March 30, 2018

Maureen O’Rourke, Chair
Council of the Section of Legal Education and Admissions to the Bar
ABA Chicago Headquarters
321 N. Clark Street, 21st Floor
Chicago, IL 60654

Dear Dean O’Rourke and Members of the Council,

I am writing to comment on the proposed elimination of ABA Standard 503 and amendment of ABA Standard 501.

I am inspired by the ABA’s desire to consider innovative solutions to some of the challenges that law schools and the legal profession face. The substantial decline in interest in attending law school over the past 15 years and persistent barriers for students — such as the time and expense needed to take multiple admission tests to be eligible for different areas of advanced education — are all very troubling. I commend the ABA for looking for a solution, and I believe that the ideal solution should, in turn, give law schools greater flexibility to consider innovative ways to navigate these challenges as well. Such innovations could help them increase the pipeline of qualified candidates and reduce barriers for talented students while still maintaining accountability to the Council and to the public. ETS is prepared to help.

As a nonprofit educational research and assessment company, ETS supports standards that would:

1) Enable law schools to choose which assessments they will accept, provided that those assessments are proven valid for law school admissions. Currently, the LSAT® test and GRE® General Test are the only two validated tests for law school admissions.

2) Continue to require that law schools are accountable for enrolling “candidates they believe to be capable of satisfactorily completing the school’s program of legal education.” The best way for law schools to meet that obligation is to require that all candidates submit scores from a carefully developed and validated admissions test along with other components of their application package.

What a Valid Measure Provides

Law school applicants, law schools and society at large are best protected by law school admissions policies that require use of a valid assessment. A valid assessment provides a common, objective measure to compare candidates from different backgrounds on a set of skills shown to be critical for future success. It provides a common measure that no other component
of a candidate’s application file can provide, due to widespread grade inflation, the incomparability of undergraduate program rigor, and the subjectivity inherent in personal statements and letters of recommendation. A standardized assessment helps law schools identify students who have the knowledge and skills to succeed in their programs. A high score can propel a candidate who didn’t attend an elite school — and who had to work a low-skilled job to make ends meet rather than gain experience as class president or head of the debate club — into the consideration set at an institution that otherwise may not have had a way to see that student among myriad qualified applicants.

A Commitment to Validity and Fairness

ETS has a long history of commitment to validity and fairness. Like the LSAT test, the GRE General Test was launched in the 1940s in response to the great demand to help institutions fairly evaluate the overwhelming influx of applicants once the GI Bill was signed into law. The demand was so great, in fact, that it would require operations larger and more sophisticated than any one company could handle at the time. This prompted the College Board, the American Council on Education, and the Carnegie Foundation for the Advancement of Teaching to jointly form ETS, a nonprofit organization devoted exclusively to educational testing and research.

Today ETS continues to carry out its mission to help advance quality and equity in education by providing fair and valid assessments, research and related services. And we still develop assessments today that my predecessors worked on 70 years ago, including the GRE General Test, the Praxis® tests (then called the National Teacher Examinations), and the College Board’s SAT® test. These programs have evolved over the years but still hold true to their purpose: increasing access to higher education for qualified students, regardless of where they come from.

The GRE General Test is carefully developed so that it is valid, reliable and fair, and ETS invests significantly in research and processes to maintain those attributes. Our research complies with the highest professional standards jointly set by the American Educational Research Association, the National Council on Measurement in Education and the American Psychological Association. And external parties provide oversight through our Technical Advisory Committee and GRE Board. ETS publishes its standards for quality and fairness, trains its staff, and employs rigorous review processes. A diverse team of people review each test question to ensure it is free of racial, ethnic, gender, socioeconomic and other forms of bias. And after analyzing test takers’ responses, test developers discard test questions that seem to unfairly bias any one group. ETS also provides testing accommodations and actively pursues new advancements in test accessibility for people who have disabilities, so they can test fairly and appropriately and enjoy equal access to pursue their education and career dreams.
Although the GRE and LSAT tests are managed by independent entities, I would argue that both assessments are born out of a desire to enable opportunity for talented individuals, are managed by nonprofit organizations committed to advancing quality and equity, and are held to the highest standards and scrutiny.

**Flexibility in How Schools Can Meet Their Goals and Commitments**

In the past year or so, some law schools have begun accepting GRE scores for admissions in an effort to access a larger pool of applicants from a wider range of academic and professional areas to meet the evolving needs of the law profession. A national validity study that ETS conducted in collaboration with 21 American law schools shows that the GRE General Test — already accepted for admission to thousands of graduate and business school programs around the world — is a valid measure for law schools as well. This study should give the ABA confidence that the GRE test can help law schools meet their commitments to students, the Council and the public without compromising on validity or reliability. Individuals accepted into law schools with GRE scores thus far show early signs that they will be successful in their program of study.

Thank you for this opportunity to share ETS’s thoughts about the revisions currently proposed. ETS commends the ABA for its efforts to innovate law school admissions and hopes that the Council will approve revisions to the standards that give institutions flexibility in determining how to address challenges that the legal profession faces and meet their obligation to enroll candidates they believe are capable of satisfactory program completion. ETS urges law schools to continue to require standardized test scores of all applicants. Doing so provides a common, objective measure to compare candidates from different backgrounds and best protects the interests of all stakeholders.

Sincerely,

David G. Payne, Ph.D.
Vice President & COO