

Motion to concur with recommendations of 106B agreed to

**AMERICAN BAR ASSOCIATION
SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR
REPORT TO THE HOUSE OF DELEGATES**

Recommendation

1 RESOLVED, That the American Bar Association House of Delegates concurs in
2 the action of the Council of the Section of Legal Education and Admissions to the
3 Bar in adopting revisions to Standards 210-212, concerning equal opportunity and
4 diversity, of the Standards for Approval of Law Schools and the Interpretations
5 thereto dated August 2006.

**STANDARDS FOR APPROVAL OF LAW SCHOOLS
[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.~~

(ec) 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(f) 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. A law school that is subject to such constitutional or statutory provisions would have to demonstrate the commitment required by Standard 211 by means other than those prohibited by the applicable constitutional or statutory provisions.

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.