

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

Chapter 2
DRAFT for November 7 – 8, 2010

Strike-outs and underlines show changes from the July 2010 draft.

ORGANIZATION AND ADMINISTRATION

Standard 201. GOVERNING BOARD AND LAW SCHOOL AUTHORITY

(a) The policies of a governing board of a university that are applicable to a law school shall be consistent with the Standards.

(b) ~~The law school dean and faculty shall~~ have primary responsibility for planning, implementing and administering plan and administer the educational program of the law school, including ~~establishing and altering the curriculum;~~ ~~determining appropriate~~ methods of instruction and evaluation; ~~formulating admissions policies and procedures;~~ ~~and establishing and enforcing academic standards for retention, advancement, and graduation of students. The dean and faculty shall also participate in the selection, retention, promotion, and tenure (or granting of security of position) of members of the faculty.~~

[Comment: The phrase “dean and faculty” is changed to “law school” after discussion at the last full committee meeting in July because the focus of this standard is on law school-university relations, not on the division of power between the dean and faculty. The phrase “planning, implementing and administering” is meant to be all inclusive, but the later phrases “establishing and altering,” “determining appropriate,” “formulating,” and “establishing and enforcing” seem to suggest that in each of these specific areas the law school’s responsibility is somehow narrower. To avoid that ambiguity, those verb formulations have been removed, so the entire list all clearly falls within the law school’s “primary responsibility for planning, implementing and administering.”]

(c) ~~The law school dean and faculty shall also participate in~~ shall have primary responsibility for the selection of members of the faculty, and shall recommend retention, promotion, and tenure (or granting of security of position) of members of the faculty.

[Comment: The second sentence of (b) was moved to a new paragraph (c) because it focuses on a different subject. As in (b), the phrase “dean and faculty” was changed to “law school” for the same reason. Selection of faculty was separated from retention, promotion, and tenure. This allows us to retain the original word “recommend” in the context of retention, promotion and tenure matters, while using the phrase “primary responsibility for” in the context of selection. This change allows us to avoid the not very helpful phrase “participate in,” which was a way of fudging the distinction between initial selection and retention, promotion and tenure.]

Interpretation 201-1

Admission of a student to a law school in contravention ~~of~~ to the law school's admissions policies and procedures violates Standard 201(b).

Interpretation 201-2

~~An action by university officials that unduly interferes with the role of the dean and faculty of a law school in recommending faculty promotion and tenure or security of position violates Standard 201(b).~~

[Comment: No one knows what constitutes undue interference with the role of the dean and faculty. In light of the changes in the language of new paragraph (c) of the Standard, perhaps this interpretation is unnecessary.]

Standard 202. LAW SCHOOL-UNIVERSITY RELATIONSHIP

(a) If a law school is part of a university, that relationship shall serve to enhance the law school's program.

(b) Appropriate separate policies shall be established for the law school where a university's general policies do not adequately facilitate the law school's efforts to attract and retain a competent law faculty or adequately protect academic freedom.

Standard 203. RESOURCES FOR PROGRAM

The present and anticipated financial resources of a law school shall be sufficient to fulfill the requirements of the Standards, meet the goals of its educational program, and advance its mission~~adequate to sustain a sound program of legal education and accomplish its mission~~.

Interpretation 203-1

A law school does not comply with the Standards if its current lack of financial resources are so inadequate as to have ~~has~~ a negative and material effect on the school's ability to fulfill the requirements of the Standards, meet the goals of its educational program, or advance its mission on the education students receive. A law school also does not comply with the Standards if its anticipated financial resources will have a negative and material effect on the school's ability to fulfill the requirements of the Standards, meet the goals of its educational program, or advance its mission in the immediate future.

[Comment: It appears we are required to keep the negative and material language that we recommended omitting in the previous draft. This draft moves the negative and material language back to an interpretation. It rephrases the Standard to parallel language from 402(2) concerning faculty, on the theory that meeting the Standard, its goals, and advancing its mission is a more concrete requirement than sustaining a sound program of legal education.

The original language of the interpretation is rewritten to accomplish two things. First, in the first sentence of the interpretation it substitutes lack of resources for the language about resources being “so inadequate” and broadens the focus beyond the impact on the education students receive, to encompass negative and material effects on a school’s ability to meet Standards, meet its goals, or advance its mission, paralleling the new language of the Standard. The original language contributed greatly to the sense that the bar was set really low. Second, it adds language in the second sentence addressing inadequacy of anticipated financial resources and its impact on the school’s ability to meet the Standards, goals and mission in the immediate future.]

Interpretation 203-21

~~A law school may not base the compensation paid any person for service to the law school (other than compensation paid a student or associate for reading and correcting papers or similar activity) on the number of persons enrolled in the law school or in any class, or on the number of persons applying for admission to or registering in the law school.~~

[Comment: The subcommittee doubts the continued need to prohibit payment by piece work.]

Standard 204. DEAN

(a) A law school shall have a full-time dean, selected by the governing board or its designee, to whom the dean shall be responsible.

(b) A law school shall provide the dean with the authority and support needed to discharge the responsibilities of the position and those contemplated by the Standards.

[To be reviewed by Terms & Conditions Subcommittee:

(c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.]

(d) The faculty or a representative body of it shall have meaningful involvement in the selection of a dean. Except in extraordinary circumstances, a dean shall not be appointed or reappointed to a new term over the stated objections of a substantial majority of the faculty. While involvement by faculty in the appointment of an interim or acting dean will necessarily be more limited, there shall still be consultation with the faculty regarding the appointment of an interim or acting dean. ~~There may be exceptional circumstances that provide good cause for limited departures from these requirements.~~

[Comment: It is unclear what “meaningful involvement” or “substantial majority” means. At the same time, defining either of these phrases with greater particularity seems overly regulatory. Some sentiment was expressed, in the committee meeting in July for getting rid of the second sentence, leaving the Standard set at “meaningful involvement.” However, the sense of the subcommittee was that this issue arises more often than we might imagine. It is true that once a President or Provost appoints a dean over the objections of a substantial majority of the faculty, there is little that can be done about it. However, we will never know how often the existence of this language, which has been a part of the Standards for a long time, encourages good behavior

by Presidents and Provosts. So we cannot know how much the frequency of this problem might increase in the absence of the substantial majority language.

The “exceptional circumstances that provide good cause” language was rewritten to say “except in extraordinary circumstances” in order to simplify the language and to be consistent with similar language in other Standards.

There was also a question whether the “except” language should apply to all decanal appointments, or only permanent appointments. Since the language about interim/acting appointments requires only consultation with the faculty, the subcommittee was of the view that the exception was not necessary in the case of interim/acting appointments.]

Interpretation 204-1

~~For purposes of Standard 204(d), the~~ The extension decision to extend the appointment of an interim or acting dean’s service term beyond two years, ~~for purposes of Standard 204(d),~~ shall be treated as a regular decanal appointment or reappointment.

[Comment: In the full committee discussion in July we discussed the fact that when an interim/acting appointment extends beyond two years, it is often not by any formal decision, but rather simply by inaction. So the language about the “decision to extend” was rewritten to encompass any extension beyond two years, whether by action or inaction.]

Standard 205. ALLOCATION OF AUTHORITY BETWEEN DEAN AND FACULTY

The allocation of authority between the dean and the law faculty is a matter for determination by each institution as long as both the dean and the faculty have a significant role in determining educational policy.

[From the 202/203 Subcommittee:

Standard 206. REGULAR PLANNING AND ASSESSMENT

The dean, faculty and other constituencies the law school deems appropriate shall engage in a regular planning and assessment process, including ongoing assessment of the school’s effectiveness in achieving its mission and realizing its established goals, and when appropriate in light of the school’s assessment of its effectiveness, periodic revision of plans, goals or mission. In addition, before each site evaluation visit a self study document shall be prepared in accordance with the requirements of Rule 2 of the Rules of Procedure for Approval of Law Schools.

Interpretation 206-1

To assure ongoing vitality and successful adaptation to the rapidly changing environment of legal education and the practice of law, law schools must establish periodic or cyclical institutional planning processes and activities. Planning efforts that have proven successful in law schools and other professional or business milieus typically involve the definition and periodic reassessment of both short-term and long-range goals for the successful accomplishment of institutional missions. By framing goals in terms of measurable outcomes wherever circumstances permit, a law school can more readily track progress towards their achievement.

The manner in which a law school engages in institutional planning will vary according to available resources and local circumstances, but all law schools shall be able to document their vision, mission, and goals, evidence indicating their achievement, and strategies for periodic or ongoing reassessment of successes and unmet challenges.

Standard 207. GOVERNING BOARD OF AN INDEPENDENT LAW SCHOOL

A law school that is not part of a university shall be governed by a governing board composed of individuals dedicated to the maintenance of a sound program of legal education.