American Bar Association
Section of Legal Education and Admissions to the Bar

MEMORANDUM

TO: Interested Persons and Entities

FROM: The Hon. Solomon Oliver, Jr., Council Chairperson
    Barry A. Currier, Managing Director of Accreditation and Legal Education

DATE: December 13, 2013

SUBJECT: Comprehensive Review of the ABA Standards for Approval of Law School Matters for Notice and Comment

At its meeting held on December 6-7, 2013, the Council of the Section of Legal Education and Admissions to the Bar approved for Notice and Comment proposed revisions to Standard 205 [Non-Discrimination and Equality of Opportunity], Standard 206 [Diversity and Inclusion], Standard 207 [Reasonable Accommodation for Qualified Individuals with Disabilities], Standard 303(a)(3) [Curriculum], and Standard 603(a-c) [Director of the Law Library] of the ABA Standards and Rules of Procedure for Approval of Law Schools.

The Standards Review Committee of the Section has been conducting a comprehensive review of the Standards. As part of that review, the Committee considered multiple drafts and received informal comments from many interested persons and entities.

The proposed revisions and accompanying explanations are attached below and published on the Section’s website: http://www.americanbar.org/groups/legal_education/resources/notice_and_comment.html.

We solicit and encourage written comments on the proposed changes by letter or e-mail. Written comments should be submitted no later than Friday, January 31, 2014.

A hearing on these proposed changes is scheduled for February 5-6, 2014 (details below). The hearing will be held at the American Bar Association, 321 N. Clark St., Chicago, IL 60654.

February 5-6, 2014
   Wednesday, February 5th, 1 p.m.
   Thursday, February 6th, 9 a.m.

Please address written comments on the proposal and requests to speak at the hearing to JR Clark, jr.clark@americanbar.org.
American Bar Association
Section of Legal Education and Admissions to the Bar
Standards Review Committee

Standards 205 - 207
Explanation of Changes

Proposed Standard 205. NON-DISCRIMINATION AND EQUAL OPPORTUNITY

Proposed Standard 205 replaces current Standard 211. No significant changes are recommended. The change in proposed Standard 205(b) clarifies that the Standard applies to students, faculty, and staff.

Proposed Standard 206. DIVERSITY AND INCLUSION

Proposed Standard 206 replaces current Standard 212. The title of the proposed Standard has been changed from “Equal Opportunity and Diversity” in current Standard 212 to “Diversity and Inclusion” to emphasize the purpose of the Standard. The words “diversity and inclusion” have been added to proposed Standards 206(a) and 206(b).

Proposed Interpretation 206-2 deletes a specific reference to Grutter v. Bollinger and states that a law school may use race and ethnicity in its admissions process to promote diversity and inclusion “if consistent with applicable law.”

Proposed Standard 207. REASONABLE ACCOMMODATIONS FOR QUALIFIED INDIVIDUALS WITH DISABILITIES

Proposed Standard 207 replaces current Standard 213. The word “may” has been deleted in proposed 207(a) and the words “consistent with applicable law” have been added to the Standard to clarify that schools must provide accommodations for qualified individuals with disabilities consistent with applicable law.

Proposed Standard 207(b) is new and requires law schools to adopt, publish, and adhere to written policies and procedures for assessing and handling requests for reasonable accommodations made by qualified individuals with disabilities.

As a result of this change in Proposed Standard 207(a), current Interpretations 213-1 and 213-2 have been deleted.
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Standard 205. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY

(a) A law school shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.

(b) A law school shall foster and maintain equality of opportunity for students, faculty, and staff, without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.

(c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (i) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (ii) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but shall not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.

(d) Non-discrimination and equality of opportunity in legal education includes equal opportunity to obtain employment. A law school shall communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement functions the school’s firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, religion, national origin, gender, sexual orientation, age and disability in regard to hiring, promotion, retention and conditions of employment.

Interpretation 205-1
Schools may not require applicants, students, faculty or employees to disclose their sexual orientation, although they may provide opportunities for them to do so voluntarily.

Interpretation 205-2
As long as a school complies with the requirements of Standard 205(c), the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs. For example, it does not require a school to recognize or fund organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school.

**Interpretation 205-3**

Standard 205(d) applies to all employers, including government agencies, to which a school furnishes assistance and facilities for interviewing and other placement services. However, this Standard does not require a law school to implement its terms by excluding any employer unless that employer discriminates unlawfully.

**Interpretation 205-4**

The denial by a law school of admission to a qualified applicant is treated as made upon the basis of race, color, religion, national origin, gender, sexual orientation, age or disability if the basis of denial relied upon is an admissions qualification of the school which is intended to prevent the admission of applicants on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability though not purporting to do so.

**Interpretation 205-5**

The denial by a law school of employment to a qualified individual is treated as made upon the basis of race, color, religion, national origin, gender, sexual orientation, age or disability if the basis of denial relied upon is an employment policy of the school which is intended to prevent the employment of individuals on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability though not purporting to do so.

**Standard 206. DIVERSITY AND INCLUSION**

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.

(b) Consistent with sound educational policy and the Standards, 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.

**Interpretation 206-1**

The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity or national origin in admissions or employment decisions is not a justification for a school’s non-compliance with Standard 206. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 206 by means other than those prohibited by the applicable constitutional or statutory provisions.
**Interpretation 206-2**

In addition to providing full opportunities for the study of law and the entry into the legal profession by members of underrepresented groups, the enrollment of a diverse student body promotes cross-cultural understanding, helps break down racial, ethnic, and gender stereotypes, and enables students to better understand persons of different backgrounds. The forms of concrete action required by a law school to satisfy the obligations of this Standard are not specified. If consistent with applicable law, a law school may use race and ethnicity in its admissions process to promote diversity and inclusion. The determination of a law school’s satisfaction of such obligations is based on the totality of the law school’s actions and the results achieved. The commitment to providing full educational opportunities for members of underrepresented groups typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, and programs that assist in meeting the academic and financial needs of many of these students and that create a favorable environment for students from underrepresented groups.

**Standard 207. REASONABLE ACCOMMODATION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES**

(a) Assuring equality of opportunity for qualified individuals with disabilities, as required by Standard 205, requires a law school to provide such students, faculty and staff with reasonable accommodations consistent with applicable law.

(b) A law school shall adopt, publish, and adhere to written policies and procedures for assessing and handling requests for reasonable accommodations made by qualified individuals with disabilities.

**Interpretation 207-1**

Applicants and students shall be individually evaluated to determine whether they meet the academic standards requisite to admission and participation in the law school program. The use of the term “qualified” in the Standard requires a careful and thorough consideration of each applicant and each student’s qualifications in light of reasonable accommodations. Reasonable accommodations are those that are consistent with the fundamental nature of the school’s program of legal education, that can be provided without undue financial or administrative burden, and that can be provided while maintaining academic and other essential performance standards.
Standard 205-211. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY

(a) (b) A law school shall not use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.

(b) (a) A law school shall foster and maintain equality of opportunity for students, faculty, and staff in legal education, including employment of faculty and staff, without discrimination or segregation on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability.

(c) This Standard does not prevent a law school from having a religious affiliation or purpose and adopting and applying policies of admission of students and employment of faculty and staff that directly relate to this affiliation or purpose so long as (i) notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school, and (ii) the religious affiliation, purpose, or policies do not contravene any other Standard, including Standard 405(b) concerning academic freedom. These policies may provide a preference for persons adhering to the religious affiliation or purpose of the law school, but shall not be applied to use admission policies or take other action to preclude admission of applicants or retention of students on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability. This Standard permits religious affiliation or purpose policies as to admission, retention, and employment only to the extent that these policies are protected by the United States Constitution. It is administered as though the First Amendment of the United States Constitution governs its application.

(d) Non-discrimination and equality of opportunity in legal education includes equal opportunity to obtain employment. A law school shall communicate to every employer to whom it furnishes assistance and facilities for interviewing and other placement functions the school’s firm expectation that the employer will observe the principles of non-discrimination and equality of opportunity on the basis of race, color, religion, national origin, gender, sexual orientation, age and disability in regard to hiring, promotion, retention and conditions of employment.

Interpretation 205-1 211-1
Schools may not require applicants, students, faculty or employees to disclose their sexual orientation, although they may provide opportunities for them to do so voluntarily.

Interpretation 205-2 211-2
As long as a school complies with the requirements of Standard 205(c) 211(e), the prohibition concerning sexual orientation does not require a religiously affiliated school to act inconsistently with the essential elements of its religious values and beliefs. For example, it does
not require a school to recognize or fund organizations whose purposes or objectives with respect to sexual orientation conflict with the essential elements of the religious values and beliefs held by the school.

**Interpretation 205-3 211-3**

Standard 205(d) 211(d) applies to all employers, including government agencies, to which a school furnishes assistance and facilities for interviewing and other placement services. However, this Standard does not require a law school to implement its terms by excluding any employer unless that employer discriminates unlawfully.

**Interpretation 205-4 211-4**

The denial by a law school of admission to a qualified applicant is treated as made upon the basis of race, color, religion, national origin, gender, sexual orientation, age or disability if the basis of denial relied upon is an admissions qualification of the school which is intended to prevent the admission of applicants on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability though not purporting to do so.

**Interpretation 205-5 211-5**

The denial by a law school of employment to a qualified individual is treated as made upon the basis of race, color, religion, national origin, gender, sexual orientation, age or disability if the basis of denial relied upon is an employment policy of the school which is intended to prevent the employment of individuals on the basis of race, color, religion, national origin, gender, sexual orientation, age or disability though not purporting to do so.

**Standard 206 212. EQUAL OPPORTUNITY AND DIVERSITY AND INCLUSION**

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to diversity and inclusion by providing full opportunities for the study of law and entry into the profession by members of underrepresented groups, particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity.

(b) Consistent with sound educational policy and the Standards, 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.

**Interpretation 206-1 212-1**

The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity or national origin in admissions or employment decisions is not a justification for a school’s non-compliance with Standard 206 212. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 206 212 by means other than those prohibited by the applicable constitutional or statutory provisions.
Interpretation 206-2 212-2
Consistent with the U.S. Supreme Court’s decision in Grutter v. Bollinger, 529 U.S. 306 (2003), a law school may use race and ethnicity in its admissions process to promote equal opportunity and diversity. Through its admissions policies and practices, a law school shall take concrete actions to enroll a diverse student body that In addition to providing full opportunities for the study of law and the entry into the legal profession by members of underrepresented groups, the enrollment of a diverse student body promotes cross-cultural understanding, helps break down racial, and ethnic, and gender stereotypes, and enables students to better understand persons of different races, ethnic groups and backgrounds. Interpretation 212-3 This Standard does not specify the forms of concrete actions a law school must take to satisfy its equal opportunity and diversity obligations. The forms of concrete action required by a law school to satisfy the obligations of this Standard are not specified. If consistent with applicable law, a law school may use race and ethnicity in its admissions process to promote diversity and inclusion. The determination of a law school’s satisfaction of such obligations is based on the totality of the law school’s actions and the results achieved. The commitment to providing full educational opportunities for members of underrepresented groups typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, and programs that assist in meeting the academic and financial needs of many of these students and that create a more-favorable environment for students from underrepresented groups.

Standard 207 213. REASONABLE ACCOMMODATION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES

(a) Assuring equality of opportunity for qualified individuals with disabilities, as required by Standard 205-211, may require a law school to provide such students, faculty and staff with reasonable accommodations consistent with applicable law.

(b) A law school shall adopt, publish, and adhere to written policies and procedures for assessing and handling requests for reasonable accommodations made by qualified individuals with disabilities.

Interpretation 213-1
For the purpose of this Standard and Standard 211, disability is defined as in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 794, as further defined by the regulations on post secondary education, 45C.F.R. Section 84.3(k)(3) and by the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.

Interpretation 213-2
As to those matters covered by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, neither this Standard nor Standard 211 impose obligations upon law schools beyond those provided by Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act those statutes.
Interpretation 213-3-207-1
Applicants and students shall be individually evaluated to determine whether they meet the academic standards requisite to admission and participation in the law school program. The use of the term “qualified” in the Standard requires a careful and thorough consideration of each applicant and each student’s qualifications in light of reasonable accommodations. Reasonable accommodations are those that are consistent with the fundamental nature of the school’s program of legal education, that can be provided without undue financial or administrative burden, and that can be provided while maintaining academic and other essential performance standards.
American Bar Association  
Section of Legal Education and Admissions to the Bar  

Chapter 3  
Explanation of Changes  

Alternative Proposal on Standard 303(a)(3). CURRICULUM  

Current Standard 302(a) has a list of mandatory requirements for the law school curriculum. The current Standard does not prescribe any credit hour requirements for specific areas.  

In September 2013, the Council circulated for notice and comment proposed Standard 303(a)(3), which included a new requirement of six credits of instruction in an experiential course or courses. To qualify, the experiential course or courses must be a simulation, clinical, or field placement, all as defined in subsequent Standards. Four requirements for a qualifying experiential course are set out.  

This alternative Proposed Standard 303(a)(3) increases the new requirement from six to 15 credits of instruction in an experiential course or courses.  

A copy of the alternative proposal showing differences from the prior proposal is attached.  

The Council continues to seek comments on the original proposal as well as this alternative proposal.
American Bar Association  
Section of Legal Education and Admissions to the Bar  

Chapter 3 – PROGRAM OF LEGAL EDUCATION  

Alternative Proposal on Standard 303(a)(3)  

Strike-outs and underlines show differences from the proposal that was circulated for comment in September 2013.  

Standard 303. CURRICULUM  

(a) The law school shall offer a curriculum that requires each student to satisfactorily complete at least the following:  

......  

(3) one or more experiential course(s) totaling at least-six 15 credit hours. An experiential course or courses must be: (i) simulation course(s); or (ii) clinical course(s); or (iii) field placement(s). To satisfy this requirement, a course must be primarily experiential in nature and must:  

(i) integrate doctrine, theory, skills, and legal ethics and engage students in performance of one or more of the professional skills identified in Standard 302;  

(ii) develop the concepts underlying the professional skills being taught;  

(iii) provide multiple opportunities for performance; and  

(iv) provide opportunities for self-evaluation.
Proposed Standard 603(a-c) [Director of the Law Library] was not sent forward with the rest of Chapter 6: Library and Information Resources.

Standard 603. DIRECTOR OF THE LAW LIBRARY

Proposed Standard 603(a) adds “providing information resources in appropriate formats to faculty and students” as one of the overall management responsibilities of the law library director.

In proposed Standard 603(c), the requirement that the law library director must have specific degrees for the position has been replaced with a requirement that the director must have “appropriate academic qualifications.” As in other provisions in the proposed Standards, the SRC added the requirement that the director’s knowledge and experience must be “sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards.”

Proposed Interpretation 603-1 provides guidance for the Accreditation Committee by elaborating on how a law school could meet the Standard.
American Bar Association
Section of Legal Education and Admissions to the Bar

Standard 603(a-c)

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Standard 603. Director of the Law Library

(a) A law school shall have a full-time director of the law library whose principal responsibilities are managing the law library and providing information resources in appropriate formats to faculty and students.

(b) The selection and retention of the director of the law library shall be determined by the law school.

(c) A director of a law library shall have appropriate academic qualifications and shall have knowledge of and experience in library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards.

Interpretation 603-1

Having a director of a law library with a law degree and a degree in library or information science is an effective method of assuring that the individual has appropriate qualifications and knowledge of and experience in library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards. A law school not having a director with these credentials bears the burden of demonstrating that it is in compliance with Standard 603(c).
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Strike-outs and underlines show changes from the current Standards.

Standard 603. Director of the Law Library

(a) A law library shall be administered by the law school and shall have a full-time director whose principal responsibility is the management of the law library and providing information resources in appropriate formats to faculty and students.

(b) The selection and retention of the director of the law library shall be determined by the law school.

(c) A director of a law library should have a law degree and a degree in library or information science, and shall have appropriate academic qualifications and experience in library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards.

Interpretation 603-1

Having a director of a law library with a law degree and a degree in library or information science is an effective method of assuring that the individual has appropriate qualifications and experience in library administration sufficient to support the program of legal education and to enable the law school to operate in compliance with the Standards. A law school not having a director with these credentials bears the burden of demonstrating that it is in compliance with Standard 603(c).

Interpretation 603-2

The director of the law library is responsible for all aspects of the management of the law library, including budgeting, staff, collections, services and facilities.

Interpretation 603-3

The granting of faculty appointment to the director of the law library under this Standard normally is a tenure or tenure-track appointment. If a director is granted tenure, this tenure is not in the administrative position of director.

Interpretation 603-4

It is not a violation of Standard 603(a) for the director of the law library also to have other administrative or teaching responsibilities, provided sufficient resources and staff support are available to ensure effective management of library operations.