

Learning Outcomes that Law Schools Have Adopted: Seizing the Opportunity to Help Students, Legal Employers, Clients, and Law Schools

Neil Hamilton* and Jerome Organ**

I. Introduction

Over the next several years, legal education's movement toward NextGen Bar capacities and skills, and the associated learning outcomes and assessment efforts, offer an excellent opportunity for proactive law schools to realize substantial benefits for their students and the schools themselves. Proactive law schools can:

1. Continually seek data on the full range of competencies that clients, legal employers, and the legal system need, including the NextGen Bar capacities and skills, and revise learning outcomes to meet these needs;
2. Be transparent with students about the full range of needed competencies, the stages of development for each competency, the requirements with respect to each competency for graduation, and the curricular and noncurricular experiences that will foster growth of each competency;
3. Help each student to grow to later stages of development on the competencies where each student's strengths best meet the needs of clients, legal employers, and the legal system; and
4. Provide assessment evidence that clients, legal employers, and the public will value.

Students and graduates with strong evidence of later-stage development of competencies in addition to the standard cognitive "thinking like a lawyer" skills will have higher probabilities of good post-graduation outcomes that will help the students, clients, legal employers, the law schools, and the legal system. Law schools that are proactive early leaders will be rewarded.

***Neil Hamilton** is the Thomas and Patricia Holloran Professor of Law and the Co-Director of the Holloran Center for Ethical Leadership in the Professions at the University of St. Thomas School of Law (MN).

****Jerome Organ** is the Earl Bakken Professor of Law and the Co-Director of the Holloran Center for Ethical Leadership in the Professions at the University of St. Thomas School of Law (MN).

Section II below explains the opportunities presented to proactive law schools by the American Bar Association's revision of the accreditation standards to emphasize competency-based education. Section III reports on a survey of the learning outcomes (one of the foundational steps in competency-based education) adopted by ABA-accredited law schools as of November 2023. These data indicate how law faculties understand the competencies needed to serve clients, legal employers, and the legal system. The data also indicate substantial opportunities for law schools with respect to the NextGen Bar capacities and skills. Section IV provides a step-by-step model on how to seize the opportunity to implement competency-based education using the competency of ownership over the student's own professional development/self-directed learning as the model.

II. The Opportunity Presented by the Change to Outcomes-Based Education and Competency-Based Education

In 2014, the American Bar Association Section on Legal Education and Admissions to the Bar revised its accreditation standards “to require law schools to develop programmatic learning outcomes as well as methods to assess those outcomes The assessment standards stem from a broader movement in higher education from a traditional, input-based prescriptive system of accreditation (focusing on budget, facilities, academic metrics of incoming students, and the number of faculty) to an outcome-based system of accreditation.”¹

An outcomes-based approach would require law schools to (1) identify knowledge, skills and professional attributes that graduates should possess, (2) design curriculum based on such educational outcomes, (3) communicate these outcomes to students, (4) provide feedback on student progress toward achieving these outcomes, and (5) measure student proficiency in terms of the outcomes.²

Competency-based education (CBE) is a type of outcomes-based education that: (1) puts more emphasis on the competencies sought by employers and

1 *From the Editors*, 67 J. LEGAL EDUC. 373 (2018). “Learning outcomes” are defined as “. . . clear and concise statements of knowledge that the students are expected to acquire, skills students are expected to develop, and values that they are expected to understand and integrate into their professional lives. The outcomes should identify the desired knowledge, skills, and values that a school believes that its students should master.” *Managing Director's Guidance Memo, Standards 301, 302, 314, and 315*, AMERICAN BAR ASSOCIATION 4 (2015), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/governancedocuments/2015_learning_outcomes_guidance.authcheckdam.pdf. For an excellent analysis of the history of the 2014 accreditation changes, see Steven C. Bahls, *Adoption of Student Learning Outcomes: Lessons for Systemic Change in Legal Education*, 67 J. LEGAL EDUC. 376 (2018). For an excellent analysis of assessment challenges that law schools face, see Judith Welch Wegner, *Law School Assessment in the Context of Accreditation: Critical Questions, What We Know and Don't Know and What We Should Do Next*, 67 J. LEGAL EDUC. 412, 450 (2018).

2 Carolyn Grose, *Outcomes-Based Education One Course at a Time: My Experiment with Estates and Trusts*, 62 J. LEGAL EDUC. 336, 337 (2012).

the ultimate people to be served (e.g., customers, clients, patients, students); and (2) tends to emphasize more self-paced learning.³ Medical education began the journey to an outcomes-based education system in the 1990s using competency-based frameworks.⁴ “In 1999, the Accreditation Council for Graduate Medical Education (ACGME), together with the American Board of Medical Specialties (ABMS), approved a framework of six general competencies. . . .”⁵ “The medical education community eventually realized the overemphasis on cognitive skills is insufficient to meet patient and population needs [T]he medical education enterprise must start with the health and healthcare needs of the systems and population served.”⁶ In essence, the medical educators realized that their previous approach—amounting to “if you’re really smart cognitively you’ll be fine” in serving patients and the healthcare system—failed to address many competencies vital to clinical practice.⁷ Appendix A has a fuller explanation of the differences between a time-based approach to education and competency-based education.

Learning from medical education’s fifteen years of additional experience with competency-based education, we focus this essay on CBE as the most promising opportunity for proactive law schools to benefit students and the law school. The larger legal employers are also moving to competency-based assessment of their lawyers.⁸ CBE requires law schools to engage in continuing inquiry and evaluation of whether a school’s learning outcomes reflect the most current understandings of the competencies that clients, legal employers, and the legal system want and need. CBE is an opportunity to build bridges among the main stakeholders in legal education—students, faculty and staff, clients and legal employers—so each student understands the competencies that legal employers and clients want and can effectively use the curricular and noncurricular experiences of law school to develop to a later stage on those competencies that reflect the student’s strengths to meet employer and client needs.

For example, the National Conference of Bar Examiners is in the process of revising the bar exam to the NextGen Bar Exam, with a focus not only on

3 LINDSAY DAUGHERTY ET AL., COMPETENCY-BASED EDUCATION PROGRAMS IN TEXAS: AN INNOVATIVE APPROACH TO HIGHER EDUCATION 10 (2015).

4 Dr. Eric Holmboe & Dr. Robert Englander, *What Can the Legal Profession Learn from the Medical Profession About the Next Steps?*, 14 UNIV. ST. THOMAS L.J. 345, 346 (2018).

5 *Id.*

6 *Id.* at 347.

7 *Id.*

8 REPORT ON 2020 SURVEY OF LAW FIRM COMPETENCY EXPECTATIONS FOR ASSOCIATE DEVELOPMENT 5 (NALP, May 2021), https://www.nalp.org/uploads/NALP_Associate_Competencies_Report_May_2021.pdf; see NEIL W. HAMILTON & LOUIS D. BILIONIS, LAW STUDENT PROFESSIONAL DEVELOPMENT AND FORMATION 7-9, 17-27 (2022) (Appendix A summarizes eleven empirical studies defining the capacities and skills that legal employers and clients need in changing legal markets.).

substantive knowledge in a number of subject areas, but on seven foundational skills: legal research, legal writing, issue spotting and analysis, investigation and evaluation, client counseling and advising, negotiation and dispute resolution, and client relationship and management.⁹ As will be shown below in Section III, not all of these skills have found their way into law school learning outcomes at a wide array of law schools.

What are the competencies that law schools are including in their learning outcomes? Section III provides a survey of all competencies included in law schools' learning outcomes posted as of November 2023.

III. Results of November 2023 Survey of All ABA-Accredited Law Schools' Websites

A. Data on Learning Outcomes at 185 Law Schools

ABA Standard 301 requires that “[a] law school shall establish and publish learning outcomes”¹⁰ The June 2015 Managing Director’s Guidance Memo on Standards 301, 302, 314, and 315 provides guidance that “[l]earning outcomes for the school’s overall program of legal education must appear in those places on its website and its publications where the law school describes its mission and curriculum.”¹¹ The Managing Director’s Guidance Memo also provides: “Those outcomes should be in place by the end of the 2017-18 year. Schools must have adopted an assessment plan and be able to demonstrate that they are implementing it by the end of the 2018-19 academic year.”¹²

ABA Standard 302 requires that “[a] law school shall establish learning outcomes that shall at a minimum include competency in the following:

- a. Knowledge and understanding of substantive and procedural law;
- b. Legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context;
- c. Exercise of proper professional and ethical responsibilities to clients and the legal system; and
- d. Other professional skills needed for competent and ethical participation as a member of the legal profession.”¹³

9 Next Gen Bar Exam, <https://nextgenbarexam.ncbex.org/>.

10 2020-2021 Standards and Rules of Procedure for Approval of Law Schools, AMERICAN BAR ASSOCIATION, https://www.americanbar.org/groups/legal_education/resources/standards/.

11 *Managing Director’s Guidance Memo*, *supra* note 1, at 4.

12 *Id.* at 6.

13 *Id.* at Standard 302. Note that Interpretation 302-1 provides that for purposes of Standard 302(d), “other professional skills are determined by the law school and may include skills such as interviewing, counseling, negotiation, fact development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency, and self-evaluation.” *Id.* at 2.

As of November 2023, 185 out of the 192 ABA-accredited law schools had posted learning outcomes on their websites.¹⁴ Seven law schools had not yet made their learning outcomes publicly available as of November 2023. The Holloran Center for Ethical Leadership in the Professions at the University of St. Thomas School of Law has been tracking law school learning outcomes and maintains a searchable Learning Outcomes Database with all publicly available learning outcomes.¹⁵

After analyzing the posted learning outcomes for each school, we have divided the 185 law schools into two groups. The first group consists of the sixteen (16) law schools adopting learning outcomes that essentially use the same language as ABA Standard 302.¹⁶ We call this group the “minimum Standard 302 law school group.”¹⁷ The second group consists of the 169 law schools that have adopted learning outcomes specifically identifying competencies that further define Standard 302(a) (knowledge and understanding of substantive and procedural law), Standard 302(b) (legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context), Standard 302(c) (“the exercise of proper professional and ethical responsibilities to clients and the legal system”) and Standard 302(d) (“other professional skills needed for competent and ethical participation as a member of the legal profession”). We call these schools the “leadership beyond the

14 We did not include the following law schools: the JAG School, the Puerto Rican schools, and schools that have closed. The seven law schools that did not have publicly available learning outcomes on their law school webpage as of November 2023 were: Columbia University, University of the District of Columbia, Lewis and Clark University, Louisiana State University, College of William and Mary, University of Wyoming and Yeshiva University (Cardozo). Holloran Center Learning Outcomes Database, <https://law.stthomas.edu/about/centers-institutes/holloran-center/learning-outcomes-database/> (last visited on July 3, 2024).

15 *Id.*

16 Note that Standard 302(b) includes “legal analysis and reasoning, legal research, problem-solving, and written and oral communication in the legal context.” Some law schools have defined “legal analysis and reasoning” to include the abilities to analogize and synthesize, spot issues, and provide policy analysis. Some law schools have defined “written and oral communication in the legal context” to include citation/format compliance, identification of authority, precise language, persuasion/known audience, advocacy, and public speaking and argument. We think that these further specific elements are included in the general concepts of “legal analysis and reasoning” and “written and oral communication in the legal context,” so a law school adopting these specific elements is not meaningfully going beyond the Standard 302(b) minimum.

17 The law schools currently in this minimum Standard 302 law school group may just be adopting the 302 language as a placeholder to meet ABA requirements. If so, the law school may intend to supplement the basic language after seeing what other law schools are doing with respect to these requirements.

minimum Standard 302 group.” Both the minimum Standard 302 law school group and the leadership beyond the minimum Standard 302 group will need to proceed through the steps of competency-based education outlined in Section IV of this article, but the leadership beyond the minimum Standard 302 group will be experimenting with a number of competencies that have historically received less curricular attention than the traditional cognitive skills set forth in Standard 302(a) and (b).

Table 1: Technical Skills and Capacities Adopted by the Leadership Beyond the Minimum Standard 302 Group of Law Schools as of November 2023

Most common learning outcomes law schools are adopting on technical skills and capacities beyond the Standard 302 (a)-(d) minimum requirements (including all outcomes adopted by ten or more schools) (presented in descending order of frequency)¹⁸

Skill or capacity	Number of Law Schools and Percentage of Law Schools with Learning Outcomes (185)
Issue-spotting (NextGen)	70 (38%)
Understanding legal policy and trends	58 (31%)
Investigate Facts (NextGen)	57 (31%)
Document drafting	54 (29%)
Time Management/planning	48 (26%)
Understanding the legal system	48 (26%)
Analogize/synthesize/distinguish (NextGen)	44 (24%)
Public speaking/oral argument	44 (24%)
Identify authority	44 (24%)
Precise language	38 (21%)
Advocacy	34 (18%)
On-line research/technology	28 (15%)
Policy arguments	26 (14%)
Knowledge of a specialty area	24 (13%)
Citation format	15 (8%)

18 See Learning Outcomes Database *supra* note 14.

Table 2: Relational and Character Competencies Adopted by the Leadership Beyond the Minimum Standard 302 Group of Law Schools as of November 2023

Most common learning outcomes that law schools are adopting on relational and virtue-oriented skills and capacities beyond the Standard 302 (b)-(d) minimum requirements (including all outcomes adopted by ten or more schools)(descending order of frequency)

Skill or capacity	Number of Law Schools and Percentage of Law Schools with Learning Outcomes (185)
Persuasion/knowing audience	74 (40%)
Teamwork/collaboration	67 (36%)
Cultural competence ¹⁹	67 (36%)
Pro bono	64 (35%)
Professionalism ²⁰	62 (34%)
Self-directedness ²¹	54 (29%)
Negotiation (NextGen)	42 (23%)
Reflection/self-evaluation	41 (22%)
Counseling (NextGen)	40 (22%)
Judgment	37 (20%)
Improving the profession	36 (19%)
Respect for others	35 (19%)
Client Interviewing (NextGen)	34 (18%)
Client-centered (NextGen)	33 (18%)
Active listening	31 (17%)
Integrity	26 (14%)

¹⁹ We included in cultural competence all learning outcomes that mentioned the capacities and skills of working with others of diverse backgrounds.

²⁰ We included in professionalism all learning outcomes concerning the core values and guiding principles of the profession beyond the minimum of learning the law of lawyering.

²¹ We included in self-directedness all learning outcomes concerning ownership of a student's own professional development. Self-directedness includes the sub-competencies of seeking feedback and reflection on experiences and feedback. If schools with learning outcomes on feedback and reflection were included in self-directedness, the total would be 64 schools (35%).

Skill or capacity	Number of Law Schools and Percentage of Law Schools with Learning Outcomes (185)
Mediation/conflict resolution (NextGen)	26 (14%)
Leadership	17 (9%)
Diligence	15 (8%)
Self-care	11 (6%)
Actively Seeking Feedback	10 (5%)

As noted earlier, CBE requires law schools to engage in continuing inquiry and evaluation of whether a school's learning outcomes reflect the most current understandings of the competencies that clients, legal employers, and the legal system want and need.

If we focus on the NextGen Bar Exam's seven foundational skills, all law schools are addressing the first three: legal writing, legal research and issue spotting and analysis, because they are required by ABA Standard 302(a) and (b).²² With respect to the other four foundational skills -- investigation and evaluation, client counseling and advising, negotiation and dispute resolution, and client relationship and management -- there is a serious gap between what the NCBE is expecting of all law school graduates (and what other empirical studies also say are essential competencies for lawyers) and what law schools have adopted in terms of learning outcomes. As shown in Tables 1 and 2, only 31% of law schools have a learning outcome on investigating facts, while less than 25% have a learning outcome on negotiation/dispute resolution or counseling, and only 18% have a learning outcome on client interviewing or client-centered. Few law schools have embraced strong client service orientation learning outcomes that specifically foster exceptional understanding of client context/business, superior client focus, and responsiveness to client, competencies employers and clients increasingly expect.²³ This learning outcomes gap provides an opportunity for entrepreneurial law schools to benefit students, employers, and clients.

22 Notably, however, as shown in Table 1, issue-spotting and analogizing/distinguishing/synthesizing are only explicitly mentioned in the learning outcomes of 70 law schools and 44 law schools respectively, even though issue-spotting and analysis are the bread and butter of most exams in doctrinal courses in most law schools.

23 The empirical studies cited *supra* in note 8 analyze empirical data from clients and employers. See Neil Hamilton, *The Gap Between the Foundational Competencies Clients and Legal Employers Need and the Learning Outcomes Law Schools Are Adopting*, 89 UMKC L. REV. 559-82 (2021).

What are the next steps for a faculty and staff to implement the learning outcomes listed in Tables 1 and 2 above? Section IV provides a step-by-step model on how to implement these learning outcomes.

IV. The Next Steps in Seizing the Opportunity to Use Learning Outcomes to Help Students, Legal Employers, Clients, and Law Schools

A. The Initial Step Is to Make Clear the Benefits to Students, Legal Employers, Clients and Law Schools from Each Student's Further Development Toward Later Stages of Each Learning Outcome

Judith Welch Wegner points out: “Simply advising faculty and staff members of new accreditation requirements is unlikely to motivate anyone. It is natural for those already fully engaged with existing duties to view new procedural obligations as an extraneous and ill-considered burden rather than an opportunity.”²⁴ The implementation process must emphasize benefits to student learning and the law school, not just ABA requirements.²⁵ Given the reality of available faculty and staff time and energy, the most effective initial step could be a pilot project on the learning outcome where faculty and staff could see the clearest benefit to the students, themselves, and the law school.²⁶

This section, for the sake of brevity, focuses on the benefits of one important learning outcome as a model for the steps a law school needs to take to implement CBE for any of the twenty learning outcomes listed above in Table 2. What are the benefits of each student’s growth to later stages of development on ownership over continuous professional development/self-directed learning?

A stage-development model is very helpful to demonstrate the benefits to students, faculty, and staff from each student’s growth to a later stage of development at ownership over the student’s own continuous professional development. Kelly Terry, Gerald Hess, Emily Grant & Sandra Simpson in their book, *Assessment of Teaching and Learning: A Comprehensive Guidebook for Law Schools*, note that a stage-development model is a criterion-referenced standard that measures competency by comparing student performance against a set of absolute criteria established by the faculty.²⁷ The authors observe “The performance expectations typically are set forth in a rubric which is a set of

24 Judith Welch Wegner, *Law School Assessment in the Context of Accreditation: Critical Questions, What We Know and Don't Know and What We Should Do Next*, 67 J. LEGAL EDUC. 412, 450 (2018); Wegner, *supra* note 1, at 450.

25 Susan Hanley Duncan, *They're Back! The New Accreditation Standards Coming to a Law School Near You—A 2018 Update, Guide to Compliance, and Dean's Role in Implementing*, 67 J. LEGAL EDUC. 462, 465 (2018).

26 *Id.* at 470; Wegner, *supra* note 1, at 456-57.

27 KELLY TERRY ET AL., *ASSESSMENT OF TEACHING AND LEARNING: A COMPREHENSIVE GUIDEBOOK FOR LAW SCHOOLS*, 28 (2021). This is an excellent resource on assessment.

detailed written criteria that describe what students should learn and how they will be evaluated.”²⁸

Table 3 below provides a stage-development model for the Self-Directedness competency.²⁹

Table 3: Self-Directedness Milestone

SUBCOMPETENCIES	NOVICE LEARNER	INTERMEDIATE LEARNER	COMPETENT LEARNER	EXCEPTIONAL LEARNER
1. Self-Assesses and identifies strengths and areas for growth.	Rarely demonstrates understanding of full range of lawyering competencies and diagnoses learning needs.	Sometimes demonstrates understanding of full range of lawyering competencies and diagnoses learning needs.	Often demonstrates understanding of full range of lawyering competencies and diagnoses learning needs.	Consistently demonstrates understanding of full range of lawyering competencies and diagnoses learning needs.
2. Articulates goals and follows a plan.	Rarely creates and implements a written professional development plan reflecting goals that are specific, measurable, achievable, relevant, and time-bound.	Sometimes creates and implements a written professional development plan reflecting goals that are specific, measurable, achievable, relevant, and time-bound.	Often creates and implements a written professional development plan reflecting goals that are specific, measurable, achievable, relevant, and time-bound.	Consistently creates and implements a written professional development plan reflecting goals that are specific, measurable, achievable, relevant, and time-bound.

²⁸ *Id.* at 29.

²⁹ The Holloran Center Working Group on Self-Directed Learning created this Milestone. The members were Kendall Karew (chair), Rupa Bhandari, Susan Fine, Neil Hamilton, and Benjamin Madison. This and other Holloran Competency Milestones can be found at the Holloran Competency Milestones webpage, <https://law.stthomas.edu/about/centers-institutes/holloran-center/competency-milestones/>.

SUBCOMPETENCIES	NOVICE LEARNER	INTERMEDIATE LEARNER	COMPETENT LEARNER	EXCEPTIONAL LEARNER
3. Acquires and learns from experience.	Rarely seeks experiences or seeks and incorporates feedback received during the experiences.	Sometimes seeks experiences or seeks and incorporates feedback received during the experiences.	Often seeks experiences or seeks and incorporates feedback received during the experiences.	Consistently seeks experiences or seeks and incorporates feedback received during the experiences.
4. Reflects and applies lessons learned.	Rarely uses reflective practice to reflect on performance, contemplate lessons learned, identify how to apply lessons learned to improve in the future, and applies those lessons.	Sometimes uses reflective practice to reflect on performance, contemplate lessons learned, identify how to apply lessons learned to improve in the future, and applies those lessons.	Often uses reflective practice to reflect on performance, contemplate lessons learned, identify how to apply lessons learned to improve in the future, and applies those lessons.	Consistently uses reflective practice to reflect on performance, contemplate lessons learned, identify how to apply lessons learned to improve in the future, and applies those lessons.

Table 3 makes clear the following benefits:

1. Student growth toward later stages of a commitment to continuous professional development as shown in Table 3 will lead to improved academic performance at all the other competencies the faculty and staff want each student to develop.³⁰ It makes sense that a student who is at later stages of the capacities listed in Table 3 will demonstrate improved academic performance in general, and empirical evidence strongly supports this.³¹ Nilson explains, “Research has amassed overwhelming evidence that self-regulated learning enhances:

³⁰ Susanna Lucieer et al., *Self-regulated learning and academic performance in medical education*, 38 MED. TEACH. 585, 586 (2016)(It has been shown that self-regulated learning is one of the best predictors of academic performance” and “self-regulated learners are more effective learners.”)

³¹ Timothy J. Cleary et al., *Self-regulated learning in medical education*, in OXFORD TEXTBOOK OF MEDICAL EDUCATION 469-70 (Kieran Walsh ed., 2013); Michael Schneider & Franzis Preckel,

- a. student performance and achievement in courses and course units;
 - b. the amount and depth of student thinking;
 - c. students' conscious focus on their learning; and
 - d. the development of reflective and responsible professionalism."³²
2. Growth to later stages of development at the competencies in Table 3 and improved academic performance will benefit particularly those students who are not performing well and are at risk.
 3. The faculty and staff can design a more effective curriculum to foster the characteristics of the students whom faculty and staff most enjoy teaching. Faculty and staff should think about the students whom they most enjoy teaching or helping and list the top five characteristics of those students. Many will include versions of strong initiative, strong work ethic, a drive toward excellence, totally reliable and high-quality work, and proactive ownership of the student's own professional development.³³
 4. A student who grows toward later stages of the competencies in Table 3 should not only improve academic performance but also increase the probability of bar passage and taking proactive ownership over the student's search for meaningful post-graduation employment. There is a correlation between higher academic performance and bar passage,³⁴ and it makes sense that a proactive student who is at a later stage of the competencies listed in Table 3 also will be proactive and effective in the search for post-graduation employment. Legal employers greatly value initiative, ownership, and a proactive commitment to continuous professional development.³⁵
 5. Higher bar passage and meaningful post-graduation employment metrics should translate to higher rankings for law schools³⁶ and increased applications and a lower discount rate.

Variables associated with achievement in higher education: A systematic review of meta-analyses, 143 PSYCHOL. BULLETIN 63 (2017).

- 32 LINDA B. NILSON, CREATING SELF-REGULATED LEARNERS: STRATEGIES TO STRENGTHEN STUDENTS' SELF-AWARENESS AND LEARNING SKILLS 10-11 (2013).
- 33 MICHAEL HUNTER SCHWARTZ ET AL., TEACHING LAW BY DESIGN: ENGAGING STUDENTS FROM THE SYLLABUS TO THE FINAL EXAM 8 (2d ed. 2016).
- 34 LINDA F. WIGHTMAN, LSAC NATIONAL LONGITUDINAL BAR PASSAGE STUDY 37 (1998); Douglas K. Rush & Hisako Matsuo, *Does Law School Curriculum Affect Bar Examination Passage? An Empirical Analysis of Factors Which Were Related to Bar Examination Passage Between 2001 and 2006 at a Midwestern Law School*, 57 J. LEGAL EDUC. 224, 232-33 (2007); Katherine A. Austin et al., *Will I Pass the Bar Exam?: Predicting Student Success Using LSAT Scores and Law School Performance*, 45 HOFSTRA L. REV. 753 (2017).
- 35 NEIL HAMILTON, ROADMAP: THE LAW STUDENT'S GUIDE TO MEANINGFUL EMPLOYMENT 18-34 (2d ed. 2018).
- 36 US News and World Report Law School Rankings adopted a change in methodology for

6. There are also substantial benefits for each student from growth to later stages of Table 3. Survey data indicate that law students' most important goals are bar passage and meaningful post-graduation employment.³⁷ More generally, surveys of 18- to 29-year-olds indicate that what matters most to this age group is "accepting responsibility for yourself and becoming financially independent."³⁸ Students want to become self-sufficient, to stand alone as independent persons.³⁹

B. Steps After the Benefits of a Competency are Clear to Seize the Opportunity to Use Learning Outcomes to Help Students and Clients

Once the benefits of student growth on a selected competency for students, the law school, employers and clients are made clear, the law school is well-situated to take the next steps to seize the opportunity to use learning outcomes to help students and the law school. There are two different sources that help illuminate the next steps: 1) The 2018 Journal of Legal Education's Outcome Assessment Symposium, and 2) medical education's fifteen years of additional experience with CBE.

1. Short Summary of Suggestions on Next Steps in the Winter 2018 JLE Symposium

This is a synthesis of the steps recommended in the eight articles in this JLE Outcome Assessment Symposium.

Step 1. Educate the faculty and staff about the accreditation standards and the benefits of being proactive with respect to competency-based education.

Dean Susan Duncan observes that "[b]ecause most faculty members know very little about the institutional assessment cycle, they need to be educated."⁴⁰ We would add that educating the staff is also very important, since many staff members observe student performance concerning some learning outcomes as much or more than faculty. This education should emphasize the benefits of a proactive approach to CBE.

the 2023-24 rankings with much greater weight being placed on employment outcomes and bar passage. Methodology: 2023 Best Law Schools Rankings (usnews.com); <https://www.usnews.com/education/best-graduate-schools/articles/law-schools-methodology>.

37 Larry O. Natt Gantt II & Benjamin V. Madison III, *Self-Directedness and Professional Formation: Connecting Two Critical Concepts in Legal Education*, 14 UNIV. ST. THOMAS L.J. 498-529 (2018).

38 Neil W. Hamilton, *Professional Formation with Emerging Adult Law Students in the 21-29 Age Group: Engaging Students to Take Ownership of Their Own Professional Development Toward Both Excellence and Meaningful Employment*, 2015 J. PROF. LAWYER 125, 128, 130 (2015).

39 *Id.* at 128-29.

40 Duncan, *supra* note 25, at 463.

Step 2. Create stage-development models or rubrics (like Table 3) for each competency in the learning outcomes.

Andi Curcio explains: “Rubrics for outcome-measures assessment not only identify a competency, they also describe what competent performance looks like, along a continuum of development and in a way that fosters reliability among raters.”⁴¹ Curcio’s article gives examples of the rubrics that Georgia State has developed for its learning-outcome competencies.⁴²

Step 3. Map the curricular and noncurricular engagements to decide where in the curriculum and culture each student can develop and the faculty and staff can assess the competency.

Dean Duncan explains: “Curriculum mapping becomes an important tool to determine where in the curriculum a student will first be introduced to the skill, practice the skill, and reach competency The inventory may also uncover that the skill is only introduced but no opportunities exist in the current curriculum for practice or to show competency.”⁴³ The simplest beginning point is to identify existing curriculum where faculty or staff members are already teaching and assessing the specific competency.⁴⁴ But attention also should be paid to noncurricular engagements where some development of competencies might be taking place, whether that is volunteer opportunities, student organizations, competition teams, or part-time work experiences.

Step 4. Decide on formative and summative assessments that will inform each student about progress to later stages of development for each competency in the learning outcomes.

Formative assessments offer near-term benefits to current students. Dean Duncan notes that “the ongoing nature of formative assessments makes them better-suited to assisting student learning.”⁴⁵ If each student receives formative assessment that fosters growth to later stages of development on a competency like ownership over continuous professional development, the student and the school benefit with better outcomes. Program assessment will particularly

41 Andrea A. Curcio, *A Simple Low-Cost Institutional Learning Outcomes Assessment Process*, 67 J. LEGAL EDUC. 489, 493 (2018).

42 *Id.* at 498–500, 515–30.

43 Duncan, *supra* note 25, at 474.

44 Curcio, *supra* note 41, at 501.

45 Duncan, *supra* note 25, at 478. “However devised, formative assessments should include five key strategies:

1. Clarifying and sharing learning intentions and criteria for success;
2. Engineering effective classroom discussions and learning tasks that elicit evidence of student understanding;
3. Providing feedback that moves learners forward;
4. Activating students as instructional resources for one other; and
5. Activating students as the owners of their own learning.

Id. at 479.

benefit future students as the faculty and staff assess the overall effectiveness of the curriculum and culture and make improvements over future years.

Dean Duncan emphasizes that “The assessment literature suggests using multiple methods to assess student learning outcomes. Dr. Walvoord suggests using one direct method of assessment and one indirect method for each learning outcome.”⁴⁶ “Indirect forms of assessment measure students’ opinions on their learning; direct forms measure performance.”⁴⁷

Step 5. Decide on evaluation of the entire program.

Dean Duncan notes: “The accreditors want evidence that programs continue to be refined and revised based on an analysis of the assessment results.”⁴⁸ Bahls observes: “Perhaps the most significant requirement is found in Standard 315, which provides that law schools conduct ongoing evaluations of the law school’s program of legal education, learning outcomes, and assessment methods Because of these standards, curricular review at law schools can no longer be an afterthought.”⁴⁹

The interpretation of Standard 315 offers examples of methods that may be used to measure the degree to which students have attained competency in the school’s student learning outcomes. These include:

- a. review of the records the law school maintains to measure individual student achievement pursuant to Standard 314;
- b. evaluation of student learning portfolios;
- c. student evaluation of the sufficiency of their education;
- d. student performance in capstone courses or other courses that appropriately assess a variety of skills and knowledge;
- e. bar exam passage rates;
- f. placement rates;
- g. surveys of attorneys, judges, and alumni; and
- h. assessment of student performance by judges, attorneys, or law professors from other schools. The methods used to measure the degree of student achievement of learning outcomes are likely to differ from school to school, and law schools are not required by this standard to use any particular methods.⁵⁰
- i. A tool like the Law School Survey of Student Engagement⁵¹ also can

⁴⁶ *Id.* at 477.

⁴⁷ *Id.* at 481.

⁴⁸ *Id.* at 486.

⁴⁹ Bahls, *supra* note 1, at 376, 408–09.

⁵⁰ ABA Standard 315, Interpretation 315-1.

⁵¹ LSSSE, <https://lssse.indiana.edu/>.

provide some important information regarding how a law school's students perceive their educational experience relative to peers at other law schools. In addition, regular participation in the Law School Survey of Student Engagement can provide longitudinal insights regarding whether new initiatives are resulting in changes in the student experience.

Georgia State College of Law decided to focus on program assessment first.

To help create faculty buy-in, or at least minimize resistance, [Georgia State College of Law] wanted to cause as little initial disruption of faculty pedagogy and assessment processes as possible and minimize the amount of additional faculty work Using the rubric outcome-assessment model, a faculty member continues to give his or her students the assessments he or she usually gives—exams, papers, performance assessments, etc. . . . In courses designated for [program] measurement, professors add one more step to their grading process. After grading, faculty in designated courses complete an institutional faculty-designed rubric that delineates, along a continuum, students' development of core competencies encompassed by a given learning outcome.⁵²

Curcio discusses also the benefits of sharing the rubric assessments with students and how data entry can work.⁵³

2. Short Summary of the Next Steps on Seizing Opportunities if Legal Education Learns from Medical Education's Fifteen Years of Additional Experience with Competency-Based Education

What insight does medical education's fifteen years of additional experience with CBE add to the five steps above?

Facing the same type of changes in accreditation standards in 1999, medical educators have fifteen years of experience from which legal educators can learn with respect to what curricular engagements are most effective to help each student grow toward competency-based learning outcomes, especially with regard to assessments. This section outlines medical education's major "lessons learned" regarding effective assessment of professional-identity learning outcomes.

From our earlier research, we synthesized eight "lessons learned" from medical education's fifteen more years of experience with competency-based education.⁵⁴

52 Curcio, *supra* note 41, at 503.

53 *Id.* at 504-07.

54 Neil Hamilton, *Professional-Identity/Professional Formation/Professionalism Learning Outcomes: What Can We Learn About Assessment From Medical Education*, 14 UNIV. ST. THOMAS L.J. 357 (2018) [hereinafter Hamilton, *Professional-Identity/Professional Formation/Professionalism Learning Outcomes*].

- a. Choose one or two competencies from the faculty's learning outcomes where the students, faculty and staff will see the greatest benefit as an initial focus to gain experience and create a workable model for implementation of all the other learning outcomes.⁵⁵
- b. In selecting a competency for initial implementation, consider the foundational importance of ownership over a student's own continuous professional development (self-directed learning) as a foundation for CBE.⁵⁶
- c. Create a stage-development model (rubric) for the one or two competencies selected for the pilot program.⁵⁷ Medical education calls these stage development rubrics "Milestones." A Milestone model both defines a logical learning trajectory of professional development and highlights significant points in student's development using a narrative that describes demonstrated student behavior at each stage.⁵⁸ Milestones can be used for formative and summative assessment and program assessment. If a faculty and staff adopt a Milestone model for any competency, they are building consensus on what competent performance looks like, and thus will foster interrater reliability.
- d. Take into account that students are at different developmental stages of growth and engage each student at the student's present developmental stage (Go where they are)⁵⁹.
- e. Emphasize experiential learning, coaching and feedback on the student's performance, and repeated opportunities for guided reflection and development of the habit of reflection.⁶⁰
- f. Help the student understand how the new knowledge/skill is building on the student's existing knowledge/skill in a progression of engagements and assessments to help the student grow to later stages.⁶¹
- g. Emphasize the importance of direct observation of student performance and multi-source feedback based on observation (multi-source feedback is explained further below).⁶²

55 *Id.* at 392.

56 *Id.* at 359-60.

57 *Id.* at 394-5.

58 L. Edgar et al., *Milestones 2.0: A Step Forward*, 10 J. GRAD. MED. EDUC. 367-69 (No. 3, 2018).

59 Hamilton, *Professional-Identity/Professional Formation/Professionalism Learning Outcomes*, *supra* note 54 at 384, 387.

60 *Id.* at 373-76, 380, 383, 396.

61 *Id.* at 383-84, 396.

62 *Id.* at 375, 382, 395-96. Note that the observer needs to have reasonable observation of any of the sub-competencies of any learning outcome, not all of them.

Multi-source feedback, widely used in medical education and also referred to as a 360-degree assessment,⁶³ “is an assessment that is completed by multiple persons [who observe the learner] within a learner’s sphere of influence. Multi-rater assessments are ideally completed by other students, peers, nurses, faculty supervisors, patients, families and the residents themselves.”⁶⁴ Different respondents focus on the characteristics of the student or physician that they can assess so for example, patients are not expected to assess clinical expertise.⁶⁵ High quality assessment will use rating scales, evaluation forms and the aggregation of multiple data points.⁶⁶ Together with rating scales and evaluation forms, narrative feedback is also very useful as feedback to the student.⁶⁷

A meta-analysis of the multi-source feedback process to assess physician performance⁶⁸ emphasizes that multi-source feedback “has been shown to be a unique form of evaluation that provides more valuable information than any single feedback source. [Multi-source feedback] has gained widespread acceptance both for formative and summative assessment of professionals, and is seen as a trigger for reflecting on where changes in practice are required.”⁶⁹ “[Multi-source feedback] has been shown to enhance changes in clinical performance, communication skills, professionalism, teamwork, productivity, and building trusting relationships with patients.”⁷⁰ A second meta-analysis of multi-source feedback also concludes that it is reliable, valid, and feasible.⁷¹

63 Ahmed Al Ansari et al., *The construct and criterion validity of the multi-source feedback process to assess physician performance: a meta-analysis*, 5 *ADVANCES IN MEDICAL EDUCATION AND PRACTICE* 39 (2014).

64 Linda Snell, *Supporting Professionalism and Professional Identity Formation at the Postgraduate Level*, in *TEACHING MEDICAL PROFESSIONALISM: SUPPORTING THE DEVELOPMENT OF A PROFESSIONAL IDENTITY* 248, 254 (Richard Creuss et al. eds., 2d ed. 2016).

65 Tyrone Donnon et al., *The Reliability, Validity, and Feasibility of Multisource Feedback Physician Assessment: A Systematic Review*, 89 *ACAD. MED.* 1 (No. 3, March 2014).

66 John Norcini & Judy Shea, *Assessment of Professionalism and Progress in the Development of a Professional Identity*, in *TEACHING MEDICAL PROFESSIONALISM*, *supra* note 64 at 155, 162.

67 Al Ansari, *supra* note 63, at 42.

68 *Id.* The meta-analysis included 35 studies. The sample size of the studies ranges from six plastic surgery residents to 577 pediatric residents who had been assessed using multi-source feedback with as few as 1.2 patients and 2.6 medical colleagues to as many as 47.3 patients completing forms per student.

69 *Id.* at 39.

70 *Id.* at 49.

71 Donnon, *supra* note 65, at 5.

- h. Consider written individualized learning plans and student portfolios (into which the direct observations of performance are placed) combined with coaching as part of an effective curriculum and assessment (student portfolios are explained further below).⁷²

Several scholars in *Teaching Medical Professionalism* recommend portfolios as a particularly effective formative and program assessment. A portfolio is a “purposeful collection of student work that demonstrates the student’s efforts and progress in selected domains.”⁷³ “Portfolios are recommended for capturing the combined assessments and providing a longitudinal perspective.”⁷⁴ Drs. Holden, Bock, and Luk note that “the aggregation of information into a portfolio would provide longitudinal perspective allowing for a broader view of students’ developmental trajectory not readily available from more narrow or discrete pieces of information.”⁷⁵

Dr. Steinert observes “In medicine, portfolios can encourage self-directed learning, foster reflection, and demonstrate progress toward identifiable outcomes. Portfolios have the added advantage of respecting individuality and diversity while developing life-long learning skills.”⁷⁶

Dr. Snell summarizes, “[p]ortfolios provide a flexible, multifaceted means of collecting qualitative and quantitative evidence of achievement of competence or demonstration of progression over time. Portfolio entries can be linked with self-assessment or guided reflection and thus become an effective tool to support identity formation.”⁷⁷

As of 2016, over 45% of the medical schools in the United States were using student portfolios, with 72% of those using a longitudinal, competency-based portfolio strategy.⁷⁸ Eighty percent of students and 69% of faculty agreed that portfolios engage students. Ninety-seven percent agreed that there is room for improvement with respect to the use of portfolios.⁷⁹ It will be important to follow medical education research on the use of portfolios in the curriculum.

72 Hamilton, *Professional-Identity/Professional Formation/Professionalism Learning Outcomes*, *supra* note 54, at 375-76

73 Yvonne Steinert, *Educational theory and strategies to support professionalism and professional identity formation*, in *TEACHING MEDICAL PROFESSIONALISM*, *supra* note 64 at 78.

74 Mark Holden et al, *Developing and Implementing Undergraduate Curriculum*, in *TEACHING MEDICAL PROFESSIONALISM*, *supra* note 64, at 236.

75 *Id.* at 237.

76 *Id.*

77 Linda Snell, *supra* note 64, at 255.

78 J. Chertoff et al., *Status of Portfolios in Undergraduate Medical Education in the LCME accredited US Medical School*, 38 *MED. TEACH.* 886-96 (No. 9, Sept. 2016)

79 *Id.*

3. Synthesis of Implementation Suggestions from the Winter 2018 JLE Symposium and Medical Education's Experience

Looking at the major ideas expressed in the Winter 2018 JLE Symposium issue and medical education's experience over the last fifteen years, there are several common threads or themes.

Step 1. Educate the faculty and staff about the accreditation standards and the benefits of being proactive with respect to competency-based education.

- Choose one or two competencies from the faculty's learning outcomes where the students, faculty and staff will see the greatest benefit as an initial focus to gain experience and to create a workable model for implementation for all the other learning outcomes. For the selected learning outcome, list the benefits if each student could demonstrate growth to a later stage of development of that competency.
- In selecting a competency for initial implementation, consider the central importance for CBE of ownership over a student's own continuous professional development (self-directed learning) as a foundation.

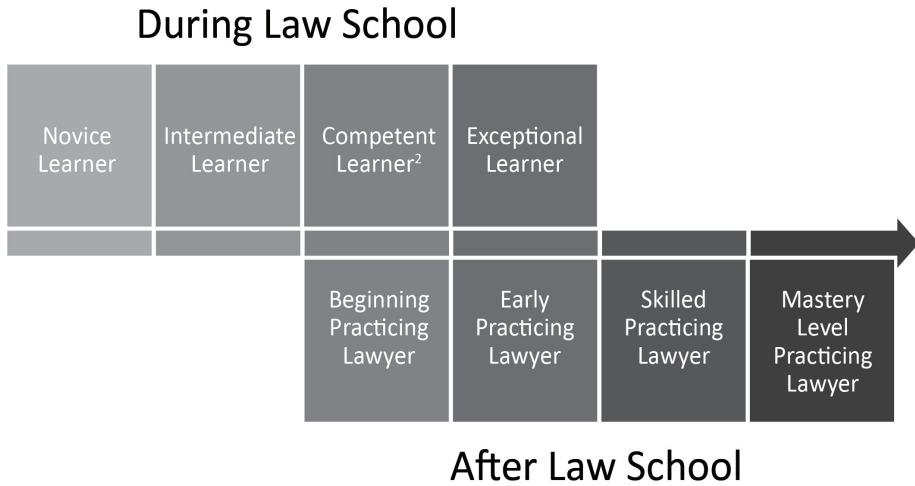
Step 2. Create a stage-development model or rubric (like Table 3) for each competency selected in the project to create a workable model of implementing CBE.

- A stage development model, such as presented above in Table 3, is very helpful to demonstrate the benefits to students, clients, legal employers, and faculty and staff from each student's growth to a later stage of development at the selected competency. It also makes transparent to each student what the faculty expects the student to demonstrate on that competency.
- Each school may have to create its own stage development models for its unique learning outcomes. To the extent that a large number of law schools have identified common learning outcomes as noted above in Section III, however, there is no reason every law school needs to develop an independent stage development model. The Holloran Center for Ethical Leadership in the Professions is trying to support development of stage development rubrics for the most common learning outcomes and has worked with over two dozen faculty and staff from nearly as many law schools to generate Holloran Competency Milestones for some of the most common virtue or relationship-oriented learning outcomes, such as: cultural competence, integrity, teamwork/collaboration, self-directedness, active listening, commitment to pro bono, leadership and professional communication.⁸⁰ Table 4 below shows how all the Holloran Milestone models try to align with legal employer competency models.

80 These are posted at the Holloran Competency Milestones webpage, at <https://law.stthomas.edu/about/centers-institutes/holloran-center/competency-milestones/>.

Table 4: Holloran Competency Alignment Model

**Stages of Development of Learning Outcomes Competencies:
A Continuum from Entry into Law School throughout a Career**



Step 3. Map the curricular and noncurricular engagements to decide where in the curriculum and culture each student can develop and the faculty and staff can assess the competency.

- Analyze where there are gaps in the curriculum and non-curricular engagements in terms of a progression of modules to foster student growth toward later stages of development on the competency.
- Engage each learner where that learner is developmentally on the competency. Individual learners progress at rates dependent on demonstrated competency.
- Emphasize experiential learning, coaching and feedback on the student’s performance, and repeated opportunities for guided reflection and development of the habit of reflection.
- Help the student understand how the new knowledge/skill is building on the student’s existing knowledge/skill in a progression of engagements and assessments to help the student grow to later stages.

Step 4. Decide on formative and summative assessments that will inform each student about progress to later stages of development for each competency in the learning outcomes.

- Create formative assessments (including self-assessments) for the competency selected for the pilot program.

- Select assessments to allow for frequent formative feedback to learning that will help learners become active agents in guiding their curricular engagements.
- “Observe, observe, and observe.” Faculty and staff observation of the student performing the competency is essential. Note that easily accessible assessment forms for faculty/staff are important.
- Obtain multisource (360-degree) assessments, which are very valuable, especially from peers and staff members who may observe some competencies most directly.
- Consider written individualized learning plans and student portfolios (into which the direct observations of performance are placed) combined with coaching and feedback as part of an effective curriculum and assessment.

The student can carry the burden to develop a portfolio of evidence that demonstrates the student is making progress toward the competent learning stage of development on the competency selected. The evidence can come from the student’s experience both before and during law school including extra-curricular activities and volunteer and work experience. After the student collects evidence of stage or milestone development regarding a particular competency, the student then selects the most credible and persuasive evidence that a given stage of development has been achieved. The student then reflects on what needs to be done to grow to the next stage of development regarding that competency and how to develop credible evidence of that stage of development.⁸¹

Note that in order to prevent both student and faculty “burnout” with respect to the creation and review of portfolios, it is important to start with an easily manageable selection of 1-2 competencies for which a student will develop a portfolio. Self-directed learning is foundational and should be considered as one of the portfolios. The student could select the other portfolio depending on the competencies the student is most emphasizing in the student’s search for meaningful employment.

A few law schools are experimenting with portfolios. For example, Daniel Webster Scholars at the University of New Hampshire School of Law are required to develop portfolios.⁸² Similarly, students pursuing certificates at the UMKC School of Law also are required to develop portfolios.⁸³

Step 5. Decide on evaluation of the entire program.

- The suggestions on program assessment from Step 5 of the 2018 JLE symposium are similar to medical education’s experience. Note that putting the burden on a student to develop a portfolio of evidence (including

81 See Neil Hamilton, *Formation-of-an-Ethical-Professional-Identity (Professionalism) Learning Outcomes and E-Portfolio Formative Assessments*, 48 U. PACIFIC L. REV. 847, 848 (2017).

82 John Garvey, *Making Law Students Client-Ready*, N.Y. STATE BAR J. 44, 47 (Sept. 2013).

83 Presentation by Barbara Glesner Fines, former dean of UMKC, at the University of St. Thomas School of Law on Monday, November 27, 2023.

multi-source feedback) demonstrating that the student is growing toward later stages of development on a particular competency and providing coaching, and faculty and staff assessment of the portfolio is promising as a formative, summative, and program assessment.

- Note also that while ABA Interpretation 315-1 provides a number of examples of program evaluation methods that include evaluation of student portfolios and student evaluations of the sufficiency of their education, the accreditation standards of the University as a whole, of which the law school is a part, will both differentiate between direct and indirect assessments and will require some direct assessment of student performance of a learning outcome competency. The Council for Higher Education Accreditation now requires direct evidence of student learning. “Evidence of student learning outcomes can take many forms, but should involve direct examination of student performance – either for individual students or a representative sample of students. Examples of the types of evidence that might be used appropriately in accreditation settings include (but are not limited to):
 - faculty-designed comprehensive of capstone examinations and assignments;
 - performance on licensing or other external examinations;
 - professionally judged performances or demonstrations of abilities in context;
 - portfolios of student work compiled over time; and
 - samples of representative student work generated in response to typical course assignments.”⁸⁴

On the other hand, indirect assessment generated by methods like student satisfaction surveys, focus groups, or interviews are certainly useful in the accreditation process, but do not in themselves constitute direct evidence of student learning outcomes.

V. Conclusion

The synthesis above outlines the steps to seize the opportunity created by the learning outcomes a law school has adopted to realize substantial benefits for its students and the law school itself. CBE is an opportunity to build bridges among the main stakeholders in legal education – students, faculty and staff, clients and legal employers – so each student understands the competencies that legal employers and clients want and can effectively use the curricular and non-curricular experiences of law school to develop to a later stage on those competencies that reflect the student’s strengths to meet employer and client needs. In the spring of 2022, Cambridge University Press published

84 Council for Higher Education Accreditation, *Statement of Mutual Responsibilities for Student Learning Outcomes: Accreditation, Institutions, and Programs* 5 (2003).

Law Student Professional Development and Formation: Bridging Law School, Student, and Employer Goals, which provides more in depth, clear actionable steps to achieve these benefits for students, law schools, clients and legal employers.⁸⁵

This change to CBE is going to take time and patient experimentation. Medical education has been making this transition to CBE since 1999 and has many “lessons learned” to help legal education. Graduate education in other fields is also moving toward CBE and may offer relevant experience with effective approaches. If a law school is at a university where other units have been moving toward CBE, seek out the lessons they have learned.

Over these next years, there will be better data on the competencies that clients and legal employers want and need. It will be important for law schools continually to seek data on the full range of competencies that clients, legal employers and the legal system need and revise learning outcomes to meet these needs. It will be interesting to see the extent to which law schools revise their learning outcomes to align better, for example, with the seven foundational skills the NCBE has identified for the NextGen Bar Exam.⁸⁶ Those law schools that do better at meeting these needs will see better results in terms of outcomes for their graduates on both bar passage and post-graduation employment. Law schools need to be particularly attentive to empirical data on the most effective curricular and non-curricular engagements and assessments.

Given the limited resources realities of individual law schools, it also makes sense to cooperate with other schools that have the same learning outcomes⁸⁷ and not to “go solo.”⁸⁸ Wegner also suggests identifying partner schools at a distance with similar institutional characteristics and develop institutional partnerships in developing assessments.⁸⁹ The Holloran Center Milestones are another example of collaboration.

The proactive schools that seize the opportunity created by the learning outcomes to take the next steps to realize competency-based education are going to thrive in the changing markets that law students and law schools face. The 169 law schools that are in the “leaders beyond the minimum 302 group” are the best positioned to realize these benefits.

85 HAMILTON & BILIONIS, *supra* note 8.

86 *See supra* text accompanying notes 22 and 23.

87 Wegner, *supra* note 1, at 448.

88 *Id.* at 457.

89 *Id.* at 454.

Appendix A: The Differences Between Time-based Education and Competency-based Education

The shift to competency-based education means each law school faces the challenge of implementing a major change from a time-based curriculum to a competency-based curriculum. A time-based (also known as a structure and process) curricular model is where education corresponds to fixed time spent in training.⁹⁰ A competency-based education model, on the other hand, focuses on what a learner can demonstrate and do. It emphasizes the transition of each student to grow from a beginner to demonstrate by graduation some level of adequate competence at actual professional-practice knowledge and skills derived from an analysis of client, legal employer and legal system needs.⁹¹ Table 5 explains medical education’s basic principles of CBE.

Table 5: Principles and Characteristics of Competency-based Education Models⁹²

Principles	Characteristics
<ol style="list-style-type: none"> 1. Competencies are role-derived (e.g., lawyer), specified in behavioral terms and made public. 2. Assessment criteria are competency-based and specify what constitute stages of development culminating in a mastery level of achievement. 3. Assessment requires performance as the prime evidence but also takes knowledge into account. 4. Individual learners progress at rates dependent on demonstrated competency. 5. The instructional program facilitates development and evaluation of the specific competencies. 	<ol style="list-style-type: none"> 1. Learning is individualized. 2. Feedback to the learner is critical. 3. Emphasis is more on the exit criteria than on the admission criteria. 4. Development of competencies through a progression of stages from novice to expert 5. Systemic curriculum has a progression of modules that build on one another. 6. Accountability is shared by both the learner and the program

90 Yoon Soo Park et al., *Evaluating the Paradigm Shift from Time-based Toward Competency-based Medical Education: Implications for Curriculum Assessment*, in *ASSESSING COMPETENCE IN PROFESSIONAL PERFORMANCE ACROSS DISCIPLINES AND PROFESSIONS* 411, 412 (P. Wimmers & M. Mentkowski eds., 2016). This is a tea-seeping approach where students are likened to tea leaves soaked in hot water for a fixed duration. *Id.* at 413.

91 *Id.* at 415, 418.

92 This table is adapted from ERIC HOLMBOE ET AL., *THE MILESTONES GUIDEBOOK* 6 (2016).

Table 6: Comparing a Time-based and a Competency-based Curriculum⁹³

	Traditional Time-based Education	Competency-based Education
Goal of educational encounter	Acquisition of knowledge	Application of knowledge
Responsibility for driving educational process	Teacher	Learner
Responsibility for learning	Teacher	Learner and teacher
Timing of assessment	Emphasis on summative	Emphasis on formative
Typical assessment context	Proxy on a single subject	Authentic in mimicking real tasks of professional work into evaluation portfolio
Evaluation standards	Relative to peers	Relative to objective standard of competency
Program completion	Fixed time	Variable time

Note that competency-based education as outlined in Tables 5 and 6 requires:

- assessment criteria for each learning outcome that are competency-based and specify what constitute stages of development that include some defined level of minimum competence that meets the faculty's requirements and culminates in a mastery level of achievement;
- a systematic and modularized curriculum and assessments that foster development of learning-outcome competencies through a progression of steps;
- substantial emphasis on experiential engagements where the student demonstrates that he or she can do the actual tasks of professional work;
- formative and summative assessments to give effective individualized feedback to each learner, to encourage the habit of reflection on the feedback, and to support and document the learner's progressive development of each learning-outcome competency; and

93 This table is adapted from Jeffrey Kuvin, *Training Present and Future Cardiologists*, 108 AMER. J. CARD. 1508, 1511 (2011).

- a shift of responsibility for driving the educational process from the teacher to the learner.

The intended output of a competency-based curriculum is a graduate who can perform the competencies that the faculty has adopted as learning outcomes at a defined level of proficiency to meet client, legal employer and legal system needs. The change from time-based to competency-based education will take time and much experimentation to develop the necessary elements. Given the time needed to develop competency-based education, legal education will see a hybrid of time-based and competency-based education for many years.

One key change that Table 6 emphasizes is that learners in a CBE system “must be active agents co-guiding both the curricular experiences and assessment activities.”⁹⁴ What does it mean for a student to be an active agent in her own learning and assessment? “Learners must learn to be self-directed in seeking assessment and feedback.”⁹⁵ Learners should ideally:

1. be both introduced to the overall competency-based education curriculum at the beginning and engaged in dialogue about the overall program on an ongoing basis;
2. actively seek out assessment and feedback on an ongoing basis;
3. perform regular self-evaluations together with feedback from external sources;
4. direct and perform some of their own assessments such as seeking out direct observation by an experienced professional and creating portfolios of evidence regarding specific competencies; and
5. develop personal learning plans that they revisit and revise at least twice a year.⁹⁶

The reader should reflect on whether he or she believes law graduates are entering an era where more rapid technology and market changes will place even greater demands on lawyers to continually develop themselves in response to the changes. In this future, each lawyer must internalize a drive to be a lifelong learner and networker.

94 MILESTONES GUIDEBOOK, *supra* note 92 at 15.

95 *Id.* at 16

96 *Id.*