

What ABA Student Well-Being Standards Mean For Law Firms

By **David Jaffe** (March 15, 2022)

In February, the American Bar Association adopted language^[1] that for the first time places student well-being into the ABA Standards and Rules of Procedure for Approval of Law Schools.

This watershed addition occurs not once, but twice in the current adoption, both as part of professional formation and again with respect to student well-being resources.

Specifically, ABA Standard 303 — the curriculum standard — adds the development of a professional identity, which includes, inter alia, an involvement of "well-being practices considered foundational to successful legal practice." Standard 508 — student support services — in turn calls for information on law student well-being resources.



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Notwithstanding the ABA standards adoptions, it is important first to consider what the ABA chose not to address.

First, to the dismay of many advocates, the Council of the Section of Legal Education and Admissions to the Bar set aside requests that substance use and mental health education become a mandatory component of every law school curriculum.

Inclusion of this broader mandate would have ensured into the foreseeable future a more profound understanding for every law student about the personal challenges law students may face as they prepare for the legal profession. Adoption of substance use and mental health education also would have signaled from the very top that the ABA acknowledges and supports the challenges faced by law students and lawyers around these issues.

Second, the ABA House of Delegates' adoption of changes to Standard 508 deliberately leads with "information on" law student well-being resources, and not a mandate that resources themselves be provided. A casual reader might mistakenly infer that these are one and the same: Provision of information on law student well-being resources requires only that students be directed to services, which may not even be tied to the university or to the law school.

While the referred-to resources are no doubt quality services, the ABA missed an opportunity to underscore the ongoing, critical need for these resources by imposing on a law school or its university an obligation to provide them directly.

Law school deans must be brave in their allocation of resources — that among the ongoing, competing interests, they must demonstrate practically and symbolically that student well-being matters, and that services ranging from counseling to support for educational fora to weekly activities are an imperative for each institution.

While there are thus clear, additional steps that the ABA should be supporting around law student well-being, these modifications are a solid addition to a fairly nascent law student well-being movement that continues to gain traction and reflect progress in law schools, as is the case in the legal profession.

Tracing its roots to a 2017 National Task Force on Lawyer Well-Being report[2] — which I co-authored, and which followed a national survey of law student well-being[3] — and a 2016 report on legal professionals' substance use,[4] the movement has brought much-needed change to such an extent that attorneys who graduated years ago might not recognize their law school alma mater when it comes to areas of well-being.

Law firms and legal employers would be mindful to consider several of the following steps law schools are taking, and begin or continue to mirror them in their own practice.

Largely gone are the days that law schools ignore well-being issues during orientation out of fear that students will be scared off to another school.

Whether providing a counselor to explain how stressors arise and the need for assistance when small, acceptable doses of anxiety give way to larger bouts, or simply discussing the topic — i.e., trying a live word cloud so students can express and share their early fears and anxieties — law schools are taking steps to reduce stigma and students see from the start that their school cares about creating a supportive environment.

Law schools that are not already doing so should invite a bar examiner from their primary jurisdiction to present alongside a lawyer assistance program, director or volunteer to share that the overwhelming majority of applicants will be admitted to the bar notwithstanding — or better, owing to — having received help while in law school, a truth that is overshadowed by student perception.

In the national survey of law student well-being mentioned above, which was conducted in 2014 and reported two years later,[5] and in a forthcoming updated survey, law student respondents indicate that keeping their problems hidden will enhance their prospects of getting admitted to the bar.

Much as law schools should continue to emphasize substance use and mental health education and awareness in professional responsibility courses and elsewhere, a legal employer's support in this area should begin with the onboarding process.

Law firms should communicate clearly during their associate orientation that seeking support from an employee assistance program is encouraged as a sign of strength, without judgement and without stigma. Lawyer assistance programs should also be referenced as a viable alternative, especially when at this early stage associate may be wary of the confidential nature of employee assistance programs.

Further, continuing legal education requirements or expectations should include a minimum substance use and mental health component and should be recommended at least every other year, so attorneys are up to date on new trends, best practices and resources to cope with challenges that arise.

Law schools are doing a better job of minimizing alcohol at events, largely in response to the well-being movement, but also perhaps as a cost-cutting measure. Regardless of the rationale for doing so, the reduction in provision of alcohol sends the message that this vice adversely affects law students and future lawyers, while simultaneously supporting those individuals already in recovery or working to get there.

Legal employers should follow this trend and adjust this aspect of the traditional law firm social culture by offering events that deemphasize or remove alcohol altogether, perhaps hosting a mocktail reception instead, with quality ingredients and printed recipes for

attendees to replicate at home.

Law firms would do well to go one better and switch to more family-friendly events that reflect the firm's commitment to work-life balance.[6] If alcohol has to be retained, a legal employer should provide quality, nonalcoholic alternatives in a discreet way, allowing individuals in recovery to equally enjoy the event without standing out.

Law schools and their university counterparts continue to struggle to allocate resources for well-being. In particular, counseling services, while improving in most instances, often limit the number of one-on-one sessions — usually only six to eight sessions — citing limited resources. The current demand for counselors in the COVID-19 era has also allowed these professionals to gravitate to better-paid practices in the private sector.

Any individual seeking support will sustain that they are likely just getting started at that stage and getting through some of the deeper issues will call for additional time. Resource-heavy law firms generally have less of a concern in the provision of counseling services, but should ensure that their employees are not limited when seeking this support.

Law school well-being programming has moved from being virtually nonexistent to weekly offerings in many instances. Mindfulness meditation and yoga sessions, therapy dogs, outreach in common areas that offer assistance and share literature amid giveaways, and other events often prompted by student surveys permeate many a hallway. Law students, seemingly more self-aware and gradually more comfortable about opening up, ask for ongoing change and improvement.

Law firms can take a cue here — and many have done so — by hiring wellness professionals who develop programming not just around mental health but also on well-being. Important here is an emphasis not just on doing but also on repeating: Both for law schools and for legal employers, the practical approach of programming is as important as its symbolic effect — that the institution cares enough to think about and implement these events.

A one-and-done approach to programming looks like window dressing, whereas repeated events not only send the positive message but have the practical effect of allowing those taking advantage to gravitate to and adopt more positive and healthy attitudes.

Legal employers should be proactive in promoting well-being now and not wait for the next generation of applicants. Future attorneys will surely seek these supports, and may even reject the prospective employer that has not "gotten there" on well-being initiatives.

Law students should not have to fear these questions in interviews, wondering if a prospective employer will look askance and quietly question if the applicant has an issue, versus the individual merely trying to assess the culture of the firm. Concerns about continuing to attract the best and brightest are alleviated in part by taking a deliberate approach to well-being and by proudly and openly advertising the steps being taken.

While the current ABA adoptions should be recognized for their significance, we hope that they are the first in a series of incremental steps that will continue to strengthen today's law student and tomorrow's attorney.

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[1] <https://www.americanbar.org/content/dam/aba/administrative/news/2022/02/midyear-hod-resolutions/300.pdf>.

[2] The Path to Lawyer Well-Being: Practical Recommendations for Positive Change, <https://lawyerwellbeing.net/the-report/>.

[3] Organ, et al., "Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns", 66 *Journal of Legal Education* 116 (2016) ("Suffering in Silence"), <https://jle.aals.org/home/vol66/iss1/13/>; See also Jaffe, Bender, Organ, "It Is Okay to Not Be Okay": The 2021 Survey of Law Student Well-Being" (University of Louisville Brandeis School of Law, forthcoming).

[4] "The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys", vol. 10 *Journal of Addiction Medicine* 46 (2016), https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/the_prevalence_of_substance_use_and_other_mental.8.aspx.

[5] *Supra*, footnote 3 at 142 (indicating that 49% of respondents believed keeping a drug or alcohol problem hidden would increase their chances of getting admitted to the bar, and 43% of respondents felt the same regarding a mental health problem). While the number regarding substance use remained roughly the same in the 2021 Updated Survey, the percentage regarding mental health dropped to 40%, a potential positive sign).

[6] The author was struck by a story while moderating a law firm roundtable on challenges around instituting well-being, wherein a senior partner shared her disbelief with an associate working a case with her who dared pass on the law firm's happy hour in the name of well-being to attend his daughter's soccer game. Anecdotes like these reflect a younger generation being more self-aware of the importance of work-life balance, and its clash with at least some elements of an older generation maintaining "I did it; you should be doing it as well" approach and attitude to law firm life and culture.