April 2, 2018

American Bar Association
ABA Standards and Rules of Procedure
Matters for Notice and Comment

Attention: JR Clark

Seton Hall Law School currently takes no position on the validity and reliability of the Graduate Record Examination in lieu of or in addition to the Law School Aptitude Test for American Bar Association-approved law schools. We do, however, believe that it is inappropriate to eliminate the requirement that law schools employ a valid and reliable test as part of their admissions process. Such a move would undermine the consumer protection advances the ABA has achieved over the last several years.

As we understand the proposed revision of the Standard, the requirement of a valid and reliable admissions test, currently in Standard 503, would be removed. Instead, a law school would have to demonstrate that it admits “only applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar.” Proposed Standard 501. A nonexclusive list of factors in assessing 501 compliance would include “the academic and admission credentials of the law school’s entering students, the academic attrition rate of the law school’s students, the bar passage rate of its graduates, and the effectiveness of the law school’s academic support program.”

“Academic and admissions credentials” are the only front-end requirement, and therefore the only criteria that can avoid the human and financial costs of admitting unqualified students. Remarkable, however, is the absence of any requirement that the use of such credentials be validated. Indeed, the term “valid and reliable” appeared in the Standards only as a modifier of the admissions test and now does not appear at all. We remain mystified why, at this point in our history, the American Bar Association would strip any requirement of scientific validation from its Standards.

The remaining listed factors are all back-end requirements and therefore no substitute for forward-looking criteria. Each is also problematic, although no doubt useful as a check on the use of appropriate front-end predictors. We agree that attrition is a legitimate, indeed, critical
criterion in assessing whether admissions decisions comply with the Standard. But identifying excessive attrition by definition means that some, perhaps many, students have suffered the personal and financial costs of attempting and failing law school. The same is true for unacceptable bar passage rates, but that criterion entails even more financial and opportunity costs, not to mention the personal devastation suffered by those who graduate but cannot be admitted. Further, by definition, any bar passage criterion tests admissions policies and practices in Year 1 by outcomes as far out as Years 5 and 6, which means that a school may be assessed on the basis of policies and practices that may have been long abandoned – indeed, this delay exceeds the average tenure of law school deans. Finally, while we fully support academic success programs, “effectiveness of academic support” seems less a separate criterion than an operational tactic whose effectiveness is reflected in a school’s attrition, graduation rate, and bar passage outcomes.

Legal education has made tremendous gains with regard to transparency in recent years. This proposed change is advanced simultaneous with the extension of accreditation reviews to ten from seven years. We believe that these combined changes will weaken the ABA’s ability to protect aspiring law students. We urge the Section to reconsider these proposals and the unintended consequences that may result from their passage.

Warm regards,

Kathleen M. Boozang
Dean & Professor of Law