

Ilya Shapiro
Director of Constitutional Studies
Manhattan Institute

Testimony before the National Advisory Committee on Institutional Quality and Integrity
(NACIQI) regarding the Renewal of Recognition of the American Bar Association (ABA)
Council of the Section of Legal Education and Admissions to the Bar

September 23, 2026

Good morning. I am Ilya Shapiro, director of constitutional studies at the Manhattan Institute and author of *Lawless: The Miseducation of America's Elites*.

I urge NACIQI to recommend denial of the ABA Council's petition for renewed recognition. The Department staff report reaches the same conclusion, finding that the Council failed to demonstrate compliance with numerous federal criteria.¹

First, Section 602.14 requires the accreditor to be "separate and independent" from its affiliated membership organization. The regulation specifically demands independent selection of decision-makers, separately paid dues, and budgetary autonomy. Department staff found that the Council failed to provide approved bylaws and other documentation needed to establish compliance.²

That omission is hardly academic. Last month, the ABA House of Delegates refused to concur in the Council's repeal of Standard 206, delaying the change and requiring another Council vote. The episode shows why the Council must demonstrate—rather than merely assert—its independence from the politically active organization that houses it.³

Second, Section 602.21(c) provides that once an accreditor determines that a standard needs changing, it "must initiate action within 12 months" and finish in a reasonable time. After *Students for Fair Admissions* changed affirmative-action law in June 2023, the Council acknowledged that it would need to revise Standard 206. Yet it continued training reviewers and evaluating schools under that standard through the 2024–25 cycle. It suspended the rule only in February 2025 and repealed it only this month. Department staff correctly found that this record fails the regulatory timetable.⁴

Third, Section 602.16 requires clear standards for student achievement, expressly including licensing examinations. Yet staff found that the Council failed to produce the studies supporting its chosen bar-passage benchmark. The Council has been quicker to prescribe ideological inputs than to justify the outcomes by which legal education should be judged.⁵

¹ U.S. Department of Education, *Staff Report to the Senior Department Official on Recognition Compliance Issues: American Bar Association Council* 1–5 (2026) (recommending denial and summarizing the Council's outstanding compliance failures), <https://surveys.ope.ed.gov/erecognition/api/public-documents/files/6/1182/119854>.

² See 34 C.F.R. § 602.14(b) (defining "separate and independent"); U.S. Department of Education, *Staff Report*, supra, at 1, 6–10 (finding that the Council failed to provide approved bylaws, documentation of changes to the House of Delegates concurrence process, and evidence concerning separate invoicing).

³ Barbara J. Howard, *The Work of Eliminating Bias and Enhancing Diversity Remains as Important as Ever*, American Bar Association (Aug. 31, 2026) (acknowledging that the House of Delegates declined to concur in repealing Standard 206 and that the Council consequently had to observe a 30-day waiting period); *ABA Accreditation Council Repeals Diversity Standard, Inside Higher Ed* (Sept. 8, 2026).

⁴ See 34 C.F.R. § 602.21(c); U.S. Department of Education, *Staff Report*, supra, at 42–43 (documenting the Council's acknowledgment that Standard 206 required revision after *SFFA*, its continued use during the 2023–24 and 2024–25 review cycles, and its February 2025 suspension); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023).

⁵ See 34 C.F.R. § 602.16(a)(1)(i) (requiring accreditation standards addressing student achievement, including, where appropriate, licensing examinations); U.S. Department of Education, *Staff Report*, supra, at 1, 15–17 (finding that the Council did not submit the studies or reports supporting its 75-percent bar-passage benchmark).

Standard 303(c), for example, still compels every law school to provide education on “bias, cross-cultural competency, and racism.” The Council’s own Standards Committee now concedes that this rule fails to build the intended skills, imposes a particular curricular input without measuring results, conflicts with some state laws, and creates unjustified burdens. Section 602.21 requires standards to be adequate measures of educational quality and relevant to students’ educational needs. The Council’s own assessment shows that this mandate fails that test.⁶

This is part of a long pattern. Two decades ago, the Council repeatedly withheld reaccreditation from George Mason despite active minority recruitment, pressuring it to lower admissions standards and adopt larger racial preferences. The result, as Gail Heriot documented, was severe academic failure among students supposedly helped.⁷ For example, from 2003 through 2005, 45 percent of its African American students experienced academic failure, compared with 4 percent of other students. Federal recognition magnifies the consequences of such ideological coercion.⁸

These failures carry unusual consequences. In nearly every jurisdiction, an ABA-accredited degree is the ticket to the bar exam. For some freestanding schools, accreditation also gates federal student aid. The Council exercises enormous government-backed power over legal education.⁹

In sum, the ABA Council has had ample warning and ample time. Its 11th-hour changes do not establish compliance. I respectfully urge NACIQI to adopt the Department staff recommendation and deny renewed recognition.

⁶ American Bar Association, [2026–2027 Standards and Rules of Procedure for Approval of Law Schools, Standard 303\(c\), at 23–24](#); ABA Standards Committee, [Recommended Revisions for Final Approval—Standard 303\(c\) 1–2](#) (Aug. 6, 2026) (concluding that the standard was not producing the intended communication skills, imposed a curricular input without measuring outcomes, conflicted with some state laws, and created unjustified burdens); 34 C.F.R. § 602.21(a).

⁷ See Gail L. Heriot & Carissa Mulder, *The Sausage Factory*, San Diego Legal Studies Paper No. 22-003 (2022) (providing a detailed account of the ABA’s accreditation pressure on George Mason and other law schools concerning race-conscious admissions and student-body composition), https://digital.sandiego.edu/law_fac_works/107/.

⁸ Andy Guess, [Diversity Meets Data at George Mason Law](#), *Inside Higher Ed* (June 25, 2008) (reporting the ABA’s repeated criticism of George Mason’s diversity efforts, quoting its site report regarding the school’s unwillingness to employ “significant preferential affirmative action,” and reporting academic-failure rates of 45 percent for African-American students and 4 percent for other students).

⁹ National Conference of Bar Examiners & ABA Section of Legal Education, [Domestic Legal Education: Jurisdiction-by-Jurisdiction Bar-Eligibility Requirements](#); U.S. Department of Education, *Staff Report*, *supra*, at 5, <https://surveys.ope.ed.gov/erecognition/api/public-documents/files/6/1182/119854> (explaining that the Council accredits 13 freestanding law schools and may serve as their gatekeeper for federal higher-education programs).