The ABA Commissions on Disability Rights (CDR) and Sexual Orientation and Gender Identity (SOGI), joined by Dr. Valeria Stokes, lead the ABA’s efforts to fulfill its commitment to ensuring full and equal participation in the legal profession by persons with disabilities and persons of differing sexual orientations and gender identities. Our diversity and inclusion initiatives focus on both lawyers and those preparing to enter the profession. Law students with disabilities and those who are lesbian, gay, bisexual, and transgender (LGBT) are greatly underrepresented in law schools and throughout the profession.

We commend your efforts to incorporate a commitment to diversity and inclusion into the Standards, but strongly urge that the new Standard 206 be made fully inclusive. It must extend to disability and sexual orientation and gender identity as well as gender and race or ethnicity. Accordingly, CDR and SOGI respectfully submit the following additions to Proposed Standard 206 of the ABA’s Standards and Rules of Procedure for Approval of Law Schools.

Standard 206. DIVERSITY AND INCLUSION

(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, disability, sexual orientation, and gender identity.

(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, disability, sexual orientation, and gender identity.

Interpretation 206-1
The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, race, ethnicity, disability, sexual orientation, gender identity, 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.

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, disability, sexual orientation, and gender identity 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.