March 12, 2014

The Honorable Solomon Oliver, Jr., Chair
Section of Legal Education and Admissions to the Bar
American Bar Association
321 N. Clark Street
Chicago, IL 60654-7598

Re: Proposed Standard 206

Dear Mr. Chairman:

We understand that the Council of the Section of Legal Education will be considering revisions to the Standards for Approval of Law Schools (the Standards), including Proposed Standard 206\(^1\) (the Proposed Standard), at its meeting this week in San Diego, CA.

Following the 2014 ABA Midyear Meeting, we were informed that the Standards Review Committee had declined to adopt the recommendation by the Commission on Disability Rights

\(^1\) The Proposed Standard would replace and revise current Standard 212 as follows: First, it would retitle the existing Standard, changing “Equal Opportunity and Diversity” to “Diversity and Inclusion.” Second, it would incorporate the phrase “diversity and inclusion” into both paragraph (a) and paragraph (b) as shown below:

Standard 206. EQUAL OPPORTUNITY AND 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.

(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.
and the Commission on Sexual Orientation and Gender Identity to amend two Proposed Standard 206. We also understand the Proposed Standard is not currently on the agenda for discussion by the Council.

We respectfully request that you share this letter setting forth our concerns with the Council, and that the Council take up this matter at its upcoming meeting. Alternatively, if the Council does not believe it has sufficient information on which to base a decision, we ask that you defer action and consider our recommendation at a future meeting.

Discussion

We commend the authors of the Proposed Standard for their effort to incorporate into the Standards a new and express commitment to diversity and inclusion. Our concern is that that effort is undermined by the failure to make the Proposed Standard fully inclusive. The Standard for the first time would require law schools to “demonstrate by concrete action a commitment to diversity and inclusion,” but would exclude disability, sexual orientation, and gender identity from the scope of the commitment to having a diverse student body (paragraph (a)) and a diverse faculty and staff (paragraph (b)). As such, the Proposed Standard sends an unmistakable signal to law students, faculty and staff with disabilities and those who are lesbian, gay, bisexual or transgender (LGBT) that these commitments to diversity and inclusion do not apply to them. In addition, although it might appear that the commitment expressed in paragraph (a) to “full opportunities” for “members of underrepresented groups, particularly racial and ethnic minorities,” leaves the door open to other underrepresented groups, by failing to identify such other groups, the Proposed Standard makes clear that the commitment does not extend to them with any special force, if at all.

It is regrettable that the Proposed Standard ignores the aspirations of these law students, faculty and staff for full inclusion at a time when they face exceptional challenges in gaining acceptance within their educational and professional environments. It is doubly unfortunate that a non-

2 The recommendation would amend the Proposed Standard as shown below:

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.
inclusive standard is being put forward at the very time that the legal profession and legal educators are increasingly playing a leadership role in promoting a model of inclusiveness that expressly incorporates disability, sexual orientation and gender identity, as well as gender, race and ethnicity. Looked at from this perspective, what was clearly intended as a step forward toward greater recognition of the value of diversity and inclusion is in actuality a step back.

Nor can our concerns be assuaged by looking to the separate non-discrimination standard (current Standard 211), which unlike the Proposed Standard, is fully inclusive. The fact that a law school refrains from discrimination based on disability or sexual orientation should not absolve it of its obligation to foster a diverse and inclusive environment in which all persons—including persons with disabilities and LGBT individuals—can flourish.

As written, the Proposed Standard cannot be reconciled with the American Bar Association’s commitment to “full and equal participation in the association, our profession, and the justice system by all persons,” as embodied in Association Goal III and implemented through the four Goal III commissions that represent the concerns of women, racial and ethnic minorities, the LGBT community and persons with disabilities within the legal profession.

Thank you for considering our views. Please let us know if we can provide any further information as you weigh your decision.

Sincerely,

Mark D. Agrast, Chair
ABA Commission on Disability Rights

James J.S. Holmes, Chair
ABA Commission on Sexual Orientation and Gender Identity

cc: Barry A. Currier, Managing Director
Section of Legal Education and Admissions to the Bar