

American Bar Association
Section of Legal Education and Admissions to the Bar
Standards Review Committee

Chapter 2
DRAFT FOR April 2011 meeting

THE FACULTY

redlined to current Standards

Standard 106. Definitions

~~(#) “Faculty member” is an individual who teaches one or more courses or parts of courses in the curriculum of a law school. It includes “full-time faculty members” as well as part-time instructors.~~

Commentary: After further reflection, at its January meeting, the Committee decided that providing this new definition was more problematic than helpful. It is deleted.

(#) “Full-time faculty member” means ~~(b) A full-time faculty member is one an~~ individual whose primary professional employment is with the law school and who devotes substantially all working time during the academic year to the responsibilities described in Standard 404(a), and whose outside professional activities, if any, ~~are limited to those that relate to major academic interests or enrich the faculty member’s capacity as a scholar and teacher, are of service to the legal profession and the public generally, and do not unduly interfere with one’s responsibility as a faculty member.~~

Commentary: This definition was approved at the January meeting.

The source of this definition is Standard 402(b). Note the Committee earlier deleted Interpretation 402-4 as part of the weeding out of provisions tied to faculty-student ratio calculations, which means that if this proposal is also adopted, a faculty member could engage in law practice, governmental work or other business, provided those activities do not interfere with his or her responsibilities under Standard 404.

Standard 401. Qualifications

A law school shall have a faculty whose qualifications and experience are appropriate to the stated mission of the law school and to ~~maintaining~~ carrying out a program of legal education consistent with the requirements of Standards 301, 302 and 303. The faculty shall possess a high degree of competence, as demonstrated by its education, experience in teaching or practice, teaching effectiveness and ~~scholarly research and writing, scholarship.~~

Commentary: At its January meeting, the Committee substituted “carrying out” for “maintaining” and preferred “carrying out” to “advance” its program of legal education. It also preferred “scholarship” for “when appropriate, scholarly research and writing.”

At its November 2010 meeting, the Committee suggested that Standard 302 (Learning Outcomes) should also be cross-referenced in Standard 401. The Curriculum Standard (formerly 302) is now renumbered as 303 in the Committee’s revision. The Committee also decided to articulate throughout the Standards the school’s responsibility to “advance its educational program” and to omit references to the school’s mission. In view of the fact that not all faculty may have obligations to conduct scholarly research and produce scholarship, the modifying phrase “when appropriate” was inserted. This is consistent with current Standard 404(a) [new Standard 404(b)].

Standard 402. Size of Full-Time Faculty

(a) A law school shall have a sufficient number of full-time faculty to fulfill the requirements of the Standards, and meet the goals of carry out its educational program. The number of full-time faculty necessary depends on: The school shall maintain a faculty sufficient to provide stability and ongoing quality of its instructional programs and to fulfill the obligations of Standards 403 and 404.

~~(1) the size of the student body and the opportunity for students to meet individually with and consult faculty members;~~

~~(2) the nature and scope of the educational program; and~~

~~3) the opportunities for the faculty adequately to fulfill teaching obligations, conduct scholarly research, and participate effectively in the governance of the law school and in service to the legal profession and the public.~~

~~(b) A full-time faculty member is one whose primary professional employment is with the law school and who devotes substantially all working time during the academic year to the responsibilities described in Standard 404(a), and whose outside professional activities, if any, are limited to those that relate to major academic interests or enrich the faculty member’s capacity as a scholar and teacher, are of service to the legal profession and the public generally, and do not unduly interfere with one’s responsibility as a faculty member.~~

Commentary: At its January meeting, the Committee again substituted “carry out” for “advance” the educational program, substituted “shall” for “should” because it reflects the mandate of a Standard, and made stylistic changes as indicated in the second sentence.

The policy underpinning this Standard is that there ought to be a sufficient number of teachers of all rank and terms of employment who can meet these goals. In contrast, Standards 403 and 404 are directed at institutional responsibilities beyond teaching and do refer to the full-time faculty – the “professional”, “core” or “permanent” faculty.

The second sentence of Standard 402 is new and modeled on the Business School Accreditation Standard dealing with size.

Subparagraphs (a) (1) - (3) have been deleted because they are illustrations of how a school determines “sufficiency” of faculty and thus appear to be better encapsulated as an Interpretation. (See Interpretation 402-1, below) Subparagraph (b) belongs with the other definitions in Standard 106.

At its November 2010 meeting, the Committee decided to articulate throughout the Standards the school’s responsibility to “advance its educational program” and to omit references to the school’s mission.

Interpretation 402-1

The number of full-time faculty necessary depends on the size of the student body and the opportunity for students to meet individually with and consult faculty members; the mission of the school; the nature and scope of the educational program; and the ability of the faculty adequately to fulfill their responsibilities in accordance with Standard 404.

Commentary: No changes were made to this Interpretation at the January meeting.

The source of these factors is Standard 402(a) (1)-(3) although reference to the school’s own chosen mission is new. The responsibilities of the full-time faculty are set forth in Standard 404 which is cross-referenced in this latest draft. At its November 2010 meeting, the Committee decided to substitute “ability of” the faculty adequately to fulfill their responsibilities” for “the opportunities for” the faculty adequately to fulfill their responsibilities.

Interpretation 402-1

~~*In determining whether a law school complies with the Standards, the ratio of the number of full-time equivalent students to the number of full-time equivalent faculty members is considered.*~~

~~*(1) In computing the student/faculty ratio, full-time equivalent teachers are those who are employed as full-time teachers on tenure track or its equivalent who shall be counted as one each plus those who constitute “additional teaching resources” as defined below. No limit is imposed on the total number of teachers that a school may employ as additional teaching resources, but these additional teaching resources shall be counted at a fraction of less than 1 and may constitute in the aggregate up to 20 percent of the full-time faculty for purposes of calculating the student/faculty ratio.*~~

~~*(A) Additional teaching resources and the proportional weight assigned to each category include:*~~

- ~~*(i) teachers on tenure track or its equivalent who have administrative duties beyond those normally performed by full-time faculty members: 0.5;*~~
- ~~*(ii) clinicians and legal writing instructors not on tenure track or its equivalent who teach a full load: 0.7; and*~~
- ~~*(iii) adjuncts, emeriti faculty who teach, non-tenure track administrators who teach, librarians who teach, and teachers from other units of the university: 0.2.*~~

~~(B) These norms have been selected to provide a workable framework to recognize the effective contributions of additional teaching resources. To the extent a law school has types or categories of teachers not specifically described above, they shall be counted as appropriate in accordance with the weights specified above. It is recognized that the designated proportional weights may not in all cases reflect the contributions to the law school of particular teachers. In exceptional cases, a school may seek to demonstrate to site evaluation teams and the Accreditation Committee that these proportional weights should be changed to weigh contributions of individual teachers~~

~~(2) For the purpose of computing the student/faculty ratio, a student is considered full-time or part-time as determined by the school, provided that no student who is enrolled in fewer than ten credit hours in a term shall be considered a full-time student, and no student enrolled in more than 13 credit hours shall be considered a part-time student. A part-time student is counted as a two-thirds equivalent student.~~

~~(3) If there are graduate or non-degree students whose presence might result in a dilution of J.D. program resources, the circumstances of the individual school are considered to determine the adequacy of the teaching resources available for the J.D. program.~~

~~Interpretation 402-2~~

~~Student/faculty ratios are considered in determining a law school's compliance with the Standards.~~

~~(1) A ratio of 20:1 or less presumptively indicates that a law school complies with the Standards. However, the educational effects shall be examined to determine whether the size and duties of the full-time faculty meet the Standards.~~

~~(2) A ratio of 30:1 or more presumptively indicates that a law school does not comply with the Standards.~~

~~(3) At a ratio of between 20:1 and 30:1 and to rebut the presumption created by a ratio of 30:1 or greater, the examination will take into account the effects of all teaching resources on the school's educational program, including such matters as quality of teaching, class size, availability of small group classes and seminars, student/faculty contact, examinations and grading, scholarly contributions, public service, discharge of governance responsibilities, and the ability of the law school to carry out its announced mission.~~

~~Interpretation 402-3~~

~~A full-time faculty member who is teaching an additional full-time load at another law school may not be considered as a full-time faculty member at either institution.~~

~~Interpretation 402-4~~

~~Regularly engaging in law practice or having an ongoing relationship with a law firm or other business creates a presumption that a faculty member is not a full-time faculty member under this~~

~~Standard. This presumption may be rebutted if the law school is able to demonstrate that the individual has a full-time commitment to teaching, research, and public service, is available to students, and is able to participate in the governance of the institution to the same extent expected of full-time faculty.~~

Standard 403. Instructional Role of Faculty

(a) ~~The full-time faculty shall teach the major portion of the law school's curriculum, including more than half of all credit hours or student contact hours and substantially all of the first one-third of each student's coursework. and more than half of the upperclass credit hours or student contact hours.~~

(b) ~~A law school shall ensure effective teaching by all persons providing instruction to students, providing its faculty with appropriate orientation, guidance, mentoring, faculty development and periodic evaluation of its full-time and part-time faculty members.~~

(c) ~~A law school should include experienced practicing lawyers and judges as teaching resources to enrich the educational program. Appropriate use of practicing lawyers and judges as faculty requires that a law school shall provide them with orientation, guidance, monitoring, and evaluation.~~

Commentary: At its January 2010 meeting, the Committee decided to maintain the current order of the clauses in Subsection (a) but to retain the reference to "contact hours" in order to clarify the meaning.

The reference in Subsection (a) to "the major portion" of the law school's curriculum is ambiguous. The Accreditation Committee interprets this phrase to mean half of the student contact hours. The Standard should reflect this practice. At its November 2010 meeting, the Committee concluded that the proper test was whether the full-time faculty taught more than half of the upper-class student contact hours, rather than half of the upper-class credit hours. The two tests produce differing results. Also at that meeting the Committee noted that "substantially all" was ambiguous, but it did not arrive at a consensus about whether to attempt a more precise and transparent substitute.

The source of Subparagraph (b) is current Subsection (c), second sentence. Note that it may not be necessary to specify full-time and part-time faculty members, especially if the Committee decides to provide definition of "faculty" as well as "full-time faculty".

Subsection (c) has been deleted as unnecessary.

Interpretation 403-1

~~The full-time faculty's teaching responsibility will usually be determined by the proportion of student credit hours taught by full-time faculty in each of the law school's programs or divisions (such as full-time, part-time evening study, and part-time weekend study). For purposes of Standard 403(a), a faculty member is considered full-time if that person's primary professional employment is with the law school.~~

Interpretation 403-2 403-1

Efforts to ensure teaching effectiveness may include: a faculty committee on effective teaching, class visitations, critiques of videotaped teaching, institutional review of student evaluation of teaching, colloquia on effective teaching and recognition of creative scholarship in law school teaching methodology. ~~A law school shall provide all new faculty members with orientation, guidance, mentoring, and periodic evaluation.~~

Commentary: No changes were made to this Interpretation at the January meeting.

For many schools, these are obvious means of improving teaching effectiveness.

However, this listing might be helpful for some institutions that are struggling with improvement. The last sentence has been moved to the text of the Standard. The source of this Interpretation is current Interpretation 403-2.

Standard 404. Responsibilities of Full-Time Faculty

(a) A law school shall ~~establish set forth~~ provide written policies with respect to a full-time faculty members' member's responsibilities. The policies shall require that the faculty, as a collective body, fulfill these core responsibilities: in teaching, scholarship, service to the law school community, and professional and pro bono activities outside the law school. ~~The policies need not seek uniformity among faculty members, but should address:~~

(1) ~~Faculty Teaching responsibilities, including carrying a fair share of the law school's course offerings, preparing for classes, being available for student consultation, participating in academic advising, and creating an atmosphere in which students and faculty may voice opinions and exchange ideas~~ and assessment of student learning;

(2) Engaging in scholarship, including but not limited to keeping abreast in areas of legal specialty and publication of legal Rresearch, publishing legal analyses, commentary, analyses of legal issues and advocacy; ~~scholarship, and integrity in the conduct of scholarship, including appropriate use of student research assistants, acknowledgment of the contributions of others, and responsibility of faculty members to keep abreast of developments in their specialties;~~

(3) Maintaining scholarly integrity through the appropriate use and credit of student research assistants and other sources;

(4)-(3) Service Obligations to the law school and university community, including participation in the governance of the law school and other institutional responsibilities described in Standard 205(b);

(5) (4) Obligations Service to the profession, including working with the practicing bar and judiciary to improve the profession; ~~and~~

(6) (5) Obligations Service to the public, including participation in pro bono activities;

and

(7) Any other contribution deemed essential important by the law school for the achievement of its mission.

(b) Except for effectiveness in teaching, the policies need not seek uniformity among faculty members may permit faculty members to assume varying responsibilities.

(b) The law school shall evaluate periodically the extent to which each faculty member discharges his or her responsibilities under these policies. ~~adopted pursuant to Standard 404(a).~~

Commentary: The Committee debated various restatements of Subsection (a) at its January meeting and eventually returned to the Subcommittee for reconsideration. After the meeting, this version of the second sentence was suggested. It seems to capture the Committee's ideas. Because of the reference in Subsection (a) to the faculty "as a collective body", Subsection (b) is no longer needed and was in any event awkwardly expressed. The Committee also directed the Subcommittee to "broaden" the concept of "scholarship." The Subcommittee concluded that the research/scholarship and integrity obligations were really quite different and should be put in separate subparagraphs. The new language in 404(a)(1) is a revision aimed at broadening what is meant by scholarship.

The full Committee did endorse again the principle that we include an enumeration of the core responsibilities of the faculty.

Subsection (a) identifies the typical responsibilities of full-time faculty members. The Standards address this issue by the current listing in Standard 404(a) and indirectly by the listing in current Standard 205 which is concerned with the "institutional responsibilities" of the faculty as a collective. Because Standard 205(b) refers to the faculty's responsibilities for the administration of the educational program, including the curriculum and admissions, the development of academic standards and faculty selection, retention and promotion, those responsibilities ought to be echoed here. Factor 1 as revised acknowledges assessment of student learning ("methods of instruction and evaluation" of Standard 205(b)). Factor 3 is new and reflects the faculty member's responsibilities for the development of the educational program. Factor 4 has been expanded to incorporate the responsibilities of Standard 205(b).

At its last two meetings, the Committee did not clearly decide whether to retain or delete the articulation of the five faculty responsibilities of Standard 404(a) or whether to, add the two new responsibilities of course and curricular development and other roles important to the School's mission.

The source of Subsection (b) is the current version of Standard 404(b).

The source of Subsection (c) is Standard 404(b). Standard 403(b) requires a school to ensure effectiveness in teaching, presumably by periodic review. In the proposed revision, this duty is enlarged, because Standard 403(b) is concerned only with review of teaching. Subsection (c) of Standard 404 imposes the obligation of periodic review of a faculty member's complete contributions to the school.

Note: Prior drafts eliminated the preservation of academic freedom of faculty because it was already protected by Standard 405(b). However, it seemed harmless to reiterate it here and the omission might suggest a change in the vigor of the protection of faculty expression.