March 19, 2018

Council of the ABA Section on Legal Education and Admissions to the Bar
321 North Clark Street, 21st Floor
Chicago, IL  60654-7598

Dear Members of the Council:

I am writing to convey AccessLex Institute’s support for the recommendation from the Standards Review Committee to eliminate Standard 503 (requirement of an admission test) and revise Standard 501 to include admission test scores, among other considerations, as a “black letter” factor in assessing compliance with Standard 501.

AccessLex Institute Thesis

At a foundational level, we believe that the ABA’s Standards for Approval of Law Schools (the Standards) should provide a law school with substantial flexibility in its admissions policies, organizational and operational structure, and program of legal education, limited only by the requirement that the core principles of the Standards are maintained in the application of such flexibility. For example, our thesis in no way seeks to undermine the requirement for law schools to admit students who can demonstrate the likelihood to succeed in law school and gain admission to the bar, or the requirement that law schools maintain a rigorous program of education.

We recognize that a reasonable argument can be made that the Standards already provide for sufficient flexibility through the variance process outlined in Standard 107. However, we disagree with the premise. The variance process, which has its merits in certain cases and should be maintained, does not allow for the broad-scale experimentation necessary to inform and effect necessary evolutions that can benefit our aspiring lawyers and the society which they will ultimately serve.

Standard 503

More specifically, AccessLex Institute supports the elimination of Standard 503 for the following reasons.

1. Law School Accountability is Unaffected. The Standards currently contain an outcomes-based accountability scheme, including academic attrition measures and minimum bar passage rates that support a law school’s compliance with Standard 501’s mandate to only admit applicants who appear capable of completing law school and be admitted to the bar. Moreover, the Council’s interim monitoring and enforcement authority continue unabated.
by the proposed change. In sum, this accountability scheme will remain intact with the elimination of Standard 503, and in conjunction with the proposed amendments to Standard 501, offer more clarity to law schools and the Council.

2. Misalignment of Test Relevance as Applied. AccessLex Institute believes that Standard 503 signals a stronger-than-intended alignment between admission test scores and the primary goals of the Standards and admission process—an alignment that is unsupported by research. Its elimination will help to reduce the strength of this bond and allow each law school to more freely craft its admission policies to better serve its mission and the substantive aspirations of the Standards, such as those contained in Standard 206(a) (commitment to diversity and inclusion).

For AccessLex Institute, we see this misalignment as a meaningful barrier factor to opportunity for historically disadvantaged racial and economic populations.

All standardized admission tests are typified by meaningful racial, ethnic and socioeconomic score disparities—and the LSAT results are no different. One study showed that the average score for Black LSAT-takers is 142—eleven points lower than the average of 153 among White and Asian test-takers, with Latino test-takers scoring an average of 146.1

Law school admit rates loosely track these LSAT score disparities. In 2016, Black applicants had, by far, the lowest admit rate—54%, compared to 68% among Latino applicants; 75% for Asian applicants; and 83% for White applicants.2 In other words, it took about 1,851 Black law school applicants to yield 1,000 offers of admission in 2016, compared to 1,204 among White applicants and 1,315 overall.3 And the alignment between LSAT scores and admit rates persists even when score trends are detached from racial and ethnic variables.4

Despite these trends, we are not suggesting that valid and reliable admissions tests have no place in the law school admission process, or even within the Standards themselves. (See Standard 501 discussion below.) The LSAT is designed to predict first-year law school grades, and it has been shown to succeed in that regard in the aggregate, subject to substantial range of correlation across the universe of law schools.5 But beyond the first-year, its predictive power is reduced.6

3. Unnecessary Procedural Burden. The elimination of Standard 503 will have no negative impact on the ABA’s ability to assess compliance with Standard 501, which generally requires a law school to implement sound admissions policies and only admit candidates capable graduating and being admitted to the bar.

In fact, current Interpretation 503-2 leaves “the particular weight that a law school should give to an applicant’s test score” at the discretion of the law school. Thus, in theory, a law school could all but ignore the results of applicant test scores and remain in compliance with Standard 503, making its sole compliance requirement that each applicant merely took
a “valid and reliable admission test.” To us, such a requirement for accreditation purposes adds no value, while creating unnecessary procedural homogeneity in law school admissions.

4. Standard 503 is an Outlier. Standard 503 is distinctive in that none of the major accreditors of medical degrees,\textsuperscript{7} doctor of pharmacy degrees,\textsuperscript{8} or business degrees\textsuperscript{9} mandate or otherwise encourage the use of an admission test. Their standards tend to emphasize important values, such as requiring that admission policies and practices are “clear, effective, consistently applied, and aligned with the school’s mission, expected outcomes, and strategies.”\textsuperscript{10}

**Standard 501**

AccessLex Institute supports the elevation of Interpretation 501-1 to the “black letter” of Standard 501 as a means to signal to law schools certain immutable factors that will be considered by the Council in determining compliance with the Standard. Clarity is always helpful to provide when practicable.

However, we suggest the following substitute language, which makes technical amendments to the language to better conform the new provision with the drafting conventions utilized throughout the Standards, and more substantively, removes the final sentence\textsuperscript{11} as non-operative from a black letter perspective.

\begin{quote}
\textit{(c) The Council will consider, at a minimum, the following factors when assessing a law school’s compliance with this Standard: the academic and admission credentials of the law school’s entering students; the academic attrition rate of its students; the bar passage rate of its graduates; and the effectiveness of its academic support program.}
\end{quote}

The technical amendments are designed to clarify the party that is directed by the Standard and that party’s charge in acquitting its duties thereunder. With respect to the final sentence, if it is retained at all, we believe it is best positioned as an Interpretation.

**Conclusion**

By offering these comments, AccessLex Institute supports the ability of each law school to make a decision with respect to pre-admission testing in a manner that is appropriate to its mission and the student population that it serves, while maintaining a law school’s accountability to the Council. We suspect that in the near to medium term many, if not most, law schools will continue to require a pre-admission test.

However, AccessLex Institute believes that the elimination of Standard 503 is a positive step that that could support flexibility by law schools looking to innovate and experiment. One benefit could be admission policies that are more equitable, resulting in student bodies that are more diverse. And the results of this experimentation could illuminate new paths that others might follow for the
benefit of all. Or not. But advancement in any endeavor requires risk—the advancement of legal education is no different.

Thank you for your consideration of our comments.

Sincerely,

Christopher P. Chapman

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3 Calculations from AccessLex Institute internal analysis; Compare Latino applicants: 1471; Asian applicants: 1333

4 An AccessLex Institute internal analysis found that among applicants with LSAT scores between 135-159 (69 percent of all applicants), those with higher scores were more likely to gain admission than those with lower scores, even after accounting for UGPA. (Applicants were divided into LSAT score bands of 5-points (e.g. 155-159). UGPAs were divided into intermediate ranges of 0.25 points (e.g. 3.25-3.49), with open-ended ranges at the extremes.)

5 According to LSAC, the median correlation between LSAT scores and first-year law school grades is 0.41 – signifying a moderate relationship between the variables. https://www.lsac.org/id/l sat/your-score/law-school-performance.


10 P. 26 http://www.aacsb.edu/-/media/1f7806c0739e49b48bed544577e3edd5.ashx

11 I.e., “Compliance with Standard 316 is not alone sufficient to comply with the Standard.”