

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

Chapter 2

Draft – January 2011 Meeting

THE FACULTY

Italics show changes from the November 2010 draft.

**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: this definition is new. At the November , 2010 meeting, several Committee members thought that this term which is used in some, but not all, provisions of Chapter 4 should be a defined term. See, for example, Standards 401, 402.*

( # ) “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, 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: 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 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, when appropriate, scholarly research and

writing.

*Commentary: 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 law school shall have a sufficient number of full-time faculty to fulfill the requirements of the Standards, and ~~meet the goals of~~ advance its educational program ~~and advance its mission~~. ~~The number of full-time faculty necessary depends on: The school should maintain a faculty sufficient to provide stability and ongoing quality improvement for the instructional programs offered 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: 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. ~~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.~~

*Commentary: 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 402-2**

~~It is impossible to specify numerical standards or student-faculty ratios that would apply to all law schools. The school should maintain a faculty sufficient to provide stability and ongoing quality improvement for the instructional programs offered and to fulfill the obligations of Standards 403 and 404.~~

## **Standard 403. Instructional Role of Faculty**

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

(b) A law school shall ensure effective teaching by ~~all persons providing instruction to students by 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: 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. I believe it is correct that 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 403-2 403-1**

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: 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 full-time faculty members’ responsibilities ~~in teaching, assessment of student learning, scholarship, school governance, service to the law school community, and professional and pro bono activities outside the law school and other responsibilities deemed important for the achievement of its mission. meeting the goals of advancing its educational program and in advancing its mission.~~ The policies ~~should~~ shall address these core responsibilities:

(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) Research and 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) Course and curricular development, including the preparation of students for

**emerging areas of practice and other professional innovations;**

**(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.***

**(c) (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: 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.*