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This report with recommendation was received after the May 10 filing deadline and therefore has not been reviewed by the Committee on Rules and Calendar. Pursuant to §45.5 of the House Rules of Procedure, this late report will be considered by the House if the Committee on Rules and Calendar recommends a waiver of the time requirement and the recommendation is approved by a two-thirds vote of the delegates voting.  
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**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.~~

(~~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. 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, fFor the purpose of this Standard, and Standard 210, disability is defined ~~in~~ 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.*

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

**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.*

## REPORT

As part of the current comprehensive review of the Standards for Approval of Law Schools, the Council of the Section of Legal Education and Admissions to the Bar and its Standards Review Committee during 2004 through 2006 examined Standards 210-212 and the Interpretations of those Standards, which deal with equality of opportunity and diversity. Those provisions had not been substantially reviewed or revised since 1994. 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 in order to provide adequate guidance both to law schools and to the Accreditation Committee.

Preliminary discussion of proposed changes was begun at the November 2004 meeting of the Standards Review Committee. The Committee devoted its March 19, 2005, meeting to developing recommendations for presentation to the Council in August. At that time, the Committee already had before it various recommendations for revisions of these provisions prepared by the Section's Diversity Committee, and 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 developing its proposals in March of 2005, 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.

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 the 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 Association of American Law Schools 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.

At its meeting on January 6, 2006, the Standards Review Committee carefully considered all of the comments that had been received, including the many comments that were made during the January 5 hearing. The Committee presented to the Council its final recommendations for revision of Standards 210 – 212 for review and action at the

Council's meeting on February 11, 2006. The Council approved the recommended changes with some modification. This Report describes the revisions that the Council approved. Marked-up and restated versions of the approved revisions to Standards 210 – 212 are attached.

### **Misconceptions Concerning the Revisions and Their Effect**

There has been an extensive amount of public commentary concerning the revisions adopted by the Council in February. Unfortunately, much of that commentary – which was not raised during the extensive public comment process that preceded the Council's adoption of these revisions -- has been misinformed and reflects serious misconceptions concerning the revisions and their effect. Before moving to a section by section description of the revisions, it is necessary to address those misconceptions:

- The revisions do not impose significant new requirements on law schools. Most of the revisions merely provide greater clarity and transparency in the Standards and more guidance to law schools concerning long-standing practices of the Council and the Accreditation Committee in enforcing the current, but more generally phrased, Standards and Interpretations.
- The revised Standards and Interpretations do not require law schools to consider race or ethnicity in their admissions decisions. Interpretation 211-2 states only that law schools “may” use race and ethnicity in their admissions decisions in a manner permitted by *Grutter v. Bollinger*.
- The revised Standards and Interpretations do not establish or mandate a system of “quotas” for minority enrollment. In fact, the Committee and the Council explicitly rejected a recommendation that the Standards require that law schools enroll a “critical mass” of students from underrepresented minority groups and did so in part because such a requirement could be viewed by some as establishing a quota requirement. The requirement of the Standard is that law schools “demonstrate by concrete action . . . a commitment” to having a diverse student body, faculty and staff. Interpretation 211-3 does indicate that the results that a school achieves in its diversity efforts are “relevant”, but results are not dispositive and the requirement of the Standard is that law schools must demonstrate a commitment to diversity.
- The revised Standards and Interpretations do not require law schools to violate state or federal law that prohibits the consideration of gender, race, ethnicity or national origin in admissions or employment decisions. Because the Standards do not require a school to consider gender, race ethnicity or national origin in its admissions or employment selection policies, Interpretation 211-1 makes the logical point that a constitutional or statutory provision that prohibits the consideration of such factors in admissions or employment decisions does not relieve a law school of the

obligation to comply with the requirements of Standard 211, which is to demonstrate a commitment to having a diverse student body, faculty and staff. The second sentence of Interpretation 211-1 makes it clear that law schools that operate under such constitutional or statutory constraints would have to demonstrate the commitment required by the Standards by means other than having race-conscious admissions or employment selection policies. In the admissions context, for example, schools could make, and have made, that demonstration by employing some of a large range of well known methods, other than race-conscious admissions decisions, for seeking to recruit and enroll a diverse student body. A partial list of such efforts would include: admissions recruitment outreach to undergraduate campuses having a substantial population of minority students; “pipeline” efforts to encourage persons from underrepresented groups, even as early as high school, to consider the legal profession as a career; careful consideration of factors in addition to LSAT score and undergraduate grade point average, such as achievements in student leadership, the workplace and graduate education, when making admissions decisions; holding or collaborating in summer programs that assist those of all races and ethnic backgrounds to be more well prepared for admission to and success in law school; enhanced efforts to encourage minority students who have been admitted actually to enroll; etc.

### **Standard 210. Non-Discrimination and Equality of Opportunity**

The revisions to Standard 210 state a comprehensive requirement of non-discrimination and equality of opportunity. “Non-discrimination” has been added to the title of the Standard. Changes throughout the Standard make clear that the two terms are linked and required. Except for a few new requirements that are highlighted below, these revisions are consistent with the manner in which the existing Standard has been applied over many years by the Accreditation Committee and the Council.

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 existing 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 these provisions 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 are 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) also have been made.

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. Renumbered Interpretation 210-3 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.

### **Standard 211. Equal Opportunity and Diversity**

Standard 211 had been primarily directed to the admission of students, although actions by the Accreditation Committee and Council have applied the same principles to faculty. The revisions make explicit that the Standard also applies to faculty and staff as well as to students. 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.

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. There also was concern that a “critical mass” requirement could be viewed by some as establishing a quota requirement that might be impermissible under applicable federal or state law. 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 dispositive, in evaluating commitment. Thus the second sentence of Interpretation 211-3 provides: “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

As stated above, the revised Standards and Interpretations do not require law schools to violate state or federal law that prohibits the consideration of gender, race, ethnicity or national origin in admissions or employment decisions. Because the Standards do not require a school to consider gender, race ethnicity or national origin in its admissions policies, Interpretation 211-1 makes the logical point that a constitutional or statutory provision that prohibits the consideration of such factors in admissions or employment decisions does not relieve a law school of the obligation to comply with the requirements of Standard 211, which is to demonstrate a commitment to having a diverse student

body, faculty and staff. The second sentence of Standard 211-1 makes it clear that law schools that operate under such constitutional or statutory constraints would have to demonstrate the commitment required by the Standards by means other than having a race-conscious admissions policy. (See the earlier discussion of possible ways that schools could make, and have made, the necessary demonstration of a commitment to seeking a diverse student body.) The Council understands that this Interpretation is consistent with the practice of the Accreditation Committee in applying the existing Standards.

### **New Interpretation 211-2**

The first sentence relies on *Grutter* for the proposition that a school may use race and ethnicity in its admissions standards. 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. 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. As explained above, the addition of the phrase "and the results achieved" at the end of the second sentence is intended 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**

This Interpretation has been deleted. The Council agreed with the recommendation of the Standards Review 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.

**Standard 212. Reasonable Accommodation for Qualified Individuals with Disabilities**

The requirement of non-discrimination against individuals with disabilities has been moved from this Standard to Standard 210. Standard 212 now deals only 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 persons with disabilities.

**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.

\* \* \*

The Council respectfully requests that the House of Delegates concur in the revisions of Standards 210-212 of the Standards for Approval of Law Schools and its Interpretations that the Council has adopted.

Respectfully submitted,

Steven R. Smith, Chairperson  
August 2006

## GENERAL INFORMATION FORM

To Be Appended to Reports with Recommendations  
(Please refer to instructions for completing this form.)

Submitting Entity: Section of Legal Education and Admissions to the Bar

Submitted By: Dean Steven R. Smith, Chairperson

1. Summary of Recommendation(s).

That the House concur in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting revisions to Standards 210- 212, concerning equal opportunity and diversity, of the Standards for Approval of Law Schools and the Interpretations thereto.

2. Approval by Submitting Entity.

Approved by the Council of the Section of Legal Education and Admissions to the Bar at its meeting of February 11, 2006.

3. Has this or a similar recommendation been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this recommendation and how would they be affected by its adoption?

The revisions provide greater clarity and transparency in the Standards and more guidance to law schools concerning the requirements of the Standards concerning non-discrimination, equality of opportunity, and diversity.

5. What urgency exists which requires action at this meeting of the House?

To promote and assure the smooth functioning of the ABA Standards for Approval of Law Schools and its interpretations, it is useful and important that revisions that are developed, widely discussed and adopted in one academic year be effective at the beginning of the following academic year. This revision was developed in the spring of 2005, circulated extensively for comment in August 2005, and adopted by the Council in February 2006. The matter is now ready for consideration at the August 2006 meeting of the House.

6. Status of Legislation. (If applicable.)

None.

7. Cost to the Association. (Both direct and indirect costs.)

None.

8. Disclosure of Interest. (If applicable.)

None.

9. Referrals.

The following groups were offered opportunities to comment on the proposed Interpretation: Deans of ABA-approved law schools, presidents of universities with ABA-approved law schools, chief justices of state supreme courts, bar admissions authorities, the Senior Lawyers Division, the Commission on Racial and Ethnic Diversity in the Profession, the Commission on Women in the Profession, the deans of unapproved law schools, and leaders of organizations interested in the law school approval process (including the Association of American Law Schools, the National Conference of Bar Examiners, the Law School Admissions Council, the National Association for Law Placement, the Conference of Chief Justices, and the National Conference of Bar Presidents). A hearing was held to hear comments on the proposed revisions in January 2006 and the proposed Interpretation and the memo soliciting comment also were posted on the Section's website. Numerous comments were received at the hearing and by e-mail and letter, and all comments were carefully considered as the final revisions were adopted.

10. Contact Person. (Prior to the meeting.)

John A. Sebert, Consultant on Legal Education	312-988-6746
[At the Meeting, Moana Surfrider	808-922-3111]

11. Contact Person. (Who will present the report to the House.)

Jose Garcia Pedrosa, Esq., Section Delegate	305-243-5813
[At the Meeting, Hilton Hawaiian Village	808-949-4321]

Sidney S. Eagles, Jr., Esq., Section Delegate	919-755-8771
[At the Meeting, Sheraton Waikiki	808-922-4422]

12. Contact person regarding amendments to this recommendation.

(Are there any known proposed amendments at this time? If so, please provide the name, address, telephone, fax and ABA/net number of the person to contact below.) None known at this time.

## EXECUTIVE SUMMARY

### Summary of the Recommendation

That the House concur in the action of the Council of the Section of Legal Education and Admissions to the Bar in adopting revisions to Standards 210- 212, concerning equal opportunity and diversity, of the Standards for Approval of Law Schools and the Interpretations thereto.

### Summary of the Issue that the Recommendation Addresses

The revisions provide greater clarity and transparency in the Standards and more guidance to law schools concerning the requirements of the Standards concerning non-discrimination, equality of opportunity, and diversity.

### Explanation of How the Proposed Policy Addresses the Issues

This new Interpretation was adopted by the Council in February 2006 after extensive opportunities for comment by law school deans and others interested in the Standards for Approval of Law Schools and its Interpretations. Concurrence by the House of Delegates is necessary in order for the new Interpretation to be effective.

### Summary of Minority Views or Opposition

None at this time.