



UNITED STATES COMMISSION ON CIVIL RIGHTS

624 NINTH STREET, NW, WASHINGTON, DC 20425

www.usccr.gov

March 20, 2006

VIA FACSIMILE AND U.S. MAIL

The Honorable Sally Stroup
Assistant Secretary for Postsecondary Education
c/o Ms. Robin Greathouse
Accreditation and State Liaison
United States Department of Education
Room 7105, MS 8509
Washington, D.C. 20006

Re: Recognition of Accrediting Agencies, State Agencies for the Approval of Public Postsecondary Vocational Education, and State Agencies for the Approval of Nurse Education; Petition of the American Bar Association

Dear Assistant Secretary Stroup:

As members of the U.S. Commission on Civil Rights, we write to express our concerns regarding the petition for renewal of recognition (the "Petition") filed by the American Bar Association (the "ABA"), Council of the Section of Legal Education and Admissions of the Bar (the "Council"), with the U.S. Department of Education (the "Department") with respect to accreditation of legal education programs. We urge you either to deny the Petition or to grant it only upon the condition that the Council disavow its new Standard 211 (Equal Opportunity and Diversity) and its accompanying interpretations.

The U.S. Commission on Civil Rights

The U.S. Commission on Civil Rights is an agency of the federal government authorized to investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices; to study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice; to appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion,

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sex, age, disability, or national origin, or in the administration of justice; to serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin; to submit reports, findings, and recommendations to the President and Congress; and to issue public service announcements to discourage discrimination or denial of equal protection of the laws.

ABA Standard 211

On February 11, 2006, the Council approved Standard 211, which will be reviewed by the ABA House of Delegates at its August 3-8, 2006, meeting. This provision, when read together with the Council's new Interpretation 211-1, appears to require that any law school that seeks ABA accreditation engage in racial preferences in hiring or admissions, regardless of any contrary federal, state, or law prohibiting such policies. Specifically, Standard 211 provides in full as follows:

Standard 211. Equal Opportunity and Diversity

- (a) Consistent with sound legal education policy and the Standards, a law school shall demonstrate by concrete action a commitment to 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 having a faculty and staff that are diverse with respect to gender, race and ethnicity.*

Although the standard purports to enforce equal opportunity mandates, we are concerned that Standard 211's requirement of "concrete action" to achieve gender, racial and ethnic diversity may amount to a requirement of unlawful quotas and preferences when read together with Interpretation 211-1:

Interpretation 211-1

The requirement of a constitutional provision or statute that purports to prohibit consideration of gender, ethnicity or national origin in admissions or employment decisions is not a justification for a school's non-compliance with Standard 211.

Standard 211, read in conjunction with this interpretation, sends precisely the wrong signal to law schools and law students; it suggests that federal, state and local laws, including the U.S. Constitution and federal antidiscrimination laws, may be disregarded when they conflict with the

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ABA's values or goals. It is ironic that the ABA, of all groups, should take such a defiant attitude towards American law. For the U.S. Department of Education to endorse this view, even tacitly, by approving the ABA's petition would be even worse. Since it is the accreditation of American *law schools* that is at stake, it is important that the Department not sanction this statement of defiance. As Civil Rights Commissioners, we are particularly concerned that the Council's new Standard 211 appears to advocate defiance of civil rights laws and constitutional protections.

Additionally, Standard 211 is likely to impinge upon law schools' ability to freely establish the admissions criteria for their prospective students. Unless required by law, the Department should refrain from lending its imprimatur to any accreditation requirement that restricts a core precept of academic freedom.

Moreover, we would like to associate ourselves with the letter that Vice Chair Abigail Thernstrom sent to you on March 8, 2006. Specifically, we agree with the Vice Chair's arguments and ask that you to seriously consider them in evaluating the Council's petition:

- First, Standard 211 appears to require candidates for accreditation or re-accreditation to disregard federal constitutional requirements that are inconsistent with Standard 211. Approval of the petition could implicate the U.S. Department of Education, directly or indirectly, in any such violations.
- Second, Standard 211 appears to require candidates for accreditation or re-accreditation to disregard any civil rights laws that conflict with the institution's efforts to comply with Standard 211, which could include the regulations of the U.S. Department of Education and its Office for Civil Rights. Approval of the petition could undermine the Department's efforts to ensure civil rights compliance by recipients of its funds.
- Third, Interpretation 211-1 tacitly suggests that Standard 211 may conflict with existing non-discrimination law in at least some states, if not also the federal government, such as prohibitions on the use of racial or ethnic preferences in post-secondary admissions in California or Florida. If the Department should grant the ABA's Petition, it could force public law schools in these states to choose between compliance with state constitutional requirements and ABA accreditation for their law schools.

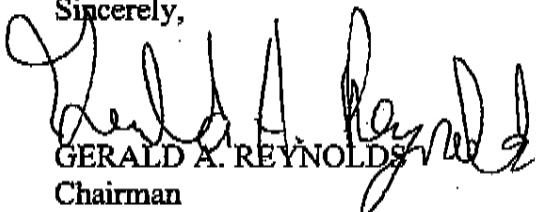
For these reasons, we would urge you either to deny the Petition or to grant it only upon the condition that the Council disavow Standard 211 and its accompanying interpretations.

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This letter is sent on behalf of its signatories and may not represent the views of all members of the U.S. Commission on Civil Rights.

Sincerely,



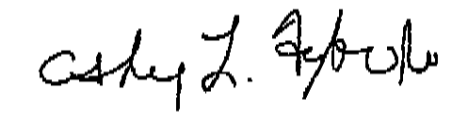
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