

## Standard 501 & 503 Comments

April 2, 2018

On June 28, 2017, we provided commentary on the March 24, 2017, request for comment on proposed revisions to ABA Section on Legal Education and Admissions to the Bar Standard 503. We were concerned that the proposed Standard 503 would foreclose innovation. More fundamentally, we disagreed with the premise that a standardized test is the only way to assess and enforce the ABA Standard 501 requirement that law schools admit only capable students.

We write today to express our support for the current proposal, reflected in the request for comment dated November 17, 2017, to eliminate Standard 503, and to govern admissions to JD programs under Standard 501. Standard 501 unambiguously places the burden on law schools to admit capable students. Proposed Standard 501(c) would provide:

Among the factors to consider in assessing compliance with this Standard are the academic and admission credentials of the law school's entering students, the academic attrition rate of the law school's students, the bar passage rate of its graduates, and the effectiveness of the law school's academic support program. Compliance with Standard 316 is not alone sufficient to comply with the Standard.

In addition, Interpretation 501-1 would provide:

Sound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome. If a law school requires an admission test, it shall publish information regarding which tests are accepted.

Consistent with our June 2017 commentary on the earlier proposal, we strongly endorse the revised proposal.

The comment accompanying the revised proposal notes that "While this proposal eliminates the requirement of an admission test in the Standards, a law school may still require an admission test, which the Council expects will remain the norm, and it may decide which test(s) it accepts."

We agree with both points. Just as they have remained the norm for business and medical schools, admissions tests are likely to remain the norm for law school admissions. And each law school should be able to decide which tests it accepts, and whether it requires a test for all JD admission decisions. As with transparency regarding all fundamental consumer information for law school applicants, we also agree that law schools should be clear about the basis for JD admissions, including which tests it accepts.

The great virtue of the proposal is that it invites experimentation consistent with Standard 501. The proposal would go a long way towards diversifying admission to JD programs, and place the burden of wise admissions decisions where it belongs: on law schools, and focused on outcomes rather than inputs. It would, as we noted in June 2017, put the ABA Standards and Rules of Procedure in line with regulators of other professions, none of which mandate the use of standardized tests for consideration of admission to other professional programs.

Other commentators addressing the current proposal have praised the value of the LSAT in identifying strong and appropriate candidates for admission, especially candidates who did not attend elite undergraduate institutions. The current proposal will allow law schools to continue to require applicants to take the LSAT.

By supporting this proposal, we take no issue with the good and longstanding work of the LSAC. But explaining the virtues of the LSAT is not a justification for mandating its use. Any realistic view of the world would suggest that for the foreseeable future most schools would use the LSAT as a primary means for assessing applicants.

But a law school world governed by Standard 501 would likely open the doors of legal education for additional potential students with the intelligence, discipline and character to succeed in law school and on the bar, and to become great lawyers, but who come from different backgrounds, experiences, challenges and opportunities.

Relying on Standard 501 and making the use of standardized tests an element of admissions for schools that want it but not a requirement for all applicants for all schools at all times also recognizes that both the LSAT and GRE explain a relatively small amount of variation in observed law school performance.

Both the LSAT and the GRE are valid and reliable predictors of first year law school grades. But even when paired with Undergraduate GPA, the LSAT and GRE only explain about 19% of the variation in first-year grades according both to LSAC and

ETS studies. In other words, about 22% of those who are in the top third of standardized test scores, will end up in the bottom third of the class grades in the first year. And vice-versa – about 23% of those who are in the bottom third of standardized test scores will end up in the top third of the first-year class grades.

It is also worth noting that the measure of performance itself, first-year grades, may be only distantly connected to success in the profession. Admissions professionals may in their judgment occasionally do well to admit students without relying on these tests, and indeed a law school might do the hard work to establish an entirely different path to admission including, for example, contingent admissions, or extended assessments that actually test the ability of applicants to learn and apply the law.

Innovation in legal education is hard. But we appreciate the steps the Section on Legal Education and Admission to the Bar has taken to focus on what matters – the content, quality and outcomes of legal education – and to take a step away from incomplete heuristics of quality, such as a mandated standardized test or a mandated method or form of how to best educate students.

We hope the Council will take the modest step, as proposed, that would put law schools in line with other professional schools, and challenge us to select and educate capable students with the highest aspirations and greatest trust, honesty and transparency in mind.

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