



# NATIONAL BLACK LAW STUDENTS ASSOCIATION

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The Hon. Rebecca White Berch  
Chairperson, Council for the Section of Legal Education and Admissions to the Bar  
American Bar Association

## **RE: ABA Proposal to Amend Standard 316**

NBLSA<sup>1</sup> submits this comment in opposition to the ABA's Council for the Section of Legal Education and Admissions to the Bar proposed change to Standard 316 because it fails to address the systemic racial inequities in the law school admission process and in legal education, it disproportionately adversely impacts law students of color and communities of color, and it does nothing to remedy the holistic challenges that face law schools that seek to serve underrepresented communities.

- I. Historically, students of color score lower on the LSAT and the LSAT has a strong correlation with bar passage. If Standard 316 is amended as proposed, law schools would focus more on higher LSAT scores, reducing the diversity in their law schools and in the legal profession as a whole.**

The LSAT is purported to be an objective test that measures how successful a student will be in not only law school but the bar exam as well.<sup>2</sup> Because of the ostensibly predictive nature of the LSAT, law schools base their admissions decisions largely on test scores.<sup>3</sup> The undue weight given to LSAT scores in admissions creates a barrier to entry for people of color because data shows that Black, Puerto Rican, Hispanic, and Native American test takers have the lowest mean LSAT scores.<sup>4</sup>

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<sup>1</sup> The National Black Law Students Association (NBLSA) is a 501(c)(3) corporation and the largest student-run organization in the United States, representing nearly 6,000 law students at over 200 law schools throughout the US and six other countries. However, outside of simple numbers, our organization has continuously articulated and promoted the needs and concerns of African-Americans and other minority communities.

<sup>2</sup> Law School Transparency, 2015 State of Legal Education, *available at* <http://lawschooltransparency.com/reform/projects/investigations/2015/key-findings/>.

<sup>3</sup> William C. Kidder, The Struggle for Access from Sweatt to Grutter: A History of African American, Latino, and American Indian Law School Admissions, 1950-2000, 19 HARV. BLACKLETTER L.J. 1, 29 (2003).

<sup>4</sup> Susan P. Dalessandro, Lisa C. Anthony, Lynda M. Reese, *LSAT Performance With Regional, Gender, and Racial/Ethnic Breakdowns: 2005-2006 Through 2011-2012 Testing Years*, Law School Admissions Council, *available at* [http://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-12-03.pdf](http://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-12-03.pdf); Ry Rivard, *Lowering the Bar*, *Inside Higher Ed* [small caps], January 16,

Law schools that place less of an emphasis on high LSAT scores, namely those whose existence would be threatened as a result of this proposed rule, are more diverse and give students of color an opportunity to enter and thrive in the legal profession. Of the 64 schools that had a bar passage rate below 75% between 2012 and 2015, over 20 of them have student bodies that are more than 30% diverse.<sup>5</sup> If the ABA closes these schools because of their failure to reach the 75% threshold, the ABA is essentially creating a blockage to diversity in the legal profession and further exacerbating public trust, confidence, and perceptions of fairness in the legal system.<sup>6</sup>

Further, this proposed rule is over-inclusive as the 75% bar passage rate would jeopardize the existence of historic, revered, and well-intentioned law schools. If this proposed rule were to be enacted, many law schools who have failed to meet the threshold at any point in recent years, like American University's Washington College of Law, University of California's Hastings College of Law, New York Law School, and Howard University School of Law may have to close their doors.<sup>7</sup> It is a fact that these schools enroll scores of students that are diverse, do pass the bar, and become leaders in the legal profession.

NBLSA believes that exploitative law schools that prioritize profits, prey on students, and fail to be transparent about student prospects for passing the bar should be held accountable. However, the 75% bar passage rate requirement is over-inclusive and would disproportionately impact communities of color because the rule would threaten the status of several schools that serve as pipelines for diverse students into the legal profession.

## **II. The ABA should consider a more holistic and comprehensive review of the bar exam and law school accreditation process.**

With LSAT scores and bar passage rates at historic lows, the proposed rule raises fundamental concerns about how lawyers are licensed and the metrics by which law schools should be judged.<sup>8</sup> In order to ensure that individuals from

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2015, *available at* <https://www.insidehighered.com/news/2015/01/16/law-schools-compete-students-many-may-not-have-admitted-past>.

<sup>5</sup> ABA Section of Legal Education and Admissions to the Bar, Standard 509 Reports: JD Enrollment and Ethnicity, *available at* <http://abarequireddisclosures.org>.

<sup>6</sup> Achieving Diversity in the Legal Profession through the Educational Pipeline, ABA Council for Racial and Ethnic Diversity in the Educational Pipeline, *available at* [http://www.americanbar.org/content/dam/aba/administrative/diversity\\_pipeline/rev\\_diversity\\_in\\_educational\\_pipeline\\_slides\\_oct2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/diversity_pipeline/rev_diversity_in_educational_pipeline_slides_oct2013.authcheckdam.pdf).

<sup>7</sup> ABA Section of Legal Education and Admissions to the Bar, Standard 509 Reports: Bar Passage Rates, *available at* <http://abarequireddisclosures.org>.

<sup>8</sup> Debra Cassens Weiss, *LSAT profiles of current law students signal more troubles ahead; has low point been reached?*, ABA JOURNAL, January 25, 2016, *available at* [http://www.abajournal.com/news/article/lsat\\_profiles\\_of\\_current\\_law\\_students\\_signal\\_more\\_troubles\\_ahead\\_has\\_low\\_po/](http://www.abajournal.com/news/article/lsat_profiles_of_current_law_students_signal_more_troubles_ahead_has_low_po/).

diverse backgrounds have access to quality legal education that prepares them for a lifetime of service, the ABA must pursue an effort to radically transform law school admissions, legal education, and the bar exam. This transformation begins with an acknowledgement that race and class have long played a role in the inequalities that persist in the legal profession.

NBLSA submits this comment on behalf of our membership and we urge the ABA's Council for the Section of Legal Education and Admissions to the Bar to reject the proposed change to Standard 316 and we encourage the ABA to reconsider the metrics that govern the law school admissions and accreditation process in a way that prioritizes diversity in the legal profession.

Respectfully submitted,

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