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November 16, 2006

The Honorable Margaret Spellings
Secretary of Education
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202

Dear Madame Secretary:

Accrediting organizations recognized by the Department of Education are invested with a public trust and perform an important public function as gatekeepers to federal student financial aid programs. These organizations should apply the same level of transparency, due process, and accountability that would apply to the Department if it performed this function itself, and most importantly, they should comply with the law.

Unfortunately, recent developments indicate that the American Bar Association Council of the Section of Legal Education and Admissions to the Bar (the "ABA Council") may not be fulfilling these requirements. For example, in June of this year, the Department of Justice filed a petition to find the ABA in civil contempt for the Council's failure to comply with the provisions of the 1996 antitrust consent decree that attempted to limit the Council's anti-competitive activities. On June 26, 2006, United States District Judge Lamberth of the U.S. District Court for the District of Columbia entered an order, based on a stipulation agreed to by the ABA, finding that "on multiple occasions the ABA has violated clear and unambiguous provisions" of the consent decree, and ordered the ABA to pay \$185,000 to the United States.

The ABA Council is also under investigation by the U.S. Commission on Civil Rights for its adoption of law school diversity standards that may force accredited schools to engage in practices that violate federal or state law prohibitions against the use of race in university hiring or admissions.

As you are aware, the Department of Education's National Advisory Committee on Institutional Quality and Integrity (NACIQI) has twice postponed consideration of the ABA Council's petition for renewal of recognition. The ABA Council was originally scheduled for consideration in December 2005. The volume and magnitude of some of the concerns raised was unprecedented and required the staff to delay the re-recognition hearing until June 2006. In March 2006, it was decided again to postpone ABA's re-recognition hearing to December 2006, in part due to concerns to proposed diversity standards. I understand that it is unprecedented to postpone a re-recognition hearing twice. However, I support the Department's decision to

thoroughly examine these issues and not simply rubber stamp the ABA Council's petition for recognition.

It is my understanding that the ABA Council's accreditation actions are taken in secret, with no public access to the discussions within the accrediting bodies, no record made of the proceedings, and no access to the accreditation records. The lack of transparency and accountability in the existing process allows the ABA Council to make decisions without fear that they will be subject to outside scrutiny. I am particularly concerned that the ABA's new diversity standard (ABA Standard 211) imposes results-oriented diversity requirements, and law schools seeking ABA accreditation may be required to engage in racial preferences in admissions or hiring, regardless of laws to the contrary. Without transparency as to how law schools are accredited, there is no way to determine the ABA Council's compliance with the law.

Because the ABA Council is the only accrediting agency for law schools recognized by the Department of Education, and its imprimatur is essential for a school's graduates to sit for state bar examinations, I am concerned that its monopoly power has intimidated some schools from coming forward to voice their concerns out of fear of retaliation, and that this has hindered a full and fair assessment of the ABA's compliance with federal law. I understand that the ABA has used the number of schools that have come forward to downplay the seriousness of the concerns that are being raised about its accreditation process. I therefore would appreciate any steps you can take to advise the ABA that your agency will closely monitor its treatment of schools that do come forward for evidence of inconsistent treatment or retaliation, so that all relevant concerns about the ABA's failure to comply with federal law are brought to the attention of the appropriate authorities.

In light of the issues articulated above – the ABA's failure to comply with the law, the upcoming NACIQI hearing, the newly adopted diversity standard, and the possible intimidation of law schools – I seek your assurance that the Department will thoroughly investigate these matters and give serious consideration to whether the ABA Council's petition for recognition should be renewed.

Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Orrin Hatch", written over a circular flourish.

Orrin G. Hatch
United States Senator