

March 2007

HIGHER EDUCATION

Issues Related to Law School Accreditation



Contents

Letter		1
Appendix I	Briefing Slides	5
Appendix II	Comments from the Department of Education	28
Appendix III	Comments from the American Bar Association	30

Abbreviations

ABA	American Bar Association
Education	Department of Education
NACIQI	National Advisory Committee on Institutional Quality and Integrity

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United States Government Accountability Office
Washington, DC 20548

March 8, 2007

The Honorable George Miller
Chairman
The Honorable Howard P. “Buck” McKeon
Ranking Minority Member
Committee on Education and Labor
House of Representatives

The Honorable Stephanie Tubbs Jones
House of Representatives

In order to participate in certain federal programs, such as federal student financial aid, postsecondary institutions must be accredited by an accrediting agency recognized by the Department of Education (Education). Accreditation ensures that schools provide basic levels of quality in their educational programs, and Education recognizes those agencies it concludes can reliably determine the quality of education provided by the schools and programs they accredit. Since 1952, Education has recognized the American Bar Association (ABA) as an accrediting agency for law schools. ABA accreditation is important to the 195 law schools it accredits because it allows their graduates the flexibility to take the Bar exam in any jurisdiction in the United States.

The Department of Education requires that all recognized accrediting agencies periodically reapply for continued recognition. The Secretary of Education’s accreditation advisory group, the National Advisory Committee on Institutional Quality and Integrity (NACIQI), considered the ABA’s most recent application for continued recognition in December 2006. The ABA was originally scheduled for review in December 2005, but Education postponed it twice based on the large volume of public comments that had to be reviewed, as well as concerns about the ABA’s diversity standard. To address your interest in these issues, we answered the following questions: (1) What is Education’s process for recognizing accrediting agencies? (2) What is ABA’s process for accrediting law schools? (3) What concerns have been raised about the ABA’s accreditation process?

We used the following methodologies to develop our findings. To understand Education and ABA processes related to accreditation, we reviewed relevant laws and regulations, ABA accreditation standards, and

documents pertaining to the ABA's application for renewed recognition. We also interviewed Education officials, ABA representatives, and four law school administrators. To identify the concerns that have been raised about ABA's accreditation process, we reviewed third-party comments submitted to Education in advance of the NACIQI meeting. We also attended the December 2006 public meeting that NACIQI held to consider ABA's application for continued recognition, and reviewed the transcript of the meeting. Finally, we analyzed ABA data on first-year law school enrollment and found the data sufficiently reliable for our purposes. We conducted our work between October 2006 and February 2007 in accordance with generally accepted government auditing standards.

We briefed your staff on results of our analysis on February 9, 2007. This report formally conveys the information provided during that briefing. In summary, we reported the following findings:

- Education has established criteria for recognizing an accrediting agency and has mechanisms in place to assess compliance with the criteria. Agencies found to be in compliance with Education's criteria can be approved for up to 5 years. There are also mechanisms in place to defer or deny an agency's recognition.
- ABA has established standards for approval of law schools and has mechanisms in place to assess compliance with the criteria. Law schools are eligible for provisional approval when they demonstrate that they are in substantial compliance with each of the standards, and must demonstrate they are in full compliance to be fully approved.
- Some Education staff, law school administrators, and other third-parties have raised concerns about ABA's accreditation process, particularly with respect to the transparency and consistency of the process, as well as the legality of its diversity standard, which requires schools to demonstrate they are reaching out to underrepresented groups. Based on concerns that ABA is not fully in compliance with regulatory provisions that govern accreditation, Education and NACIQI have recommended that the Secretary of Education renew ABA's recognition for a period of 18 months, rather than the maximum period of 5 years.

We provided copies of a draft of this report to the Department of Education and the American Bar Association for review and comment. In written comments, Education provided technical comments and clarifications, which we incorporated as appropriate. In particular,

Education clarified that its recommendation suggested that NACIQI require ABA to submit interim reports on ABA's compliance with all criteria for accreditation recognition, not just the diversity standard as stated in the draft. We revised our report accordingly. However, we note that the recommended interim reporting requirements focus heavily on the diversity standard. Education also expressed concern about our characterization of why NACIQI excluded from its recommendation the additional reporting requirements related to diversity, as Education had recommended. Our report correctly notes that NACIQI did not think additional reporting related to the diversity standard was necessary because Education had not identified any instances in which ABA inconsistently applied the diversity standard or provided evidence that law schools had been compelled to violate existing state laws. However, Education thought our report should also note that NACIQI did not address Education's broader concern that ABA had not demonstrated that it has effective controls in place to prevent inconsistent application of the standard as required by the recognition criteria. While Education is correct that NACIQI did not discuss this concern specifically, it addressed these concerns by affirming Education's recommendation to limit ABA's recognition to a period of 18 months. Education's comments appear in appendix II.

The ABA said that the report was generally balanced and fair, and provided technical comments and clarifications, which we incorporated as appropriate. ABA expressed concern about our statement that it uses thresholds on bar passage and attrition rates to prompt further review. ABA emphasized that these thresholds are not used to determine whether or not a school is in compliance with the accreditation standards. We revised our report to clarify this issue. The ABA also provided updated data on law school enrollment that was not available to us at the time we conducted our briefing. Finally, with respect to the background information the report provides on non-ABA approved law schools, the ABA said the number of such law schools is much greater than indicated in our draft report. Specifically, ABA identified a number of California law schools that were not included on the list of non-ABA approved law schools that we obtained from the Law School Admission Council (LSAC). While the information from LSAC is not exhaustive, it provides the most complete source of readily-available data on non-ABA approved law schools. Additionally, because graduates of these law schools can sit for the bar exam in California, our overall message remains the same—graduates of many non-ABA law schools can take the bar exam in the state where they earned their degree. ABA's comments appear in appendix III.

We are sending copies of this report to relevant congressional committees, the Secretary of Education, and other interested parties and will make copies available to others upon request. In addition, this report will be available at no charge on GAO's Web site at www.gao.gov.

If you or your staff has any questions about this report, please contact me at (202) 512-7215 or scottg@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report include Jeff Appel (Assistant Director), Debra Prescott (Analyst-in-Charge), Summer Pachman, John Mingus, and Jim Rebbe.



George A. Scott
Acting Director, Education, Workforce, and
Income Security Issues

Appendix I: Briefing Slides



Issues Related to Law School Accreditation

**Briefing for the
House Committee on Education
and Labor
and Representative Stephanie Tubbs Jones**

February 9, 2007



Briefing Overview

- Introduction
 - Research Objectives
 - Scope and Methodology
 - Background
 - Research Findings
 - Next Steps in the Recognition Process
-



Introduction

- Concerns have been raised about trends in law school enrollment for certain racial/ethnic groups.
 - Questions have been raised about the transparency of the American Bar Association's (ABA) accreditation process for law schools.
 - Questions have also been raised about the extent to which ABA is consistently applying its standards.
-



Research Objectives

1. What is Education's process for recognizing accrediting agencies?
 2. What is ABA's process for accrediting law schools?
 3. What concerns have been raised about ABA's accreditation process?
-



Scope and Methodology

To address our research objectives, we:

- Reviewed relevant laws, regulations, ABA accreditation standards, and documents related to ABA's request for renewed recognition, including third party comments submitted to Education.
 - Interviewed Education officials, ABA representatives, and four law school administrators about the accreditation process.
 - Analyzed data from ABA on first-year law school enrollment, and found the data sufficiently reliable for our purposes.
 - Conducted the review from October 2006 to February 2007 in accordance with generally accepted government auditing standards.
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Background

- To be eligible to participate in certain federal programs, such as federal student aid, a postsecondary school must be accredited by an accrediting agency recognized by the Department of Education.
 - Education recognizes agencies that it determines to be reliable authorities in determining the quality of education provided by the schools and programs they accredit.
 - The American Bar Association's (ABA) Council of the Section of Legal Education and Admissions to the Bar is recognized for accrediting law schools.
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Background



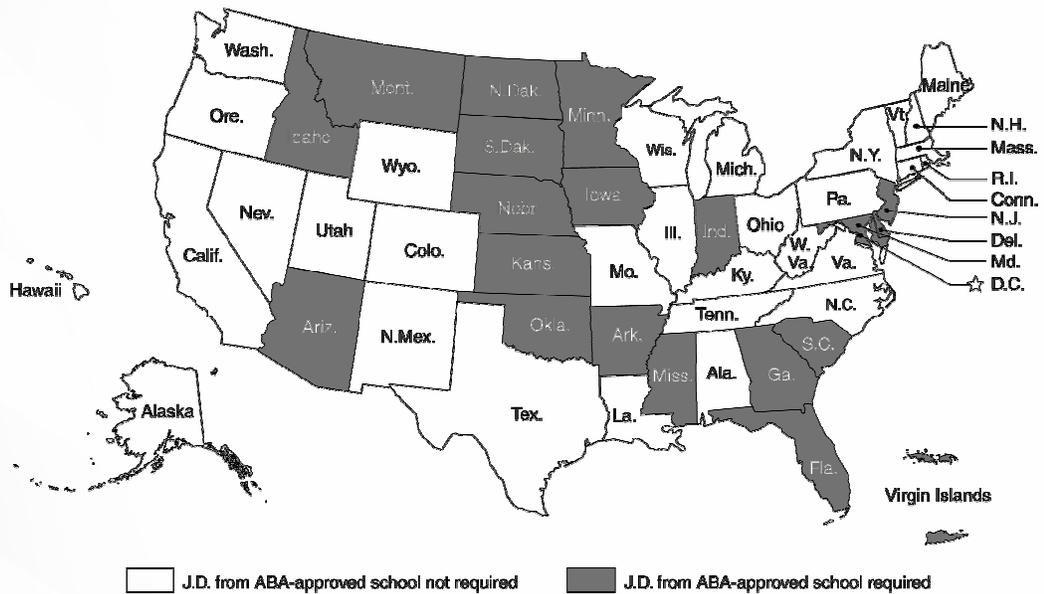
History of ABA as a Recognized Accrediting Agency

- First began approving law schools in 1921, and federally recognized since 1952.
 - Must petition for continued recognition at least every 5 years.
- Most recently reviewed in December 2006 after being postponed twice based on high volume of public comments and concerns about the legality of ABA's standards related to diversity.
- As of January 2007, 195 law schools have received ABA approval.
 - Seven provisionally approved; two on probation.
 - Since 1952, only eight institutions have applied for but never received approval.
- According to ABA, it is not uncommon for law schools to apply more than once before being approved.
 - Since 1990, 8 of 22 law schools were denied provisional approval at least once before being approved.

Background



J.D. Degree from ABA-Approved Law School Provides Eligibility to Take Bar Exam in Any U.S. Jurisdiction, and for Some States It Is a Prerequisite



Source: American Bar Association (data); map, Map Resources (presentation).

Background



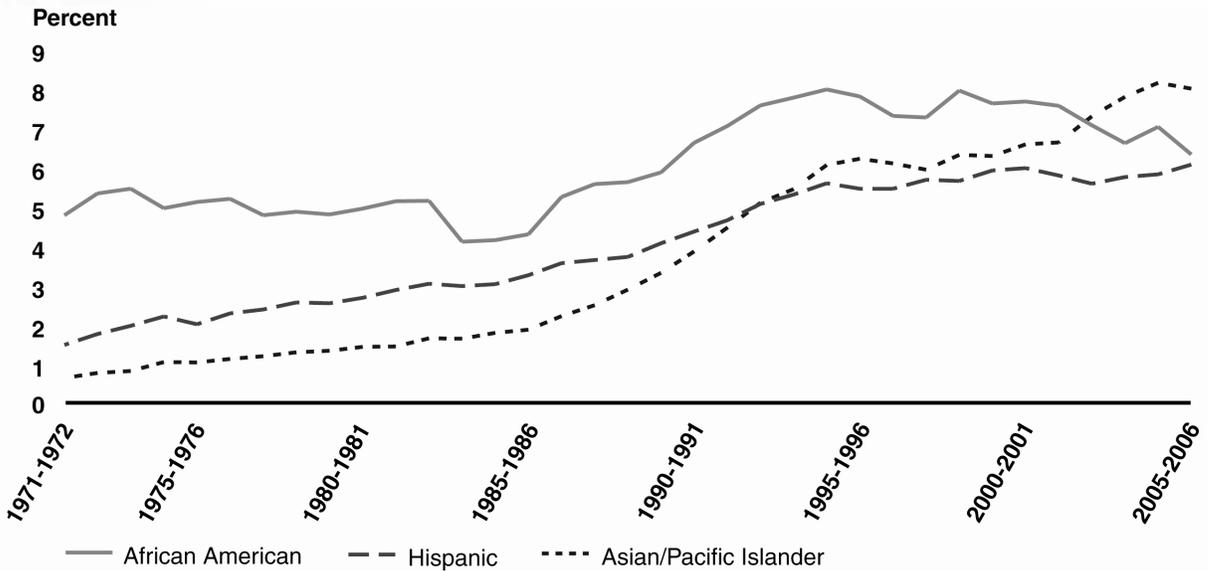
Graduates from Many Non-ABA approved Law Schools Can Take Bar Exam in Their State

- Of the 41 law schools identified by the Law School Admission Council as non-ABA approved, graduates from 37 can take bar exam in their state.
 - Over half of these schools are in California, which allows graduates of non-ABA approved law schools in the state to take the bar exam.
 - Seven of these schools offer J.D. programs through distance education, but the ABA will not accredit schools that require more than 12 hours of credit via distance.
 - Six of the 41 schools are in the process of applying for ABA approval.
 - Five of these have not been open long enough to graduate their first class of J.D. students.
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Background



Percent First Year Law School Enrollment for Selected Minorities, 1971-2006

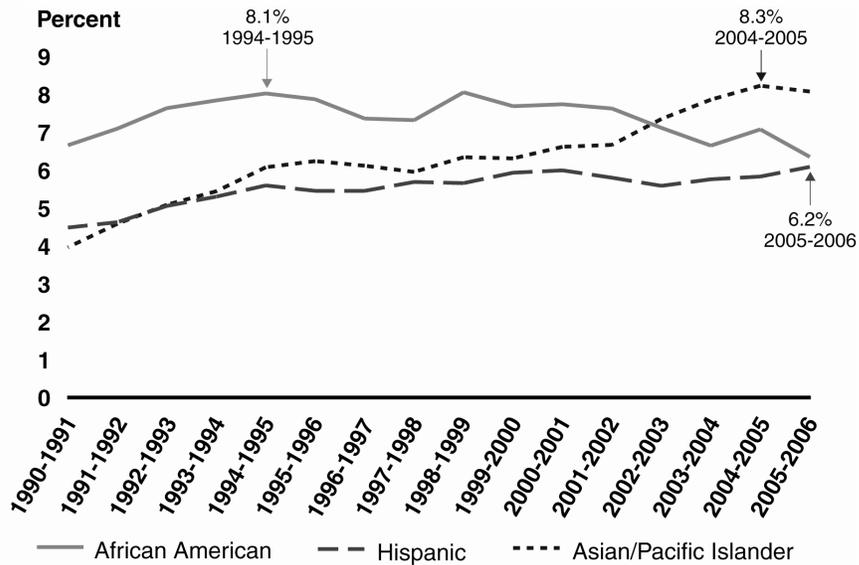


Source: GAO analysis of ABA data.

Background



In Recent Years African American Enrollment Has Declined While Asian and Hispanic Enrollment Has Increased



Source: GAO analysis of ABA data.

Objective 1: Education's Process



Education Has Established Criteria for Recognizing an Accrediting Agency

To establish eligibility accreditors must, among other things, demonstrate they:

- Have at least 2 years of accrediting experience.
- Have the capability to administer its accreditation activities.
- Are separate and independent, both administratively and financially, of any related trade association or membership organization if the accreditor is recognized for federal student aid purposes.

Accreditors must have standards for assessing institutional or programmatic quality, and consistently apply and enforce standards.

- Establish standards to assess quality in areas such as student achievement, admissions, curricula, faculty, facilities, support services, fiscal and administrative capacity.
- Establish regular intervals for reevaluating accredited institutions or programs, and processes for approving substantive changes.
- Make final accreditation decisions publicly available.
- Review complaints against itself in timely, fair, and equitable manner.

Objective 1: Education's Process



Education Has Mechanisms in Place to Assess Compliance with Criteria

- Accreditor submits application for recognition.
- Education makes initial recommendation based on review of petition and third-party comments.
- Accreditor invited to respond with additional support, and Education modifies analysis and recommendation, as appropriate.
- Education forwards complete package to the Secretary of Education's accreditation advisory group, the National Advisory Committee on Institutional Quality and Integrity (NACIQI).
- Following public meetings to consider each accrediting agency's petition, NACIQI recommends that the Secretary approve, deny, or defer request.
- Secretary considers entire record of application, including Education staff and NACIQI recommendations, and approves, denies, or defers the request.

Objective 1: Education's Process



Possible Recognition Decision Outcomes

-
- Approval – Agency recognized for up to 5 years.
 - Deferment – deficiencies do not warrant immediate loss of recognition and agency should be able to demonstrate compliance within a maximum of 12 months.
 - Denial – If agency fails to comply with criteria or is not effective in its performance.
 - Limit, suspend, or terminate recognition of an already recognized agency—can happen anytime.
 - Agencies can appeal final decisions.
-

Objective 2: ABA'S Process



ABA's Organizational Structure for Accreditation Activities

- ABA's accreditation activities fall under the Section of Legal Education and Admissions to the Bar.
- Accreditation and compliance decisions are made by the Section's Council, which is comprised of 21 voting members.
- The Section's Accreditation Committee, which administers the ABA's accreditation process and has primary oversight responsibility for ABA approved law schools, generally makes accreditation recommendations to the Council.
 - The Committee may make accreditation decisions without consulting the Council when schools seeking continued approval are found to be sufficiently in compliance with the standards.
- The Section's Office of the Consultant provides assistance to the Council and the Accreditation Committee.

Objective 2: ABA'S Process



ABA's Process for Accrediting Law Schools Includes Multiple Levels of Review

- School requesting accreditation completes application, data questionnaire, and self-study and is visited by a site evaluation team.
- Accreditation Committee reviews site evaluation team's report of findings and materials submitted by school and as appropriate, makes final decision or recommendation to Council.
- Council makes final decision to grant, deny, or withdraw accreditation based on Committee's report and all application materials.
 - ABA has requested that the Committee also be recognized by Education as a decision-making body.
- Due Process – Schools have the right to appeal accreditation decisions.

16

Objective 2: ABA'S Process



ABA's Standards for Approval of Law Schools

- ABA considers the extent to which law schools comply with standards in the following areas:
 - Organization and administration
 - Program of legal education
 - Faculty
 - Admissions and student services
 - Library and information resources
 - Facilities

- Provisional approval granted when schools demonstrate substantial compliance with each of the standards; must demonstrate full compliance to be fully approved.

17

Objective 2: ABA'S Process



Data Collected on a Range of Indicators

- Data elements collected annually:
 - First-time bar passage
 - Attrition (academic, transfers, etc.)
 - Employment of graduates
 - LSAT scores/Undergraduate GPA
 - Student to faculty ratio

Objective 3: Concerns



Education, School Administrators, and Third-Parties Have Raised Concerns Regarding ABA's Petition for Recognition

- Education, some law school administrators, and others are concerned that ABA has unpublished standards, including minimum LSAT requirements.
 - ABA says it follows its published standards and has no requirement for a minimum LSAT score.
 - ABA acknowledges that indicators such as low bar passage rates and high attrition can prompt further review of other areas, including a school's support services and the credentials of entering students.
 - First-time bar passage rate: < 70 percent overall or more than 10 percentage points below state average.
 - Academic attrition: about 15 to 20 percent.

Objective 3: Concerns



Concerns Regarding ABA's Petition for Recognition (cont'd.)

- Education and other third-parties have expressed concern about ABA's diversity standard, which requires schools to demonstrate a commitment to having both a diverse student body and faculty.
 - Education expressed concern that ABA will evaluate compliance with the standard based in part on the results achieved and that ABA does not have sufficient controls in place to prevent inconsistent application of the standard. Additionally, Education is concerned that the lack of specificity about the requirements would lead the ABA to use unpublished criteria in evaluating compliance.
 - The Chair and Vice Chair of the U.S. Commission on Civil Rights along with other third parties expressed concern that the ABA's diversity standard would put pressure on law schools to employ race conscious admissions and hiring practices, including racial or ethnic quotas.
-

Objective 3: Concerns



Concerns Regarding ABA's Petition for Recognition (cont'd.)

- The ABA and others defend the current diversity standard:
 - According to ABA representatives, the standard only requires schools to demonstrate that they are reaching out to groups underrepresented in the legal profession. Quotas are not involved and it should not conflict with state laws that prohibit the consideration of race in hiring and admissions.
 - Law school administrators we spoke to and those administrators who provided third-party comments, along with other commenters, were generally supportive of ABA having a diversity standard.
-

Objective 3: Concerns



Concerns Regarding ABA's Petition for Recognition (cont'd.)

- Education identified instances in which ABA was inconsistently enforcing its standards by allowing some schools to exceed the maximum time allowed to enter compliance without adverse action
 - According to ABA, each instance involved compliance in the areas of bar passage rates or facilities, which cannot be readily addressed in the two-year period schools are given to demonstrate compliance.
 - ABA has approved changes that make clear that if a school has not been able to address noncompliance within the allowable two-year period, ABA must take adverse action or find good cause to extend accreditation.



Next Steps in the Recognition Process for ABA

- Because Education identified a number of compliance issues that ABA could not fully address in advance of the NACIQI meeting, it recommended that NACIQI renew ABA's recognition for a period of 18 months and require the ABA to submit interim reports on its compliance with the criteria for recognition, with particular emphasis on the diversity standard.
 - ABA representatives said they were able to address a number of the concerns immediately, and the remaining items would be addressed by August 2007.
- At a public meeting on 12/4/2006, NACIQI recommended that the Secretary of Education renew ABA's recognition for 18 months; however, it did not recommend any specific reporting requirements related to the diversity standard.
 - NACIQI did not think the reporting requirements related to diversity were necessary given that Education had not identified any instances in which ABA inconsistently applied its diversity standard or provided evidence that law schools had been compelled to violate state laws.
- The ABA is awaiting the final decision from the Secretary of Education on whether its recognition will be renewed.

Appendix II: Comments from the Department of Education



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF POSTSECONDARY EDUCATION

MAR - 1 2007

THE ASSISTANT SECRETARY

Mr. George A. Scott
Acting Director
Education, Workforce, and
Income Security Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Scott:

The Department thanks you for the opportunity to comment on the Government Accountability Office's (GAO's) draft report, "HIGHER EDUCATION: Issues Related to Law School Accreditation" (GAO-07-314). Accreditation is an important accountability measure for ensuring the quality of higher education, and we appreciate GAO's study of the Department's significant involvement in this area.

GAO makes no recommendations in this study. In reviewing the content of the draft report, however, the Department has identified the following items that require clarification:

- At page 15 of the Draft Report, in *Objective 1: Education's Process*, GAO has listed three eligibility factors for recognition. Please revise the third bullet to read: "Are separate and independent, both administratively and financially, of any related trade association or membership organization, *if the accreditor is a Title IV, Higher Education Act gatekeeper.*"
- Also on page 15, the fourth bullet should refer to admissions and thus read as follows: "Establish standards to assess quality in areas such as student achievement, *admissions*, curricula, faculty, facilities, support services, fiscal and administrative capacity." The Higher Education Act permits the Department to assess an accrediting agency's standards pertaining to admissions, recruiting, and faculty, 20 U.S.C. § 1099b(a)(5)(C) and (G). The diversity standard of the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association (ABA) explicitly relates to admissions and faculty hiring. In this vein, the Department staff recommendation found that the ABA's diversity standard (which governs admissions and faculty hiring) fails to comply with 34 C.F.R. §§ 602.18(a) and (b) and 602.23(a)(3), which require effective control mechanisms to ensure consistent accreditation decisions and which bar the use of unpublished accreditation criteria by an accreditation authority.

1990 K STREET, N.W. WASHINGTON, D.C. 20006

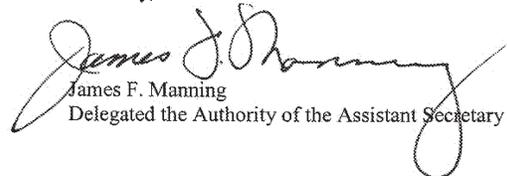
Our mission is to ensure equal access to education and to promote educational excellence throughout the Nation.

Page Two – Mr. Scott

- At page 20 of the Draft Report, in its description of the Department staff’s concerns about the ABA diversity standard, GAO leaves out an important concern that the Department staff has about the standard—that the agency now intends to evaluate a law school’s satisfaction of “its equal opportunity and diversity obligations” based not only on the “totality of actions” (the test under the prior rule) but also on “the results achieved.”
- At page 24 of the Draft Report, in the first bullet, GAO leaves the reader with the mistaken impression that the Department staff opposes the use of diversity standards in admissions. The Department staff does not oppose the use of such a standard in admissions but has concerns about requirements specific to the ABA Standard 212. The bullet should thus read as follows: “The ABA and others defend having *Standard 212*.”
- At page 26 of the Draft Report, in the first bullet, GAO erroneously states that the Department recommended that the National Advisory Committee on Institutional Quality and Integrity (NACIQI) require the ABA to submit interim reports only concerning the diversity standard. The Department staff recommendation suggested that NACIQI require interim reports on the ABA’s compliance with all criteria for accreditation recognition, not just the diversity standard. The bullet should thus read as follows: “Because Education identified a number of compliance issues that ABA could not fully address in advance of the NACIQI meeting, it recommended that NACIQI renew ABA’s recognition for a period of 18 months and require[d] the ABA to submit interim reports *relating to its compliance with the Criteria for Recognition*.”
- The fourth bullet on page 26 of the Draft Report is not entirely accurate. Regarding bar passage rates and Standard 212 (the ABA’s diversity standard), the Department staff advised NACIQI that the ABA’s lack of effective controls to ensure consistent application of the ABA’s standards violated 34 C.F.R. § 602.18(a). §602.18(a) imposes an obligation on the accreditation agency to demonstrate that it “has effective controls against the inconsistent application of the agency’s standards.” GAO should note that NACIQI did not address this important element of the staff’s recommendation.

If you have any questions about these clarifications, please contact Annora Bryant in the Office of the Secretary, Executive Secretariat, at 202-260-1854.

Sincerely,


James F. Manning
Delegated the Authority of the Assistant Secretary

Appendix III: Comments from the American Bar Association



AMERICAN BAR ASSOCIATION

March 1, 2007

Section of Legal Education
and Admissions to the Bar

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Legal Education to the
American Bar Association

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George A. Scott
Acting Director
Education, Workforce, and Income Security Issues
General Accountability Office
441 G St., NW
Room 5928
Washington, DC 20548

RE: Draft Report: *Issues Related to Law School Accreditation* (GAO-07-314)

Dear Mr. Scott:

I am writing to provide comments from the American Bar Association's ("ABA") Section on Legal Education and Admissions to the Bar (the "Section") on the draft report, *Issues Related to Law School Accreditation*. First, let me commend Ms. Prescott and your staff on the professionalism with which they conducted their research. In our interactions, they were always pleasant and respectful. As a result of their efforts, the Section believes the draft report is generally balanced and fair; however, there are a few areas that require our response.

Bar Passage

The slide on page 22 of the draft report asserts that "ABA acknowledges that it has unpublished thresholds, and exceeding them can prompt further review." The Section does not use unpublished thresholds in deciding whether a school's bar passage or attrition rates satisfy the Standards for Approval of Law Schools.^[1] There are, however, some general characteristics that have, over time, proven to be indicators that further inquiry into a school's bar passage rates might be useful. These characteristics include such things as having a bar passage rate below 60 percent or a weak system of academic support. But, these characteristics alone are not factors for determining compliance or non-compliance with the Standards.

In a December 2005 guidance memorandum, the Section attempted to clarify the factors and process it uses to review a school's bar passage rates. After that memorandum was circulated, a small handful of schools continued to express confusion about whether their bar passage rates complied with the Standards. Thus, the Section

[1] Indeed, the Department itself recently concluded, after a comprehensive review of third-party comments and attendance at a meeting of the Section's Accreditation Committee, that no evidence exists that the Section relies on unwritten standards in its decision-making. See Final Determination of Complaints Lodged Against the Council on Legal Education at 8 (Nov. 2, 2006).

George A. Scott
Acting Director

began a process of reviewing and revising its Standards on bar passage in November 2006. The proposed Interpretation of those Standards, which the Council approved to be circulated for comment at its most recent meeting, would require a school to provide additional information demonstrating compliance if its first-time bar passage rates are frequently below 70 percent.

The comment period will conclude in mid-May following an open session to discuss the proposed Interpretation held in conjunction with a meeting of the American Law Institute. After the open session, a final proposed Interpretation, taking into account all of the comments received throughout the comment period, will be issued. The plan is that final consideration by the Council of the proposed Interpretation will occur in June and House of Delegates concurrence will occur in August. If the proposed Interpretation is adopted in its current form, the Section will have a measurable threshold for bar passage rates; however, no such unpublished threshold exists today.

Factors Reviewed if Low Bar Passage Rates Exist

On page 21 of the draft report, GAO indicates that relatively low bar passage rates can prompt a further review of support services and credentials of entering students. This statement is accurate though the list of items that might be reviewed if a school presents low bar passage rates also includes: first-time bar passage rates in other jurisdictions, second-time taker bar passage rates, ultimate bar passage rates, information on academic support, attrition rates, bar preparation programs, and the entering credentials of students.

Diversity

The draft report spends two pages discussing the controversy over the Section's diversity standard. It indicates that in addition to the Department other third parties have expressed concern about the Section's standard. The draft report then describes the comments filed by Gerald Reynolds and Abigail Thernstrom. But, it fails to mention either that their comments were echoed only by four of about 60 third party commenters or that all four of those commenters were special interest groups ideologically opposed to diversity and affirmative action.

Moreover, the draft report's characterization of those who support the Section's diversity standard mentions no specific supporters and only indicates that law school administrators were "generally supportive of ABA having a diversity standard." The real picture is much more stark – no law school dean, judge, or practitioner filed a third-party comment with the Department opposing the Section's standard. And two of the nation's most respected civil rights organizations, the Lawyer's Committee for Civil

George A. Scott
Acting Director

Rights Under Law and the Leadership Conference on Civil Rights, filed comments supporting the Section's standard and explaining the legal basis for its existence. Thus, to accurately reflect the support that exists for the Section's diversity standard, the second bullet on page 24 (slide 21) should provide, "Law school administrators we spoke to and those who provided third-party comments, including the Lawyers Committee for Civil Rights Under Law, the Leadership Conference on Civil Rights, members of the judiciary, and practicing lawyers, were generally supportive of ABA having a diversity standard and contended that the standard did not require the use of quotas or race-conscious admissions programs."

Finally, it is worth noting that the report correctly reflects NACIQI's recommendation to reject any reporting from the Section related to its diversity standard. NACIQI did not believe the Department had identified any instances in which the Section inconsistently applied its diversity standard, nor did it believe that complying with the standard would require schools to violate the law. Thus, as stated in the report, NACIQI disagreed with the Department's contention that the diversity standard would necessarily lead to inconsistent application of the standards and also rejected the Department's recommendation that the Section report on all activities related to the application of its diversity standard.

Minority Enrollments

Page 14 of the draft report contains a chart showing recent figures on minority enrollment in law schools. The chart is accurate but I can provide more recent information which you may wish to add to the chart. On February 15, 2007, the Section distributed to the Deans of all ABA-approved law schools its most recent data on Fall 2006 law school enrollments, including minority enrollments. See attached. For the 2006-2007 academic year, there are a total of 9,529 African-American students, (and for information purposes 11,306 Asian students, 2,499 Mexican American students, 551 Puerto Rican students, and 8,564 Other Hispanic students) enrolled in ABA-approved law schools. In other words, 6.8 percent of all enrolled students in an ABA-approved law school in 2006-2007 are African-American, an increase of .6 percent over the 2005-2006 academic year. African-American enrollment in the first-year class is even higher, 7.2 percent, and total minority enrollment for 2006-2007 is 21.6 percent.

Technical Corrections

The draft report asserts on page one that the ABA was "deferred" because of "concerns about the ABA's accreditation process." Later, on page 7, the draft report asserts that the ABA was "deferred" because of concerns about the "ABA's standards related to diversity." It is important to clarify that the Section was not formally deferred by the Department in accordance with the recognition criteria. Instead, the Department administratively postponed its appearance before NACIQI. Also, the April 5, 2006

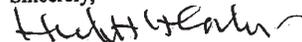
George A. Scott
Acting Director

letter the Section received from the Department postponing its appearance clearly indicated that the postponement was due to the Department's concern about the Section's standards related to diversity, not because of concerns about the Section's accreditation process. See attached letter. Thus, the Section respectfully requests that the draft report be amended to state that the Section was administratively postponed and to state on page one that the April 2006 postponement was due to concerns regarding the Section's diversity standards.

Finally, the draft report on page 12 asserts that there are 41 law schools identified by the Law School Admission Council ("LSAC") as non-ABA approved. Although this statement is true, the number of non-ABA approved law schools in the country is actually much higher. A search of just the non-ABA approved law schools identified by the California Bar Association combined with the LSAC list yields a total of 61 non-ABA approved law schools.

Thank you for providing the Section an opportunity to respond to the draft report. We hope these comments have been helpful and look forward to their incorporation in the final report.

Sincerely,



Hulett H. Askew
Consultant on Legal Education to the
American Bar Association

Cc: Bill Rakes
Hank White
John Przypyszny

Enclosures

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