



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

September 30, 2024

Dear David A. Brennan, Council Chair:

The undersigned Attorneys General write to express support for the Council of the American Bar Association Section of Legal Education and Admissions to the Bar's ("Council") Proposed Standard 206 "Access to Legal Education."

The American Bar Association ("ABA") Section of Legal Education and Admissions to the Bar is the sole accrediting authority in legal education.¹ The ABA, as the nation's largest professional organization, serves as the voice of the legal community and is the premier advocate for improvements in the profession.² With that position comes considerable authority and power of influence. In recognizing that authority and influence, the ABA has expressed a public commitment to equitable access to the legal profession through Goal III of its Mission- to "eliminate bias and enhance diversity in the legal profession."³ The ABA has sought to achieve this goal internally via its Center for Diversity, Equity, and Inclusion and its associated groups and projects. And, although independent and separate from the ABA, the Council has recognized the role of law schools in increasing access to the legal profession by imbedding diversity, equity, and inclusion values into its accreditation standards.⁴

This commitment to diversity, equity, and inclusion is necessary to continue to dismantle the barriers that have historically excluded many talented individuals from access to our Nation's laws schools and to opportunities within the legal profession. Although we have made great strides toward broadening access over the past several decades, significant disparities persist. For example, in 2023, only 5% of lawyers identified as Black, despite Black individuals accounting

¹ See American Bar Association, https://www.americanbar.org/groups/legal_education/about_us/

² See American Bar Association, Membership, <https://www.americanbar.org/membership/>

³ See American Bar Association, Mission and Goals https://www.americanbar.org/about_the_aba/aba-mission-goals/

⁴ Cliburn, E. (2022, June 27). *American Bar Association Looks to Increase DEI in Law Schools Through Accreditation Standards Revisions*. Insight Into Diversity. Retrieved September 5, 2024, from <https://www.insightintodiversity.com/the-american-bar-association-leads-the-charge-to-increase-dei-in-law-schools-through-revisions-in-accreditation-standards/>

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for 13.6% of the U.S. population.⁵ Likewise, only 6% of lawyers identified as Hispanic/Latinx, significantly lower than the 19.1% of the U.S. population that identifies as Hispanic/Latinx.⁶ These sorts of disparities are also apparent in access to key career opportunities, such as federal clerkships. In 2021, for instance, Black and Hispanic graduates respectively held only 5.2% and 5.5% of federal clerkships.⁷

In light of these demographic disparities, and especially in light of recent attacks on racial equity and inclusion, the Council's continued commitment to diversity is commendable. As stated in our June 20, 2024, letter to the ABA, attempts to expand the holding of *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023) ("*SFFA*") to invalidate all diversity, equity, and inclusion ("DEI") efforts must be rejected. *SFFA*'s holding was narrow, and did not prohibit higher education institutions from maintaining an interest in and commitment to DEI. It similarly does not prohibit higher education institutions from endeavoring to recruit and support racially and ethnically diverse student bodies, such as by undertaking targeted outreach and recruitment efforts to boost applications from students of color, or by establishing cultural centers and supporting affinity groups.⁸ We are therefore pleased that Standard 206, both in its most recent and proposed forms, requires law schools to continue to take concrete steps to improve access to, and inclusivity within, the legal profession. This requirement is critically important, as it contributes to an equitable and fair justice system, and ensures that law schools are in compliance with state and federal civil rights mandates.

It is indisputable that racial minorities have historically been systemically disadvantaged and discriminated against as both applicants and students in law schools.⁹ As such, to the extent that the Standard specifically includes persons with identities that have historically been disadvantaged and excluded, the Standard continues to specifically require that law schools make their institutions available and accessible to racial minorities. Further, the expansive language in Proposed Rule 206 explicitly encourages law schools to account for marginalized and underrepresented identities of *all* types. This broad umbrella includes communities that have been historically marginalized due to disability status, immigration status, socioeconomic status, sexual orientation and gender identity, as well as race and ethnicity. This broadening is an improvement to an already important and legally sound Standard.

Although the undersigned offices support the substance of the proposed revisions to Standard 206, we encourage the ABA to reconsider its revision to the title of the Standard. Webster's

⁵ See ABA Profile of the Legal Profession - Lawyer Demographics, <https://www.abalegalprofile.com/demographics.html>

⁶ *Id.*

⁷ See NALP Research: Judicial Clerks Remain Less Diverse than Law Graduates Overall, <https://www.nalp.org/1022research>

⁸ See U.S. Dept. of Ed., Strategies for Increasing Diversity and Opportunity in Higher Education (Sept. 2023), <https://sites.ed.gov/ous/files/2023/09/Diversity-and-Opportunity-in-Higher-Education.pdf>.

⁹ Stephenson, Gail S., The Unsung Heroes of the Desegregation of American Law Schools (August 14, 2021). Journal of Law and Education (Forthcoming), Available at SSRN: <https://ssrn.com/abstract=3905215>

Dictionary defines diversity as: “differing from one another composed of distinct or unlike elements or qualities.” In comparison, the ABA’s Center for Diversity, Equity, and Inclusion states the following:

“Diversity includes all visible and nonvisible dimensions that make an individual who they are. The concept of diversity means understanding that everyone is unique and recognizing our individual differences. These can be along various dimensions, such as race, ethnicity, gender, sexual orientation, socio-economic status, age, physical abilities, religious beliefs, political beliefs, neurodiversity etc.”¹⁰

For many people, race and ethnicity are significant parts of their identities. As such, race and ethnicity are often meaningful pieces of information to consider in a determination of whether a group is diverse or not (wholly separate from the question of societal discrimination). But still, race is not the *only* element of diversity. And to the extent that the ABA revised Standard 206 to be more explicitly in line with *SFFA*, it must be noted that compliance with *SFFA* does not require a retreat from using the word “diversity.” Such a withdrawal could give the unintended appearance of a reversal of course on the ABA’s mission and goals, and would harm marginalized applicants and students at law schools nationwide.

Further, in keeping with the ABA’s efforts to ensure that law schools provide access to all people, we encourage the Council and the ABA to continue requiring accredited schools to submit demographic data yearly. We also encourage the ABA to specifically monitor any abnormal demographic shifts, and to make note of any shifts as to groups that historically have been disadvantaged or excluded from the legal profession. Those shifts, if they occur, may be indications that a school needs more guidance on how to provide equal access to students and otherwise comply with the Standard, and the ABA should provide such guidance where necessary. Data collection and transparency are critical to continue our combined efforts to increase access to legal education, and we thank the ABA for its continued collection and publication of data to that end.

We commend the ABA for its continued commitment to equity, and remain partners in this work. We are available to discuss these comments if desired.



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¹⁰ See American Bar Association, Center for Diversity, Equity, and Inclusion, <https://www.americanbar.org/groups/diversity/resources/dei-center-faqs/>



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