

WITHDRAWN

AMERICAN BAR ASSOCIATION

SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

- 1 RESOLVED, That the American Bar Association House of Delegates concurs in the action of
- 2 the Council of the Section of Legal Education and Admissions to the Bar in adopting the
- 3 amendments dated August 2018 to Standard 501 (Admission) and Standard 503 (Admission
- 4 Test) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

American Bar Association
Section of Legal Education and Admissions to the Bar
Revised Standards for Approval of Law Schools
August 2018

Standard 501. ADMISSIONS

(a) A law school shall adopt, publish, and adhere to sound admission policies and practices consistent with the Standards, ~~its~~ the law school's mission, and the objectives of its program of legal education.

(b) A law school shall ~~only~~ admit only applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar.

(c) Among the factors to consider in assessing compliance with this Standard are 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. Compliance with Standard 316 is not alone sufficient to comply with the Standard.

~~(d) (e)~~ A law school shall not admit or readmit a student who has been disqualified previously for academic reasons without an affirmative showing that the prior disqualification does not indicate a lack of capacity to complete its program of legal education and be admitted to the bar. For every admission or readmission of a previously disqualified individual, a statement of the considerations that led to the decision shall be placed in the admittee's file.

Interpretation 501-1

~~*Among the factors to consider in assessing compliance with this Standard are the academic and admission test 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. Compliance with Standard 316 is not alone sufficient to comply with the Standard.*~~

Interpretation 501-21

Sound admissions policies and practices may include consideration of admission test scores, undergraduate course of study and grade point average, extracurricular activities, work experience, performance in other graduate or professional programs, relevant demonstrated skills, and obstacles overcome. If a law school requires an admission test, it shall publish information regarding which tests are accepted.

Interpretation 501-32

A law school having a cumulative non-transfer attrition rate above 20 percent for a class creates a rebuttable presumption that the law school is not in compliance with the Standard.

Interpretation 501-3

111D

46 Failure to include a valid and reliable admission test as part of the admissions process creates a
47 rebuttable presumption that a law school is not in compliance with Standard 501.

48
49 **Standard 503. ADMISSION TEST**

50
51 ~~A law school shall require each applicant for admission as a first-year J.D. degree student to take~~
52 ~~a valid and reliable admission test to assist the school and the applicant in assessing the applicant's~~
53 ~~capability of satisfactorily completing the school's program of legal education. In making~~
54 ~~admissions decisions, a law school shall use the test results in a manner that is consistent with the~~
55 ~~current guidelines regarding proper use of the test results provided by the agency that developed~~
56 ~~the test.~~

57
58 *Interpretation 503-1*

59 ~~A law school that uses an admission test other than the Law School Admission Test sponsored by~~
60 ~~the Law School Admission Council shall demonstrate that such other test is a valid and reliable~~
61 ~~test to assist the school in assessing an applicant's capability to satisfactorily complete the~~
62 ~~school's program of legal education.~~

63
64 *Interpretation 503-2*

65 ~~This Standard does not prescribe the particular weight that a law school should give to an~~
66 ~~applicant's admission test score in deciding whether to admit or deny admission to the applicant.~~

67
68 *Interpretation 503-3*

- 69 ~~(a) It is not a violation of this Standard for a law school to admit no more than 10% of an~~
70 ~~entering class without requiring the LSAT from:~~
 - 71 ~~(1) Students in an undergraduate program of the same institution as the J.D. program;~~
72 ~~and/or~~
 - 73 ~~(2) Students seeking the J.D. degree in combination with a degree in a different discipline.~~
- 74 ~~(b) Applicants admitted under subsection (a) must meet the following conditions:~~
 - 75 ~~(1) Scored at or above the 85th percentile on the ACT or SAT for purposes of subsection~~
76 ~~(a)(1) or for purposes of subsection (a)(2), scored at or above the 85th percentile on the~~
77 ~~GRE or GMAT; and~~
 - 78 ~~(2) Ranked in the top 10% of their undergraduate class through six semesters of academic~~
79 ~~work, or achieved a cumulative GPA of 3.5 or above through six semesters of academic~~
80 ~~work.~~

REPORT

The Council of the Section of Legal Education and Admissions to the Bar (Council) submits to the House of Delegates (House) for its concurrence, the amendments to Standards 501 (Admission) and 503 (Admission Test) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*¹.

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the Council of the Section of Legal Education and Admissions to the Bar files a resolution to the House seeking concurrence of the House in any actions of the Council to adopt, revise, or repeal the *ABA Standards and Rules of Procedures for Approval of Law Schools*. The House may either concur with the Council's decision or refer the decision back to the Council for further consideration. A decision by the Council is subject to a maximum of two referrals back to the Council by the House. The decision of the Council following the second referral shall be final.

The amendments were approved by the Council for Notice and Comment during its meeting held on November 3-4, 2017. A public hearing was held on April 12, 2018. The Council approved the amendments at its meeting on May 11, 2018.

In March 2017, the Council circulated for Notice and Comment a proposal that would result in the following changes to the Standard 503: [1] establish a process by which law school admission tests other than the Law School Admission Test (LSAT) offered by the Law School Admissions Council (LSAC) can be certified as valid and reliable law school admission tests that all law schools can use to meet the requirements of Standard 503; [2] eliminate Interpretation 503-1, which currently allows a law school to demonstrate that a test other than the LSAT (or presumably any other test that would be certified by the Council under the proposed new approach) is a valid and reliable law school admission test for that school; [3] reconfirm the Council's prior action to eliminate the "safe harbor" provision of current Interpretation 503-3; and [4] make clear that every law school will have to require at least the LSAT or another certified test as part of its admissions process and that no variances will be granted to this requirement.

After discussion and reviewing the comments received, the Standards Review Committee recommended that the Council reject the proposal that had been circulated and offered three options to the Council. In its recommendation to the Council, the Committee stated that it believes that Standard 501 sets out sufficiently strong statements that a law school must adopt, publish, and adhere to sound admission policies, and that a law school shall admit only applicants who appear capable of satisfactorily completing its program of legal education and being admitted to the bar, so that the requirement of an admission test is not needed. The factors to be considered in assessing compliance with the Standard have been moved from an Interpretation into the body of Standard 501. The factor of "academic and admission test credentials" has been changed to "academic and admission credentials." The Committee felt that the many factors listed in Standard 501 should be sufficient for the Accreditation Committee and the Council to determine whether a law school is in compliance. It also felt that in order to demonstrate whether only capable individuals are being

¹ "2017-2018 ABA Standards and Rules of Procedure for Approval of Law Schools," http://www.americanbar.org/groups/legal_education/resources/standards.html

111D

admitted to a law school, more focus should be placed on outcomes, assessed through bar passage and attrition rates.

The Council circulated for Notice and Comment the option that would (a) eliminate the requirement in Standard 503 of a valid and reliable admissions test and (b) revise Standard 501 by moving Interpretation 501-1 (factors to consider in assessing compliance with Standard 501) into the black letter of the Standard. An admissions test would be one of the factors relevant to determining whether a law school complies with Standard 501. The proposal also included a new sentence in Interpretation 501-1 requiring law school to publish information informing potential students which tests are accepted.

Comments Received: A total of 16 comments were received by the end of the Notice and Comment period, some with multiple signatories. The comments were varied. In summary, those in favor of the proposed changes stated that “test optional” admissions would promote diversity, would provide law schools with greater flexibility, and would allow law schools to innovate in looking to other indicia of predictors of success. Some also stated that they believed sufficient safeguards were in place under proposed changes to Standard 501 to unambiguously place the burden on law schools to admit capable students. Those opposed to the changes, especially to eliminate Standard 503, stated that the removal of a standardized test would harm diversity, open the door to bias, risk undermining public confidence in the legal profession, and complicate collecting data for consumer protection information. Moreover, there were concerns that there are insufficient outputs in place to move to a fully test-optional accreditation standard.

Hearing Testimony: The following entities and individuals testified, stating positions consistent with their submitted comments: Society of American Law Teachers (Professor Matthew Charity); Clinical Legal Education (Professor Joy Radice); Educational Testing Services (Dr. Joanna Gorin, Dr. David Klieger, and Christine Betaneli); Law School Admissions Council (Professor Larry Dessem, Professor Christina Whittman, Camille deJorna, Dean Kellye Testy, and Dean Susan Krinsky); Minority Network (Dean Jay Austin); and Dean Gisele Joachim on behalf of admissions professionals from 22 ABA-approved law schools.

The Standards Review Committee considered the comments and testimony and recommended that the Council should adopt the changes the Council approved for Notice and Comment and, additionally, adopt the following Interpretation to proposed Standard 501:

Interpretation 501-3

Failure to include a valid and reliable admission test as part of the admissions process creates a rebuttable presumption that a law school is not in compliance with Standard 501.

The Council agreed with the recommendation and has included this Interpretation in the resolution. The Council believes that adding this Interpretation will address concerns about unregulated innovation in admissions, while still providing the benefits outlined in the Explanation that accompanied the proposed changes that were posted for Notice and Comment. The Council did not agree that there were insufficient outputs or mechanisms to address when a law school appears to be admitting students in violation of Standard 501. Specifically, interim monitoring successfully

triggers early identification of potential non-compliance with admissions criteria. The Council also did not agree that the gathering of consumer protection information would be sacrificed in the absence of requiring a specific test. The collection of data in the Annual Questionnaire can be modified to ensure consumer protection information remains robust.

Sincerely,

Maureen A. O'Rourke
Dean, Boston University School of Law
Chair, Council of the Section of Legal Education and Admissions to the Bar
August 2018

111D

GENERAL INFORMATION FORM

Submitting Entity: American Bar Association
Section of Legal Education and Admissions to the Bar

Submitted By: Dean Maureen A. O'Rourke, Chair

1. Summary of Resolution(s).

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to Standards 501 (Admission) and 503 (Admission Test) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*.

2. Approval by Submitting Entity.

The amendments were approved by the Council for Notice and Comment during its meeting held on November 3-4, 2017. A public hearing was held on April 12, 2018. The Council approved the amendments at its meeting on May 11, 2018.

3. Has this or a similar resolution been submitted to the House or Board previously?

No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

The amendments modify the existing *ABA Standards and Rules of Procedure for Approval of Law Schools*.

5. If this is a late report, what urgency exists which requires action at this meeting of the House?

Not applicable.

6. Status of Legislation. (If applicable)

Not applicable.

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Council will notify ABA-approved law schools and other interested entities of the approved changes to the *ABA Standards and Rules of Procedure for Approval of Law*

Schools. The Council and the Managing Director’s Office will prepare guidance memoranda and training materials regarding the revised Standards, as necessary.

8. Cost to the Association. (Both direct and indirect costs)

None.

9. Disclosure of Interest. (If applicable)

Not applicable.

10. Referrals.

The amendments were posted on the Section’s website and circulated for Notice and Comment to the following interested persons and entities:

- ABA Standing and Special Committees, Task Forces, and Commission Chairs;
- ABA Section Directors and Delegates;
- Conference of Chief Justices;
- National Conference of Bar Presidents;
- National Association of Bar Executives;
- Law Student Division;
- SBA Presidents;
- National Conference of Bar Examiners;
- University Presidents;
- Deans and Associate Deans; and
- Section Affiliated Organizations, including AccessLex Institute, American Association of Law Libraries, Association of American Law Schools, Association of Legal Writing Directors, Clinical Legal Education Association, Law School Admission Council, National Association for Law Placement, and Society of American Law Teachers.

11. Contact Name and Address Information. (Prior to the meeting. Please include name, address, telephone number and e-mail address)

Barry A. Currier, Managing Director
American Bar Association
Section of Legal Education and Admissions to the Bar
321 N. Clark St.
Chicago, IL 60654-7598
Ph: (312) 988-6744 / Cell: (310) 400-2702
Email: barry.currier@americanbar.org

111D

12. Contact Name and Address Information. (Who will present the report to the House? Please include name, address, telephone number, cell phone number and e-mail address.)

Joan S. Howland
Associate Dean and Professor
University of Minnesota Law School
Walter F. Mondale Hall
Room 120
229 19th Avenue South
Minneapolis, MN 55455
Ph: (612) 625-9036
Email: howla001@umn.edu

The Honorable Solomon Oliver, Jr.
Chief Judge
U.S. District Court for the Northern District of Ohio
Carl B. Stokes United States Courthouse
801 West Superior Avenue
Cleveland, OH 44113
Ph: (216) 357-7171 / Cell: (216) 973-6496
Email: solomon_oliver@ohnd.uscourts.gov

EXECUTIVE SUMMARY

1. Summary of the Resolution

Under Rule 45.9(b) of the Rules of Procedure of the House of Delegates, the resolution seeks concurrence in the action of the Council of the Section of Legal Education and Admissions to the Bar in making amendments dated August 2018 to Standards 501 (Admission) and 503 (Admission Test) of the *ABA Standards and Rules of Procedure for Approval of Law Schools*.

2. Summary of the Issue that the Resolution Addresses

The proposal eliminates the requirement in Standard 503 of a valid and reliable admissions test and revises Standard 501 by moving Interpretation 501-1 (factors to consider in assessing compliance with Standard 501) into the black letter of the Standard. An admissions test would be one of the factors relevant to determining whether a law school complies with Standard 501. A new sentence in Interpretation 501-1 requires law schools to publish information informing potential students which tests are accepted. New Interpretation 501-3 addresses concerns about unregulated innovation in admissions by stating that failure to include a valid and reliable admission test as part of the admissions process creates a rebuttable presumption that a law school is not in compliance with Standard 501.

3. Please Explain How the Proposed Policy Position will address the issue

The proposals amend the 2017-2018 *ABA Standards and Rules of Procedure for Approval of Law Schools*.

4. Summary of Minority Views

Of the comments received, those opposed to the changes, especially to eliminate Standard 503, stated that the removal of a standardized test would harm diversity, open the door to bias, risk undermining public confidence in the legal profession, and complicate collecting data for consumer protection information. Moreover, there were concerns that there are insufficient outputs in place to move to a fully test-optional accreditation standard.