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TO: NACUA Board of Directors

FROM: Kenneth McKanders, Chair
Board Advisory Council on Diversity and Inclusivity

DATE: May 20, 2009

SUBJECT: June 2009 Report

The Board Advisory Council on Diversity and Inclusivity (charge and list of members attached) met on November 24, 2008 and May 8, 2009 (reports from both meetings are attached). At both meetings, representatives from each committee provided a report on the work of the committee in the area of diversity. The attached materials describe the variety of activities and programs that NACUA has undertaken and continues to undertake.

When asked to evaluate the process of utilizing a Board Advisory Council comprised of various committee representatives, the Council was confident that it has monitored and reviewed NACUA's overall progress as reported through the various committees. It was suggested that the process infuses diversity from multiple committees and that it broadens the base and gets many more people involved; others also noted that the Council provides a mechanism for integrating the work of the committee into a single report. Further, the Council members are confident that the process and results show NACUA's ongoing consideration of, and commitment to diversity and inclusivity.

We would like to thank the Board, members of other committees, and the staff for their continued attention to diversity initiatives and programming. We welcome comments and feedback from the members of the Board.

ATTACHMENT I: Board Charge and Members

BOARD ADVISORY COUNCIL ON DIVERSITY AND INCLUSIVITY

The Council will review the progress of the diversity chart's activities relative to each committee on which the individuals serve, review and monitor the Organization's overall progress, and may assist the President and the Board in reviewing and analyzing current or new ideas and activities or additional opportunities to enhance diversity and inclusivity of NACUA and of its constituent institutions. *Staff Liaison: Kathleen Curry Santora.*

FY 2008-09 Members, Board Advisory Council on Diversity and Inclusivity

1. **Chair:** Kenneth McKanders, Eastern Michigan University
Representative from Committee on Honors and Awards
2. Beth E. Cate, Indiana University
Representative from Committee on Strategic Planning
3. Jaffe Dickerson, Associate Individual Member
At-Large Member
4. Melinda Grier, Oregon University System (University of Oregon)
At-Large Member
5. Andrew Hughey, Central State University
Representative from Committee on Annual Conference Program
6. Mary Kennard, American University
Ex officio Member
7. Derek Langhauser, Maine Community College System
Ex officio Member
8. Cristina Mendoza, Florida International University
Representative from Committee on Nominations and Elections
9. Miles Postema, Ferris State University
Representative from Committee on Legal Education
10. Kathleen Curry Santora, NACUA
Ex officio Member
11. Nancy Washington-Vaughn, Tennessee Board of Regents
Representative from Committee on Membership and Member Services

ATTACHMENT II: Conference Call Notes**Notes: Board Advisory Council on Diversity and Inclusivity
Conference Call: Monday, November 24, 2009; 3:00 p.m. – 4:00 p.m.****Members Participating:**

Kenneth McKanders	Melinda Grier	Cristina Mendoza
Beth E. Cate	Andrew Hughey	Miles Postema
Jaffe Dickerson	Derek Langhauser	Kathleen Curry Santora

Chair Ken McKanders welcomed the members of the Board Advisory Council on Diversity and Inclusivity to the call. He noted that great progress had been made in the area of diversity and the formation of the Board Advisory Council (as a successor to the Diversity Subcommittee of the Committee on Strategic Planning) was one more example of the progress. He reviewed the charge of the Council and indicated the group would be preparing a year-end report on progress, as informed by the representatives from the various NACUA committees.

President-Elect Derek Langhauser noted that this is the second year for the Council, that it was a new and better structure that the board supported, and that Beverly Ledbetter, who served as the Council's chair last year noted that the structure and process had been successful. CEO Kathleen Santora then provided an overview of last year's final report and the chart of diversity initiatives and activities that has been in place for several years and is updated each year.

Representatives from each committee were then asked to provide a report on their individual committee's work in the area of diversity:

Committee on Honors and Awards: Ken McKanders noted that the committee would be certain that diversity is a factor in consideration of candidates, in terms of gender, race, and type of institution, in addition to meeting the qualifications for the award. He noted that results in the past had been positive, with several women and minorities receiving awards last year. The First Decade award provides an opportunity to recognize those who have been members for 10 years or less and have provides noteworthy service.

Committee on Legal Education: Miles Postema commented that the committee works on highlighting and enhancing diversity continuously. He provided an overview of the committee's written report and noted that the results of the committee's efforts had been very positive. He provided an overview of plans for the March CLE workshop on discrimination law, both in terms of topics and speakers. He also noted that staff serves as resources to committee members who need help identifying diverse speakers and topics, and that most success occurs when we reach out, so any help that Council members can provide with identifying speakers and moderators would be appreciated.

Committee on Membership and Member Services: In the absence of Nancy Washington-Vaughn, Haleema Burton, Manager of Membership and Outreach Services, provided an overview of the committee's report, including a summary of the demographic data NACUA compiles; a summary of the various ways that NACUA welcomes new members; an update on recruitment efforts to reach underrepresented institutions in NACUA's membership; and a description of distribution efforts to share Higher Education Law At a Glance, the document prepared by last year's Board Advisory Council.

Committee on Nominations and Elections: Cristina Mendoza reported that the committee always considers diversity in its process, as evidenced by the results. She also reported that the revisions to the Presidential ladder meant that there would be more slots for at-large members and thus more members to participate in the leadership. She indicated that NACUA solicits nominees for the board from all members who are invited to participate in the process.

Committee on Program: Andy Hughey reported that he is co-leader of the Diversity and Civil Rights working group for the 2009 Annual Conference. He noted that there are numerous documents given to members of the committee to encourage diversity of topics and speakers, and highlighted in particular the Committee Statement on Diversity and Annual Conference Presenters, as well as the Checklist for Selection of Speakers. He reported that both the diversity/civil rights track and other tracks' sessions would provide numerous topics related to diversity.

Committee on Strategic Planning: Beth Cate reported that each year, the board receives a report on dashboard indicators, which includes data on the ethnicity of all members (as reported by members who complete the demographic survey) and data on ethnicity of all NACUA committee volunteers. The Committee is reviewing all of NACUA's indicators this year to determine whether any are in need of revision. She also noted that the CEO reports on the progress of diversity initiatives as part of the State of the Association each year.

Jaffe Dickerson, an at-large member of the Council, commented on what an important time it is for diversity and especially for inclusiveness. He noted other important areas of diversity, including attention to disability and GLBT (Gay, Lesbian, Bisexual, Transgender) topics. Melinda Grier, also an at-large member of the Council, commented on how encouraging all of the committee reports had been. Other members of the Council agreed.

Chair McKanders reminded Council members that they would be asked to report on progress again in the Spring, once the committees had a chance to meet in March/April. The next call of the Council would occur once the committee work had been updated and would likely be in April or early May. Ken McKanders thanked the members of the Council for their good work and adjourned the call.

Notes
Board Advisory Council on Diversity and Inclusivity
Conference Call: Friday, May 8, 2009; 12:00 noon – 1:00 p.m.

Members Participating:

Kenneth McKanders	Mary E. Kennard	Kathleen Curry Santora
Beth E. Cate	Derek Langhauser	Nancy Washington-Vaughn
Melinda Grier	Cristina Mendoza	
Andrew Hughey	Miles Postema	

Member Absent:

Jaffe Dickerson

Others Present:

Karl Brevitz, NACUA Director of Legal Resources
Haleema Burton, NACUA Manager of Membership and Outreach Services
Paul Parsons, Deputy CEO
Laurence Pendleton, Member Committee on Strategic Planning
Georgia Yuan, Chair, Committee on Honors and Awards

Chair Ken McKanders welcomed the members of the Board Advisory Council on Diversity and Inclusivity to the call and thanked the members of the Council for serving. He then asked each committee representative to provide an update since late November on their committee's work in the area of diversity:

Committee on Honors and Awards: Georgia Yuan, chair of the Committee on Honors and Awards, reported for the committee (Ken McKanders had recused himself from the committee's deliberations since he had been nominated for an award). Georgia noted that in fact, Ken McKanders would be receiving the very well-deserved Distinguished Service Award, as would another member of the committee, Melinda Grier. Georgia described the process for soliciting nominees for honors and said that the First Decade Award in particular had been created to increase the number of recognitions and also to expand the awards to individuals who were newer to the Association. She noted that honorees were an outstanding group.

Committee on Legal Education: Miles Postema reported that the committee continues to remind members of the importance of diversity when making speaker and topic choices, adding that the staff has also helped members to identify a diverse group of individual as speakers. He referenced the agenda for the March 2009 CLE workshop on Discrimination Law as an illustration of the variety of topics addressing diversity and civil rights issues. He noted the committee's regular attention to diversity as an important factor in the development of programs.

Committee on Membership and Member Services: Nancy Washington-Vaughn reported that NACUA had exceeded 50% of members who participate in the demographic survey, an excellent response rate. She noted that having the data from members helps the staff to identify diverse speakers for members of the programmatic committees. Nancy also highlighted the strategic priority that continues to be one of NACUA's seven strategic goals – outreach efforts to

Historically Black Colleges and Universities and Hispanic-Serving Institutions to join NACUA, and also to the associations representing those constituencies (Hispanic Association of Colleges and Universities, National Association for Equal Opportunity in Higher Education). She reminded the Council that the one-pager on higher education law that began with the diversity subcommittee was being utilized in many ways to educate a wide variety of groups about the practice of higher education law.

Committee on Nominations and Elections: Cristina Mendoza reported that the committee had done an excellent job of soliciting the participation of a diverse group of nominees, that they represented a broad range of individual and institutional characteristics, and that the final slate was outstanding. She reminded the Council that as the Presidential ladder is shortened, there will be more opportunities for at-large members to serve on the board.

Committee on Program: Andy Hughey reported on the committee's diversity efforts, including regular written and verbal reminders to committee members throughout the planning process about the importance of diverse speakers and topics that address diversity issues, from both an individual and institutional perspective. He noted that the Civil Rights/Diversity track achieved a broad range of diverse topics, and several other sessions outside of that track also include aspects of diversity, in both Professional Development and the General Counsel tracks. Council members noted that the topics for the conference look strong.

Committee on Strategic Planning: Beth Cate reported that a work group of the committee had convened to review NACUA's dashboard indicators and one recommendation for revision/enhancement was to begin showing a five-year trend line for demographic data on members by ethnicity and also for committee participation by ethnicity. She reported further that NACUA's strategic priorities show a continuing commitment to diversity in all areas of the Association. She reminded the Council that the CEO reports on the progress of diversity initiatives as part of the State of the Association each year.

Ken asked if there were additional comments or thoughts about the work of the Council. Mary Kennard, President, thanked the members of the Council for their work over the last year. She commented that the format of infusing diversity into NACUA through the work of various committees broadens the base of people involved in the conversations and is a very effective way to devote attention to these issues. Other members of the committee agreed, noting that the Council insures diversity does not become compartmentalized but rather is infused into the Association's work. Council members also thanked the staff for their commitment to diversity and to the Council's work.

Ken McKanders noted that a major goal/objective is the "consideration" of diversity issues, even if specific proposals are not always implemented; other members of the Council agreed strongly. Derek Langhauser, President-Elect, commented that he saw these issues being addressed at the ground level in a number of committees where he participated in the deliberations over the last year, using Nominations as an example. He agreed that the Council is a good way to keep track of various initiatives and that it gives NACUA a way to integrate what all of the committees are doing through a central mechanism. He noted that the Council provides a legacy of leadership to other volunteer leaders who follow, and that this is an ongoing process. He thanked the members of the Council for their work.

Ken concluded the call by telling Council members he would provide both a written and verbal report to the Board in June and that the written report would be circulated to the Council. He then thanked the members of the Council for their excellent work and they, in turn, thanked Ken for his outstanding leadership.

ATTACHMENT III: Diversity Sessions from 2009 March CLE and Annual Conference

The March 2009 Legal Education Program “*Higher Education Discrimination Law: ADA, FMLA, EEOC, OCR and More Essential Updates for College and University Counsel*” http://www.nacua.org/meetings/march2009/pdfs/full_schedule.pdf focused entirely on diversity.

2009 Annual Conference Diversity and Civil Rights Working Group Topics

1B. Law and Order in the Context of Civil Rights

- Aggressive enforcement vs. ambassador function: what is the role of the campus police force?
- Challenges and opportunities with having or establishing a commissioned police force
- Use of tasing and other pain compliance methods in a campus community and avoiding complaints of excessive force
- Overview of constitutional search and seizure issues
- Best practices for establishing effective relationships with law enforcement agencies

1 H. Faith On A Postmodern Campus: Student and Student Organization Religious Freedom

- Student religious accommodations in the classroom, housing, and activities
- Student organizations and religious freedom issues

2B. Faculty, Employee and Student Diversity

- Federal, state, and local statutes and regulations that govern and/or impact campus diversity efforts
- U.S. Supreme Court and other federal/state court cases
- Use of race neutral alternatives in admissions/financial aid
- Faculty/Staff diversity initiatives

3B. Understanding, Drafting, and Applying the Campus Facilities Use Policy

- Best practices in drafting facilities use policies
- Restricting attendance at campus events
- Dealing with provocative or controversial speakers on campus
- "Content neutrality" - what it means and how to achieve it
- Other statutes pertinent to facilities use, including the Solomon Amendment

4B. Free Sex v. Free Speech: Navigating the Delicate Balance Between Anti-Harassment Policies and the Right to Free Speech

- OCR and EEOC guidance on Title IX and Title VII sexual harassment policies
- First Amendment cases overturning policies consistent with OCR and EEOC guidance
- How to handle the legal and public relations fallout
- Prophylactic policy drafting suggestions

5A. The John Roberts Civil Rights Round Up - A Review of the Supreme Court's Recent Civil Rights Rulings and What the Future May Hold

- Trends in the Court's civil rights jurisprudence
- Discussion of selected cases in such areas as employment discrimination; retaliation; freedom of speech and association; and voluntary affirmative action/school desegregation
- Where are we going? Peering into the crystal ball

6B. Student Mental Health Concerns

- The delicate balance between mental health, campus safety, and disability discrimination
- Involuntary medical withdrawal policies
- New U.S. Department of Education and HHS guidance on the application of FERPA and HIPAA to student health center treatment records
- Model policy threat assessments (best practices and policies, privacy and privilege issues)
- Student issues, avoiding liability, and sharing information on campus

7B. Strategies to Avoid Retaliation Exposure

- Current issues in retaliation law
- Implications of decisions in Crawford v. Metropolitan Government, White v. Burlington Northern, and other recent cases
- How to avoid claims
- Strategies for managing claims by current employees

9A. Transgender Issues on College Campus: The New Frontier

- Cultural competency/training/updating non-discrimination policies
- Facility issues: bathroom, locker room, student housing
- Unique healthcare needs and challenges
- Records/documents/name change requests
- Overview of legislative amendments to include transgender as protected status and cases asserting transgender discrimination claims

Other Diversity-Related Annual Conference Sessions

SIG7. Historically Black Institutions

Special Interest Group

1C. Managing the Higher Education Legal Office

- Performance Management: positions, reviews, promotions, and compensation issues
- Business and budget issues
- Filing and contract review systems
- Use of law clerks and work-study students
- Relationships with outside counsel (best practices in hiring and review, billing arrangements, diversity, etc.)
- Methods of achieving diversity in both in-house and external counsel

1D. The 2009 FMLA Landscape – What Has Changed, What Has Remained the Same, and How to Manage FMLA Claims

- Current FMLA landscape and the proposed/new regulations
- Changes effectuated by the 2008 National Defense Authorization Act
- Identification of some of the most challenging FMLA issues and strategies to manage them; whether the new regulatory scheme addresses any of these challenges

3F. Student on Student Harassment (Including Recent Sexual Assault Cases)

- Overview of Title IX liability standards/applicable legal principles
- Discussion of recent cases concerning sexual assault by student athletes and potential institutional liability
- Policy and process considerations for reducing institutional exposure to student on student harassment litigation
- Policy and procedure drafting and administration of student disciplinary process
- Establishing a training program and other recommended prophylactic steps to reduce exposure to student on student litigation

3H. ADA/FMLA

- Forum

6D. What Every University Lawyer Needs to Know about Hiring, Firing and Employment of Foreign Nationals

- Introduction to basic terms and visa categories
- H-1B employees: portability, extensions, changes, terminations; responsibility for payment of fees and expenses; Recruitment questions dos and don'ts
- Visa options for Postdoctoral researchers: J-1 vs. H-1B; Responsibility for payment of fees and expenses
- Going from student to employment status
- Employment-Based Immigration – PERMs, EB-1/2s and more!
- Latest Developments: E-Verify and I-9 compliance (Safe Harbor?)

7F. The Buck Stops Where? Student Organizations - Risks, Liabilities and First Amendment Issues

- Student government, inter-fraternity council and other student groups: when to recognize, sponsor or keep at arm's length
- Managing the risks of student activities through pre-event planning, releases and insurance
- The legal and constitutional limits on managing risk by regulating student speech and student organizations
- Legal limits on the ability to shift the cost of security for student organization events
- Special risk and liability concerns raised by student newspapers