⁵ There are a number of CRT frameworks that can be incorporated into experiential pedagogy to help students understand what they are seeing in practice: “(1) racial realism helps us understand the law purports to be objective but can reify the status quo in ways further entrenching racism and inequality; (2) interest

convergence helps us think about appropriate legal and political strategies to employ in advocating for our clients; (3) intersectionality helps us understand the multiple intersecting layers of subordination that may impact our clients and to design appropriate advocacy strategies; and (4) counternarratives gives tools to use in framing case theories.”⁷⁶

There are many ways to address CRT and DEI from learning outcomes for each seminar class or externship workshop, to each skills training module, to each case and/or project, and in each experiential context. Questions to consider include: What do we want students to understand about how race impacts this problem/case/project? Are racial and power disparities apparent, and how might that impact our advocacy? Clinics and externships can help students identify and consider alternative, race-conscious possibilities as a baseline lawyering paradigm.⁷⁷

YOU CAN LEARN MORE HERE:

- ❖ [Law Deans Antiracist Clearinghouse Project](#)
- ❖ [LSSE's Topical Module: Diversity and Inclusiveness](#)
- ❖ ABA Section on Public Contract Law “[21-Day Racial Equity Habit-Building Challenge](#)”
- ❖ [Guerrilla Guide for Teaching Clinical Law](#)
- ❖ Erika Wilson, [Teaching Justice Through Critical Race Lawyering](#), CLEA, March, 8, 2023.
- ❖ David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502 (1998).
- ❖ Anne Gordon, *Cleaning Up Our Own Houses: Creating Antiracist Clinical Programs*, 29. CLINICAL L. REV. 49, 49 (2023).

Professional Identity

ABA Standard 303(b)(3) now requires law schools to provide substantial opportunities for students for the development of a professional identity. As mentioned above, and explained further in Interpretation 303-5, “professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundation to successful legal practice.”

Helpful Terminology

“Professional identity is representation of self, achieved in stages over time, during which the characteristics, values, and norms of the . . . profession are internalized, resulting in an individual thinking, acting, and feeling like a . . . [member of the profession].”⁷⁸ Norms and values for a successful legal practice include: “1) a deep responsibility and commitment to serving clients, the profession, and the rule of law; 2) a commitment to pro-active continuous professional development towards excellence at all the competencies needed to serve others well in the profession’s work.”⁷⁹

“Professional identity formation is about evolving from student to lawyer --to becoming a professional with a responsibility to others and to the system of justice and with a need for ownership around self-development and well being.”⁸⁰ Professional identity formation is the intentional and developmental process of socialization to the profession that begins in law school and continues throughout one’s career and during periods of transition.⁸¹ “This process of socialization is a product of the developing lawyer’s social interactions and activities in environments authentic to the legal profession’s culture and enriched by coaching, mentoring, modeling, reflection, and other supportive strategies.”⁸²

“Professionalism means that each lawyer: 1) Agrees to comply with the law of lawyering including the Rules of Professional Conduct; 2) Strives over a career to live into the profession’s core values and ideals, including the highest standards for the lawyer’s professional skills; and 3) Agrees to act as a fiduciary where the lawyer’s self-interest is over-balanced by devotion to the client and to justice.”⁸³

Opportunities and Challenges in Teaching Professional Identity

Experiential teachers are uniquely positioned to help students explore professional identity and professional identity formation in varied contexts of learning from experience, including fieldwork or casework, simulations, and supervision. This standard presents experiential teachers with another opportunity to collaborate with faculty and staff across the law school in what the Holloran Center calls the “enterprise-wide approach. “Our challenge is to build bridges from this definition of student professional identity to: 1) learning outcomes and the curriculum and culture

of individual law schools; the capacities and skills that employers and clients want; and our students' conception of what legal education should be."⁸⁴

Translating legal values, principles, and practices into learning outcomes

The Holloran Center for Ethical Leadership in the Professions culled the scholarship on professional identity to propose four learning outcomes on professional identity: "A law school should help each student to understand, internalize, and demonstrate: (1) a deep responsibility and care orientation to others, especially the client, (2) ownership of continuous professional development toward excellence at the major competencies that clients, employers, and the legal system need, (3) well-being practices, and (4) client-centered relational skills, problem-solving, and good judgment that ground each student's responsibility to and care for the client."⁸⁵

YOU CAN LEARN MORE HERE:

- ❖ The Holloran Center for Ethical Leadership in the Professions at University of St. Thomas School of Law maintains a comprehensive [website](#) on professional identity formation with definitions, standards, research, curricula, and programs.
- ❖ Neil W. Hamilton and Louis D. Billionis, *Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer's Professional Identity, Part 1: Understanding the New Requirements*, Nat'l Assn. L. Placement Bull., May 2022.
- ❖ Neil W. Hamilton and Louis D. Billionis, *Revised ABA Standards 303(b) and (c) and the Formation of a Lawyer's Professional Identity, Part 2: Action Steps to Benefit Students, Law Schools, and the Legal Profession*, Nat'l Assn. L. Placement Bull., June 2022.

Well-being

According to Interpretation 303-5, the “development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice.” Derived from modern positive psychology self-determination theory (SDT), well-being is “the sum of (1) life satisfaction and (2) positive affect or mood (after subtracting negative affect).”⁸⁶ “Life satisfaction includes a personal (subjective) evaluation of objective circumstances such as one’s work, health, home, relationships, possessions, income, and leisure opportunities.”⁸⁷ SDT identifies three basic psychological needs that contribute to well-being: “(1) autonomy (to feel in control of one’s own goals and behaviors); (2) competence (to feel one has the needed skills, including physical and mental health skills, to be successful); and (3) relatedness (to experience a sense of belonging or attachment to other people).”⁸⁸

Opportunities and Challenges in Teaching Well-being

Conversations on well-being in experiential courses include: the higher risk of substance abuse and mental health disorders in the legal community; self-care, mindfulness, and balance; character strengths; as well as competencies that lawyers and clients want.⁸⁹ There are many opportunities for constructive conversations around these topics, and many resources available. Challenges addressing this topic include: resistance and discomfort from students to reflect and engage around some topics, and lack of time or ability to fit these conversations into the curriculum.

Online Teaching/Technology

Online teaching and the availability and reliance on technology in experiential education has proliferated, especially during and since the COVID-19 pandemic, which raises important considerations.⁹⁰ ABA Model Rule of Professional Conduct 1.1, comment 8, states: “To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology . . .” Technological professionalism requires attention to a lawyer’s duties of confidentiality and competence when using technology and depends on the particular technology being used and the circumstances surrounding such use, including an evaluation of: “1) the level of security attendant to the use of that technology; 2) the *legal ramifications to a third party* who intercepts, accesses or exceeds authorized use of the electronic information; 3) the degree of *sensitivity* of the information; 4) the possible *impact* on the client of an inadvertent disclosure of privileged or confidential information or work product; 5) the *urgency* of the situation; 6) the *client’s instructions* and circumstances, such as access by others to the client’s devices and communications.”⁹¹

Opportunities and Challenges in Online Teaching/Technology

Technology offers convenience and connection, and technology will remain and continue to evolve, which calls for intentional reflection: “First, does virtual access to the legal system result in greater access to justice? Second, does a virtual connection between lawyers and clients have the same quality as an in-person connection? Third, does remote work result in increased quality of life for lawyers?”⁹² Challenges include marginalized clients’ access to technology; building personal and empathic relationships and rapport online; understanding and navigating ethical implications associated with relevant technology; and establishing boundaries around remote work and technology itself to avoid burnout.⁹³

Best Practices for Online Teaching/Technology

Best practices include: improving access to requisite technology; designing legal services with unrepresented, marginalized populations in mind; making provision of legal services more accessible to people with disabilities and limited English proficiency; paying attention to online rapport and “websites manner”; implementing boundaries around remote work and technology; establishing data confidentiality procedures across experiential programs; and incorporating security tools like “file encryption, email encryption, two-factor authentication, and web filtering, among others.”⁹⁴

YOU CAN LEARN MORE HERE:

- ❖ Brittany Stringfellow Otey, *The Disconnect: Reflections on the Virtual Connection Between Lawyers and Clients*, WASHBURN L.J. (forthcoming 2023).
- ❖ June T. Tai, Teaching on Zoom: [Tips & Tricks](#)

OVERCOMING OBSTACLES AND BARRIERS

Unfortunately, no matter how much planning you put into course design there will be barriers and obstacles to overcome to meet the goals you set for your students and your course. Consider the following places to begin.

- Ask questions! We give this advice to our students and must remember to follow it ourselves. Post questions to one of the listservs, contact a CLEA mentor, or send an email to a colleague at another school.
- Review the ABA Standards for guidance. The Standards on Legal Education (primarily Chapter 3) can be an excellent source for guidance. Remember to read the Interpretations below each standard for additional information and to look at past years' standards for a view of how the standard has changed over time. Additionally, the ABA publishes guidance memos on various topics.
- Review the relevant scholarship. New articles are published on a regular basis and clinical education has an established foundation of pedagogical and substantive scholarship covering almost every topic. Use the selected bibliography in this handbook as a place to start. Even among clinics of a similar type, differences in design may create wide differences in teaching and service provision.

GLOSSARY

With the rapid expansion of experiential education in legal education described above, law schools are adding new courses and experimenting with new course designs every semester. Below is a general definition of terms used in experiential legal education, although each school may define these terms differently, particularly with regard to courses not defined by the ABA standards.

Experiential Education: Teaching that encompasses both instruction and practice, typically combined with facilitated reflection. In legal education, experiential education generally includes simulations and real-world legal experience, either assisting attorneys in the practice of law or by taking lead responsibility for legal work individually or as part of a team or group. These courses are generally labeled as simulation courses, externships or field placements and clinics. To meet the ABA definition of an experiential course, the course 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.”

Clinical Legal Education Program: Credited courses that offer students the opportunity to engage in the practice of law under the supervision of an attorney who is a faculty member of the law school. The practice of law is the main objective of the course. Clinics generally offer free legal services to clients. The ABA defines law clinics in Standard 304(b) as a course that “involves advising or representing one or more actual clients or serving as a third-party neutral” and includes a classroom component, direct supervision of the student by a faculty member and opportunities for performance and evaluation. The size, number of credits, goals and teaching methods may vary widely between schools depending on a range of factors, including funding, geographic location and curricular needs.

In-house Clinic: A credited clinical course operated by the law school, as opposed to a course where students perform work for another organization or firm. The physical clinic does not have to be located inside the law school building.

Externship or Field Placement: A credited course where students perform legal work for organizations or firms outside of the law school, typically supervised by an attorney who is not faculty at the law school. The ABA describes these courses as “field placements” in Standard 304(c) and has a list of required criteria, including a classroom component, direct supervision of the student’s legal work by a site supervisor or faculty member, and evaluation by a faculty member. Students may receive both payment and credit for an externship, depending on their law school’s policies.

Simulation: A credited course taught by a member of the law faculty using hypothetical facts to teach lawyering skills. The ABA defines simulations in Standard 304(a) as “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 including a classroom component, direct supervision of the student and opportunities for performance and evaluation.

Practicum: An emerging educational model for a credited course that typically focuses on one substantive area of law or legal topic and includes an experiential component. The distinction between practicums, clinics and field placements may be that practicums focus less on the practice of law, or the experiential component is not supervised by faculty at the law school, or the course has fewer credits. Schools may classify practicums as clinics or externships for ABA purposes if they meet the definition in the Standards.

Lab: An emerging educational model for a credited course where students work on a real-world legal project related to the substantive focus of a non-experiential course. These are less-common courses that tend to carry few credits and vary widely in structure across law schools.

Cooperative Education Program or Co-op: An educational model where real-world legal work is integrated into the educational program, typically as periods of employment during the academic year that are not credited.

Pro bono: Legal work performed by students for free that is not credited. Pro bono programs may be facilitated by the law school or may take place at other organizations or firms. Some schools require pro bono hours for graduation while others provide some form of graduation recognition, and some states require pro bono hours for bar licensure.

Internship: A position of employment for law students that is not credited. Internships may be paid or completed for free or with other funding sources.

YOU CAN LEARN MORE HERE:

- ❖ Allison Korn and Laila Hlass, *Assessing the Experiential (R)evolution*, 65 VILL. L. REV. 713 (2020).
- ❖ AALS Section on Clinical Legal Education, [Glossary for Experiential Education](#)

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This bibliography identifies a number of articles that address issues relevant to clinical legal education. Another resource that may be helpful for articles published before 2005 is *Clinical Legal Education: An Annotated Bibliography (Third Edition)* by J.P. Ogilvy & Karen Czapanskiy, *Clinical Law Review*, Special Issue No. 2 (2005).

Please keep in mind these are some resources selected as suggested introductory material on a range of topics that may be of interest to a new clinician. This list is not intended to be exhaustive. There are many fine articles published each year that offer important insights into experiential teaching and learning. Articles on clinical education may be found on SSRN, Lexis-Nexis, Westlaw, Hein Online, and other online legal research sources.

Clinical Legal Education History

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WEB-BASED RESOURCES

Websites and Blogs

<u>American Association of Law Schools (AALS)</u>
<u>American Association of Law Schools (AALS)/Clinical Legal Education Section</u>
<u>American Bar Association Section of Legal Education and Admission to the Bar</u>
<u>Best Practices for Legal Education</u>
<u>Center for the Study of Applied Legal Education (CSALE)</u>
<u>Clinical Law Prof Blog</u>
<u>Clinical Law Review</u>
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<u>Global Alliance for Justice Education (GAJE)</u>
<u>Guerrilla Guides to Law School Teaching</u>
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<u>Institute for Law School Teaching</u>
<u>The Law and Society Association</u>
<u>LexternWeb</u>
<u>National Legal Aid & Defender Association</u>
<u>National Professionalism Web Site</u>
<u>Society of American Law Teachers (SALT)</u>

PROFESSIONAL ORGANIZATIONS FOR CLINICAL TEACHERS

The Association of American Law Schools (“AALS”) Section on Clinical Legal Education and the Clinical Legal Education Association (“CLEA”) are the two main professional organizations for clinical teachers. This roadmap aims to describe the two organizations and their activities.

The Section on Clinical Legal Education is the official voice of clinicians within the AALS. The Clinical Section presents programs such as the Annual Clinical Conference or Workshop, supports regional conferences, and publishes a newsletter. Because the Section is part of the AALS, it cannot take an independent public position or an active role on public issues without the permission of the AALS Executive Committee. The Section may ask the AALS to take a position but it cannot take a position on its own.

The Clinical Legal Education Association advocates on behalf of clinicians and clinical education in a variety of public forums. CLEA co-publishes the Clinical Law Review, sponsors and supports workshops and conferences, publishes a newsletter, and maintains a website with a database of available positions in clinical legal education. CLEA also sponsors the *Per Diem* project each year, to financially support social justice work in the community hosting the AALS Clinical Conference. CLEA’s membership dues for individuals are \$40 per year; group rates are also available. Membership includes a subscription to the Clinical Law Review.

Together, CLEA and the AALS collaborate closely and their memberships greatly overlap. Both organizations sponsor workshops and conferences, and often the two organizations offer them in a collaborative fashion. For example, the New Clinicians Conference, held every other year, is sponsored by CLEA, but is scheduled immediately before the AALS Clinical Conference.

Both CLEA and the Clinical Section maintain committees to address various issues affecting clinical teachers, such as the ABA accreditation standards, the status of clinicians, and political interference. CLEA also maintains a comprehensive history of advocacy materials on its website, including formal comments, letters, and *amicus* briefs.

Both organizations sponsor and support the CLINICAL LAW REVIEW, a semi-annual, peer-edited journal devoted to issues of lawyering theory and clinical legal education. The Clinical Law Review is also co-sponsored by NYU Law School. The Review welcomes unsolicited articles, as well as essays, comments, and other short pieces on lawyering, clinical teaching, legal practice, or related subjects.

Both CLEA and the Clinical Section support the Center for the Study of Applied Legal

Education (CSALE), a non-profit corporation dedicated to the empirical study of applied legal education and the promotion of related scholarship. CSALE's website, with survey data on developments in applied legal education (including program design, capacity, and administrative support), can be found at www.csale.org.

With many similarities, you may be wondering: Why do we need two organizations and what are the differences between them? One major difference is the ability of each organization to take an independent public position or an active role on public issues. The Clinical Section, as part of the AALS, is limited by the fact that it is part of a larger organization, and it must therefore seek approval for any public actions and statements. As a freestanding entity, CLEA may take action on an issue, including stating its positions publicly, as long as the action or public statement has been approved by its member-elected Board of Directors.

Another difference between the two organizations is the ability of clinicians to become members. Membership in the AALS Clinical Section is limited to faculty at schools that are members of fee-paid associates of the AALS. CLEA membership is not restricted in this way. Those who teach in foreign countries and at non-AALS member schools are eligible to join, as well as adjunct professors and supervisors in field placement programs who are not full-time employees of a law school.

ENDNOTES

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- ⁴ Jerome Frank, *Why not a Clinical Law School?*, 81 U.P.A. L. REV. 907, 908 (1933).
- ⁵ Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1, 10 (2000).
- ⁶ *Id.* at 11.
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- ⁸ *Id.* at 32.
- ⁹ Andreas Bücker & William A. Woodruff, *The Bologna Process and German Legal Education: Developing Professional Competence Through Clinical Experiences*, 9 GERMAN L.J. 575, 575 (2008).
- ¹⁰ Barry et al., *supra* note 5, at 32.
- ¹¹ Center for the Study of Applied Legal Education, *2019-20 Survey of Applied Legal Education*, 13 (2020).
- ¹² Standard 405(d) makes clear that law schools may treat legal writing faculty in a different way altogether, requiring only that they are afforded sufficient security and rights to meet legal writing standards and safeguard academic freedom, and permitting short-term contracts for legal writing teachers.
- ¹³ Peter Joy and Robert Kuehn, *The Evolution of ABA Standards for Clinical Faculty*, 75 TENN L. REV. 183 (2008). This outstanding article chronicles in fascinating detail the extremely lively history of this evolution.
- ¹⁴ In early 2023, the Council proposed a change to the definition of “law clinic,” but it is not clear whether that change will be moving forward.
- ¹⁵ Susan Bryant et al., TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY xv (2014).
- ¹⁶ Carolyn Grose, *Beyond Skills Training, Revisited: Spiraling the Pyramid of Clinical Education*, 19 CLINICAL L. REV. 489, 493 (2013).
- ¹⁷ *See e.g.*, Grose, *supra* note 16, at 494-497; Bryant, *supra* note 15, at 6; J.P. Ogilvy, et al., LEARNING FROM PRACTICE viii-x (2007).
- ¹⁸ *See e.g.*, Grose, *supra* note 16, at 494-497; Bryant, *supra* note 15, at 6.
- ¹⁹ *See* Bryant, *supra* note 15, at 6.
- ²⁰ *Id.*
- ²¹ *See id.*
- ²² Lawyering skills include client, witness and stakeholder interviewing, legal counseling, legal research and analysis, fact investigation, negotiation, oral and written advocacy, legislative advocacy, drafting legal documents, engaging in discovery, trial skills, and more. *See e.g.*, Alicia Alvarez and Paul Tremblay, INTRODUCTION TO TRANSACTIONAL LAWYERING PRACTICE 7-13 (2013).
- ²³ *See* Grose, *supra* note 16, at 494; Kimberly E. O’Leary, *Evaluating Clinical Law Teaching—Suggestions for Law Professors Who Have Never Used the Clinical Teaching Method*, 29 N. KY. L. REV. 491, 510 (2002).
- ²⁴ Grose, *supra* note 16, at 494.
- ²⁵ *Id.*
- ²⁶ *Id.*
- ²⁷ *See e.g.*, Grose, *supra* note 16, at 495-496; Bryant, *supra* note 15, at 6 (“A driving and important instinct propelling clinical education’s creation was students’ enhancing social justice and learning about justice from that experience.”); Martin Guggenheim, *Fee Generating Clinics: Can We Bear the Costs?*, 1 CLINICAL L. REV. 677, 683 (1995).
- ²⁸ Grose, *supra* note 16, at 495-496.
- ²⁹ American Bar Association, 2022-2023 Standards and Rules of Procedure for Approval of Law Schools, [Standard 304\(a\)\(5\)](#).
- ³⁰ Center for the Study of Applied Legal Education, [2019-20 Survey Results](#) 34.
- ³¹ *Id.* at 35.
- ³² Susan Bryant et al., TRANSFORMING THE EDUCATION OF LAWYERS: THE THEORY AND PRACTICE OF CLINICAL PEDAGOGY 113 (2014).

³³ *Id.* at 131-167.

³⁴ See Georgetown Law Library, [Student Practice Rules – Clinical Research Guide](#).

³⁵ Excerpted from the 2019 CLEA New Clinicians Handbook supervision section written by Ann Shalleck.

³⁶ Serge Martinez, *Why Are We Doing This? Cognitive Science and Nondirective Supervision In Clinical Teaching*, 26 KAN. J. L. & PUB. POL’Y 24, 25 (2016).

³⁷ See *id.* at 26-27.

³⁸ See *id.* at 28.

³⁹ See *id.*

⁴⁰ See *id.*

⁴¹ See *id.*

⁴² See *id.*

⁴³ See *id.* at 31-32.

⁴⁴ See *id.* at 32.

⁴⁵ See *id.*

⁴⁶ See William P. Quigley, *Introduction to Clinical Teaching for the New Clinical Law Professor: A View from the First Floor*, 28 AKRON L. REV. 463, 477 (1995).

⁴⁷ See *id.* at 478.

⁴⁸ See *id.*

⁴⁹ See *id.*

⁵⁰ See *id.* at 481.

⁵¹ See *id.* at 481.

⁵² See *id.* at 482.

⁵³ ABA Interpretation to Rule 303-5.

⁵⁴ Anna E. Carpenter, *The Project Model of Clinical Education: Eight Principles to Maximize Student Learning and Social Justice Impact*, 20 CLINICAL L. REV. 39, 44 (2013).

⁵⁵ *Id.*

⁵⁶ CSALE, at 31-32.

⁵⁷ ABA Standards, Interpretation 310-1.

⁵⁸ ABA Standard 302 states that, “A law school shall establish learning outcomes that shall, at a minimum, include competency in the following:

- a) Knowledge and understanding of substantive and procedural law;
- b) Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- c) Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- d) Other professional skills needed for competent and ethical participation as a member of the legal profession.”

⁵⁹ Philip G. Schrag, *Constructing a Clinic*, 3 CLINICAL L. REV. 175, 184–85 (1996).

⁶⁰ To subscribe or unsubscribe to the LEXTERN listserv (LEXTERN@listserv.gsu.edu) send an e-mail to Professor Kendall Kerew at kkerew@gsu.edu. [LEXTERN LISTSERV](#).

⁶¹ Louis D. Bilonis & Neil W. Hamilton, [Revised ABA Standards 303 \(b\) and \(c\) and the Formation of a Lawyer’s Professional Identity, Part 3: Cross-Cultural Competency, Equal Access, and the Elimination of Bias, Discrimination, and Racism](#), Nat’l Assn. L. Placement Bull., Nov. 2022.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.* (noting the difficult challenge many schools will encounter where legislation restricts teaching of racism).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Erika K. Wilson, *Why Diversity Fails: Social Dominance Theory and the Entrenchment of Racial Inequality*, 26 NAT’L BLACK L.J. 129, n. 2 (2017).

⁶⁹ *Id.* at 136.

⁷⁰ *Id.* at 135.

⁷¹ Erika Wilson, [Teaching Justice Through Critical Race Lawyering](#), CLEA, (March, 8, 2023).

⁷² *Id.* See also David B. Wilkins, *Identities and Roles: Race, Recognition, and Professional Responsibility*, 57 MD. L. REV. 1502, 1516 (1998) (“One can subscribe to colorblindness as a normative ideal without also believing that our legal institutions fully, or even largely, live up to this ideal in practice. Too often, however, proponents of the

ideal of colorblindness conflate these two propositions. . . . This conflation of the ideal and the reality of colorblindness, so pervasive in our popular and legal discourse, further strengthens the view that lawyers must “bleach” their minds and their actions of any reference to race.”).

⁷³ Erika Wilson, *supra* note 71.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ [What Is a Law Student’s Professional Identity and What Is Professional Identity Formation? —A Short Introduction](#), HOLLORAN CENTER (September 2022).

⁷⁹ *Id.*

⁸⁰ Neil W. Hamilton & Jerry Organ, [Revised 303\(b\) & \(c\): An Opportunity to Benefit Students, the Law School, Employers, and Clients](#) (May 2022).

⁸¹ [What Is a Law Student’s Professional Identity and What Is Professional Identity Formation? —A Short Introduction](#), HOLLORAN CENTER (September 2022).

⁸² *Id.*

⁸³ Hamilton & Organ, *supra* note 80.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ Lawrence S. Krieger & Kennon M. Sheldon, *What Makes Lawyers Happy? A Data-Driven Prescription to Redefine Professional Success*, 83 GEO. WASH. L. REV. 554, 562, 582-85 (2015).

⁸⁷ Hamilton & Organ, *supra* note 80.

⁸⁸ See Lawrence Krieger, *The Most Ethical of People, the Least Ethical of People: Proposing Self-Determination Theory to Measure Professional Character Formation*, 8 U. ST. THOMAS L.J. 168, 171 -72 (2011).

⁸⁹ Hamilton & Organ, *supra* note 80 (including communication, problem-solving, collaboration, work ethic, conscientiousness and attention to detail, grit and resilience, project management, etc.).

⁹⁰ Brittany Stringfellow Otey, *The Disconnect: Reflections on the Virtual Connection Between Lawyers and Clients*, WASHBURN L.J. (forthcoming 2023).

⁹¹ See, e.g., CA State Bar Ethics Opinion 2010-179.

⁹² See Otey, *supra* note 90.

⁹³ *Id.* (defining “technostress”).

⁹⁴ *Id.*