

NO AT-RISK LAW STUDENT LEFT BEHIND: THE CONVERGENCE OF ACADEMIC SUPPORT PEDAGOGY AND EXPERIENTIAL EDUCATION

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I. INTRODUCTION

Tara and Paula began attending law school together, studied together, and sat together in every class—well, almost every class.¹ The only reason they haven't sat together in every class is because Tara earned a 2.28 grade point average at the end of her third semester which placed her in an academic support program. Consequently, Tara was disqualified from registering in the law school's clinical externship program. Paula, who earned a 2.30 at the end of her third semester, is not an academic support student. She just registered for an externship course to pursue an exciting opportunity at a state administrative agency. Tara doesn't understand why the law school will not allow her to accept a position as an extern like Paula. Tara and Paula maintained a 2.28 and 2.30 grade point average, respectively. Despite minor differences in grades which have affected their academic standing, Tara and Paula are now worlds apart in their professional standing. Paula acquired practical experience through her externship. Both women will graduate from the same law school with the same degree, but only one will be practice ready because she had the opportunity to perform tasks routinely handled by attorneys. In an increasingly difficult legal job market, where practical skills matter to employers, Tara will be vulnerable. As an at-risk law student, Tara was left behind.

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1. Although this narrative does not reflect the identity of particular law students, it resembles the experiences of scores of students whom the authors have taught.

As the economic downturn in America takes its toll on law school enrollment,² there will be many more academically and professionally vulnerable students like Tara. Analysts predict that law schools will admit candidates with low performance indicators.³ Dwindling applications,⁴ disappearing law school entrance exam takers,⁵ and declining scores of college graduates who eventually take the law school admission test (LSAT)⁶ may signal an influx of matriculates who enter the legal academy as “at-risk” students.⁷ These students will not only swell the rosters of law school academic support programs,⁸ but their distinct learning needs may ultimately place them at-risk professionally due to the correlation between LSAT scores, law school performance, and career success.⁹

These vulnerable law students require innovative options in experiential education to meet a current demand for “practice ready” law

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2. The number of first-year students dropped to a thirty-five year low for the 2013-14 academic year. Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1.
 3. Karen Sloan, *Avoiding Law School in Droves*, NAT'L L.J., Jan. 28, 2013, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202585810784&thepage=2> (forecasting that law schools will soon welcome “students with lower academic credentials” due to declining applications).
 4. Catherine Ho, *Law School Applications Continue to Slide*, WASH. POST (June 2, 2013), http://articles.washingtonpost.com/2013-06-02/business/39697850_1_american-bar-association-accredited-law-school-legal-job-market (commenting on estimates of a 13.4% decline in law school applications for the 2013-14 academic year in comparison to the previous academic year).
 5. The 2012-13 test cycle yielded the lowest number of test takers in ten years. Law Sch. Admission Council, REPORT 3 (December 2012). The total number of test takers declined by nearly 25% in the past two years. David Segal, *For 2nd Year, a Sharp Drop in Law School Entrance Tests*, N.Y. TIMES, Mar. 19, 2012, at A1.
 6. There were 2,600 fewer LSAT takers who scored above 171 in the 2011-12 test cycle compared to the previous cycle. Vivia Chen, *LSAT Scores at Top Schools Are Dropping Like Flies*, THE CAREERIST, Sept. 2, 2012, available at <http://thecareerist.typepad.com/thecareerist/2012/09/law-school-applicants-dumbing-down.html>. The number of test takers whose scores fell within the 97th-99th percentiles dropped by 21% in the 2012-13 cycle. Steve Schwartz, *Will Law Schools Scramble for Applicants/Rankings Turn Even Uglier?* (April 2012), <http://lsatblog.blogspot.com/2012/04/law-schools-applicants-rankings.html>.
 7. The term “at-risk” law student typically refers to students who are in jeopardy of academic dismissal. Ollivette E. Mencer, *New Directions in Academic Support and Legal Training: Looking Back, Forging Ahead*, 31 S.U. L. REV. 47, 49 (2003) (explaining the purpose of academic support program as developing and enhancing skills that enable at-risk students to remain in law school and, eventually, pass the bar exam). Given the focus of this article on preparing “practice ready” law school graduates, the term “at-risk” will encompass students whose performance renders them vulnerable both as bar exam takers and job seekers.
 8. Traditional academic support programs fall into two principal categories based upon pedagogical aims. Programs that strive to help students avoid academic dismissal are “academic survival” programs, while programs that seek to assist students attain superior performance are “academic enhancement” programs. LAW SCHOOL ADMISSIONS COUNCIL, AN INTRODUCTION TO ACADEMIC ASSISTANCE PROGRAMS 4 (1992) [hereinafter LSAC INTRODUCTION].
 9. Deanell Reece Tacha, *No Law Student Left Behind*, 24 STAN. L. & POL'Y REV. 353, 360 (2013) (linking LSAT results and law school academic standing to bar passage rates and vocational accomplishments).

graduates who need minimal training.¹⁰ Regrettably, some law schools ban at-risk and underperforming students from clinics¹¹ and other experiential courses¹² that offer prospects of becoming “practice ready.”¹³ These students garner attention from academic support faculty to promote their *scholastic* success; however, they are often left behind in areas vital to their *professional* success.¹⁴ Ironically, these students require more skills training than their higher performing peers whose academic achievements enhance their fortunes in a competitive job market.¹⁵

This Article addresses the anticipated surge of at-risk and underperforming law students who will be ineligible for traditional law school clinics and externships due to their cumulative law school grade point averages (GPAs) or similar academic barriers.¹⁶ Part I explores the urgency underlying the need to develop experiential education for both at-risk and underperforming law students, particularly in view of proposed revisions of law school accreditation standards. Part II reviews the academic barriers to experiential education facing vulnerable law students who will likely comprise a notable portion of new graduates. Part III proposes a course that blends academic support pedagogy with experiential education to transform vulnerable students into practice-ready law

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10. *Id.* at 362. See also Rena I. Steinzor & Alan D. Hornstein, *The Unplanned Obsolescence of American Legal Education*, 75 TEMP. L. REV. 447, 459 (2002) (attributing requests for practice ready legal professionals who can “perform billable work” upon graduation to both large and small-to-medium size law firms).
 11. Law schools typically identify “underperforming” students based on undergraduate records and LSAT scores, which foreshadow possible academic difficulty or early law school exam results. Louis N. Schultz, Jr., *Alternative Justifications for Academic Support II: How “Academic Support Across the Curriculum” Helps Meet the Goals of the Carnegie Report and Best Practices*, 40 CAP. U. L. REV. 1, 23, 63 (2012).
 12. Experiential courses are those in which students assume lawyering roles, shadow practitioners, observe legal proceedings, or otherwise participate in the legal process when “accompanied by academic inquiry.” ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION 165 (2007) [hereinafter BEST PRACTICES].
 13. Margaret Martin Barry et al., *Practice Ready: Are We There Yet?*, 32 B.C. J.L. & Soc. Just. 247, 251 (2012) (noting that many law schools do not offer an experiential curriculum to all students as indication of reluctance to make institutional investments in clinical education and other practice-based skills courses).
 14. See WILLIAM SULLIVAN ET AL., EDUCATING LAWYERS: PREPARING FOR THE PROFESSION OF LAW 95 (2007) [hereinafter CARNEGIE REPORT] (critiquing models of legal education that fail to provide visions of “the demands of actual practice” when they offer academic instruction without practical skills training).
 15. Barry et al., *supra* note 13, at 255 (observing that law students finishing at the top of their class typically received the necessary practical skills training from the law firms that hire these high achieving graduates).
 16. While both internships and externships clarify professional expectations attendant to legal employment, the latter offers the benefits of a classroom experience with academic credit and ongoing faculty guidance. J.P. Ogilvy, *Guidelines with Commentary for the Evaluation of Legal Externship Programs*, GONZ. L. REV. 155, 179 (2003) (defining “externship” and other terms related to experiential legal education).

graduates. The Article concludes by presenting solutions to overcome potential obstacles in offering this proposed course to ensure that no at-risk law student is left behind in experiential education.

II. CURRICULAR REFORM TO MEET THE DEMAND FOR PRACTICE READY GRADUATES

The nature of the ideal curriculum to prepare law students for the legal profession has been a contentious subject since the establishment of the nation's first law schools.¹⁷ The basic conflict between imparting legal knowledge and infusing practical skills forms the crux of this long-standing clash between academicians and practitioners of the bar, while reformers of legal education aptly recognize that both approaches are essential.¹⁸ The history of law school accreditation reflects this tension between providing students with a “broad education in legal principles . . . inculcated through lengthy instruction from scholarly professors” and exposing them to “the fundamentals necessary for practice.”¹⁹ Although early accreditation standards favored the academic paradigm for law schools²⁰ rather than an authentic “apprenticeship” of practice or preceptorship for legal training,²¹ the theory-practice dichotomy is a recurring theme in the curricular reform movement.

Two seminal books revived dialogue on the normative design of legal education.²² *Best Practices* and the *Carnegie Report* have fueled conversations on the commitments of law schools to their critical mission of equipping students for competent practice.²³ Although these works fail to address the instruction of academically vulnerable students, general

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17. BRIAN Z. TAMANAHA, *FAILING LAW SCHOOLS*, 22-27 (2012) (citing early discord between advocates of a three-year model and defenders of a two-year option with an additional year of mentoring from a lawyer); Ogilvy, *supra* note 16, at 158 (depicting first university-based legal education as a “group” apprenticeship).
 18. CARNEGIE REPORT, *supra* note 14, at 97 (stating that students need exposure to both “the engaged mode of narrative thinking characteristic of everyday practice and the detached mode of analytical thinking”).
 19. TAMANAHA, *supra* note 17, at 23.
 20. *Id.* at 27 (depicting three-year academic version as elitist, exclusionary, and expensive which essentially alienates “the middle class and poor” as a direct result of the first accreditation standards adopted in 1921).
 21. CARNEGIE REPORT, *supra* note 14, at 28 (identifying legal clinics and simulation courses as the second of three apprenticeships shaping a law student’s journey through professional education); Barry et al., *supra* note 13, at 5 (describing the apprenticeship model as “the applied skills training method” of teaching law).
 22. Stephen Gerst & Gerald Hess, *Professional Skills and Values in Legal Education: The GPS Model*, 43 VAL. U. L. REV. 413, 518-20 (2008) (casting these works as pivotal in the modern era of curricular reform).
 23. See *infra* note 27 (listing law school conferences germane to *Best Practices* or the *Carnegie Report*).

indictments of legal education and specific proposals to enhance practice-based skills training may uncover why these students are left behind in experiential education. Confirming that higher performing students are apt to be practice ready for employment, *Best Practices* maintains that “law schools are simply not committed to making their best efforts to prepare *all* of their students to enter the practice settings that await them.”²⁴ Likewise, the *Carnegie Report* insists that legal educators abandon a “commitment to the public mission and purpose” of law schools by neglecting the “self-conscious” and autonomous learning of students who may otherwise enjoy “improvement and growth.”²⁵ These works reveal a compromised “commitment” to practice-based skills training,²⁶ thereby exposing the impetus for excluding at-risk and underperforming law students. Since traditional experiential education is not a priority among academics,²⁷ innovative practice-based training for vulnerable law students has commanded no great interest.

A. New Practice-Ready Movement

In the wake of faculty discourse on *Best Practices* and the *Carnegie Report*,²⁸ the practicing bar continues to lament the lack of skills training that law schools offer.²⁹ During its 2011 annual meeting, the American Bar Association (ABA) resolved to ensure that sectors of the legal community supply “the knowledge, skills, values, habits and traits” that would prepare law students to enter the profession fully capable of serving clients.³⁰ The ABA specifically cited clinical courses as an area of opportunity for law schools to improve in fulfilling the charge to present “practice ready

24. BEST PRACTICES, *supra* note 12, at 18 (emphasis added).

25. CARNEGIE REPORT, *supra* note 14, at 19. Independent and “self-conscious” learning are characteristics of academic support pedagogy to assist students in identifying specific skill deficiencies. *See infra* note 89.

26. *See Gerst & Hess, supra* note 22, at 522-23 (utilizing *Best Practices* and the *Carnegie Report* as resources for constructing a practical skills course to ameliorate the current compromised “commitment”).

27. Schultz, *supra* note 11, at 12 (recognizing “the academy’s aversion to the practical apprenticeship”).

28. *See, e.g., Legal Education Reform after Carnegie: Bringing Law-in-Action into the Law School Classroom*, University of Washington, October 22-23, 2010; *Implementing Best Practices and Educating Lawyers: Teaching Skills and Professionalism Across the Curriculum*, Gonzaga University School of Law, June 23-24, 2009; *Legal Education at the Crossroads: Ideas to Implementation*, University of Washington School of Law, September 5-6, 2008.

29. *E.g., David Segal, What They Don’t Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1.

30. ABA House of Delegates, Resolution 10B (2011).

lawyers” to the profession.³¹ On the heels of the ABA’s “practice ready” resolution in 2011, some law schools experimented with a model of clinical legal education known as the “law school firm.”³² As new providers of legal services, “select students” would join a private, non-profit law firm owned and operated by the law school after the students acquire “essential skills.”³³ These students learn how to practice law by servicing real clients under the tutelage of staff attorneys similar to their counterparts enrolled in conventional law school clinics.³⁴ As a slight variation on the theme, law students may continue as “provisional attorneys” after graduating from law school under the supervision of experienced staff attorneys.³⁵ Another version of the law school firm employs recent graduates, rather than students.³⁶

Although supporters of the law school firm characterize the concept as unique,³⁷ these enterprises replicate the current design of law school clinics;³⁸ hence, they fail to present new options in practice-based training

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31. *Id.* Some observers label the measure as “the ‘practice-ready’ resolution” due to its focus on practical legal skills training that ABA delegates urged law schools to improve. Sharon D. Nelson & John W. Simek, *Why Law School Graduates Can’t Write*, LAW PRAC. MAG., Nov.-Dec. 2012, available at http://www.americanbar.org/publications/law_practice_magazine/2012/november-december/hot-buttons.html.
 32. Anting J. Wang, *New Developments in Legal Education: The “Law School Firm” at Pace University*, N.Y. ST. B.A. PERSP. 8 (Fall 2012) (explaining rationale for establishing law school firm). See also Bradley T. Borden & Robert J. Rhee, Essay, *The Law School Firm*, 63 S.C. L. REV. 1, 2 (2011) (proposing law school firm to improve traditional law school curriculum that is “clearly disconnected from practice”).
 33. Borden & Rhee, *supra* note 32, at 4 (proponents of one prototype identify fundamental skills in conducting legal research, interpreting sources of law, engaging in logical reasoning, crafting legal arguments, and understanding legal doctrine as prerequisites for participation in the law school firm).
 34. All states, the District of Columbia, and many federal jurisdictions issue guidelines for certifying law students to represent clients if they are supervised by a licensed attorney through law school clinics and externships. For a comprehensive guide to these limited practice rules, see STUDENT PRACTICE RULES—CLINICAL RESEARCH GUIDE, written by Georgetown Law Library, current as of January 20, 2014, <http://www.law.georgetown.edu/library/research/guides/StudentPractice.cfm>.
 35. Borden & Rhee, *supra* note 32, at 4 (suggesting a fixed term of employment as a provisional attorney).
 36. Wang, *supra* note 32, at 8 (comparing law school firm to so-called “low bono” legal services agencies).
 37. *Id.* (describing Pace University’s project as “ground-breaking”); Debra Cassens Weiss, *How Law Schools Can Produce ‘Practice Ready’ Grads: Operate Their Own Law Firms*, A.B.A. J., (Aug. 18, 2011, 8:11 AM), http://www.abajournal.com/news/article/how_law_schools_can_produce_practice_ready_grads_operate_their_own_law_firm/ (quoting creators of law school firm who view their project as a “radical” initiative).
 38. Barry et al., *supra* note 13, at 274 (comparing aspects of the law school firm to traditional clinics). For an historic account of the rise of clinical legal education in America, see Margaret Martin Barry et al., *Clinical Education for this Millennium: The Third Wave*, 7 CLINICAL L. REV. 1 (2000).

for at-risk or underperforming students.³⁹ The model preserves the dual system in legal education that leaves behind academically vulnerable law students,⁴⁰ many of whom also identify with ethnic or racial minorities.⁴¹ Hence, the law school firm has two flaws resident in most clinics, *viz.*, the over-selection of high-performing students and the under-inclusiveness of low-performing students.⁴²

First, the paradigm perpetuates the elitist culture thriving in the legal academy by selecting only high achievers to participate in these practice-based training endeavors.⁴³ Law school firms and clinics categorically excluded academic support students who are, thus, barred from educational and professional experiences available to their classmates. Second, similar to academic barriers associated with joining a law school firm or clinic, the plan contemplates that students who enter the law school firm will already possess a requisite skill set enabling them to represent clients under supervision of a practitioner.⁴⁴ These skilled students already have an advantage, complementing their superior grades, over lower performing students in a job market demanding them to be practice ready.⁴⁵ Reserving experiential education for law students who have mastered certain skill levels, to the exclusion of students in need of skills enhancement, is highly counterintuitive.

Despite the acclaim of the law school firm and other practice-based pedagogy,⁴⁶ most law schools still separate practical skills into a distinct

39. This example of curricular “reform” illustrates that most instruction purportedly broadening the spectrum of professional legal skills training only perpetuates the status quo. Barry et al., *supra* note 13, at 256-57.

40. Schultz, *supra* note 11, at 33 (citing cultural bias against vulnerable students in traditional pedagogy).

41. The exclusion is compounded when underperformers are members of traditionally underrepresented groups in the profession. See Judith G. Greenberg, *Erasing Race From Legal Education*, 28 U. MICH. J.L. REF. 51, 87 (1994) (claiming academic support programs are disproportionately comprised of non-white students).

42. There is no mandate in current accreditation standards to offer practice-based skills courses, clinics, or externships to “every student.” A.B.A., STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS, § 302(b), INTERPRETATIONS 302-4 and 302-5 (2013-2014) [hereinafter STANDARDS].

43. CARNEGIE REPORT, *supra* note 13, at 150 (criticizing “the general sense of elitism pervading the law school experience” that isolates “[m]any students” based on social standing, economic status, personal values, and career choices along with many other attributes that are unrelated to professional potential).

44. Creators of one law school firm devised a plan that enrolled students must “develop essential skills” during the first two years in law school before they can be supervised by senior staff attorneys of the firm. Borden & Rhee, *supra* note 32, at 4 (comparing law school firm to the hierarchy of “traditional” law firms).

45. BEST PRACTICES, *supra* note 12, at 18 (noting that “top students” are more likely to be practice ready).

46. CARNEGIE REPORT, *supra* note 14, at 35-45 (lauding two programs at City University of New York and New York Law School that weave practical legal skills training throughout the “lawyering curriculum”).

domain of legal education.⁴⁷ They dilute the value of clinics, externships, and skills courses, especially when at-risk and underperforming students are left behind from the new practice ready movement.⁴⁸ Academically vulnerable students are invisible in the literature on law school reform,⁴⁹ which further explains why law schools are willing to offer them professional degrees, yet remain unwilling to offer them viable opportunities for professional skills training.⁵⁰

B. New Accreditation Proposals

Notwithstanding the noticeable omission of at-risk and underperforming students from voluminous legal scholarship on preparing practice-ready law school graduates,⁵¹ pressure is mounting to require experiential education within the law school curriculum. The ABA Task Force on the Future of Legal Education issued a comprehensive report in February 2014 urging law schools to dedicate “much more” of their “attention to skills training, experiential learning, and the development of practice-related competencies.”⁵² Urging relaxed accreditation standards to yield benefits that will inure to law students,⁵³ the ABA renewed its longstanding position prioritizing practice-based legal education.⁵⁴

47. *Id.* at 89 (noting formidable barriers to establishing the “legitimacy” of experiential education).

48. Schultz, *supra* note 11, at 12-13.

49. Neither *Best Practices* nor the *Carnegie Report* devotes attention to how recommendations for enhanced practical skills training would impact academically vulnerable law students. Consequently, discussions examining their implications also overlook poorly performing students. *See supra* note 28.

50. Denying academically vulnerable law students entry to experiential courses strikes a chord of injustice, particularly when many academic support students are learning disabled. For scholarship on disabled law students, *see* Adeen Postar, *Selective Bibliography Relating to Law Students and Lawyers with Disabilities*, 19 AM. U. J. GENDER SOC. POL’Y & L. 1237 (2011).

51. *See, e.g.*, Beverly Petersen Jennison, *Beyond Langdell: Innovating in Legal Education*, 62 CATH. U. L. REV. 643 (2013) (examining “practice expertise” for law students without mention of at-risk students); Suzanne J. Schmitz & Alice M. Noble-Allgire, *Reinvigorating the 1L Curriculum: Sequenced “Writing Across the Curriculum” Assignments as the Foundation for Producing Practice-Ready Law Graduates*, 36 S. ILL. U. L.J. 287 (2012) (discussing “practice-ready writing skills” with passing reference to at-risk students); Alexis Anderson & Norah Wylie, *Beyond the ADA: How Clinics Can Assist Law Students with “Non-Visible” Disabilities to Bridge the Accommodations Gap Between Classroom and Practice*, 15 CLINICAL L. REV. 1, 4 (2008) (noting lack of material on clinical education for learning impaired students).

52. ABA TASK FORCE ON THE FUTURE OF LEGAL EDUC., REPORT AND RECOMMENDATIONS 3 (2014) [hereinafter TASK FORCE REPORT].

53. Recommendations include flexibility in accreditation standards to incentivize tuition reductions. *Id.* at 18.

54. *See* ABA, SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (REPORT OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP) (1992) (identifying significance of practical legal skills training more than two decades before the most recent wave of curricular reform).

In a similar effort to implement reform throughout the legal education system, ABA leaders completed an extensive project in 2013 to alter the law school curriculum.⁵⁵ The accreditation body proposed changes to the *Standards and Rules of Procedure for Approval of Law Schools* based on a consensus that law schools fail to provide the quantum of practical skills training necessary—even for high performing students.⁵⁶ The ABA advanced a proposal that would compel approved law schools to implement a curriculum requirement of six credits of experiential coursework for J.D. candidates⁵⁷ but soon offered an alternative plan raising the required experiential credits to fifteen.⁵⁸ Contrary to existing standards, it remains unsettled whether these pending measures, if adopted, would require law schools to offer experiential courses to “every student.”⁵⁹

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55. The ABA proposed revisions include rules to govern approval of law schools, processes to initiate major academic or structural changes in approved law schools, directives on branch campuses, methods to ensure outcomes-based learning, provisions to assess legal writing, standards to evaluate pro bono service, means to offer distance learning, requirements to grant credit for studying abroad, and other aspects of law school administration. As of the date of this writing, new Standard 316 addressing bar passage requirements for approved law schools remains under review. COMPREHENSIVE REVIEW OF THE ABA STANDARDS FOR APPROVAL OF LAW SCHOOL MATTERS FOR NOTICE AND COMMENT (Sept. 6, 2013), *available at* http://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20130906_notice_comment_chs_1_3_4_s203b_s603d_authcheckdam.pdf. *See generally* Kurt Olson & Lawrence R. Velvel, *THE GATHERING PEASANTS’ REVOLT IN AMERICAN LEGAL EDUCATION* (2008) (disparaging ABA law school accreditation powers, policies, and procedures).
56. For an overview of the history of experiential education standards, *see* Peter A. Joy, *Evolution of ABA Standards Relating To Externships: Steps in the Right Direction?*, 10 *CLINICAL L. REV.* 681 (2003).
57. Proposed Standard 303 provides in pertinent part as follows:
Standard 303. CURRICULUM
(a) The law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:
.....
(3) one or more experiential course(s) totaling at least six credit hours. An experiential course or courses must be: (i) simulation course(s); or (ii) clinical course(s); or (iii) field placement(s). To satisfy this requirement, a course must be primarily experiential in nature and must:
(i) integrate doctrine, theory, skills and legal ethics and engage students in performance of one or more of the professional skills identified in Standard 302;
(ii) develop the concepts underlying the professional skills being taught;
(iii) provide multiple opportunities for performance; and
(iv) provide opportunities for self-evaluation.
58. ABA procedures allow public comment before revising law school accreditation standards. Karen Sloan, *ABA Reconsiders Practical Skills Mandate for Law Schools*, *NAT’L LAW JOURNAL*, Dec. 09, 2013, *available at* <http://www.law.com/jsp/article.jsp?id=1202631585383&slreturn=20131111170636>.
59. *See* STANDARDS, *supra* note 42.

As a myriad of unfavorable forces continue to besiege legal education, including rising tuition and student loan burdens,⁶⁰ assaults on the ethics of top administrators,⁶¹ threats to the venerable tenure system for faculty,⁶² severely declining applicant pools,⁶³ and lower credentials of current applicants,⁶⁴ the academy enters another era of reform.⁶⁵ Amid these conditions, law schools await imminent changes in accreditation standards designed to generate practice-ready graduates for a less than optimal legal job market⁶⁶ despite the reality that many matriculates will fall short of current academic standards.⁶⁷ As a result, law schools face an urgent demand for innovative experiential education that embraces the distinct

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60. Tacha, *supra* note 9, at 358 (citing causal factors in the soaring overhead costs of law school administration, including present models of experiential education that law schools are accustomed to offering).
 61. Lack of accountability in leadership has created an ethics “crisis” as proven by ousting of a dean and an assistant dean at separate law schools upon reports of questionable recruiting practices. Ben Trachtenberg, *Law School Marketing and Legal Ethics*, 91 NEB. L. REV. 866, 870-79, 893 (2013) (citing release of falsified class profiles, spurious alumni job statistics, and concealed requirements for merit scholarships); Drew Eckman, *Rethinking Lawsuits Against Law Schools: Graduates Must Overcome Significant Hurdles to Prevail Against Alma Maters*, 42 J.L. & EDUC. 575, 578 (2013) (describing class action suits alleging, inter alia, administrator’s inflated job records and salary data for recent law school graduates to lure applicants).
 62. See TAMANAHA, *supra* note 17, at 28-36 (detailing fierce opposition to divisive proposal that would modify current ABA accreditation standards on mandatory tenure system for full-time faculty members).
 63. Debra Cassens Weiss, *Law School Applicants Could Drop Below 60,000 for the First Time in 30 Years*, A.B.A. J. (Jan. 28, 2013, 7:39 AM), available at http://www.abajournal.com/news/article/law_school_applicants_could_drop_below_60000_for_the_first_time_in_30_years/ (noting unprecedented twenty percent decrease in law school applications in 2012 alone).
 64. Sloan, *supra* note 3 (citing a 2012 survey in which nearly half of the 100 top tier law schools reported a decline in the median LSAT scores for incoming classes); Jonathan D. Glater, *In Lean Times for Law Schools, an Opportunity*, N.Y. TIMES, Dec. 5, 2012, at A1 (surmising that law schools will begin admitting applicants who would otherwise be wait listed for admission as a result of weakening applicant pools).
 65. The ABA has recommended “more heterogeneity” among law schools to “facilitate innovation” and “foster experimentation” that can reverse trends of escalating tuition, crushing student debt, declining applications, and a weak market for graduates. TASK FORCE REPORT, *supra* note 52, at 2.
 66. James G. Leipold, *The New Entry Level Legal Employment Market*, THE B. EXAMINER, June 2013, at 6 (describing unfavorable employment conditions confronting recent law school graduates).
 67. Jordan Weismann, *The Wrong People Have Stopped Applying to Law School*, THE ATLANTIC, (Apr. 10, 2012, 10:37 AM), <http://www.theatlantic.com/business/archive/2012/04/the-wrong-people-have-stopped-applying-to-law-school/255685/> (attributing the greatest decline in 2012 law school applications to LSAT takers who score in the highest percentile of all test takers).

learning needs of at-risk and underperforming law students,⁶⁸ especially when those students are alienated and isolated within the law school “community.”⁶⁹

III. ACADEMIC BARRIERS TO EXPERIENTIAL EDUCATION

Law schools marginalize at-risk and underperforming students by excluding them from clinics and externships that are deemed critical to their success in the profession.⁷⁰ Paradoxically, these students pay more than others to obtain degrees from institutions that provide them no options in practice-based skills training for the profession to which they aspire.⁷¹ Often, students who fail to meet GPA requirements to enroll in clinics or externships are relegated to non-academic, practice-based experiences, such as pro bono service, unpaid internships, or employment, which do not accord comparable educational benefits.⁷²

A. Insufficient Grades to Enroll in Experiential Courses

The minimum GPA requirements to participate in clinics or externships typically correspond to general academic standards to avoid

68. Predictably, law schools have been lax in devoting attention to experiential education for vulnerable law students due to painstaking progress in accomplishing meaningful curricular reform in the last decade. *The 2012 Randolph W. Thrower Symposium Innovation for the Modern Era: Law, Policy and Legal Practice a Changing World*, 62 EMORY L.J. 829 (2013) (disapproving measured implementation of *Carnegie Report* recommendations that call for widespread curricular reform to expand experiential education).

69. Chris K. Iijima, *Separating Support From Betrayal: Examining the Intersections of Racialized Legal Pedagogy, Academic Support, and Subordination*, 33 IND. L. REV. 737, 772 (2000) (advising that academic support programs “recreate community” for at-risk and underperforming students to compensate for the unwelcoming climate that they endure on many law school campuses).

70. See BEST PRACTICES, *supra* note 12, at 167 (explaining value of experiential courses as a “powerful tool for forming professional ... understandings”); CARNEGIE REPORT, *supra* note 14, at 120 (demonstrating “the well-documented importance of active learning in role” that clinics and externships afford students the opportunity to develop both “expertise and professional identity”).

71. At-risk and underperforming students, who are less likely candidates for merit-based scholarships, pay more for law school than high-performing peers and, indeed, subsidize tuition discounts allowing “higher-credentialed students to attend at reduced (or even no) cost.” TASK FORCE REPORT, *supra* note 52, at 2.

72. BEST PRACTICES, *supra* note 12, at 165-66 (confirming experiential courses offer “[o]ptimal learning from practice” in contrast to working or volunteering in a legal practice environment); CARNEGIE REPORT, *supra* note 14, at 119 (pointing to pedagogical value of performance feedback that clinical faculty provide).

academic dismissal from law school.⁷³ Some law schools, however, impose academic standards above the “survival” threshold.⁷⁴ Law schools also impose additional GPA requirements for special types of practice-based skills courses, thereby creating multi-tiered academic criteria that further systematically eliminate at-risk and underperforming students from valuable experiential education.⁷⁵ Finally, GPA requirements are not the only academic hurdles to register for experiential courses if students must earn passing grades in prerequisite subjects, such as legal ethics or evidence.⁷⁶

Accordingly, three categories of underperforming students will benefit from curricular innovations that integrate experiential education with academic support pedagogy.⁷⁷ First, students who were identified for academic survival programs and advanced to the second year of law school deserve an opportunity to register for experiential courses.⁷⁸ These industrious students have, in fact, survived the rigors of the legal academy even when they failed to satisfy the minimum GPA requirements for clinics

73. For example, University of Baltimore School of Law dismisses students who earn below a cumulative GPA of 2.0, which is the minimum GPA to enroll in experiential courses. UNIVERSITY OF BALTIMORE CLINIC SELECTION PROCEDURE, *available at* <http://law.ubalt.edu/clinics/policies/procedures.cfm>.

74. Examples of minimum GPA requirements that exceed the academic survival threshold include Seton Hall University School of Law, where students earning a cumulative GPA of 2.0 or below are dismissed, but students whose cumulative GPA falls below 2.33 may enroll in experiential courses only at the discretion of the Dean of Students. SETON HALL UNIVERSITY SCHOOL OF LAW POLICIES AND PROCEDURES, current as of January 10, 2014, *available at* <http://law.shu.edu/Students/academics/policies/Academic-Probation.cfm>.

75. At Charlotte School of Law, the minimum GPA to enroll in tax and criminal justice clinics is a 2.5 or above, yet students need to earn a 3.0 GPA to enroll in honors externships and a 2.0 for other externships. CHARLOTTE SCHOOL OF LAW, RIGHTS AND RESPONSIBILITIES MANUAL, revised August 20, 2012, *available at* http://www.charlottelaw.edu/sites/default/files/page/8_29_13working%20SRRM%20temp.pdf.

76. *See* BEST PRACTICES, *supra* note 12, at 189 (confirming evidence and professional responsibility as prerequisites for participation in experiential courses).

77. Only the first classification of underperforming law students are deemed “at-risk” academically, while students in all three categories are at-risk professionally as a direct result of systematic exclusion from experiential courses that hold promise for rendering them practice ready.

78. These students avoid academic dismissal, but their grades exclude them from experiential education. For example, at Widener University School of Law, students who earn a cumulative GPA between 2.0 and 2.3 will not be dismissed, but they are barred from the in-house clinic and clinical externships. Students who earn below a 2.5 GPA remain in school, but may not enroll in a judicial externship. WIDENER UNIVERSITY SCHOOL OF LAW STUDENT HANDBOOK-HARRISBURG CAMPUS, Academic Code Sections 304 (d) and 1001(c) (2013-14) [hereinafter WIDENER ACADEMIC CODE-HARRISBURG CAMPUS], *available at* <http://law.widener.edu/CampusLife/AdvisingandCounseling/OfficeofStudentAffairsHarrisburg/StudentHandbook.aspx>.

or externships.⁷⁹ Next, students who were never placed in academic survival programs, but whose GPAs bar them from experiential courses, also merit a chance to learn practice-based skills.⁸⁰ These students grasped legal concepts of the first-year curriculum on a cognitive level and have, thereby, earned a chance to learn corresponding competencies on a practical level.⁸¹ Finally, there is a cohort fulfilling the GPA requirements for enrollment in clinics and externships, but these students failed to complete one or more prerequisites acceptably.⁸² The underperformance of these students uniquely qualifies them for experiential courses that remediate skill deficiencies deemed vital to professional endeavors since academic support instruction employs methods of instruction to identify specific skill deficits.⁸³

B. Inadequate Academic Support to Become Practice Ready

Traditional law school curricula are insufficient to equip most law students with the requisite skills for immediate lawyering;⁸⁴ likewise, conventional academic support programs are inadequate to transform

79. ABA accreditation standards permit a law school to establish provisions for dismissal, so long as it does “not continue the enrollment of a student whose inability to do satisfactory work is sufficiently manifest so that the student’s continuation in school would inculcate false hopes, constitute economic exploitation, or detrimentally affect the education of other students.” STANDARDS, *supra* note 42, at § 303(b).

80. In this case, a law student is banned from experiential courses, even though the law school does not deem him at-risk of academic survival. For example, at Widener Law School–Harrisburg Campus, only students whose cumulative GPA falls below 2.3 “at the end of their first, second or third semester” will be identified for formal academic support classes. WIDENER ACADEMIC CODE–HARRISBURG CAMPUS, Section 1001(b). Thus, a student whose cumulative GPA falls below 2.3 at the end of the fourth or fifth semester of a three-year program never enters an academic survival class, but remains excluded from experiential courses.

81. CARNEGIE REPORT, *supra* note 14, at 121 (asserting “that the cognitive and the practical are two complementary dimensions of meaningful professional activity” that clinics cultivate in equal measure).

82. See CHARLOTTE SCHOOL OF LAW, *supra* note 75 and accompanying text.

83. Paula Lustbader, Essay, *From Dreams to Reality: The Emerging Role of Law School Academic Support Programs*, 31 U.S.F. L. Rev. 839, 853–54 (1997) (discussing approaches typical of academic support programs that improve skill deficiencies, such as metacognitive theory and adult learning theory which guide students toward self-conscious and independent learning).

84. Ideally, all law school courses require students to exercise fundamental skills that successful lawyers use, such as analytical reasoning, reading comprehension, and effective oral and written legal communication, which require intellectual aptitude, not practice-based competence. CARNEGIE REPORT, *supra* note 14, at 24 (dubbing the Socratic Method as law’s “signature pedagogy” teaching the art of “thinking like a lawyer”). In fact, legal academicians routinely ignore the relational dimensions of cognitive skills that adept lawyers exhibit. Iijima, *supra* note 69, at 751 (commenting on oversight of “the full range of diverse intelligences” associated with value judgments, moral reasoning, and policy-based decision making).

vulnerable students into practice-ready graduates.⁸⁵ Academic support programs that assist law students in academic survival and academic enhancement may succeed in moving students through law school without moving them to the overall level of competency needed to enter clinics and externships, especially in view of the practical insight and professional maturity required in live-client interaction.⁸⁶

The narrow goals of academic support,⁸⁷ scarce fiscal resources, substantial time constraints, and inconsistent or inexperienced faculty leaders impede curricular innovation needed to develop low performers into high achievers who qualify for clinical credits.⁸⁸ Academic support pedagogy, growing parallel to diversity initiatives in law schools,⁸⁹ was not designed to serve as a practice-readiness paradigm in legal education;⁹⁰ however, its most salient features inform the development of experiential curriculum that will leave no at-risk or underperforming law students behind in practice-based legal skills training.⁹¹

Facets of academic support pedagogy that facilitate modification of experiential courses are the enrichment of reasoning skills,⁹² the correction of specific skill deficits,⁹³ and the cultivation of confidence to remove

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85. See, e.g., Schultz, *supra* note 11, at 5-6 (explaining how academic support programs can adapt to fulfill recommendations of *Best Practices* and the *Carnegie Report* to prepare practice ready law graduates); Greenberg, *supra* note 41, at 56 (stating that law school academic support curricula, replete with cultural bias, fails to remediate perceived skill deficiencies in underperforming non-white students).
 86. BEST PRACTICES, *supra* note 12, at 189-90 (listing interpersonal skills critical to represent clients).
 87. See LSAC INTRODUCTION, *supra* note 8 (identifying goals of both “academic survival” and “academic enhancement” programs).
 88. Mencer, *supra* note 7, at 68.
 89. Academic support programs multiplied in law schools across the nation as a result of diversity initiatives during the 1980s to recruit and retain of students of color and “nontraditional law students” who were, and still are, underrepresented in the legal profession. These college graduates frequently entered the academy possessing indicia that signaled potential for encountering barriers in mastering the law school curriculum. LSAC INTRODUCTION, *supra* note 8, at i - ii, 1.
 90. Cynthia Schmidt & Ann L. Iijima, *A Compass for Success: A New Direction for Academic Support*, 4 CARD. PUB. L. P. & E.J. 651, 653 (2006) (citing academic support focus on legal analysis and writing); Greenberg, *supra* note 41, at 80 (noting academic support emphasis on legal writing and issue spotting). *But see* Mencer, *supra* note 7, at 67-68 (advocating that academic support faculty assume an expanded role in law student bar preparation, but maintain the twin aims of academic survival and academic enhancement).
 91. Core themes emerging from the rise of law school academic support programs include acculturation theory that “a sense of competence and belonging” are “psychological preconditions...particularly important for minority law students.” LSAC INTRODUCTION, *supra* note 8, at 1.
 92. Mencer, *supra* note 7, at 67 (confirming broad goals of academic enhancement programs that assist with “skill development, substantive legal synthesis and analysis”).
 93. LSAC INTRODUCTION, *supra* note 8, at 2 (noting adult learning theory as keystone of academic support).

stigmas attached to vulnerable law students.⁹⁴ Combined with basic instructional methods characteristic of experiential coursework,⁹⁵ these three elements lay the foundation for preparing academically, and professionally, vulnerable law students to become practice ready in the competitive legal job market.⁹⁶

While some observers posit that effective academic support programs should address tangential matters adversely affecting the performance of some vulnerable law students,⁹⁷ such ambitious undertakings may not contribute to mastery of professional competencies. Moreover, offering practice-based skills training based on academic support pedagogy creates an inclusive environment for at-risk and underperforming students to maximize “return on their investment in legal education.”⁹⁸

To assess a proposal offering experiential courses to at-risk and underperforming students, it is vital to keep in mind why they are excluded from practical skills training. First, most legal educators are not committed to universal practice-based instruction.⁹⁹ Second, modern reformers and legal scholars who lead the practice readiness charge fail to hold law schools accountable for the effective education of vulnerable law students.¹⁰⁰ Finally, to date, accreditation standards have not required law schools to allocate scarce resources in expanding experiential courses for at-risk and underperforming students.¹⁰¹

IV. EXPANDED OPTIONS IN EXPERIENTIAL EDUCATION

The proposed revisions to ABA accreditation standards present an opportunity to include at-risk and underperforming students in the

94. Schultz, *supra* note 11, at 47 (articulating “humanizing” approaches for “de-isolating students” in academic support programs to instill “a sense of confidence” compromised by their underperformance); Mencer, *supra* note 7, at 68, 74 (offering tactics to reduce stigma connected to academic support courses); Darlene C. Goring, *Silent Beneficiaries: Affirmative Action and Gender in Law School Academic Support Programs*, 84 KY. L.J. 941, 946 (1996) (documenting faculty discussion of “a double stigma” that students undergo during anonymous interviews conducted in race and gender study of academic support programs).

95. See *infra* Part IV.

96. See Tacha, *supra* note 9, at 365-66 (depicting “crisis” in the legal market place prompting law schools to balance the availability of specialized advanced curriculum against expanded experiential course offerings).

97. Mencer, *supra* note 7, at 51 (identifying concerns that inhibit academic excellence, including quality of life issues, personal habits, and campus climate). See also Iijima, *supra* note 69, at 741 (maintaining that academic support faculty have an obligation to unveil inherent “ideological and political” imperfections in, and implications of, traditional law school pedagogy as a means of contextualizing underperformance).

98. TASK FORCE REPORT, *supra* note 52, at 2.

99. See *supra* notes 22-27 and accompanying text.

100. See *supra* notes 49, 51 and accompanying text.

101. Tacha, *supra* note 9, at 366-68 (discussing institutional costs of enriching experiential education).

experiential education curriculum.¹⁰² Although the proposals specify the form and substance of practice-based skills courses that law schools would be required to provide in order to fulfill its curricular mandate,¹⁰³ neither proposal provides any guidance on the best methods to implement this reform.¹⁰⁴ Specifically, ABA officials fail to indicate whether law schools would be required to “accommodate every student requesting enrollment” in practice-based skills classes.¹⁰⁵ Thus, the pending standards present no assurance that law schools will not leave at-risk and underperforming students behind while complying with new accreditation standards.¹⁰⁶ In light of this uncertainty surrounding the scope of proposed curricular requirements,¹⁰⁷ it behooves law schools to consider expanding experiential education for these students.

102. *See supra* notes 52-60 and accompanying text (citing plans that require mandatory experiential courses).

103. Proposed Standard 304 sets forth two forms of instruction that satisfy proposed Standard 303(a)(3):

Standard 304. SIMULATION AND CLINICAL COURSES

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

- (1) direct supervision of the student’s performance by the faculty member;
- (2) multiple opportunities for performance, feed-back from a faculty member, and self-evaluation; and
- (3) a classroom instructional component.

(b) A clinical course provides substantial lawyering experience, involving one or more actual clients, and that includes:

- (1) advising or representing a client;
- (2) direct supervision of the student’s performance by a faculty member;
- (3) multiple opportunities for performance, feed-back from a faculty member, and self-evaluation; and
- (4) a classroom instructional component.

Proposed Standard 305. FIELD PLACEMENTS AND OTHER STUDY OUTSIDE THE CLASSROOM tracks language in the present version of Standard 305 addressing externships.

104. Unlike legal writing courses set forth in the current form of Standard 302 and proposed Standard 303, proposed provisions on experiential courses do not specify when the requirement must be completed. *Compare* Standard 302(3) *with* proposed Standard 303(a)(2) (expressly stating that “one writing experience in the first year and at least one additional writing experience after the first year” must be completed).

105. Proposed Standards delete INTERPRETATIONS 302-4 and 302-5. *See supra* note 42.

106. Jennison, *supra* note 51, at 669 n.146 (opining that Interpretation 302-5 serves as “an excuse...to limit exposure to clinical or live-client placements because of costs, staffing, or other reasons”).

107. Arguably, law schools may rely on INTERPRETATIONS 302-4 and 302-5 in the current standards to deny vulnerable law students access to experiential courses; however, these interpretations were stricken without comment, in contrast to commentary explaining why interpretations to Standard 305 were eliminated.

A. Course Design: A Simulation Course¹⁰⁸

The In-House Clinical Externship blends academic support pedagogy with the practice-based skills learning model to eliminate barriers for lower performing students who are academically ineligible for experiential courses, including traditional clinics.¹⁰⁹ As its name suggests, this course simulates a clinical externship experience on campus.¹¹⁰ Thus, this course has been designed as a “gateway” class to prepare vulnerable law students for subsequent participation in traditional law school clinics and externships.¹¹¹ It introduces former academic support students to experiential education that promotes sufficient skill enhancement to qualify them for more advanced practice-based courses.¹¹² This class is also an appropriate alternative to conventional experiential courses for law students who were never identified to participate in any academic survival program,¹¹³ but who still face performance barriers precluding enrollment in experiential courses.¹¹⁴

The In-House Clinical Externship is, therefore, a prerequisite for vulnerable law students who must complete its performance expectations before enrolling in classes that would satisfy experiential curriculum requirements under new accreditation standards.¹¹⁵ To fulfill the general course goals and the weekly class-specific learning objectives,¹¹⁶ minimal exposure to legal ethics and evidence is required for these in-house “externs.”¹¹⁷ These prerequisites equip students with the ability to identify

108. While proposed Standard 303 requires completion of at least one of three types of experiential courses, *supra* note 57, simulation courses are most conducive to the skills enhancement goal of academic support. See BEST PRACTICES, *supra* note 12, at 166 (describing “simulation-based courses” in which law students “assume professional roles and perform law-related tasks in hypothetical situations”).

109. Steinzor & Hornstein, *supra* note 10, at 451 (conceding that clinics represent one of the most significant law school curricular improvements, although most law students remain unable to take advantage of them).

110. Current ABA accreditation standards do not mention simulation courses and, thus, leave them undefined. See STANDARDS, *supra* note 42, at ch. 3.

111. Simulation classes often lay the foundation for subsequent experiential coursework. See BEST PRACTICES, *supra* note 12, at 182 (quoting Jay M. Feinman, *Simulations: An Introduction*, 45 J. LEGAL EDUC. 469, 473 (1995) (illustrating how simulation courses facilitate skills enhancement before students “proceed to advanced courses that are more appropriately skills-focused” based on improved competency)).

112. See *supra* notes 74, 78-79 and accompanying text.

113. See *supra* notes 80-81 and accompanying text.

114. See *supra* notes 82-83 and accompanying text.

115. See discussion *supra* Part II.

116. See *infra* text accompanying notes 129-36.

117. Alternatively, students enrolled in the In-House Clinical Externship may be simultaneously enrolled in these courses which are typically open to students after successful completion of the first year curriculum.

basic ethical issues and the capacity to participate in later field placements involving litigation or client contact.¹¹⁸

The In-House Clinical Externship is a one semester, three-credit simulation skills course organized around themes that reflect the paramount roles of practicing lawyers:¹¹⁹ Module I: The Lawyer as Advisor; Module II: The Lawyer as Advocate; and Module III: The Lawyer as Decision Maker.¹²⁰ Each module contains four weeks of class instruction, supervised performance of lawyering tasks, and faculty feedback providing exposure to practical skills and professional values commonly associated with these attorney roles.¹²¹ Each module also includes a week devoted to self-evaluation, peer assessment, reflection, and an introduction to members of the bar who address topics relevant to the module.¹²²

The class meets twice weekly for eighty-five minutes to deliver the instruction,¹²³ discuss course material,¹²⁴ afford opportunity to reflect on the completed assignments,¹²⁵ and provide feedback during role-playing exercises that introduce realistic scenarios that law students would likely encounter in traditional clinics, externships, and, eventually, legal practice.¹²⁶ Although the course employs multiple and varied methods to

118. BEST PRACTICES, *supra* note 12, at 189 (noting essential material for “client representation courses”).

119. *See id.* (detailing the best methods for the delivery of instruction through simulation courses).

120. The authors implement a similar triad module design within a pre-law diversity pipeline curriculum.

121. These aspects conform to simulation course requirements of proposed Standard 304. *See supra* note 103.

122. Under this design, the curriculum would be administered with two weeks of introductory course material to complement the module format.

123. Unlike some practice-based skills courses, a law school administrator serving as externship faculty provides instruction for the In-House Clinical Externship. *See, e.g.,* Gerst & Hess, *supra* note 22, at 527 (detailing practice-based skills course taught by practitioners who are supervised by full-time law faculty).

124. The authors recommend J.P. OGILVY ET AL., *LEARNING FROM PRACTICE* (2007 ed.) as a required textbook to clarify course expectations, describe the ethical dilemmas common to externs, and explain student-centered goal planning. This text forms the basis for the teaching plan outlined in Part IV.C-D *infra*.

125. Students are also required to submit written reflections of their observations, impressions, and opinions on “externship” experiences based on guidelines supplied at the outset of the course. *See* Ogilvy, *supra* note 16, at 175 (recommending “structured reflection” to maximize student learning during externships).

126. Martin J. Katz, *Teaching Professional Identity in Law School*, 42 *COLO. LAW.* 45, 45 (Oct. 2013) (elaborating on the efficacy of “creating situations where students will be confronted with, and pushed to reflect on, questions of professional identity” in experiential learning curricula). *See also* Brian Martin, *Students Learn In-House Counsel Responsibilities With Role-playing*, *INSIDE COUNSEL*, July 1, 2011, available at <http://www.insidecounsel.com/2011/07/01/law-students-learn-in-house-counsel-responsibiliti> (suggesting the use of role-playing to stimulate critical thinking on ethical issues facing in-house counsel).

assess student learning,¹²⁷ the In-House Clinical Externship is a pass/fail course and students obtain a final report specifying one of three skill levels they attained: developing, competent, or proficient.¹²⁸ Students will earn passing grades by exhibiting progress in, or mastery of, lawyering skills and appreciation of professional values reflected in defined learning objectives.

B. Course Goals and Learning Objectives

The In-House Clinical Externship has course goals reflected in class-specific learning objectives that appear on the syllabus as skills concentrations for each class.¹²⁹ The primary course goal is to provide an academic support model of practice-based skills training for at-risk and underperforming students ineligible for clinics and externships.¹³⁰ The secondary goals are to equip these vulnerable students with a level of competence and a degree of confidence vital to success in these subsequent placements.¹³¹ To further the general course goals, students fulfill the specific learning objectives of each class by performing exercises to complete lawyering tasks,¹³² writing papers,¹³³ discussing ethical issues germane to externs,¹³⁴ embarking on guided reflection,¹³⁵ and thinking critically on topics relevant to professional values and professional identity.¹³⁶

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127. BEST PRACTICES, *supra* note 12, at 253-55 (explaining principle in effective delivery of legal instruction that utilizes multiple methods of assessing student learning for an accurate evaluation skill development).
 128. *See id.* at 181 (explaining “targeted level of proficiency” for law students in simulation-based courses).
 129. *Id.* at 168 (recommending that experiential education faculty develop “instructional goals and objectives, which should be explicit, published and widely disseminated”).
 130. *See supra* notes 70-83 and accompanying text.
 131. *See* Schmidt & Iijima, *supra* note 90, at 680 (correlating low “self-confidence” and “self-perception” among academic support students and lower level of academic achievement). *See also* Anderson & Wylie, *supra* note 51, at 18 (documenting increased confidence of student whose clinical performance improved after application of techniques proven effective in supporting learning disabled students).
 132. *See* Robert MacCrate, *Yesterday, Today and Tomorrow: Building the Continuum of Legal Education and Professional Development*, 10 CLINICAL L. REV. 805, 807 n.6 (1994) (listing lawyering competencies).
 133. Students write several papers no more than three to five pages in length to assess their skill development, rather than their knowledge of legal doctrine. Schmidt & Iijima, *supra* note 90, at 676.
 134. The course covers specific ethical issues unique to clinical or judicial externships, rather than general topics in lawyer ethics that students learn in a professional responsibility class. Katz, *supra* note 126, at 45.
 135. BEST PRACTICES, *supra* note 12, at 166-67 (recognizing reflection as integral to experiential learning).
 136. Although related, professional values differ from professional identity. Katz, *supra* note 126, at 45-46 (contrasting professionalism exhibited through conduct and professional identity associated with character).

Students learn the following legal practice skills enabling them to assist attorneys in clinics and externships: close reading of law office documents, investigating facts, case intake and client interviewing, problem-solving, counseling, drafting, and negotiating.¹³⁷ Written assignments and role-playing exercises simulate the experience of representing clients.¹³⁸ Students also evaluate their skill development,¹³⁹ provide and obtain peer review,¹⁴⁰ and apply faculty feedback to demonstrate a capacity to learn from supervising attorneys.¹⁴¹

C. Course Material and Assignments

The centerpiece of the course material is a hypothetical case file containing various documents that students can expect to analyze on a multistate performance test (MPT).¹⁴² Students complete assignments that simulate the responsibilities of lawyers who serve as advisors, advocates, and negotiators during case intake, client meetings, and settlement negotiations in fictitious domestic violence and child custody disputes.¹⁴³ While the In-House Clinical Externship is an experiential course to teach practice skills, the course exposes students to state law governing protection from abuse and leading litigation resources on the impact of domestic violence on child witnesses.¹⁴⁴ Students also complete critical reading and writing assignments similar to real “externs” in preparation for eventual placement in law school clinics or externships.¹⁴⁵

137. Tacha, *supra* note 9, at 376 (citing these competencies as “the skills that make lawyers effective”).

138. By definition, a simulation course includes no “live-client” contact because it is designed to replicate “the experience of a lawyer advising or representing a client.” Proposed Standard 304(a), *supra* note 103.

139. Simulation courses include a “self-evaluation” component to comply with proposed Standard 304(a)(2).

140. See generally Cassandra L. Hill, *Peer Editing: A Comprehensive Pedagogical Approach to Maximize Assessment Opportunities, Integrate Collaborative Learning, and Achieve Desired Outcomes*, 11 NEV. L. J. 667 (2011) (expounding on pedagogical value of administering peer review in law school skills courses).

141. BEST PRACTICES, *supra* note 12, at 182 (explaining appropriate use of feedback in simulation courses).

142. Proposed Standard 304 contemplates presentation of realistic fact patterns that faculty devise to facilitate instruction of legal practice skills. See *supra* note 103. See also Schultz, *supra* note 11, at 6 (identifying bar exam preparation as a tool for improving academic support programs to prepare practice-ready graduates).

143. In 2014, legal professionals across the nation will undertake numerous initiatives designed to underscore the importance of domestic violence awareness to commemorate the twentieth anniversary of the Violence Against Women Act (VAWA) of 1994, 18 U.S.C. §§ 2261-2266. For ideas on raising awareness of domestic violence in the law school classroom, see ABA, *TEACH YOUR STUDENTS WELL: INCORPORATING DOMESTIC VIOLENCE INTO LAW SCHOOL CURRICULA*, A.B.A Commission on Domestic Violence (2003).

144. Protection From Abuse Act, 23 PA. CONS. STAT. § 6101. See Mencer, *supra* note 7, at 66 (urging synthesis of “substantive material into the academic support scheme”).

145. See *supra* note 111 and accompanying text.

The first assignment entails a brief diagnostic test to evaluate core competencies that students would expect to demonstrate in a traditional clinic or externship placement.¹⁴⁶ This instrument, referred to as the *Extern's Knowledge, Skills, and Values Inventory*,¹⁴⁷ introduces the self-evaluation process and serves as a baseline to assess learning when students complete the identical diagnostic tool as a post-test at the end of the semester.¹⁴⁸ The remaining assignments mirror standard coursework of traditional clinical externs in developing learning goals, submitting timesheets, completing journal entries and reflection papers, delivering presentations, and performing in-class exercises.¹⁴⁹

D. Delivery of Instruction

The first class serves as an introduction to the In-House Clinical Externship in which students review the general course goals and class-specific learning objectives, as well as the three roles of lawyers in the profession that they will assume during the semester.¹⁵⁰ Students will discuss the value of recording their impressions and observations relative to experiential learning through reflection papers, journals, and electronic discussion boards. Students identify goals that they expect to achieve in the In-House Clinical Externship. At the outset, students demonstrate skills in close reading, critical thinking, and oral communication by articulating their comprehension of the reading assignment for the first class meeting and their overall impressions after completing the diagnostic instrument, *Extern's Knowledge, Skills, and Values Inventory* (pre-test).

In-House Clinical Externship faculty divides the second class into two segments. The first portion of the second week covers how to document externship experiences by completing the personalized learning agenda, timesheets, and professional journals. Students discuss goal setting as they become active participants in externship learning.¹⁵¹ Students will also articulate the process of planning, recording, executing, assessing, and revising their goals, i.e., the experiential learning cycle based on goals initially identified in the first week and developed as a written product for

146. See LSAC INTRODUCTION, *supra* note 8, at 1 (endorsing the use of early diagnostic tools to detect “student learning skill deficiencies” for remediation through delivery of the academic support curriculum).

147. This diagnostic instrument was developed exclusively for use in the In-House Clinical Externship.

148. Students may complete these instruments, accessible on-line at the course electronic discussion board, simply by completing the questionnaire in private to record their responses.

149. These assignments are typical of material covered during the classroom component of externships. See generally OGIIVY ET AL., *supra* note 124.

150. See *supra* text accompanying notes 119-20.

151. See Ogilvy, *supra* note 16, at 173 (enumerating active participation as an extern’s “responsibilities”).

submission in the second week.¹⁵² Thus, the second week of the course builds on skills that students exhibit in the first class as they have an opportunity to share the contents of their personalized learning agenda. These optional mini-presentations serve as an occasion to practice public speaking skills. During the second portion of this class, students will assemble in small groups for a collaborative exercise to introduce a hypothetical client case file that will form the basis of multiple skills exercises in subsequent classes.¹⁵³

1. Module I: The Lawyer as Advisor

During weeks 3 through 6, students begin discharging duties and responsibilities of attorneys who act in a professional capacity as counselors or advisors to a hypothetical client. Accordingly, the focal point of week 3 is thorough review of the client case file, containing documents resembling those that would appear in a library of an MPT.¹⁵⁴ Students prepare to complete law-related tasks and procedures of a client intake and witness interview typically undertaken by clinical externs in a non-profit legal clinic. There will be classroom discussion on the meaning and purpose of “critical thinking.” Students will review various case management documents in class to draft original client intake/witness interview forms that they will use for a mock client intake in week 4.¹⁵⁵

This class presents opportunities to enhance interpersonal skills needed in professional collaboration, client intake, witness interviews, and case investigation.¹⁵⁶ Students will develop close reading, critical thinking, and synthesis skills by comparing sample client engagement letters and intake forms to create original law office documents as they work in pairs to develop a written work product that they will submit in week 4.

Thus, client intake and witness interviewing continues to concentrate on the identity of a lawyer as counselor in week 4 as students perform mock

152. See OGILVY ET AL., *supra* note 124, at ch. 2.

153. See Lustbader, *supra* note 83, at 853 (describing efficacy of multi-modal approaches in academic support to adapt to various learning styles of law students, including collaboration or small group work). See also BEST PRACTICES, *supra* note 12, at 132 (urging multi-modal law school instruction generally). Teaching with “multiple modalities” is a highly recommended strategy in primary education gaining acceptance in adult learning environments. Effective techniques for multi-modal teaching are available at <http://www.readwritethink.org/professional-development/strategy-guides/teaching-with-multiple-modalities-30101.html>.

154. Mencer, *supra* note 7, at 47 (noting trend in academic support programs towards bar exam preparation).

155. The assignments due for this class include on-line submission of written notes from the client case file to assist in drafting a formal client intake/witness interview form suitable for use in a real practice setting.

156. Barry et al., *supra* note 13, at 39 (describing simulation exercise that entails initial client interview).

client or witness interviews.¹⁵⁷ Students further participate actively in class 4 before and after these interviews by providing self-assessment and peer feedback on the in-class performance.¹⁵⁸ More important, faculty feedback is integral to this segment of experiential learning.¹⁵⁹

Classes 5 and 6 offer strategies for effective written communication with a supervising attorney in practice, as well as in law school clinics or field placements. Students will review the client's case file, interview notes, and interview feedback to determine the next steps in preparing internal office communication to a supervisor. Classroom discussion will engage students on topics, such as assignment clarification, feedback application, and professional expectations before drafting a document that recommends action on behalf of a client.

During these classes, the practical skills focus will require students to use their reasoning skills in developing a theory of the case, evaluating the merits of the client's position, anticipating viable counter-arguments, devising potential litigation strategies, and developing recommendations for the next course of action to a supervising attorney. Students must recall facts and interpret resources in the case file library of documents to draft a law office document for a supervisor's review that they will submit in week 6. Thus, week 6 covers the choice of documents that students have selected to communicate with the supervisor as the module devoted to the role of attorneys as advisors concludes.¹⁶⁰

2. *Module II: The Lawyer as Advocate*

Weeks 7 through 9 explore the role of lawyers as advocates. Classroom discussion in week 7 includes ethical considerations in civil litigation when a client presents a new legal problem through previously undisclosed facts relevant to the case. Hence, instruction shifts to the role of an advocate, which presents occasions to enhance specific problem-solving skills as students "re-open" the old case file with a different perspective on the client's "new" legal matter to explore potential ethical issues.¹⁶¹ Students will be divided into teams for new advocacy roles to resolve the dispute.

157. Student "extern teams" have an option to select either task to perform in class.

158. See proposed Standard 304(a)(2), *supra* note 103.

159. See *id.*

160. Students choose between writing an e-mail memorandum to the supervisor that summarizes the case and drafting a client letter for supervisory approval that effectively defines the scope of legal representation.

161. Essential to the ethical inquiry is the extent to which the "new" legal issue was deliberately concealed by the client, whether any conflicts of interest appear, and how students may have anticipated this dispute.

The skills instruction of week 7 will require students to read, interpret, and apply Model Rule of Professional Conduct 3.3 concerning duty of candor toward the tribunal.¹⁶² Students will practice close reading, critical thinking, and “pre-writing” skills in outlining the potential ethical issues that a clinical extern would report to a supervising attorney.¹⁶³ During week 8, classroom discussion will begin with an explanation of the two primary approaches to negotiations, namely, the adversarial and the problem-solving approaches.

Thus, practical aspects of negotiations form the basis of skills development as students demonstrate the following core competencies: (1) identifying potential ethical dilemmas; (2) distinguishing the primary functions of lawyers during negotiation and settlement; and (3) recognizing the value of secondary legal sources to advocate a client’s legal position.

During week 9, students apply their skills to negotiate a child custody dispute. Class time is allocated to teamwork in simulated settlement conferences where students offer proposals to resolve the custody conflict by synthesizing primary and secondary legal authority, formulating policy arguments, and engaging in creative problem-solving.

3. Module III: Lawyers as Decision Makers

While the course requires formal student reflection throughout the semester,¹⁶⁴ individualized conferences between faculty and students conducted in week 10 take the place of a class meeting to personalize faculty guidance for students in a reflective process. Together, the faculty member and students consider progress in developing a professional identity as students submit reflection papers no more than three to five pages in length.¹⁶⁵

Thus, the primary focus of week 10 is enhancing critical thinking and communication skills as students in the In-House Clinical Externship become reflective professionals. Students will demonstrate analytical thinking by assessing their progress in achieving their initial learning goals and by re-evaluating these goals in light of their coursework. Each student will acquire personal feedback as they pose critical questions on how they can accomplish their professional goals through a traditional externship in

162. MODEL CODE OF PROF'L CONDUCT R. 3.3 (1983).

163. Reading assignments include *Essential Lawyering Skills*, How Negotiations Work, samples of settlement proposals, and new documents that the client provides that are relevant to the dispute. See generally STEFAN H. KRIEGER & RICHARD K. NEUMANN, JR., *ESSENTIAL LAWYERING SKILLS* (4th ed. 2011).

164. See Ogilvy, *supra* note 16, at 177 (indicating formal modes of “reflection on the fieldwork experiences” are required in traditional externships).

165. Students select one of three topics for this reflection paper based on the various roles of a lawyer.

the future.¹⁶⁶ Students will further exhibit skills in oral and written communication by expressing their understanding of the roles that lawyers assume as advisers, advocates, or negotiators.

Week 11 introduces the theme of bias in the profession to explore diversity,¹⁶⁷ preference, and inclusion in legal communities, including the prevailing campus climate. Class opens with a video clip of an attorney describing the impact of bias in a lawyer's pursuit of justice, which invites student commentary to start a candid dialogue on a range of personal attributes that may trigger unlawful discrimination or exclusion, such as race, ethnicity, gender, language, religion, disability status, or sexual orientation.¹⁶⁸

Week 12 contemplates education beyond the classroom component by completing a "pre-placement" visit to an approved externship site with a current law student-extern. Students will be matched with a law student enrolled in a traditional externship based on individual career interests in the law and written learning goals submitted in week 2. After planning, recording, executing, assessing, and revising their specific learning goals, students will have an opportunity to continue the experiential learning cycle by observing law-related tasks associated with the type of externship experience that they desire. Students are encouraged to prepare critical thinking questions in advance of the field trip.

Once again, the skills development in week 12 is the application of critical thinking and oral communication skills that students will eventually demonstrate in a legal workplace. These field trips present an occasion for students to exhibit interpersonal and professional skills needed in networking with experienced externs and field placement supervisors. Students will exit the experience with a realistic view of the work assigned to externs, with particular attention to decision-making roles and responsibilities of externs.

Although the topic of week 13 is judicial externships, the focus will be the distinct professional identity that lawyers assume as decision makers on the bench. Guest speakers will discuss their experiences as lawyers who serve in judicial clerkships. The speakers will compare and contrast their

166. See *supra* text accompanying note 111 (describing simulation course as a "gateway" to conventional experiential education, such as law school clinics and externships).

167. See generally ABA Presidential Initiative Commission on Diversity, *Diversity in the Legal Profession: The Next Steps* (2010) (comprehensive discussion of strategies to eliminate bias in the legal profession).

168. Reading assignments for week 11 include ABA MISSIONS, GOALS AND STRUCTURE to stimulate critical thinking on A.B.A., GOAL III. ELIMINATE BIAS AND ENHANCE DIVERSITY, available at http://www.americanbar.org/content/dam/aba/global/ABA_Diversity_Plan_May_2011.pdf. A.B.A. LAW STUDENT DIVISION, LT. GOVERNOR HANDBOOK 1 (2009) (stating specific organizational objectives to "[p]romote full and equal participation in the association, our profession, and the justice system" and "[e]liminate bias in the legal profession and the justice system").

respective decision-making responsibilities as judicial clerks with those of judicial externs by highlighting features of each position. The guest speakers also discuss the judge's role as a decision maker in the legal system. The most obvious areas of skill development during week 13 are the enhancement of critical thinking and communication skills that students demonstrate by posing critical questions to judicial clerks presenting frequent ethical dilemmas before decision makers. Week 13 contains realistic scenarios exploring duties of confidentiality and disclosure of conflicts of interest which provide material for developing more substantive questions.

The final class consists of a re-cap of coursework completed in the semester.¹⁶⁹ This class reviews competencies that students demonstrate in the following domains: written and oral communication skills (e.g., intake/interview form, e-memo/client letter, reflection papers, journal entries, settlement proposal/agreement, and public speaking); legal analysis and reasoning skills (e.g., client case file notes, law office documents; critical thinking questions, legal problem-solving, and strategic conflict resolution); preparation, planning, and execution (goals memorandum and reflection papers); and, finally, interpersonal skills (active listening, team building, and classroom leadership).¹⁷⁰ Accordingly, students will deliver oral presentations based on a final reflection paper, which directs their attention towards planning and preparing for a traditional externship and the formation of their own professional identity in the process of becoming a lawyer. Students will discuss how the course will impact their pursuit of other experiential courses or how the coursework will affect the ongoing development of their professional identity.

V. CONCLUSION

There is a general consensus that legal education stands in dire need of reform;¹⁷¹ yet, there is little agreement concerning the best steps to ameliorate its current ailments. Disapproval of legal education ranges from the very frivolous to the extremely serious. Notwithstanding the spectrum of complaints against both educators and administrators,¹⁷² the calls for reform draw significant attention to shortfalls in the core task of law schools. Curricular reform is, therefore, crucial for law schools to remain

169. In-House Clinical Externship course proposal is based on a 14-week semester.

170. Students submit a final paper on the topics such as *My Path to a Future Externship* or *Assuming a Professional Identity as a Lawyer* while they are also required to complete the on-line diagnostic tool, *EXTERN'S KNOWLEDGE, SKILLS AND VALUES INVENTORY* (POST-TEST).

171. See TAMANAHA, *supra* note 17 (offering comprehensive commentary on conditions in legal education).

172. See Trachtenberg, *supra* note 61.

relevant, receptive, and responsive to the multiplicity of stakeholders contending for control of legal education.¹⁷³ While challenges to offering experiential courses to at-risk and underperforming students are formidable, the peril in leaving vulnerable law students behind is far greater. First, fiscal-minded opponents to endeavors which synergize traditional academic support pedagogy with the experiential course framework may contend that client-based learning is, in fact, the primary cause of escalating expenditures within legal education today.¹⁷⁴ Moreover, law schools have fewer resources to devote to “test courses” as programs of instruction contract under ever increasing fiscal restraints resulting from low admission.¹⁷⁵ Although experiential courses present a labor-intensive and, thus, more costly approach to educating future lawyers than doctrinal courses, the price of simulation courses pales in comparison to operational expenses associated with law school clinics.¹⁷⁶ Thus, the In-House Clinical Externship is a more prudent measure for law schools facing the prospect of expanding experiential education under revised accreditation standards.¹⁷⁷ Further, it behooves law schools to offset present practices in discriminatory pricing¹⁷⁸ which adversely impacts vulnerable students by offering equal educational opportunities now available to higher performing students who pay less tuition for the same degree.¹⁷⁹

Next, challengers of non-conventional classroom instruction for vulnerable law students may posit that the academic energy of these students, and law school faculty, would be best directed exclusively toward mastering fundamental skills in legal study which will serve students in the ultimate ends of bar passage and service to clients.¹⁸⁰ These challenges fail to note trends toward practice readiness among state bar examiners, who now include the MPT to test practical lawyering skills of law school

173. While most commentary on the lack of preparedness among law students derives from the practicing bar, proponents of curricular reform exist within the walls of many law schools. *See* Steinzor & Hornstein, *supra* note 10, at 484 (supporting the premise that “continuous curricular reform is a necessity and not just an option” by offering an inclusive model of change to appease competing interests within the academy).

174. Borden & Rhee, *supra* note 32, at 8-9 (observing that any realistic approach to curricular reform requires thorough vetting of fiscal implications on a macro level as reforms impact institutions and on a micro level as changes affect students).

175. *See* Tacha, *supra* note 9, at 365-66 (indicating limited funding that curtails specialty courses).

176. Barry et al., *supra* note 13, at 22 (citing “higher student/faculty ratios” associated with externships).

177. *See supra* text accompanying notes 55-59.

178. *See* TASK FORCE REPORT, *supra* note 52, at 11 (explaining “differential pricing” in legal education).

179. Vulnerable law students pay more tuition than high achievers. *See supra* text accompanying note 71.

180. Barry et al., *supra* note 13, at 249-50 (noting elevation of doctrinal over experiential courses as the best bar preparation based on reluctance of law schools to undertake “curricular redesign and assessment”).

graduates,¹⁸¹ and employers demanding new hires to possess a complement of practice-based skills. Hence, the In-House Clinical Externship as a simulation course takes into account both bar preparation and expectations of legal employers by assigning skills exercises that familiarize students with the MPT and introducing them to prospective employers.¹⁸²

Finally, critics may cast a disapproving eye on unsophisticated student learning assessment tools associated with a pass/fail course that only offers instructor feedback, peer review, and self-evaluation as means to gauge the progress of vulnerable students.¹⁸³

It is axiomatic that the ability to self-evaluate is essential for those entering the profession and tailoring student learning assessment to meet diverse institutional needs is a given.¹⁸⁴ The In-House Clinical Externship signifies a point of departure, rather than a destination, on a journey to prepare practice-ready graduates that must leave no at-risk law student behind.

181. For an overview of the MPT, see <http://www.ncbex.org/about-ncbe-exams/mpt/overview-of-the-mpt/>.

182. See *supra* Part IV.D. Delivery of Instruction.

183. See Mencer, *supra* note 7, at 63 (advocating methods of assessment in academic support programs).

184. *Id.* at 57, 66.