

To: ABA Section of Legal Education
Standards Review Committee

From: John Nussbaumer
ABA Council on Racial and Ethnic Diversity in the Educational Pipeline

Date: March 29, 2011

Re: Request to Include Standard 212 (Equal Opportunity and Diversity) in Your Current Review Process

The ABA Council on Racial and Ethnic Diversity in the Educational Pipeline (formerly the ABA Presidential Advisory Council on Diversity in the Legal Profession) is appointed by the ABA President to increase the number of diverse students who are on track to become lawyers so that our profession reflects the diversity of the nation we serve.

Our strategic plan includes as one of our functions providing appropriate input to the ABA Section of Legal Education on issues related to diversity, access, and inclusion. At our February 12, 2011 meeting in Atlanta, the Council unanimously voted to ask the Standards review Committee to “include Standard 212 in its current revision process and provide an opportunity for discussion and comment as it considers proposed revisions to the Standard.”

The first reason why we believe this would be appropriate is because as we understand it, the current review process is supposed to be a comprehensive review of all current standards and interpretations in accordance with Department of Education regulations that require accrediting bodies to periodically undertake such a review.

A second reason why we believe this would be appropriate is because there is evidence that ABA-approved schools are not providing equal opportunity to diverse applicants in a way that will achieve meaningful diversity in our lifetimes.

We currently face a substantial diversity deficit in the profession, with the proportion of lawyers of color lagging significantly behind their proportion of America’s population. We also face an increasingly diverse population whose growth is increasing this disparity, and who by about 2042 or sooner will surpass whites as the majority of America’s population. We thus need to substantially increase the diversity of America’s law schools if we are to close this gap, and avoid the crisis of confidence in our justice system that will occur if we fail to do so.

The law school admissions process over the past ten years has resulted in 60% of all African American applicants and 45% of all Hispanic applicants being totally shut-out from every ABA-approved law school they applied to, compared to just 31% of white applicants.¹ Perhaps even more troubling, Asian American applicants, whose LSAT scores are statistically

¹ See Johnson and Nussbaumer, *The Door to Law School*, forthcoming in the University of Massachusetts-Dartmouth Law Review.

indistinguishable from their white counterparts, still had a noticeably higher shut-out rate of 37% during this same period.²

Table 1 below summarizes this data for the Fall 2000 through Fall 2009 entering classes, with all data obtained from the publicly available data published by the Law School Admissions Council:

Table 1 – LSAT Scores and Shut-Out Rates by Applicant Group

Applicant Group	Average Mean LSAT Score	Shut-Out Rate
Caucasian	153	31%
Asian American	152	37%
Native American	148	42%
Mexican American	148	43%
Hispanic	146	45%
Puerto Rican	139	52%
African American	142	60%

During this same ten-year period, African American, Mexican American, and Puerto Rican students at ABA-approved schools all lost ground in proportional representation compared to the overall increase in law school enrollment, despite a substantial increase in law school seats and slightly increasing or stable entering credentials among these groups. For example, while the net enrollment change for Mexican American students during this period was about +7%, the net change for all students of color was +26%, and the net change for all students was +16%.³

² *Ibid.*

³ *Ibid.*

Table 2 below summarizes this data, which was compiled from the publicly available data published by the ABA Section of Legal Education and the Law School Admissions Council:

Table 2 – Enrollment Trends and Lost Ground

Applicant Group	Net Enrollment Change	Net Enrollment Change Among All Students of Color	Net Enrollment Change Among All Students
African Americans	+9%	+26%	+16%
Asian Americans	+39%	+26%	+16%
Hispanics	+56%	+26%	+16%
Mexican Americans	+7%	+26%	+16%
Native Americans	+34%	+26%	+16%
Puerto Ricans	-8%	+26%	+16%

Even these numbers, however, do not tell the whole story. For example, although Hispanic enrollment grew by 56% during this period, which sounds substantial, there were still only 6,514 Hispanic students enrolled in all ABA-approved schools by the 2009-10 academic year, compared to a total of 145,239 enrolled students. Hispanics thus comprised only 4.5% of all students, despite their explosive growth to 16% of America’s population in the 2010 census.

This data provides support for the conclusion that Standard 212 may not be achieving its intended purpose of helping to ensure that students of color are provided equality of opportunity at America’s ABA-approved schools.

A third reason why we believe that a thorough review of Standard 212 would be appropriate is that despite its relatively recent vintage, the Standards Review Committee has undertaken the task of reviewing standards and interpretations that were enacted even more recently than Standard 212.

A final reason why we believe that such a review would be appropriate is that other proposed changes, such as eliminating the Law School Admissions Test as a mandatory

accreditation requirement, are unlikely, standing alone, to achieve the kind of change that is necessary to achieve meaningful diversity within the timeframe we have to operate.

For these reasons, we respectfully request that you include Standard 212 in your current revision process and provide an opportunity for discussion and comment as you consider proposed revisions to this Standard. We appreciate the opportunity to submit these comments.