

February 16, 2006

MEMORANDUM

TO: Deans of ABA-Approved Law Schools

FROM: John Sebert, Consultant on Legal Education

**SUBJECT: Revisions of Standards 210-212 and Associated Interpretations
Approved by the Council at its Meeting of February 11, 2006**

As part of a comprehensive review of the Standards, the Standards Review Committee examined Standards 210-212 and the Interpretations of those Standards. Preliminary discussion of proposed changes was begun at the November 2004 meeting of the Committee. The Committee devoted its March 19, 2005, meeting to developing recommendations for presentation to the Council in August. The Committee was greatly assisted in its work by a set of recommendations for revisions prepared by the Section's Diversity Committee. The Standards Review Committee also had before it and considered (as did the Diversity Committee) recommendations for revisions of these Standards sent to the Committee by Gary Palm ("the Palm proposals") on behalf of himself and other members of the Clinical Legal Education Association (CLEA) and the Society of American Law Teachers (SALT).

In August 2005, the Council considered the Committee's recommendations and the Palm proposals, and the Council approved distributing for comment proposed revisions to Standards 210 – 212 and Interpretations of those Standards. The proposed revisions were widely distributed for comment and also were posted on the Section's website. A hearing to elicit comment was held during the AALS Annual Meeting on January 5, 2006, and many individuals appeared to speak to these proposals at that hearing. Also, a large number of written and e-mail comments were received during the formal comment period. This set of Standards and Interpretations has not been altered for a number of years. The Committee and Council agreed that it was time to re-examine these provisions, especially in light of changes in the law and institutional practices since the existing Standards were adopted. They also concluded that a need existed for greater clarity regarding both what is permitted and what is required by the Standards to provide adequate guidance both to law schools and to the Accreditation Committee.

The Committee established several overarching goals for the proposed revisions:

1. To distinguish the obligations of non-discrimination and equality of opportunity (Standard 210) and the obligations of equal opportunity and diversity (Standard 211).
2. To determine which groups and individuals should be covered by these Standards and Interpretations.
3. To determine what law school activities and actions should be covered by these standards.

At its meeting on January 5, 2006, the Standards Review Committee carefully considered all of the comments that had been received, including the many thoughtful remarks that were made during the January 4 hearing. The Committee also granted Vernellia Randall privileges of the floor so that she could address the Committee during its January 5 meeting.

The Committee presented to the Council its final recommendations for revision of Standards 210 – 212 for review and action at its meeting on February 11, 2006. The Council approved the recommended changes with some modification. The changes approved by the Council will be presented to the American Bar Association House of Delegates for concurrence at its August meeting. The changes will become effective upon the concurrence by the House of Delegates.

This memorandum discusses the changes. Marked-up and restated versions of the approved revisions to Standards 210 – 212 are attached

Standard 210. Non-Discrimination and Equality of Opportunity

The revisions to Standard 210 establish a comprehensive requirement of non-discrimination and equality of opportunity. “Non-discrimination” has been added to the Standard title. Changes throughout the Standard make clear that the two terms are linked and required.

Throughout the Standard and Interpretations, “age” and “disability” were added to the categories designated for non-discrimination and equality of opportunity. Although age might be viewed as distinguishable from the other protected categories, the Council decided that age should be included within the protected categories, in part because discrimination on the basis of age is prohibited under federal law. The current prohibition against discrimination on the basis of disability also has been moved to Standard 210 from Standard 212 so that Standard 210 contains a comprehensive statement of the requirements of non-discrimination and equality of opportunity.

To reflect the prevailing terminology, “sex” was changed to “gender” throughout the Standard and Interpretations.

In section (b), “may” was changed to “shall” to be consistent with directive language of section (a).

The Standards Review Committee recommended the deletion of sections (c) and (d) as these sections appear no longer to have relevance as the type of de jure segregation to which these sections were directed no longer exists. Some of the comments that were received suggested that it might be a mistake to delete these two provisions, asserting that the underlying principle was still relevant and that deletion of the section might send a signal of a diminished commitment to prohibiting discrimination. The Council decided to retain section (c) (2) but as new Interpretation 210-4, and to retain section (d) but as new Interpretation 210-5. For both new interpretations the protected categories included would be conformed to the changes made to sections (a) and (b).

Editorial revisions have been made to former section (e) [new section (c)], and revisions consistent with those in sections (a) and (b) are proposed.

In new section (d) [existing section (f)], “should” is changed to “shall” to be consistent with the directive language of sections (a) and (b), thus requiring a law school to communicate to employers who use the school’s placement assistance the expectation that they will observe the principles of non-discrimination and equal opportunity. The illustrations of possible violations of those principles contained in the current Standard have been deleted as unnecessary.

The only non-editorial change in the black-letter of proposed Standard 210 from the version that was distributed for comment is the addition of language at the end of Standard 210(d) that clarifies the principles of equal opportunity and non-discrimination to which employers are expected to comply. Renumbered Interpretation 210-3, however, continues to provide that a school is not required to exclude from receiving placement assistance an employer that discriminates lawfully.

Interpretation 210-1

Faculty has been added to the list of groups who cannot be required to disclose their sexual orientation.

Current Interpretation 210-2

This interpretation was viewed as unnecessary and was deleted.

Renumbered Interpretations 210-2 and 210-3

These provisions contain minor editing and numbering changes from their predecessors.

Other than the previously mentioned comments concerning the proposed deletion of Standards 210 (c) and (d), there were very few comments concerning the proposed revisions to Standard 210 or its Interpretations.

New Interpretations 210-4 and 210-5

See above.

Standard 211. Equal Opportunity and Diversity

Standard 211 had been primarily directed to the admission of students, although actions by the Accreditation Committee have extended its reach to faculty. The revisions make explicit that the Standard also applies to faculty and staff. While equal opportunity and diversity may have different foundations (equal opportunity in social justice and diversity in educational policy), the two have become connected in practice and the revisions to the Standard recognize that connection.

The requirement of the Standard is stated in terms of a commitment that is demonstrated by concrete action. There was extended discussion on this issue, both when the Committee and Council were developing the proposed revisions in 2005 and in the comments on those proposals. Some urged that the Standard be stated in terms of results and also suggested that the Standard should build on the language of the *Grutter* case and require that law schools have a “critical mass” of students from traditionally underrepresented groups. Evidence was provided to show continuing underrepresentation in law school and in the legal profession of individuals from groups that have been historically discriminated against, and the argument was made that only a “results test” could ensure that there would be substantial progress toward increasing access to legal education and the profession.

The Council was persuaded that it would be infeasible to develop and enforce a Standard that is based on requiring schools to attain a “critical mass” of persons from underrepresented groups, both because of the difficulty of defining “critical mass” and because of the widely varying demographics of the markets in which different law schools recruit their student bodies. The Council believes that the Standard should require a commitment demonstrable by concrete action. Because the core of the requirement extends beyond mere effort, the term “effort” was deleted from the title of the Section.

The Council also recognized that the results achieved are very relevant, though not necessarily dispositive, in evaluating effort and commitment. Thus the second sentence of proposed Interpretation 211-3 was revised to provide: “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 Council understands that this sentence is consistent with the current practice of the Accreditation Committee, which does consider the diversity results that a school has achieved as a factor in evaluating the school’s compliance with current Standard 211.

In section (a) “qualified” has been deleted as unnecessary given other Standards regarding student selection and retention. “Underrepresented” was added to qualify

“groups” covered to be consistent with the equal opportunity element. Specific language was added to make it clear that a law school must demonstrate a commitment to having a student body that is diverse with respect to gender, race and ethnicity.

A new section (b) makes clear that a law school must demonstrate a commitment to having a faculty and staff that are diverse with respect to gender, race and ethnicity.

New Interpretation 211-1

The Council approved this new Interpretation, which was added to the Committee’s recommended changes at its January 2006 meeting. The purpose is to make it clear that a constitutional or statutory provision prohibiting a school from considering race in making admissions or other decisions does not insulate the school from the obligation of the Standard to demonstrate a commitment to have a diverse student body, faculty and staff. The Council understands that this Interpretation is consistent with the current practice of the Accreditation Committee under the current Standards.

New Interpretation 211-2

The Committee proposed, and the Council approved, some revisions of the proposed Interpretation that was distributed for comment. The revised first sentence relies more clearly on *Grutter* for the proposition that a school may use race and ethnicity in its admissions standards and deletes as unnecessary the initially proposed language “so long as it does so in a lawful manner.” The Interpretation also indicates that, as part of school’s effort to satisfy the basic requirements of Standard 211, schools “shall take concrete actions to enroll a diverse student body” that promotes cross-cultural understanding, helps break down racial and ethnic stereotypes, and enables students better to understand persons of different races, ethnic groups and backgrounds. In the version that was distributed for comment, the verb was “should”. The Council approved the use of “shall” in order to be consistent with the black-letter, which establishes an obligation (“shall”) to have a commitment to having a diverse faculty, staff and student body.

New Interpretation 211-3

The interpretation revises former Interpretation 211-1. It retains the language that meeting the requirements of the Standard will be determined by the totality of the law school’s action, but replaces with a more general statement the prior list of actions that might demonstrate commitment to diversity. This change recognizes and encourages flexibility and innovation on the part of law schools in meeting the requirement. The only change in this Interpretation from that distributed for comment is the addition of the phrase “and the results achieved” at the end of the second sentence. As explained above, the purpose of this addition is to make it clear that the results achieved are relevant, although not dispositive, in determining a school’s compliance with the Standard.

Current Interpretation 211-2

As initially recommended, this Interpretation has been deleted. The Council agreed with the recommendation of the Committee that requiring a law school to prepare a written diversity plan imposed an unnecessary burden on law schools. In addition, conscientious application of the existing diversity plan requirement by the Accreditation Committee has on occasion led to the anomalous result of citing a school for non-compliance with the diversity plan requirement when the school has nonetheless been successful in achieving significant diversity in its faculty and student body. The proposed revised Standard requires that a school demonstrate by concrete action a commitment to diversity, so if a school has not succeeded in attaining a diverse faculty or student body the absence of a written plan still could be a factor in a determination by the Accreditation Committee that the school had not satisfied the requirements of the Standard. In the written comments and the hearing, there was no criticism of the Committee's proposal to delete Interpretation 211-2.

Standard 212. Reasonable Accommodation for Qualified Individuals with Disabilities

The requirement of non-discrimination against individuals with disabilities has been moved to Standard 210. Standard 212 now deals with the required provision of reasonable accommodations to individuals with disabilities. In this Standard, the term "qualified" was retained to correlate with federal law's use of this term when considering the rights of people with disabilities.

No criticism was received of the recommended changes to Standard 212 and its Interpretations that were circulated for comment.

Interpretation 212-1

A reference to Standard 210 is added and an incorrect citation in the current Interpretation is corrected.

Interpretation 212-2

There has been minor editing to this Interpretation, and a reference to Standard 210 has also been added.

Interpretation 212-3

The statement of the law school's obligation is more clearly focused by editing to eliminate some advisory language. The Council made some changes to the existing language of the Interpretation to remove what could have been perceived, though not intended, as negative implications regarding reasonable accommodation.

[MARKED-UP]

Standard 210. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY.

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

(b) A law school ~~may~~ 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, sex gender, ~~or~~ sexual orientation, age or disability.

~~(c) The denial by a law school of admission to a qualified applicant is treated as made upon the ground of race, color, religion, national origin, sex, or sexual orientation if the ground of denial relied upon is~~

~~(1) a state constitutional provision or statute that purports to forbid the admission of applicants to a school on the ground of race, color, religion, national origin, sex, or sexual orientation; or~~

~~(2) an admissions qualification of the school which is intended to prevent the admission of applicants on the ground of race, color, religion, national origin, sex, or sexual orientation though not purporting to do so.~~

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

(~~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 ~~which~~ 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, sex, ~~or~~ 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 ~~they~~ these policies are protected by the United States Constitution. It is administered as ~~if~~ though the First Amendment of the United States Constitution governs its application.

(fd) Equality Non-discrimination and equality of opportunity in legal education includes equal opportunity to obtain employment. A law school ~~should~~ 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, and will avoid objectionable practices such as

~~(1) refusing to hire or promote members of groups protected by this policy because of the prejudices of clients or of professional or official associates;~~

~~(2) applying standards in the hiring and promoting of these individuals that are higher than those applied otherwise;~~

~~(3) maintaining a starting or promotional salary scale as to these individuals that is lower than is applied otherwise; and~~

~~(4) disregarding personal capabilities by assigning, in a predetermined or mechanical manner, these individuals to certain kinds of work or departments.~~

Interpretation 210-1:

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 210-2:

This Standard does not require a law school to adopt policies or take actions that would violate federal law applicable to that school.

Interpretation 210-32:

As long as a school complies with the requirements of Standard 210(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 210-43:

Standard 210(fd) applies to all employers, including government agencies, to ~~whom~~ 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 210-4:

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 210-5:

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 211. EQUAL OPPORTUNITY AND DIVERSITY EFFORT.

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate, ~~or have carried out and maintained,~~ by concrete action, a commitment to providing full opportunities for the study of law and entry into the profession by qualified members of underrepresented groups, notably particularly racial and ethnic minorities, and a commitment to having a student body that is diverse with respect to gender, race, and ethnicity. ~~which have been victims of discrimination in various forms. This commitment typically includes a special concern for determining the potential of these applicants through the admission process, special recruitment efforts, and a program that assists in meeting the unusual financial needs of many of these students, but a law school is not obligated to apply standards for the award of financial assistance different from those applied to other students.~~

(b) Consistent with sound educational policy and the Standards, a law school shall demonstrate by concrete action a commitment to having a faculty and staff that are diverse with respect to gender, race and ethnicity.

Interpretation 211-1:

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 211.

Interpretation 211-2:

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 promotes cross-cultural understanding, helps break down racial and ethnic stereotypes, and enables students to better understand persons of different races, ethnic groups and backgrounds.

Interpretation 211-3:

This Standard does not specify the forms of concrete actions a law school must take to satisfy its equal opportunity and diversity obligations. The 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, 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.

Interpretation 211-1:

~~This standard does not specify the forms of concrete actions a school must take in order to satisfy its equal employment obligation. The satisfaction of such obligation is based on the totality of its actions. Among the kinds of actions that can demonstrate a school's commitment to providing equal opportunities for the study of law and entry into the profession by qualified members of groups that have been the victims of discrimination are the following:~~

- ~~a. Participating in job fairs and other programs designed to bring minority students to the attention of employers.~~
- ~~b. Establishing procedures to review the experiences of minority graduates to determine whether their employers are affording equal opportunities to members of minority groups for advancement and promotion.~~
- ~~c. Intensifying law school recruitment of minority applicants, particularly at colleges with substantial numbers of minority students.~~
- ~~d. Promoting programs to identify outstanding minority high school students and college undergraduates, and encouraging them to study law.~~
- ~~e. Supporting the activities of the Council on Legal Education Opportunity (CLEO) and other programs that enable more disadvantaged students to attend law school.~~
- ~~f. Creating a more favorable law school environment for minority students by providing academic support services, supporting minority student organizations, promoting contacts with minority lawyers, and hiring minority administrators.~~
- ~~g. Encouraging and participating in the development and expansion of programs to assist minority law graduates to pass the bar.~~
- ~~h. Developing and implementing specific plans designed to increase the number of minority faculty in tenure and tenure-track positions by applying a broader range of criteria than may customarily be applied in the employment and tenure of law teachers, consistent with maintaining standards of quality.~~
- ~~i. Developing programs that assist in meeting the unusual financial needs of many minority students, as provided in Standard 211.~~

Interpretation 211-2:

~~Each ABA approved law school (1) shall prepare a written plan describing its current program and the efforts it intends to undertake relating to compliance with Standard 211, and (2) maintain a current file which will include the specific actions which have been taken by the school to comply with its stated plan.~~

Standard 212. REASONABLE ACCOMMODATION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES.

Assuring equality of opportunity for qualified individuals with disabilities, as required by Standard 210, may require a law school to provide such students, faculty and staff with reasonable accommodations.

~~A law school may not discriminate against individuals with disabilities in its program of legal education. A law school shall provide full opportunities for the study of law and entry into the profession by qualified disabled individuals. A law school may not discriminate on the basis of disability in the hiring, promotion, and retention of otherwise qualified faculty and staff.~~

Interpretation 212-1:

Individual with disability, f~~For the purpose of this Standard-~~ and Standard 210, disability is defined as in Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. Section 706-794, as further defined by the regulations on post secondary education, 45 C.F.R. Section 84.3(k)(3) and by the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.

Interpretation 212-2:

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 210 is not designed ~~to~~ impose obligations upon law schools beyond those provided by those statutes.

Interpretation 212-3:

The essence of proper service to individuals with disabilities is individualization and reasonable accommodation. ~~Each individual~~ Applicants and students shall be individually evaluated to determine ~~if whether~~ he or she they meets 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 ~~do not fundamentally alter~~ are consistent with the fundamental nature of the program, school’s program of legal education, that can be provided without undue financial or administrative burden, and that can be provided ~~without lowering~~ while maintaining academic and other essential performance standards.

[RESTATED]

Standard 210. NON-DISCRIMINATION AND EQUALITY OF OPPORTUNITY.

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

(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.

(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 210-1:

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 210-2:

As long as a school complies with the requirements of Standard 210(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 210-3:

Standard 210(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 210-4:

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 210-5:

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 211. EQUAL OPPORTUNITY AND DIVERSITY.

(a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to 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 having a faculty and staff that are diverse with respect to gender, race and ethnicity.

Interpretation 211-1:

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 211.

Interpretation 211-2:

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 promotes cross-cultural understanding, helps break down racial and ethnic stereotypes, and enables students to better understand persons of different races, ethnic groups and backgrounds.

Interpretation 211-3:

This Standard does not specify the forms of concrete actions a law school must take to satisfy its equal opportunity and diversity obligations. The 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, 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 212. REASONABLE ACCOMMODATION FOR QUALIFIED INDIVIDUALS WITH DISABILITIES.

Assuring equality of opportunity for qualified individuals with disabilities, as required by Standard 210, may require a law school to provide such students, faculty and staff with reasonable accommodations.

Interpretation 212-1:

For the purpose of this Standard and Standard 210, 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, 45 C.F.R. Section 84.3(k)(3) and by the Americans with Disabilities Act, 42 U.S.C. Sections 12101 et seq.

Interpretation 212-2:

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 210 imposes obligations upon law schools beyond those provided by those statutes.

Interpretation 212-3:

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.