

## Standard 503 Comments

June 28, 2017

### *Summary*

These comments address proposed revisions to ABA Standard 503, governing admission to JD programs. The undersigned deans oppose the proposed revisions because they would still mandate a standardized test for admission to JD programs, a requirement that is inconsistent with all other professional accreditors, with national trends in higher education, and with the Council's own shift to outcome measures. Moreover, while the proposal would open a pathway to national validation of new standardized tests for admission to JD programs, it would close off innovation by individual schools.

Standard 503, regarding requirements for admission to JD programs, has been the source of ongoing controversy and criticism as the Council has balanced rigidity in requiring the use of a standardized test for admission – *something no other professional school accreditor requires* – with efforts to allow for innovation and variation.

Efforts at innovation have included the now disbanded process of allowing variances to Standard 503, and then the Interpretation 503-3 “safe harbor.” The 503-3 safe harbor was not grounded in theory or empirical study, and has been proposed for elimination.

As explained in the Notice and Comment Memorandum accompanying the current proposed revision to Standard 503, “The matter of whether a law school admission test should be required by the Standards and, if so, which test or tests should be allowable has proved to be a particularly difficult matter for the Council.” See

[https://www.americanbar.org/content/dam/aba/administrative/legal\\_education\\_and\\_admissions\\_to\\_the\\_bar/council\\_reports\\_and\\_resolutions/20170324\\_notice\\_and\\_comment\\_memo.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/council_reports_and_resolutions/20170324_notice_and_comment_memo.authcheckdam.pdf) .

But the existing text of Standard 503 also allowed, on its face, for innovation by law schools. Now, in response to the demonstration by the University of Arizona, Harvard University and other law schools that another standardized test (the Graduate Record Exam) can be a valid and reliable basis “to assist the school and the applicant in assessing the applicant’s capability of satisfactorily completing the school’s program of legal education,” the Council proposes to close the door on the modest innovation allowed to law schools under existing Standard 503.

### ***Proposed Revision to Standard 503***

Proposed Standard 503 would retain the requirement that law schools must use a valid and reliable standardized test for JD admission, but narrow such tests – in a manner not yet explained – to those that can be demonstrated to be valid and reliable for law school admissions nationwide.

The Notice and Comment memorandum accompanying the proposed revisions to Standard 503 makes several assertions that we believe are unfounded. The relevant paragraph states as follows:

The Council is circulating for notice and comment a proposal that retains the requirement of a law school admission test in the Standards. This requirement is important in enforcing the requirement of Standard 501 that a “law school shall not admit an applicant who does not appear capable of satisfactorily completing its program of legal education and being admitted to the bar.” Further, an admission test is helpful to schools in evaluating applicants and most schools, even if the admission test requirement was removed from the Standards, would continue to require such a test. Finally, the requirement of a test score and requiring schools to publish information about the test score profile of their entering classes is a helpful data point for students considering the study of law and where to apply/attend.

### ***The Standardized Test Mandate Does Not Fit Its Claimed Purpose***

We disagree that the requirement for a law school admission test “is important in enforcing the requirement” that law schools should only admit students they believe are capable of succeeding in law school and passing the bar.

There are many and better ways other than a standardized test to determine whether a law school believes an applicant can succeed in law school and pass the bar. That is why most law schools consider a range of factors, including academic ability (undergraduate grades, rigor of the undergraduate program, graduate studies), work experience, volunteer or public service, life experience, leadership, challenges overcome, career goals, writing skills, personal motivation, and letters of recommendation.

Moreover, even with the admissions test requirement, there are many schools with a high attrition rate and/or a low bar passage rate. That is the data that should be most helpful to students considering where to attend law school: do the admitted students succeed in graduating, and do the graduates pass the bar exam?

The easiest way to enforce Standard 501's requirement that we only admit capable students is to measure how those students we admit perform in the program and on the bar exam.

While an admission test may be helpful in evaluating many students, we do not know how many schools would require it for all applicants if the Standards did not mandate a test. It will always come down to whether the students admitted without an admission test score succeed in the program and pass the bar or not. Just because individual schools might continue to require an admissions test, why should it be required for accreditation? And why should the test have to be approved by the Council?

Also, we do not believe that the median or range of test scores of admitted students is helpful for students deciding where to attend school.

### *Harming Diversity, Skewing Admissions*

The requirement of a standardized admissions test negatively impacts efforts to diversify the profession. The many law schools attentive to rankings by *U.S. News* routinely waitlist or deny admission to students who the school believes can succeed in the educational program and pass the bar exam. In fact, many of these students' admission test scores are – in predictive terms – indistinguishable from applicants who are admitted. And many of these students are diverse along any measurement of diversity. But the heavy weight put on these test scores by *U.S. News* inhibits the ability to admit these students for fear of harming the law school's rankings.

The denial of admission has less to do with the abilities of the prospective students and more to do with maintaining metrics to ensure rankings success. While Interpretation 503-2 states that Standard 503 “does not prescribe the particular weight that a law school should give to an applicant’s admission test score in deciding whether to admit or deny admission to the applicant,” such a statement flies in the face of reality for many schools.

The proposed elimination of 503-2 does not respond to the real underlying dynamic, and maintaining the 503 standardized test requirement, and indeed proposing in significant measure to strengthen it, means that the Council has turned a blind eye to this reality.

The Council’s continued unique and mandatory embrace of standardized tests for admissions goes against the tide of history in higher education. Many Colleges and Universities no longer require a standardized test as part of the undergraduate admissions process, with over 900 accredited schools that admit substantial numbers of students without standardized test scores.

### *Stifling Innovation*

If the Section determines to continue to require a standardized test for admissions, there are still flaws in the proposed changes to Standard 503. The proposed Standard is exceedingly opaque, and rather than encouraging innovation, stifles it.

Under the proposed standard, every school would be prohibited from using any test other than the LSAT unless and until the Council – at some unknown time and using some unknown process – decides to validate a different test.

It would become extremely difficult for law schools to innovate in admissions and testing under the proposed standard.

With all respect to the Council, validating standardized tests does not seem to be in the Council’s wheelhouse, and would require consultation with standardized test experts and statisticians. And why grandfather the LSAT – why not start with a blank slate?

The proposed revision to Standard 503 forecloses a demonstration or request by a single school that a specific test be validated. It forecloses innovation by individual schools, or by a small group of schools, leaving only the expensive path of national validation. Perhaps some testing companies would be willing to demonstrate that an additional test is valid and reliable, but that is not a path to *law school* innovation.

What about the evidence already submitted about other tests, either when Arizona started using the GRE, or evidence that supports Harvard's decision to begin accepting the GRE, or evidence submitted during the many years that certain schools operating under variances used alternative tests? And what about reliance by law schools that invested significant time, money and effort in demonstrating the validity and reliability of the GRE? As with the prior variances, or the current (grandfathered) interpretation 503-3, will the message be "innovate, openly and in good faith, at your peril."

Neither the current or proposed Standard 503 protects or assists prospective law students. The current and proposed Standard 503 place sharp limits on the development of wise and innovative JD admissions policies. The proposal takes the Council and legal education even further out of line with the norms of other professions and with the broader practice of higher education admissions. It is inconsistent with the Council's own increasing focus in the Standards on content and outcome measures rather than inputs.

### *"Experimentation Benefits Us All"*

Last May, in response to a threat from LSAC to expel the University of Arizona, 153 law school deans signed a letter stating that "experimentation benefits all of us."

<http://pdfserver.amlaw.com/nlj/Letter%20to%20Daniel%20Bernstine%20LSAC%205.3.16.pdf> .

We hope the Council will continue to embrace the spirit and the language of innovation. The proposed Standard 503 does not. For all these reasons the proposed Standard 503 should be rejected, and the Standards Committee asked to redraft either to eliminate the mandatory requirement of a Standardized test, or, at a minimum, to retain the ability of law schools to demonstrate that other information provides a valid and reliable basis for admission to – and success at – those law schools, and on the bar.

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