American Bar Association
Section of Legal Education and Admissions to the Bar
Standards Review Committee

Chapter 2 - ORGANIZATION AND ADMINISTRATION

REDLINE - DRAFT after July 2011 Meeting

Strike-outs and underlines show changes from the current standards.

Standard 201 ~~205~~. GOVERNING BOARD AND LAW SCHOOL AUTHORITY

(a) ~~A~~ The policies of a governing board of a university ~~may establish general policies~~ that are applicable to a law school ~~if they are~~ shall be consistent with the Standards.

(b) The dean and faculty shall have primary responsibility for planning, implementing and administering ~~formulate and administer~~ the educational program of the law school, including curriculum,~~;~~ methods of instruction and evaluation,~~;~~ admissions policies and procedures,~~;~~ and academic standards. ~~for retention, advancement, and graduation of students; and shall recommend the selection, retention, promotion, and tenure (or granting of security of position) of the faculty.~~

(c) The dean and faculty shall have primary responsibility for ~~recommend~~ the selection of members of the faculty, and shall recommend retention, promotion, and tenure (or granting of security of position) of members of the faculty.

Interpretation *~~205-2~~* ***201-1***
Admission of a student to a law school in contravention of the law school's admissions policies and procedures ~~without the approval of the dean and faculty of the law school~~ violates ~~the~~ Standard~~s~~ 201(b).

~~***Interpretation 205-1***~~
~~*An action of a university committee may violate the standards if it deprives the dean and faculty of a law school of their appropriate roles for recommending faculty promotion and tenure or security of position.*~~

Standard 202 ~~210~~. LAW SCHOOL-UNIVERSITY RELATIONSHIP

(a) If a law school is part of a university, that relationship shall serve to enhance the law school's program.

(b) Appropriate separate policies shall be established for the law school where ~~If~~ a university's general policies do not adequately facilitate the law school's efforts to attract and retain a ~~the recruitment and retention of~~ competent law faculty or adequately protect academic freedom~~, appropriate separate policies should be established for the law school~~.

~~(c) The resources generated by a law school that is part of a university should be made available to the law school to maintain and enhance its program of legal education.~~

~~(d) A law school shall be given the opportunity to present its recommendations on budgetary matters to the university administration before the budget for the law school is submitted to the governing board for adoption.~~

~~Interpretation 210-1~~
~~A law school does not comply with the Standards if the charges and costs assessed against the law school's revenue by the university leave the law school with financial resources so inadequate as to have a negative and material effect on the education students receive.~~

~~Interpretation 210-2~~
~~The resources generated by a law school that is part of a university should be made available to the law school to maintain and enhance its program of legal education. "Resources generated" includes law school tuition and fees, endowment restricted to the law school, gifts to the law school, and income from grants, contracts, and property of the law school. The university should provide the law school with a satisfactory explanation for any use of resources generated by the law school to support non-law school activities and central university services. In turn, the law school should benefit on a reasonable basis in the allocation of university resources.~~

Standard 203 ~~201~~. RESOURCES FOR PROGRAM

(a) The present and anticipated financial resources ~~of a law school~~ shall be <u>sufficient to enable the law school to fulfill the requirements of the Standards and carry out its educational program</u> ~~adequate to sustain a sound program of legal education and accomplish its mission~~.

~~(b) A law school shall be so organized and administered that its resources are used to provide a sound program of legal education and to accomplish its mission.~~

~~Interpretation 201-1~~
<u>(b)</u> A law school does not comply with the Standards if its <u>current lack of</u> financial resources ~~are so inadequate as to have~~ <u>has</u> a negative and material effect on the <u>school's ability:</u>

<u>i. to fulfill the requirements of the Standards;</u>
<u>ii. or carry out its educational program.</u> ~~education students receive~~.

<u>(c) A law school also does not comply with the Standards if its anticipated lack of financial resources will have a negative and material effect in the immediate future on the schools' ability to:</u>

<u>i. fulfill the requirements of the Standards;</u>
<u>ii. or carry out its educational program.</u>

<u>Interpretation 203-1</u>

The university should provide the law school with a transparent explanation for any charges and costs assessed against any resources generated by the law school and for any use of resources generated by the law school to support non-law school activities and central university services.

~~Interpretation 201-2~~
~~A law school may not base the compensation paid any person for service to the law school (other than compensation paid a student or associate for reading and correcting papers or similar activity) on the number of persons enrolled in the law school or in any class or on the number of persons applying for admission to or registering in the law school.~~

Standard 204 ~~206~~. DEAN

(a) A law school shall have a full-time dean, selected by the governing board or its designee, to whom the dean shall be responsible.

(b) A law school shall provide the dean with the authority and support needed to discharge the responsibilities of the position and those contemplated by the Standards.

[To be reviewed by Terms & Conditions Subcommittee:
(c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.]

(d) The law school or university, as appropriate, shall have and follow a procedure for decanal appointment that assures meaningful involvement by ~~T~~ the faculty or a representative body of the faculty ~~it shall advise, consult, and make recommendations to the appointing authority~~ in the selection of a dean. Except in extraordinary circumstances, a dean shall not be appointed or reappointed to a new term over the stated objections of a substantial majority of the faculty. While involvement by faculty in the appointment of an interim or acting dean will necessarily be more limited, there shall still be consultation with the faculty or a representative body of the faculty regarding the appointment of an interim or acting dean.

~~Interpretation 206-1~~
~~The faculty or a representative body of it should have substantial involvement in the selection of a dean. Except in circumstances demonstrating good cause, a dean should not be appointed or reappointed to a new term over the stated objection of a substantial majority of the faculty.~~

Interpretation 204-1
For the purposes of Standard 204(d), the extension of an interim or acting dean's service beyond two years shall be treated as a regular decanal appointment or reappointment.

Standard 205 ~~207~~. ALLOCATION OF AUTHORITY BETWEEN DEAN AND FACULTY

The allocation of authority between the dean and the ~~law~~ faculty is a matter for determination by the law school ~~each institution~~ as long as both the dean and the faculty have a significant role in determining educational policy.

~~**Standard 208. INVOLVEMENT OF ALUMNI, STUDENTS AND OTHERS**~~

~~**A law school may involve alumni, students, and others in a participatory or advisory capacity; but the dean and faculty shall retain control over matters affecting the educational program of the law school.**~~

From the 202/203 Subcommittee:
[~~S202 SELF STUDY, S203 STRATEGIC PLANNING AND ASSESSMENT, and I202-1 deleted and not shown here~~]

Standard 206. REGULAR PLANNING AND ASSESSMENT

(a) The dean and faculty shall engage in a regular planning and assessment process, including ongoing written assessment of the law school's effectiveness in achieving its mission and realizing its established goals. As part of this process, the law school shall include regular, ongoing assessment of its institutional effectiveness as required by Standard 305 and regular, ongoing assessment of its effectiveness in carrying out the planning for the law library provided for in Standard 601 and Interpretation 601-2.

(b) When appropriate in light of assessments of effectiveness, the school shall revise its plans, goals, or mission.

(c) In addition, before each site evaluation visit a self study document shall be prepared in accordance with the requirements of Rule 2 of the Rules of Procedure for Approval of Law Schools.

Interpretation 206-1
To assure ongoing vitality and successful adaptation to the rapidly changing environment of legal education and the practice of law, law schools must establish periodic or cyclical institutional planning processes and activities. Planning efforts that have proven successful in law schools and other professional or business milieus typically involve the definition and periodic reassessment of both short-term and long-range goals for the successful accomplishment of institutional missions. By framing goals in terms of measurable outcomes wherever circumstances permit, a law school can more readily track progress towards their achievement. The law school may invite other constituencies to participate in the planning and assessment process, including administrative staff, adjunct faculty, students, alumni, representatives of the university, and members of the legal community served by the law school. The manner in which a law school engages in institutional planning will vary according to available resources and local circumstances, but all law schools must document their vision, mission, and goals, evidence indicating their achievement, and strategies for periodic or ongoing reassessment of successes and unmet challenges.

Standard 207 ~~204~~. GOVERNING BOARD OF AN INDEPENDENT LAW SCHOOL

A law school that is not part of a university shall be governed by a governing board composed of individuals dedicated to the maintenance of a sound program of legal education.

~~***Interpretation 204-1***~~
~~*The governing board of a law school that is not part of a university should authorize the dean to serve as chief executive, or chief academic officer of the law school, or both, and shall define the scope of the dean's authority in compliance with the Standards. The dean shall be responsible to the governing board. The dean may be a member of the board but should not serve as chairperson of the board.*~~

~~**Standard 209. NON-UNIVERSITY AFFILIATED LAW SCHOOLS**~~

~~**If a law school is not part of a university or, although a part, is physically remote from the rest of the university, the law school should seek to provide its students and faculty with the benefits that usually result from a university connection, such as by enlarging its library collection to include materials generally found only in a university library and by developing working relationships with other educational institutions in the community.**~~

Chapter 2 - ORGANIZATION AND ADMINISTRATION

CLEAN COPY -- DRAFT after July 2011 Meeting

Standard 201. GOVERNING BOARD AND LAW SCHOOL AUTHORITY

(a) The policies of a governing board of a university that are applicable to a law school shall be consistent with the Standards.

(b) The dean and faculty shall have primary responsibility for planning, implementing and administering the educational program of the law school, including curriculum, methods of instruction and evaluation, admissions policies and procedures, and academic standards.

(c) The dean and faculty shall have primary responsibility for the selection of members of the faculty, and shall recommend retention, promotion, and tenure (or granting of security of position) of members of the faculty.

Interpretation 201-1
Admission of a student to a law school in contravention of the law school's admissions policies and procedures violates Standard 201(b).

Standard 202. LAW SCHOOL-UNIVERSITY RELATIONSHIP

(a) If a law school is part of a university, that relationship shall serve to enhance the law school's program.

(b) Appropriate separate policies shall be established for the law school where a university's general policies do not adequately facilitate the law school's efforts to attract and retain a competent law faculty or adequately protect academic freedom.

Standard 203. RESOURCES FOR PROGRAM

(a) The present and anticipated financial resources shall be sufficient to enable the law school to fulfill the requirements of the Standards and carry out its educational program.

(b) A law school does not comply with the Standards if its current lack of financial resources has a negative and material effect on the school's ability:

- **i. to fulfill the requirements of the Standards;**
- **ii. or carry out its educational program.**

(c) A law school also does not comply with the Standards if its anticipated lack of financial resources will have a negative and material effect in the immediate future on the schools' ability to:

- **i. fulfill the requirements of the Standards;**
- **ii. or carry out its educational program.**

Interpretation 203-1
The university should provide the law school with a transparent explanation for any charges and costs assessed against any resources generated by the law school and for any use of resources generated by the law school to support non-law school activities and central university services.

Standard 204. DEAN

(a) A law school shall have a full-time dean, selected by the governing board or its designee, to whom the dean shall be responsible.

(b) A law school shall provide the dean with the authority and support needed to discharge the responsibilities of the position and those contemplated by the Standards.

[To be reviewed by Terms & Conditions Subcommittee:
(c) Except in extraordinary circumstances, a dean shall also hold appointment as a member of the faculty with tenure.]

(d) The law school or university, as appropriate, shall have and follow a procedure for decanal appointment that assures meaningful involvement by the faculty or a representative body of the in the selection of a dean. Except in extraordinary circumstances, a dean shall not be appointed or reappointed to a new term over the stated objections of a substantial majority of the faculty. While involvement by faculty in the appointment of an interim or acting dean will necessarily be more limited, there shall still be consultation with the faculty or a representative body of the faculty regarding the appointment of an interim or acting dean.

Interpretation 204-1
For the purposes of Standard 204(d), the extension of an interim or acting dean's service beyond two years shall be treated as a regular decanal appointment or reappointment.

Standard 205. ALLOCATION OF AUTHORITY BETWEEN DEAN AND FACULTY

The allocation of authority between the dean and the faculty is a matter for determination by the law school as long as both the dean and the faculty have a significant role in determining educational policy.

From the 202/203 Subcommittee:
Standard 206. REGULAR PLANNING AND ASSESSMENT

(a) The dean and faculty shall engage in a regular planning and assessment process, including ongoing written assessment of the law school's effectiveness in achieving its mission and realizing its established goals. As part of this process, the law school shall include regular, ongoing assessment of its institutional effectiveness as required by Standard 305 and regular, ongoing assessment of its effectiveness in carrying out the planning for the law library provided for in Standard 601 and Interpretation 601-2.

(b) When appropriate in light of assessments of effectiveness, the school shall revise its plans, goals, or mission.

(c) In addition, before each site evaluation visit a self study document shall be prepared in accordance with the requirements of Rule 2 of the Rules of Procedure for Approval of Law Schools.

Interpretation 206-1
To assure ongoing vitality and successful adaptation to the rapidly changing environment of legal education and the practice of law, law schools must establish periodic or cyclical institutional planning processes and activities. Planning efforts that have proven successful in law schools and other professional or business milieus typically involve the definition and periodic reassessment of both short-term and long-range goals for the successful accomplishment of institutional missions. By framing goals in terms of measurable outcomes wherever circumstances permit, a law school can more readily track progress towards their achievement. The law school may invite other constituencies to participate in the planning and assessment process, including administrative staff, adjunct faculty, students, alumni, representatives of the university, and members of the legal community served by the law school. The manner in which a law school engages in institutional planning will vary according to available resources and local circumstances, but all law schools must document their vision, mission, and goals, evidence indicating their achievement, and strategies for periodic or ongoing reassessment of successes and unmet challenges.

Standard 207. GOVERNING BOARD OF AN INDEPENDENT LAW SCHOOL

A law school that is not part of a university shall be governed by a governing board composed of individuals dedicated to the maintenance of a sound program of legal education.

Reporter's Notes

[N.B. These Notes reflect the SRC discussion through July 2011.]

The SRC has proposed two major changes for Chapter 2 *Organization and Administration*. First, the Chapter has been significantly reordered. The SRC was of the opinion that the sections within the chapter could be grouped together to read more coherently while retaining the substantive matters. Second, the SRC was also of the opinion that the Standards on the self-study and on strategic planning should be clarified.

Proposed Standard 201 *Governing Board and Law School Authority* is a reworking of current Standard 205. The proposed Standard attempts to more clearly delineate the relationship between that law school and its university's governing board. Proposed Standard 201 (a) makes it mandatory that a university's policies "shall be consistent with the Standards."

Proposed Standard 201 (b) notes that the dean and faculty "shall have primary responsibility for planning, implementing and administering the education program" of the law school. Additionally, and consistent with the use of student learning outcomes (see Chapter 3), the dean and faculty also have primary responsibility for evaluation as well as for methods of instruction and curriculum. The dean and faculty also have primary responsibility for policies and procedures regarding admissions.

Proposed Standard 201 (c) continues to recognize the role of the dean and faculty in recommending retention, promotion and tenure, but treats selection of faculty members differently, requiring that the dean and faculty have primary responsibility for the selection of members of the faculty.

Proposed Interpretation 201-1 is a redraft of current Interpretation 205-2 and emphasizes that the admission of a student that contravenes the law school's admissions policies is a violation of proposed Standard 201 (b). The intent of this Interpretation is to guard against interference with the law school's admissions policies.

Proposed Standard 202 *Law School University Relationship* is a reworking of current Standard 210 and directly addresses the relationship between the university and the law school.

The SRC proposes no change to subsection (a) which states that for law schools that are part of a University, the relationship shall serve to enhance a law school's educational program.

Proposed Standard 202 (b) addresses, more directly, the values of attracting and retaining competent faculty as well as adequately protecting academic freedom for law school faculty. This subsection states that if a university's policies do not provide for attracting and retaining competent faculty or for adequately protecting academic freedom, then the law school shall adopt separate policies. The SRC proposes no Interpretations for this Standard consequently recommending the deletion of current Interpretations 210-1 and 210-2. However, the third sentence of Interpretation 210-2, with minor revisions, is carried over into proposed Interpretation 203-1.

Proposed Standard 203 *Resources for the Program* incorporates current Standard 201 and elaborates the issue of law school resources.

First, proposed Standard 203 (a) requires that the present and anticipated financial resources of the law school be "sufficient to enable the school to fulfill the requirements of the standards and carry out its educational program." The language of Standard 203 (a) adds the additional requirement that resources must assist the law school in meeting and maintaining the Standards in addition to sufficient resources for the educational program.

The SRC proposes a new subsection (b) which adopts some of the language in current Interpretation 201-1. The proposed Standard 203 (b) is directed at the consequences of a *current* lack of financial resources. The proposal notes that law school is not in compliance if a current lack of financial resources has a negative and material effect on the school's ability to (1) fulfill the requirements of the Standards (2) carry out its educational program.

New proposed Standard 203 (c) addresses the situation in which there is an *anticipated* lack of financial resources. If an anticipated lack of financial resources will have a negative and material effect on the immediate future of the school's ability to (1) fulfill the requirement of the Standards or (2) carry out its educational program, then the law school is not in compliance with the Standards.

Proposed Interpretation 203-1 is a reworking of the third sentence of Interpretation 210-2, addressing the relationship between the University and its law school regarding resources. The Interpretation states that a university should provide a law school with a satisfactory explanation for any charges and costs assessed against resources generated by a law school. In addition, a university should provide a law school satisfactory explanation for its use of any resources generated by the law school to support non-law school activities and central university services.

The SRC proposes deleting current Interpretation 201-2 regarding compensation based on the number of persons enrolled in a law school.

Proposed Standard 204 *Dean* is a reworking of current Standard 206. The majority of current Standard 206 is retained in the proposal. Standard 204 (a) retains current Standard 206 (a) and states that a law school shall have a full-time dean selected by the appropriate governing authorities to whom the dean is responsible.

Similarly, proposed Standard 204 (b) retains current Standard 206 (b) regarding the dean's authority. The law school must provide a dean with the authority and support needed to discharge the responsibilities of the position and the responsibilities contemplated by the Standards.

Likewise, proposed Standard 204 (c) retains current Standard 206 (c) and states that the dean shall also hold appointment as a member of the faculty with tenure except in extraordinary circumstances. **[It should be noted that this subsection is currently under discussion regarding terms and conditions of employment.]**

Proposed Standard 204 (d) is substantial revision that adds new language and incorporates some language previously in Interpretation 206-1. This subsection addresses the role of the faculty in decanal selection and appointment. The new language in the first sentence requires that the law school or university shall have a procedure for decanal appointment that "assures meaningful involvement by the faculty or a representative body of the faculty" in the selection of the dean. The subsection also emphasizes that, except in extraordinary circumstances, a dean shall not be appointed or reappointed over the stated objections of a "substantial majority of the faculty." This language has been borrowed from current Interpretation 206-1. The subsection further notes that appointment of an interim or acting dean requires consultation with the faculty or a representative body of the faculty regarding such appointment.

Proposed Interpretation 204-1 states that the extension of an interim acting dean's service beyond a two year period should be treated as a regular decanal appointment or reappointment under Standard 204 (d) thus requiring "meaningful involvement" of the faculty or representative body of the faculty.

Proposed Standard 205 *Allocation of Authority Between Dean and Faculty* is a minor stylistic redraft of current Standard 207 that is not intended to change the substantive requirement that each law school determine the allocation of authority between the dean and the faculty as long as both have significant roles in determining educational policy.

Proposed Standard 206 *Regular Planning and Assessment* and represents a significant change to this Chapter. More specifically, Standard 206 incorporates the materials currently contained in Standard 202 *Self-Study*; Standard 203 *Strategic Planning and Assessment*; and Interpretation 202-1. Under the proposal, those provisions will be deleted and this new Standard will serve as a substitute.

Under proposed Standard 206 (a), the dean and the faculty will be required to engage in a regular planning and assessment process. This Standard also requires an ongoing assessment of a law school's effectiveness in achieving its mission and reaching its established goals. The Standard further requires a law school to regularly assess its institutional effectiveness as required by Standard 305 together with an ongoing assessment of the effectiveness of its law library planning has provided in Standard 601 and in Interpretation 601-2.

Under proposed Standard 206 (b), a law school is required to revise plans, goals and mission when appropriate and in light of its assessment of the law school's effectiveness.

Finally, under proposed Standard 206 (c) that law school will be required to prepare a self-study before each site evaluation visit in accordance with the requirements of Rule 2 of the Rules of Procedure for Approval of Law Schools that addresses the requirements that a school must satisfy for a site evaluation. More specifically, before a site visit, a law school is required to submit specific information listed in the Rule. That information should thus be included in the self-study.

Proposed Standard 206, then, combines in one subsection the previous requirements for strategic plan and the writing of a self-study.

Proposed Interpretation 206-1 explains the approach to planning and assessment. It is the intent of proposed Standard 206 to assure the ongoing evaluation and successful adaptation by law schools to changing environments in legal education and in law practice. In order to attain those goals, law schools must establish periodic or cyclical institutional planning processes.

The SRC believed that planning takes place in a variety of ways throughout the country. Some law schools, for example, are subject to regional accreditation requirements and other schools are subject to university planning requirement. Consequently, the Standard sets a general planning and assessment requirement and allows law schools to exercise discretion in the choice of planning and assessment processes and tools as long as planning is understood as an ongoing requirement.

The Interpretation indicates that planning efforts typically involves the definition and periodic assessment of short-term and long-range goals for the successful achievement of an institution's mission. Further, the Interpretation indicates that goals should be framed, when appropriate, in terms of measurable outcomes so that a law school can more readily track its progress. The Interpretation indicates that a law school may invite other constituencies to participate in planning and assessment activities. The Interpretation recognizes that institutional planning will vary among law schools due to available resources and local circumstances. However, all law schools will be required document their vision, mission, and goals as well as document evidence indicating achievement as well as document strategies for periodic reassessment and addressing unmet challenges.

Proposed Standard 207 *Governing Board of an Independent Law School* is a renumbering of current Standard 204 and wholly incorporates its language. The Standard requires that for a law school that is not part of University, it shall be governed by governing board composed of individuals dedicated to maintaining a sound program of legal education.

The SRC recommends the deletion of Standard 208 *Involvement of Alumni, Students and Others* because the committee believes that law schools have inherent authority to involve others in its affairs. Further, the committee believes that the Standard is unnecessary particularly since in proposed Standard 207 the dean and the faculty have authority over a school's educational program which is the object of current Standard 208.

The SRC and also recommend the deletion of Standard 209 *Non University Affiliated Law Schools*. The committee believed that the requirements in the current Standard 209 regarding the benefits to a law school due to a university connection are covered by the general requirement that all law schools must satisfy the each of the Standards.

[At the time of this draft, the SRC did not address Standards 211-213.]