



AMERICAN BAR ASSOCIATION

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Legal Education and  
Admissions to the Bar

To: The Council

From: The Standards Committee

Date: February 21, 2024

Re: Proposed Revisions to Standard 206 – Discussion Draft for February 2024 Meeting

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**Summary:** This memo describes revisions to Standard 206 recommended by the Standards 205/206 Working Group as a response to the Supreme Court’s opinion in Students for Fair Admissions Inc. v. President & Fellows of Harvard College. The revisions make clear that a law school must demonstrate by concrete actions a commitment to access to all persons, including those with identity characteristics that have led to disadvantages in or exclusion from the legal profession. The revisions retain the mandate that a law school demonstrate by concrete actions a commitment to diversity and inclusion by having a faculty and staff that are diverse with respect to various identity characteristics. Additionally, the revisions expand the identity characteristics listed in the Standard by including socioeconomic status and Native American tribal citizenship. The revision also requires law schools to adopt, publish, and adhere to a professionalism, mutual respect, and belonging policy. Finally, the revision recognizes that a religiously affiliated school may adopt and apply policies for admission of students and employment of faculty and staff that directly relate to its religious mission.

**Recommendation:** The Committee recommends the Council approve this revision for Notice and Comment.

**Redline:** Standard 206. ~~DIVERSITY AND INCLUSION~~ ACCESS TO LEGAL EDUCATION AND THE PROFESSION

(a) ~~Consistent with sound legal education policy and the Standards, a~~ A law school shall demonstrate by concrete actions a commitment to ~~diversity and inclusion~~ access ~~by providing full opportunities for~~ to the study of law and entry into the profession to all persons, including those with identity characteristics that have led to disadvantages in or exclusion from ~~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~~ the legal profession on the basis of race, color, ethnicity, religion, national origin, gender, gender identity, gender expression, sexual orientation, age, disability, military status, Native American tribal citizenship, or socioeconomic background.

(b) ~~Consistent with sound educational policy and the Standards, a~~ A law school shall demonstrate by concrete actions a commitment to diversity and inclusion by having a faculty and staff that are diverse

with respect to ~~gender, race, and ethnicity~~ race, color, ethnicity, religion, national origin, gender, gender identity, gender expression, sexual orientation, age, disability, military status, Native American tribal citizenship, and socioeconomic background.

(c) A law school shall adopt, publish, and adhere to a policy that promotes professionalism, mutual respect, and belonging for everyone in the law school community.

#### *Interpretation 206-1*

*Any law* ~~The requirement of a constitutional provision or statute that purports to prohibit consideration of any of the identity characteristics listed in Standard 206(a) and (b) gender, race, ethnicity, or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 206. Despite legal constraints, a~~ A law school ~~that is subject to such constitutional or statutory provisions would have to~~ must demonstrate the commitment required by Standard 206 by means other than those prohibited by ~~law the applicable constitutional or statutory provisions.~~ Compliance with Standard 206 (b) does not require a law school to have faculty and staff members from every identity category listed in the Standard.

#### *Interpretation 206-2*

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

#### *Interpretation 206-3*

*Standard 206 does not prohibit a religiously affiliated school from adopting and applying policies for admission of students and employment of faculty and staff that directly relate to its religious mission so long as notice of these policies has been given to applicants, students, faculty, and staff before their affiliation with the law school. This protection for religiously affiliated schools is not in conflict with Standard 206(c)'s requirement that a law school must adopt, publish, and adhere to a policy that promotes professionalism, mutual respect, and belonging for all people in the law school community.*