

C L E A

Clinical Legal Education Association

COMMENT OF CLINICAL LEGAL EDUCATION ASSOCIATION ON PROPOSED REVISIONS TO ABA STANDARD 503

July 5, 2017

The Clinical Legal Education Association submits this comment regarding the proposed revisions to ABA Accreditation Standard 503. These revisions would permit law schools, in making admissions decisions, to rely on standardized tests other than the Law School Admission Test, but only if the Council of the Section of Legal Education and Admissions to the Bar first determines that the particular test is valid and reliable. The revision also would eliminate Interpretation 503-1, which currently allows schools to demonstrate to the ABA that an admission test other than the LSAT is valid and reliable.

First, while allowing schools to use other admission tests beyond the LSAT is preferable to permitting only one test, the proposed revision to Standard 503 will compel law schools to continue the practice of placing emphasis on standardized testing in the admissions process. Additionally, as recognized by the Council, eliminating Interpretation 503-1 will remove flexibility and opportunities for innovation on the part of law schools when making admissions assessments. This is a mistake. Rather than placing limitations on schools, the Council should encourage a broadening of the range of approaches to admissions assessments. Moreover, the factors relied in the admissions assessment process should be predictive not only of first-year grades and bar passage, but of how well an applicant is likely to perform as a lawyer.

Flexibility is especially necessary given the LSAT's limited ability, even in combination with undergraduate GPA, to predict law school success. The 2016 Annual Report of the Law School Survey on Student Engagement, subtitled *Law School Scholarship Policies: Engines of Inequity*, <http://lssse.indiana.edu/wp-content/uploads/2015/12/LSSSE-2016-Annual-Report-1.pdf>, explains that the LSAT is designed as a predictor of first-year grades but that even when the LSAT and undergraduate GPA are considered together, they have limited value "in predicting long term outcomes such as bar exam performance and career success." LSSSE 2016 Annual Report, at 11. The Law School Admission Council itself warns that "[t]he LSAT, like any admission test, is not a perfect predictor of law school performance. The predictive power of an admission test is limited by many factors, such as the complexity of the skills the test is designed to measure and the unmeasurable factors that can affect students' performances (e.g., motivation, physical and mental health, or work and family responsibilities)." *LSAT Scores as Predictors of Law School Performance*, <https://www.lsac.org/jd/lsat/your-score/law-school-performance>.

Despite its limited utility in predicting performance beyond first-year grades, the LSAT has achieved prominence in law school admissions processes, in part due to pressures on law schools created by U.S. News and World Report rankings "to maintain, if not raise, their LSAT profiles. A school's ranking is closely associated with its median LSAT score. This pressure has

been heightened by the unprecedented downturn in applications that began in 2011 and an even more intense drop in applicants with high LSAT scores.” LSSSE 2016 Annual Report, at 11.

In considering ways to make admissions assessments more holistic and predictive of success in the practice of law, the Council should look to other professions, which have done far more to create admissions assessments that offer a greater likelihood of predicting future professional success. For example, the Association of American Medical Colleges recently concluded a multi-year effort to reform the MCAT and the standardized medical school admissions process to better assess whether applicants are likely to possess the skills used by physicians. *5th Comprehensive Review of the Medical College Admission Test (MCAT), Final MCAT Recommendations*, <https://www.staging.aamc.org/download/275126/data/finalrecommendationsupdate.pdf>. The MR5 committee recommended that the AAMC “develop new measures of integrity, service orientation, and other personal characteristics admissions committees can use early in the process of student selection” and urged the AAMC to “[v]igorously pursue options for gathering data about personal characteristics through a new section of the AMCAS application and through standardized recommendation letters.” *Id.* The MR5 committee also recommended that the AAMC “[m]ount a rigorous research program aimed at discovering the extent to which applicants’ personal characteristics may be measured . . . using nationally-developed tools.” *Id.*

The Council should follow the lead of the medical profession and take a more active role in encouraging a holistic review of applicants’ qualifications, including personal characteristics that are likely to predict success in the legal profession. Thanks to the *Educating Tomorrow’s Lawyers* initiative of the Institute for the Advancement of the American Legal System, which in 2016 published *Foundations for Practice: The Whole Lawyer and the Character Quotient*, http://iaals.du.edu/sites/default/files/reports/foundations_for_practice_whole_lawyer_character_quotient.pdf, the Council and law schools “no longer have to wonder what new lawyers need.” *Id.*, at 38. In their detailed report, Ali Gerkman and Logan Cornett explain that, according to their extensive research, new lawyers “need more than we once thought. Intelligence, on its own, is not enough. Technical legal skills are not enough. They require a broader set of characteristics (or, the character quotient), professional competencies, *and* legal skills that, when taken together, produce a whole lawyer.” *Id.* Gerkman and Cornett recommended that law schools “[e]valuate the current criteria for admitting students to law school and consider new criteria that paint a picture of the applicant’s characteristics and competencies beyond intelligence.” *Id.* at 37.

Second, the Council should consider the negative impact on diversity of perpetuating the prominence and often misuse of standardized tests in admissions assessments. The LSAT itself has had, and continues to have, a negative impact on diversity: American Indian/Alaskan Natives, Black/African American, Hispanic/Latino, and Puerto Rican minorities all score lower than White/Caucasians and Asians. *LSAT Technical Report 14-02*, October 2014, [https://www.lsac.org/docs/default-source/research-\(lsac-resources\)/tr-14-02.pdf](https://www.lsac.org/docs/default-source/research-(lsac-resources)/tr-14-02.pdf), at 21-27. In addition, men consistently score slightly higher on the LSAT than women. *Id.*, at 17-20. As racial disparities persist in law schools (see 2016 J.D. Matriculants by Gender & Race/Ethnicity, https://www.americanbar.org/groups/legal_education/resources/statistics.html), and in the legal profession (see 2016 Report on Diversity in U.S. Law Firms, published by the National Association for Law Placement,

<http://www.nalp.org/uploads/Membership/2016NALPReportonDiversityinUSLawFirms.pdf>), many schools continue to employ cut-off LSAT scores, denying consideration to applicants whose scores fall below a designated cut-off point. The LSAC discourages the use of cut-off scores and cautions that they “may have a greater adverse impact upon applicants from minority groups than upon the general applicant population.” Law School Admission Council, *Cautionary Policies Concerning LSAT Scores and Related Services*, [https://www.lsac.org/docs/default-source/publications-\(lsac-resources\)/cautionarypolicies.pdf](https://www.lsac.org/docs/default-source/publications-(lsac-resources)/cautionarypolicies.pdf).

Law schools also rely on LSAT scores to the detriment of minority applicants when determining scholarship awards. LSSSE 2016 Annual Report, *supra*. Instead of awarding grants based on need, schools purport to rely on “merit,” using LSAT scores as a guide, another way in which schools attempt to improve their rankings. The result has been a further decrease in the economic and racial diversity of applicant pools. In fact, LSSSE found that, “[t]he close correspondence between LSAT scores and merit scholarships fostered racial and socioeconomic disparities. White and Asian respondents were most likely to have received a merit scholarship. Black and Latino respondents were least likely. The underlying reason is that LSAT scores among blacks and Latinos tend to be lower than those of whites and Asians.” *Id.*, at 9.

The Graduate Record Examination, currently used as an alternative admissions test by some law schools, suffers from many of the same problems of racial bias as the LSAT. See *A Snapshot of the Individuals Who Took the GRE General Test July 2013-June 2016*, https://www.ets.org/s/gre/pdf/snapshot_test_taker_data_2016.pdf, at 6-9. Like the LSAT and GRE, other potential admissions tests may have the same type of negative impact on diversity.

Finally, the Council should identify both the process and the criteria it intends to rely on when making “valid and reliable” determinations about standardized admissions tests. The Council memo dated March 24, 2017, soliciting comments on Standard 503, states that the proposed changes “establish a process” by which admission tests other than the LSAT can be certified as valid and reliable. But the process remains obscure. We understand that the Council intends to engage experts to study proposed new tests, an undertaking that is complex and requires guidance regarding the purpose of the exam. The proposed standard does not address the question of what any new test, or for that matter the LSAT, should measure.

If the Council is concerned only with an applicant’s prospects for grade success in the traditional first-year curriculum, it will be validating tests that, like the LSAT, measure only a small portion of what an applicant needs to possess in order to succeed as a lawyer. And the Council would be impeding innovation in the first-year curriculum by embedding in the Standards the assumption that the traditional first-year curriculum is perfect. Law schools should re-examine the first-year curriculum. The Council should take seriously its obligation to support efforts to engage in that inquiry. The proposed standard could have the opposite effect.

In summary, the Council should adopt a Standard that will provide a more holistic view of law school admissions assessment, one that would allow schools to better predict more than an applicant’s first-year grades in a school with a “traditional” curriculum. The Council should also consider the negative impact on diversity of maintaining the requirement of standardized

admissions testing. Finally, the Council should provide specifics as to the process and standards to be used in determining whether a test is “valid and reliable.”