



AMERICAN **BAR** ASSOCIATION

Legal Education and
Admissions to the Bar

Memorandum

To: Interested Parties and Entities

From: David A. Brennen, Council Chair
Jennifer Rosato Perea, Managing Director of Accreditation and Legal Education

Date: August 28, 2024

Re: Matters for Notice and Comment: Standard 206 – **Deadline: September 30, 2024**

At its meeting on August 15-16, 2024, the Council of the Section of Legal Education and Admissions to the Bar (the “Council”) approved for Notice and Comment proposed revisions as follows:

- Standard 206: Access to Legal Education and the Profession (previously titled “Diversity and Inclusion”)

All proposed revisions and accompanying explanations are published on the Section’s website at https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/.

We solicit and encourage written comments on all the proposals listed above. ***Please note the changes to the submission instructions as follows:*** All written comments should be addressed to David A. Brennen, Council Chair, and sent electronically as a .pdf attachment to NoticeandComment@americanbar.org by **September 30, 2024**. Early submission of written comments is strongly encouraged. Written comments received after September 30, 2024, will not be able to be included in the materials considered by the Council at its November 2024 meeting. All written comments received will be posted publicly on the Section’s website at https://www.americanbar.org/groups/legal_education/resources/notice_and_comment/.

Standard 206: Access to Legal Education and the Profession **(previously titled “Diversity and Inclusion”)**

Background: Due to changes in the law resulting from the U.S. Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* concerning college and university admissions decisions, the Council concluded that revisions to Standard 206 were needed. The revisions below were approved by the Council after the Standards Committee reviewed the U.S. Supreme Court’s decision, consulted with outside counsel, researched state law, and looked for other accreditors’ policies in this area. After much deliberation, the Standards Committee gave the Council two options for revisions to Standard 206. The Standards Committee recommended one of these options, which the Council approved for Notice and Comment.

Explanation of Revisions: The new title of Standard 206, “Access to Legal Education and the Profession” (formerly titled “Diversity and Inclusion”) focuses on achieving access for students, faculty, and staff. The revisions to the Standard remove references to race and ethnicity, as well as other specific identity characteristics, from the text of the Standard.

Standard 206(a) emphasizes that access to the study of law and legal profession is particularly necessary for ensuring the legitimacy of the justice system, since most law school graduates become a part of the justice system. Standard 206(a) and Standard 206(b) both contain parallel language that describes access as “including those [persons] with identities that historically have been disadvantaged or excluded from the legal profession.” Interpretation 206-1 provides examples of actions that demonstrate a commitment to access.

Standard 206(b) requires concrete actions that demonstrate a commitment to maintaining a supportive learning environment for all students, in part by providing access to faculty and staff positions for all persons, including those with identities that historically have been disadvantaged or excluded from the legal profession. The Council understands that there are more aspects to a supportive learning environment, but this is an important one of those aspects. The Council provides a definition of “supportive learning environment” in Interpretation 206-3 and, in Interpretation 206-2, explicitly states that taking race or any other identity characteristic into account in making an individual employment decision is not required for compliance Standard 206(b).

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

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

(a) For purposes of ensuring the legitimacy of the justice system, a law school shall demonstrate by concrete actions a commitment to access to the study of law and entry into the legal profession for all persons including those with identities that historically have been disadvantaged or excluded from the legal profession.

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

(b) A law school shall demonstrate by concrete actions a commitment to creating and maintaining a supportive learning environment for all students, in part by providing access to faculty and staff positions for all persons, including those with identities that historically have been disadvantaged or excluded from the legal profession.

Interpretation 206-1

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

The commitment to providing access to the study of law and entry into the profession typically includes:

- 1) admissions policies, processes, and practices aimed at evaluating each applicants' potential holistically, including consideration of the applicant's individual experiences and challenges and the contribution that the applicant is likely to make to the legal profession such as making affordable legal services available to all people;
- 2) recruitment efforts targeted at groups that have been disadvantaged in or excluded from the legal profession,
- 3) programs aimed at meeting the academic and financial needs of all students; and
- 4) efforts aimed at creating a supportive learning environment for all students in the law school.

Interpretation 206-2

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

Compliance with Standard 206(b) does not require a law school to take race or any other identity characteristic into account in making an individual employment decision.

Interpretation 206-3

A supportive learning environment is one that promotes professionalism, mutual respect, and belonging for everyone in the law school community.

Clean Version: Standard 206: ACCESS TO LEGAL EDUCATION AND THE PROFESSION

(a) For purposes of ensuring the legitimacy of the justice system, a law school shall demonstrate by concrete actions a commitment to access to the study of law and entry into the legal profession for all persons including those with identities that historically have been disadvantaged or excluded from the legal profession.

(b) A law school shall demonstrate by concrete actions a commitment to creating and maintaining a supportive learning environment for all students, in part by providing access to faculty and staff positions for all persons, including those with identities that historically have been disadvantaged or excluded from the legal profession.

Interpretation 206-1

The commitment to providing access to the study of law and entry into the profession typically includes:

- 1) admissions policies, processes, and practices aimed at evaluating each applicants' potential holistically, including consideration of the applicant's individual experiences and challenges and the contribution that the applicant is likely to make to the legal profession such as making affordable legal services available to all people;*
- 2) recruitment efforts targeted at groups that have been disadvantaged in or excluded from the legal profession,*
- 3) programs aimed at meeting the academic and financial needs of all students; and*
- 4) efforts aimed at creating a supportive learning environment for all students in the law school.*

Interpretation 206-2

Compliance with Standard 206(b) does not require a law school to take race or any other identity characteristic into account in making an individual employment decision.

Interpretation 206-3

A supportive learning environment is one that promotes professionalism, mutual respect, and belonging for everyone in the law school community.