

Best Practices for Hiring and Retention of Diverse Clinical Faculty¹

Introduction

Diversity among law school faculty is important in achieving the institution's educational mission. Standard 206 of the ABA Standards and Rules of Procedure for Approval of Law Schools provides that "a law school shall demonstrate by concrete action a commitment to diversity and inclusion by having a faculty and staff that are diverse with respect to gender, race, and ethnicity." Faculty from diverse backgrounds including race, gender, ethnicity and sexual orientation enrich the law school's intellectual life and offer students more varied perspectives in the classroom. Diverse faculty also provide crucial role modeling and mentorship for under-represented students. Jon Dubin, in his groundbreaking article, highlighted additional ways diversity among clinical faculty enriches a law school's ability to serve its students, clients, and community.² Clinical faculty that reflect the greater community bring a breadth of perspectives to clinical pedagogy, scholarship and lawyering theory, and enhance legal representation to client communities in meaningful ways.³ Clinicians of color "helped to elevate cross-cultural communication and multiracial collaboration as core lawyering skills," and representation of faculty from subordinated groups is also critical for meaningful discussion of racial and social justice, which remains central to the mission of clinical education.⁴

In its 2019 article *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, the CLEA Committee for Faculty Equity and Inclusion concluded that, while there had been some progress in the twenty years since Jon Dubin wrote his article, racial and ethnic minorities remain woefully underrepresented among clinical faculty.⁵ Among its recommendations, the Committee recommended that schools adopt best practices for more inclusive clinical hiring. Developed jointly by the AALS Section of Clinical Legal Education, Policy Committee, and the Clinical Legal Education Association, Faculty Equity and Inclusion Committee, this guide builds on CLEA's article, as well as the AALS Statement of Good Practices on the Recruitment and Retention of Minority Law Faculty Members,⁶ to provide law schools with strategies and considerations to increase diversity among clinicians. We culled existing resources on promoting diversity at law schools, and in higher education more generally, and adapted them to the unique context of clinical teaching.

¹ These guidelines were prepared by the Policy Committee of the American Association of Law Schools Section on Clinical Legal Education and the Faculty Equity and Inclusion Committee of the Clinical Legal Education Association (CLEA) in Fall 2021. AALS Clinical Section Policy Committee members are Caitlin Barry, Lisa Bliss, Gautam Hans, Vida Johnson, Carolyn Kaas, Lynnise Pantin, Kele Stewart, and Erika Wilson. Clinical Legal Education CLEA Committee for Faculty Equity and Inclusion members are Priya Baskaran, Jennifer Fernandez, Crystal Grant, Anju Gupta, Gautam Hans, Julia Hernandez, Alexis Karteron, Shobha Mahadev, and Lynnise Pantin. Elizabeth Keyes and Anita Sinha also provided valuable comments.

² Jon Dubin, *Faculty Diversity as a Clinical Legal Education Imperative*, 51 HASTINGS L. J. 445 (2000).

³ *Id.* at 455-465, 469-472.

⁴ Clinical Legal Education Association, Committee for Faculty Equity and Inclusion, *The Diversity Imperative Revisited: Racial and Gender Inclusion in Clinical Law Faculty*, 26 CLIN. L. REV. 127 (Fall, 2017).

⁵ *Id.*

⁶ AMERICAN ASSOCIATION OF LAW SCHOOLS HANDBOOK, STATEMENT OF GOOD PRACTICES ON THE RECRUITMENT AND RETENTION OF MINORITY LAW FACULTY MEMBERS, <https://www.aals.org/about/handbook/good-practices/full-time-faculty/>.

In developing this guide, we recognize that the imperative to diversify law school faculty remains urgent among faculty teaching in all spheres of the law school curriculum, and should not be relegated to only experiential teachers. It is, nonetheless, important to consider diversity in the clinical context as clinical hiring raises some unique considerations given that clinicians' teaching responsibilities include law practice, clinicians may occupy different statuses within the institution, and law schools may use a variety of processes to hire clinicians. We also recognize that institutions vary significantly in the way clinical hiring decisions are made, and there may be different processes for different types of clinicians, even within a single institution. Our goal is to provide strategies and considerations that could be adopted and applied in a variety of law school settings, rather than prescribe particular hiring models.

Status and Clinical Hiring

Issues of status and hierarchy are inextricably linked to the hiring and retention of clinical faculty. Clinicians may be tenured or tenure-track, on long-term or short-term contracts, hold staff or administrative positions, in fellowships, or occupy some other category within the law school or University's hierarchy. Clinical positions may or may not include scholarship requirements. Status also determines whether clinicians have voting rights and the extent to which they participate in faculty governance. These differences inevitably lead to power differentials within the law school.

While these hierarchies are problematic and more should be done to achieve equity on law school faculties, they are the current reality at law schools and impact recruiting and hiring. In thinking about diversity, it is important for law schools to pay attention not only to the overall number and percentage of diverse clinicians, but whether faculty of color are represented among the status that holds the most power within the law school's academic hierarchy. In trying to attract and retain diverse candidates, law schools must also confront the reality that, among clinicians, status is an important consideration that can make law schools more or less attractive to applicants. For some clinicians, status serves as a proxy for how much the school values clinical education. Lateral candidates, in particular, are unlikely to move from a school where clinicians can obtain tenure to one with less security of position or voting rights.

The Clinical Hiring Process

As a result of the various types of clinical teachers and clinical models, there are multiple ways hiring decisions are made. Even within the same law school, there may be different hiring processes depending on the status of the position. For schools with unitary tracks, tenure or tenure-track clinicians are likely hired using the same process used for doctrinal faculty. This typically involves an Appointments or Laterals committee comprised of tenured and tenure-track faculty who screen and narrow a slate of candidates for consideration by the broader faculty. The full faculty votes on candidates that are recommended or presented to the Dean for hiring. We understand that, for unitary track schools, there may be some tension between applying the same standard to doctrinal and clinical hires alike, or recognizing the ways clinical teaching may be different. The practices outlined in this guide are good practices for diverse hiring generally and can strengthen the hiring process for any type of faculty hiring.

At some schools, the Appointments or Lateral committee may also do screening and recommendations for some clinical positions that are not tenure-earning, such as "clinical tenure" or other types of positions that

lead to long-term contracts. Clinicians may be hired by an *ad hoc* or specially constituted search committee that is different from the Appointments or Laterals committee. These committees may include all clinicians or more clinicians than might serve on a typical Appointments or Laterals committee. The recommendations below about search committees are intended to apply regardless of how the committee is constituted, how large or small, or formal or informal.

Clinicians may also be hired by the Dean or a delegate of the Dean, such as an Associate Dean for Experiential Learning or a Director of Clinical Programs. For example, at some schools, clinicians on short-term contracts might be hired by the Dean or her delegate, while positions that lead to presumptively, renewable long-term contracts might be referred to a committee. It is important that, throughout the life of a law school, there be diversity among the individuals who hold these leadership positions. Although this guide refers to committees, many of the ideas can also be integrated into decanal hiring strategies.

The way the hiring decision is made has implications for recruiting diverse candidates. We hope that this guide can offer ideas that can be adopted regardless of the specific way hiring decisions are made at your law school.

Recruitment

Search Committee

-Search committees should be diverse, reflecting if possible broad representation across race and ethnicity, gender, and sexual orientation. This ensures that a variety of perspectives are considered in evaluating candidates. A diverse search committee also signals to candidates that the law school is serious about diversity, and helps diverse candidates feel welcomed at the outset of the hiring process. However, at schools with few faculty of color, law school leadership should consider the burden imposed on diverse faculty members who serve repeatedly on the search committee. Including a student leader on the search committee can also be helpful for communicating to candidates why diversity matters to their particular student body.

-For clinical hires, schools should be attentive to including clinicians on the search committee. Clinicians bring valuable perspectives about what clinical teaching entails and can help the committee think about the criteria used to screen candidates. This adds yet another type of diverse viewpoint to assess candidates and is useful even on committees for unitary-track hires where clinicians and doctrinal faculty are hired using the same general criteria. This may implicate status issues because at some schools clinicians may not be eligible to serve on search committees. Including faculty in the same status for which the candidate is being hired signals to the candidate that their role is valued at the law school.

-The Committee Chair should be attentive to power dynamics to ensure that minority and untenured committee members are empowered to fully participate and candidly provide input. One way to accomplish this might be to agree to maintain the confidentiality of committee discussions, and report recommendations of the committee to the Dean or broader faculty without attributing comments to particular committee members. More generally, the Committee Chair should encourage members to freely share opinions and

facilitate a process where every perspective is carefully considered, especially where there are differing perspectives on the strengths and weaknesses of a candidate.

-The Dean and law school should ensure members of the committee know diversity is an institutional priority. The Committee Chair should be someone known to be supportive of law school diversity, and should be familiar with the strategies that are most effective in creating diverse candidate pools and in managing the appointments process effectively with respect to diversity. There are different techniques to reflect this priority throughout the search. The Dean or administrative lead for the hire should meet with the search committee to emphasize this priority. Some schools assign a specific faculty member to focus the group on diversity among candidates and remind the group of tactics to reduce bias; this should not necessarily be a person from an under-represented group. Others require committees to report to the Dean on diversity of the pool at each stage of the process. Armed with that kind of information, the Dean or committee could choose not to proceed to the next stage of the search until more efforts are made to diversify the pool.

-The law school should provide search committees with the training and resources needed to minimize bias and run a good search. This includes training on implicit bias and anti-discrimination, as well as resources like this guide that include strategies to recruit and retain diverse faculty. The Committee Chair should memorialize in detail the efforts to diversify the pool and recruitment strategies, and pass that information along to the next committee to avoid reinventing the wheel. These should be a standard resource for every search committee regardless of the position. While law school and University HR departments often are not involved in law school faculty hiring, many HR departments offer training on how to run a search process that limits bias and may serve as a valuable resource.

-The Committee should develop a search plan that includes: teaching, scholarship and advocacy priorities; the qualifications, competencies and other criteria upon which candidates will be assessed; the outreach and efforts that will be made to recruit diverse candidates; job posting language; list of places where job will be posted; interview/assessment questions; pool diversity targets; and any available data on pipeline. Having an organized and systematic search plan is generally a good HR practice and increases the likelihood decision-makers will be intentional about diversity throughout the process.

-The law school should collect and make data available to the search committee on relevant areas such as law school and campus climate, trends at the law school in hiring and retention (e.g. retention rates, turnover rates, tenure rates and promotion rates), and analysis of law school data on past searches. The data on previous searches should include information such as the demographic breakdown of the percentages and number of applications for openings, screening interview offers, campus “finalist” interview offers, yield rates, and percentage of current faculty by gender and race/ethnicity. This information should be available for all searches regardless of the status of the position or the hiring decision-maker.

Job Posting

In developing job descriptions, the Committee should seek to identify a core set of minimum qualifications and competencies that are, in fact, essential to the functions of the job. Be clear about which requirements are required versus preferred. Job postings should avoid wish lists (like appellate clerkship or PhDs if they

aren't related to the actual job) that may privilege certain groups over others and may work to discourage certain groups from applying; it is helpful to engage the faculty in discussion as to why these wish lists are no longer part of the job "requirements" so that committee screening decisions do not cause difficult conversations farther down in the hiring cycle.

- In the clinical context, job descriptions should not simply import the requirements for doctrinal faculty, but should carefully consider what qualifications would make someone effective in the particular type of clinical course, as well as scholarship and service if those are also requirements for the job. If the committee thinks a clerkship or clinical teaching fellowship is a requirement for the job, consider how that may hinder your ability to attract diverse qualified applicants. Many people of color may be first generation lawyers and did not understand the importance of these types of jobs to academia early in their career when these positions are most common. Similarly, the lower pay that comes with these roles might be a disincentive to someone who cannot financially afford to meet their financial obligations on that salary, or have other financial support from parents or a spouse.

- The job requirements should not be so specific that it screens out diverse candidates. Hanover Research provides the following example:

Instead of requiring candidates to have "4-5 years of teaching experience," a relevant posting could state, "candidates must demonstrate teaching experience relevant to the position." By defining positions more broadly, it is possible to attract a larger candidate pool.

-The job posting is the law school's first opportunity to invite, or discourage, applicants. Some candidates may not apply simply based on the wording of a job description. In addition to the other recommendations in this section, job postings should depict that the law school is a place that values diversity, equity and inclusion. To emphasize this point, law schools should go beyond the required Equal Employment Opportunity Statement. A well-crafted diversity statement could, for example, discuss the institutional commitment to creating a diverse intellectual community, teaching a diverse student body, or effectively serving historically marginalized client communities.

-Law Schools should also consider whether a candidate's commitment to diversity, or experience working in a diverse environment, is itself an important job-related criteria for the position. Schools may ask candidates to submit a diversity statement as part of the written application materials. The search committee should clarify at the outset how these statements will be used to assess candidates and why they are important. For example, does the law school want someone who can effectively teach about social justice as part of their clinical course, teach and mentor underrepresented students, or engage in advocacy on behalf of under-represented communities? If so, these criteria should be included in the job posting. There could be a perception that diversity statements are used to filter out majority candidates, so the post should be written to convey the goal of building a culture that welcomes different types of diversity and experiences or the ways diversity relate to job success.

Developing the pool

To develop a diverse faculty means setting goals and intentions before the search even begins. An aspirational goal should be to have a faculty that is reflective of the demographics of the community, not simply the particular legal field. For example, while whites are the majority racial group in the United States, Black people make up just under 13% of the population, Latinos comprise 18% of the population. Asian Americans make up just over 5% and indigenous people make up about 2% of the population when one includes Native Americans, Native Alaskans and Native Hawaiians in a combined category. Thus, white people should comprise just over 70% of a faculty, including white Hispanics.⁷ However, according to data for 2019 about 80% of law school faculty members are white.⁸ To create the amount of racial diversity on a faculty that roughly reflects our community as a whole means multi-year work and planning. The following suggestions can help develop a diverse pool of candidates:

-It is important to cultivate diverse candidates years before the search happens. Encouraging and mentoring promising students of color while they are still in law school, as well as alumni, to consider academia, is the first place to start. Helping students or diverse lawyers in your community to enter fellowships, publish, serve as adjunct faculty, or participate in conferences are just some of the ways you can actively build the pipeline. Mentoring junior clinicians at other schools or helping them build their resumes also helps to develop the pool. Clinical teaching fellows and other talented attorneys in the practice area where your school may have a need are other pools of potential candidates beyond simply those who sign up for the AALS Faculty Recruitment process.

-Reach out to promising candidates from diverse backgrounds and suggest they apply. Members of underrepresented groups may need more encouragement than other people with the same qualification, as they may be more likely to feel underqualified as a result of internalized biases. It is also flattering to be nominated or recruited, and may increase the likelihood that a diverse candidate will accept an offer down the road. It is never too early in the process to start making candidates feel welcomed and wanted.

-Send the notice of the position to professional organizations and interest groups with diverse audiences. These should include affinity-group professional organizations for lawyers (like local and national bar groups), as well as subject-matter specific groups. For example if recruiting for a criminal defense clinic, be sure to post the notice with the local and national affinity group Public Defender associations. Within the academic community, there are a number of listservs for faculty of color (e.g., Clinicians of Color, the AALS minority faculty listserv and LatCrit). Compile a list of all of the relevant organizations and listservs that can be passed onto the next year's committee for use with every search. Rely on your faculty to also informally share the posting among their networks.

-Do not start screening interviews for the position until your applicant pool is sufficiently diverse. The creation of a diverse pool of potential candidates is the prerequisite for a successful search and is an

⁷ The Census Bureau, American Community Survey, Demographic and Housing Estimates (2019) <https://data.census.gov/cedsci/table?d=ACS%205-Year%20Estimates%20Data%20Profiles&tid=ACSDP5Y2016.DP05>

⁸ Stephanie Francis Ward, *How many tenured law professors are black? Public data does not say*, ABA J. (Oct. 28, 2020) <https://www.abajournal.com/web/article/how-many-tenured-law-professors-are-black-public-data-does-not-say>

uncontroversial aspect of hiring, compared to decisions about interviews, callbacks and offers that might be highly contested or raise legal questions.

-Create a requirement at your school that demands the search committee certify the diversity of the pool of applicants interviewed. This will hold the school accountable to itself and help institutional actors assess whether it is meeting the goals set.

Screening and Selection Process

-Decide, prior to interviewing candidates, the criteria that will be used to assess candidates and how they will be weighted. Discuss the qualifications listed in the job description, as well as any other competencies or characteristics the committee or hiring person believes is critical for success in the position. This might include things like strong written communication, strong interpersonal skills, demonstrated ability to work with clients from a marginalized community, advocacy experience and a range of other things. It is important for the committee to reach consensus and write down the essential competencies for job success. This approach avoids common cognitive errors like elitism, shifting standards, using pretexts, and rushing to judgment. The criteria should be tied to the role in a way that can be articulated, and will ensure that realistic job-criteria are used, there is a shared understanding of those criteria, and that all candidates will be assessed using the same criteria. These criteria should then be used to develop a Candidate Evaluation Form.

-Ensure that the same packet of material is considered for all candidates. When reviewing Faculty Appointment Register (FAR) forms, be mindful that not everyone has the mentorship to know the insider tips for completing the forms. Also be mindful of the way bias may impact teaching evaluations for people of color and women.

-During the initial screening process, ask standardized questions of each applicant. Unstructured interviews allow more room for unconscious biases to creep into the process. The questions should be specifically tied to the criteria and competencies identified by the candidate as necessary for the position. Once the committee or person hiring has your list of criteria, brainstorm with the committee the 1-2 questions you will ask to assess each criteria. HR experts recommend asking behavioral-based questions that provide examples to demonstrate competencies. These questions might begin, for example, with the following kind of openings:

In what ways have you . . .
Describe a time when you . . .
Describe an approach that you used . . .

It is also useful for the committee to decide ahead of time who will ask each question or set of questions linked to a criterion. This helps avoid the dynamic that can occur in committee interviews where one questioner dominates the questioning, either because they have an affinity for, or a dislike of, the candidate. By orchestrating your questions in this way, you ensure that at least for the initial set of interviews, every candidate has a consistent interview experience and opportunity to demonstrate their fit for the role.

-During the screening process, the goal should be to have a diverse final pool of qualified applicants. This requires that multiple diverse candidates are interviewed at the screening phase. There is a myth that being attentive to diversity is different than the goal of finding an exceptional candidate. The strategies recommended here help to expand the pool of promising people who are considered, and guards against bias so that those candidates are fairly considered. The process creates better conditions to fairly identify the top candidate.

-Some schools include a racial equity officer or advocate on the search committee. A committee member could play this role or it could be the law school's DEI person if there is one. The purpose is so that there is one person whose sole job is to encourage the fairness of the selection process. A racial equity officer can do things like assess the diversity of the field, your applicant pool, and those selected for interviews. They then prepare a report that goes to the faculty and/or the dean about the fairness of the search.

-When discussing and ranking candidates, assess and discuss all of the criteria agreed upon by the committee. Articulate candidate strengths in each category, as well as weaknesses. Be sure to talk about every candidate, rather than prematurely rushing to rank or rule out candidates. Ensure that all committee members are able to freely express their views. Assess criteria based on things that can be articulated or demonstrated from the candidate's experience. Be careful of elitism and rating a candidate highly solely because of their institution rather than careful consideration of their experience. Also be careful of holding different candidates to different expectations. To create the list of finalists, include candidates who ranked favorably in multiple categories. Keep in mind that diverse candidates tend to be evaluated more fairly when there are multiple diverse candidates in the group.

-Consider whether explicit or implicit preferences for candidates who have had clerkships and/or clinical teaching fellowships are affecting your hiring choices. As noted above, these opportunities are not as known, or as available, to all who could be excellent clinical faculty. Keep in mind that an experienced attorney who practices law in the subject matter of the clinic could make a better teacher, mentor, and reference for students wishing to pursue practice in the field than someone who joined academia after only a short time in practice. Hiring faculty without previous clinical teaching experience will, certainly, require orientation and ongoing mentoring, but with resources like the CLEA and AALS Clinical Section conferences, people who have not had prior clinical teaching fellowships can thrive.

-On-campus or finalist call-back visits typically include a full day with a mix of activities like a talk, interviews or meetings with faculty, students and/or administrators, and more informal opportunities for the candidate to meet faculty such as coffees, lunch or dinner. For clinical hires, consider including opportunities for the candidate to meet a broader group of community stakeholders of the type they may work with in their advocacy role. Search committees should pay attention to whether all candidates are getting a uniform experience. Create a warm atmosphere for on-campus visits. If possible, make available a diverse group of faculty members for both the more formal and informal parts of the day. A homogeneous group at office visits and in the job talk means diverse perspectives may not be considered in assessing the candidate, and may also mean that a school is unable to persuade attractive candidates to accept an extended offer.

-If the search has resulted in an entire slate of non-diverse finalists, then reconsider whether this is the right year to hire. If there is a strong teaching need in a particular area, then a visitor for one or two years allows your institution to continue with the search while filling the teaching void. At a minimum, the committee should report to the Dean and faculty on the steps that were taken to identify and recruit diverse candidates and why the committee was not successful.

-Conduct a post-search debrief to review how the process went, the steps taken to diversify the pool, and the outcome of the search including discussion of any candidates who did not accept an offer.

Retain diverse candidates and existing faculty

If faculty diversity is an institutional goal, ensuring that your institution does not lose members of the faculty from underrepresented groups is also important. Not only does retention help maintain a diverse faculty, but it helps the school attract a more diverse group of faculty applicants and students.

-Generous financial compensation is, of course, an important way for a law school to help faculty feel valued. Pay that is commensurate with the field or higher should be the norm. This includes paying close attention to equity in compensation among clinicians, and between clinicians and doctrinal faculty. Other benefits like housing assistance, travel allowances, tuition assistance, research leaves, support staff, and family friendly policies are factors clinical faculty members consider in deciding whether to remain at an institution long-term.

-Status is also uniquely important to clinicians. Status often determines the power structure within the law school and is one of the ways clinicians measure how much the law school values experiential education. As more schools have moved to clinical tenure or unitary tenure tracks, clinicians have more opportunities to move to schools that offer them a better status. Conversely, clinicians who feel secure in their status at a law school, and feel as though they are a valued member of their community, are more likely to remain at the institution.

-Offering mentorship and support to junior faculty is key to their success at your institution. Pre-tenure or long-term contracts, this mentorship is critical in helping junior clinicians develop the portfolio that will make them successful in the promotion process. As part of faculty development, law schools should make it easy for junior clinical faculty to attend workshops and conferences. This could include things like participating in internal speaker series or being encouraged to invite, question or provide comments for outside speakers. Inclusion in spaces traditionally made available to junior doctrinal faculty is vital to retaining valued clinical faculty members. As clinicians grow in their careers, mentors and other senior faculty can share and prepare clinicians for the various paths and expectations for future leadership and growth opportunities.

-When faculty do leave your institution for another academic institution, having an exit interview can help identify whether faculty are leaving because of issues involving a climate that impacts people of color negatively. This allows the law school to address issues before they cause more diverse faculty members to leave.

-There should be racially diverse associate deans and chaired faculty from clinical positions included in the faculty so that junior clinical faculty recognize that they have opportunities to advance and gain recognition at the law school.

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