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## Reflections on Public Examination Schools: Is It Time to Minimize the Role of Entrance Tests in Admission to These Schools

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**REFLECTIONS ON  
PUBLIC EXAMINATION SCHOOLS: IS IT TIME  
TO MINIMIZE THE ROLE OF ENTRANCE TESTS  
IN ADMISSION TO THESE SCHOOLS?**

*Charles J. Russo*<sup>\*</sup>

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## PROLEGOMENA

The popular 1980 movie “Fame,”<sup>1</sup> which served as the basis for a subsequent television series that aired from 1982–87<sup>2</sup> and an eventual 2009 remake<sup>3</sup> of the original, was a fictional account of the travails of an entering class to New York City’s High School for Music and the Performing Arts, now formally known as Fiorello H. LaGuardia High School of Music & Art and Performing Arts. The high school is located a stone’s throw from Fordham University’s School of Law in Midtown Manhattan, adjacent to the world-renowned Lincoln Center.

The movie version of “Fame,” which details students’ four-year careers, opens by narrating the story of how aspiring young artists dealt with the pressures associated with having to audition for faculty members in order to gain admission to the school. More specifically, rather than sitting for a traditional written standardized entrance examination, along with having to submit their portfolios evaluated as the means of demonstrating their qualifications to gain entry to this prestigious high school, students had to showcase their talents through their live auditions.

While certainly conceding that it is not the same as having to excel on traditional standardized tests, there can be no doubt that having to audition<sup>4</sup> successfully to gain admission to LaGuardia or similar prestigious programs is a no less stressful form of what may broadly be described as an authentic assessment of students’ academic abilities. In fact, a good case can be made that an audition may be even more stressful than a single written examination because judgments of the quality of live performances run the risk of being more subjective than what are supposed to be objective standardized tests.<sup>5</sup> Even so, the decisions of school officials to embrace standardized tests as perhaps the central criterion of their admission policies has produced a

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1. FAME (Metro-Goldwyn-Mayer 1980).

2. *Fame* (NBC Television Broadcast 1982–83; Syndication Television Broadcast 1983–87).

3. FAME (Metro-Goldwyn-Mayer, United Artists, Lakeshore Entertainment, Atmosphere Pictures 2009).

4. See *Specialized High Schools*, N.Y.C. Bd. of Educ., <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/specialized-high-schools> [<https://perma.cc/P4DW-QJ48>] (last visited Sept. 30, 2022) (specifying that students wishing to attend LaGuardia High School must submit a portfolio and audition in a talent area for up to six different studios, namely Fine & Visual Art, Vocal Music, Instrumental Music, Dance, Drama, and Technical Theater, in addition to having officials also consider students’ academic records).

5. See generally STUART EDWARD DUNKEL, *THE AUDITION PROCESS: ANXIETY MANAGEMENT AND COPING STRATEGIES* (1991) (providing some insights into the stress levels people experience, although not written with exam schools in mind).

unique kind of stress.<sup>6</sup> Putting aside concerns about whether a written test or live audition is more challenging, the remainder of this Essay focuses on the larger, timely question of whether examination schools<sup>7</sup> in the United States should continue to use standardized entrance examinations.

Despite the continued controversy surrounding the use of standardized tests in education, officials in selective public schools, almost all of which are at the secondary level, often referred to as “exam schools,” in large urban districts such as Boston,<sup>8</sup> Detroit,<sup>9</sup> and New York City,<sup>10</sup> among others,<sup>11</sup> have typically relied on specialized entrance examinations when admitting students. Doing so affords students who have exceptional ability the opportunity to excel in environments conducive to their skillsets. Notably, specialized schools did not always use the standardized examinations they do today; the use of such tests started in the Boston Latin School in 1635.<sup>12</sup> Similar schools emerged beginning in the mid-nineteenth century in urban centers such as New York City, Louisville, San Francisco,<sup>13</sup> and in Worcester, Massachusetts, which adopted such a test in 1901.<sup>14</sup>

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6. See *Articles on Exam Stress*, CONVERSATION (Nov. 9, 2021), <https://theconversation.com/uk/topics/exam-stress-19454> [<https://perma.cc/5L63-ZBLY>].

7. This Essay uses the terms “examination schools” and “exam schools” interchangeably.

8. See *Exam Schools*, BOS. PUB. SCHS., <https://www.bostonpublicschools.org/site/default.aspx?PageID=8809> [<https://perma.cc/23P5-LE5S>] (last visited Sept. 30, 2022); see also Carrie Jung, *For Many in Boston, Debates Over Exam School Policy Distract From Larger Issues*, WBUR RADIO (Aug. 16, 2021), <https://www.wbur.org/news/2021/08/16/boston-exam-schools-attention-bps> [<https://perma.cc/D6VE-J9SL>].

9. See *Examination High Schools*, DETROIT PUB. HIGH SCH., <https://www.detroitk12.org/examschools> [<https://perma.cc/X6Z6-8J27>] (last visited July 31, 2022).

10. See *Specialized High Schools*, N.Y.C. DEP’T OF EDUC., <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/specialized-high-schools> [<https://perma.cc/2Z5R-LC8L>] (last visited Sept. 28, 2022).

11. See generally CHESTER E. FINN, JR. & JESSICA A. HOCKETT, *EXAM SCHOOLS: INSIDE AMERICA’S MOST SELECTIVE HIGH SCHOOLS* (2012) (detailing, albeit now a bit dated, an analysis of the history and status of examination schools, this book contains a wealth of information); see also Chester E. Finn, Jr. & Jessica A. Hockett, *Exam Schools from the Inside: Racially Diverse, Subject to Collective Bargaining, Fulfilling a Need*, EDUC. NEXT (Oct. 29, 2012), <https://www.educationnext.org/exam-schools-from-the-inside/> [<https://perma.cc/XER7-UXGX>].

12. See generally FINN & HOCKETT, *supra* note 11; see also *Bray v. Lee*, 337 F. Supp. 934 (D. Mass. 1972) (directing officials to use the same admissions standards for male and female applicants, finding that they violated the equal protection rights of females both because they attended classes in a smaller building and insofar as some of the young women who were excluded had higher scores on the entrance examination than males who were admitted).

13. See *Berkelman v. S.F. Unified Sch. Dist.*, 501 F.2d 1264 (9th Cir. 1974) (ordering school officials to stop requiring female applicants to have higher scores than males as this requirement violated of their rights to equal protection).

14. See FINN, JR. & HOCKETT, *supra* note 11.

Change is in the offing, though, as officials in the examination school in San Francisco adopted a lottery system for admissions<sup>15</sup> while their counterparts in Alexandria, Virginia, switched to “a ‘*holistic review*’ of applicants based on their grade point averages (GPAs), essays and other factors”<sup>16</sup> in lieu of its long-standing entrance examination. At the same time, officials in Boston changed their 20-year old policy, and grades are now being accorded greater weight than test scores as invitations to attend its three prestigious examination schools as students with grade point averages equivalent to a B can apply for admission; seats will be offered “to students in socioeconomic tiers based on geography with a set number of seats for each.”<sup>17</sup>

Despite the development of other admissions methods and criteria, selective exam schools remain controversial. To this end, some educational officials and political leaders,<sup>18</sup> such as the former Mayor of New York Bill de Blasio, who tried to impose a lottery system for admissions to

15. See Jill Tucker, *S.F. School Board Strips Lowell High of its Merit-Based Admissions System*, S.F. CHRON. (Feb. 9, 2021), <https://www.sfchronicle.com/bayarea/article/S-F-school-board-strips-Lowell-High-of-its-15938565.php> [https://perma.cc/99YE-E2GR]. Interestingly, after this change was made, many first-year students in the high school received significantly lower grades than those in previous years; the news story added that “it’s unclear exactly how much the change in admissions policy factored into the rise in D’s and F’s among Lowell’s ninth-graders.” *Id.*; see also Ricardo Cano & Nanette Asimov, *New Data Shows Shift at Lowell High School: More Students Given Failing Grades After Admissions Change*, S.F. CHRON. (May 25, 2022), <https://www.sfchronicle.com/sf/article/Lowell-High-admissions-17196603.php> [https://perma.cc/KM63-Y57U].

16. See Hannah Natanson, *Fairfax School Board Switches to ‘Holistic Review’ Admissions System for Thomas Jefferson High School*, WASH. POST (Dec. 18, 2020), [https://www.washingtonpost.com/local/education/1168homas-jefferson-high-admissions-fairfax/2020/12/18/d09a2b3c-40b9-11eb-8bc0-ae155bee4aff\\_story.html](https://www.washingtonpost.com/local/education/1168homas-jefferson-high-admissions-fairfax/2020/12/18/d09a2b3c-40b9-11eb-8bc0-ae155bee4aff_story.html) [https://perma.cc/X9N9-7T33].

17. See Meg Woolhouse, *Historic Vote Changes Boston Exam School Admissions Policy*, GBH BOS. (July 15, 2021), <https://www.wgbh.org/news/education/2021/07/15/historic-vote-changes-boston-exam-school-admissions-policy> [https://perma.cc/NX2T-ESNG]; Katie Brace, *Boston School Committee Approves Changes to Exam School Admission Process*, NBC BOSTON 10 (July 15, 2021), <https://www.nbcboston.com/news/local/boston-school-committee-approves-changes-to-exam-school-admission-process/2430478/> [https://perma.cc/5KJX-DV6R].

18. See, e.g., Selim Algar, *NYC Schools Chancellor Calls for End to Elite School Test as Asians Dominate*, N.Y. POST (Apr. 29, 2021), <https://nypost.com/2021/04/29/nyc-schools-chancellor-calls-for-end-to-elite-school-test/> [https://perma.cc/5H9W-D26B] (calling “the current single-test entry format ‘unacceptable’ [insofar as] Asians comprised 53.7 percent of those admitted, whites 27.9, Hispanics 5.4, and African Americans 3.6” because while “70 percent of all city students are black and Hispanic, they only accounted for 9.4 percent of specialized high school acceptances for next year”).

examination schools,<sup>19</sup> and his Chancellor of Schools Richard Carranza,<sup>20</sup> did drop academic admissions screening for middle school students but ultimately retained entrance tests for the examination high schools.<sup>21</sup>

Some critics have called for the closure of exam schools, even as other critics sought to have courts discontinue programs for the gifted in New York City, where a judge rejected the claim on the basis that “the court doesn’t ‘make educational policy.’”<sup>22</sup> Critics oppose these schools because even though they are typically located in large urban centers, the schools may result in inequitable outcomes and racial disparities.<sup>23</sup> Supporters respond that the changes ignore academic success.<sup>24</sup> Opponents continue to criticize exam schools because they “have much lower proportions of Black, Hispanic and low-income students than the districts they are located in”<sup>25</sup> while seeking ways to increase attendance among students who are black and Hispanic.<sup>26</sup> On the other hand, supporters respond that eliminating such test schools unfairly targets students who are gifted and talented by denying them opportunities to demonstrate how they can excel in educational environments developed for their unique learning needs.<sup>27</sup>

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19. See Editorial, *De Blasio’s HS-Admission Stinkbomb Could Destroy NYC’s Public-School System*, N.Y. POST (June 9, 2022), <https://nypost.com/2022/06/09/de-blasios-hs-admission-lottery-could-destroy-nyc-public-schools/> [<https://perma.cc/4FGH-GA8X>].

20. See Bernadette Hogan & Selim Algar, *Richard Carranza Lobbies Albany to Scrap Entrance Exam for Top High Schools*, N.Y. POST (June 12, 2019), <https://nypost.com/2019/06/12/richard-carranza-lobbies-albany-to-scrap-entrance-exam-for-top-high-schools/> [<https://perma.cc/4HZD-G2RX>]. See generally Aaron J. Saiger, *Test Unrest: New York City’s Examination High Schools*, 21 CITY L. 1 (2015).

21. See Melissa Bailey, *Opening the Doors to Elite Public Schools*, HECHINGER REP. (Mar. 17, 2021), <https://hechingerreport.org/opening-the-doors-to-elite-public-schools/> [<https://perma.cc/9TSA-V53H>].

22. See Cayla Bamberger & Priscilla DeGregory, *Judge Dismisses Suit Seeking to End NYC’s Gifted & Talented Programs*, N.Y. POST (May 25, 2020), <https://nypost.com/2022/05/25/judge-dismisses-suit-seeking-end-of-gifted-talented-classes/> [<https://perma.cc/NL3S-6HTA>]; see also *IntegrateNYC Inc. v. State*, No. 152743/2021, 2022 WL 1718507 (N.Y. Sup. Ct. May 25, 2022).

23. See, e.g., Saiger, *supra* note 20.

24. See Susan Edelman & Mary Kay Linge, *Good Grades Barely Matter in NYC’s New High School Application Process*, N.Y. POST (Feb. 5, 2022), <https://nypost.com/2022/02/05/nycs-new-high-school-selection-setup-discounts-good-grades/> [<https://perma.cc/XP6L-2F5K>].

25. See Richard V. Reeves & Ashley Schobert, *Elite or Elitist? Lessons for Colleges from Selective High Schools*, BROOKINGS INST. (July 31, 2019), <https://www.brookings.edu/research/elite-or-elitist-lessons-for-colleges-from-selective-high-schools/> [<https://perma.cc/ZA6H-SS8B>].

26. See Selim Algar, *NYC Admissions Changes Will Boost Black, Hispanic Enrollment at Top Schools by 13 Percent*, N.Y. POST (Feb. 16, 2022), <https://nypost.com/2022/02/16/nyc-admissions-changes-will-boost-black-hispanic-enrollment/> [<https://perma.cc/UQ35-5LP2>].

27. See, e.g., Alina Adams, *NYC Needs More Accelerated High Schools: Are Charter Schools the Answer?*, N.Y. SCH. TALK (Aug. 14, 2017),

The upshot is that according to estimates, of the approximately 165 examination schools existing in the United States, only 13 of the 58 institutions whose officials provided data on their opening dates existed prior to World War II. Another 21 exam schools opened their doors between 1941 and 1990.<sup>28</sup> Yet, only six of the exam schools start as early as fourth-grade.<sup>29</sup> Put simply, the number of examinations schools is relatively small.

Take New York City, for instance, home of the largest public school system in the United States,<sup>30</sup> which includes its nine specialized schools. There, issues abound over a contentious 1971 state statute, the Hecht-Calandra Act (the “HC Act”).<sup>31</sup> The HC Act was designed to afford disadvantaged students who lived in high-poverty areas with significant academic potential to gain entry into to specialized schools.<sup>32</sup> The HC Act’s goal was to provide opportunities to earn seats in New York City’s original select specialized high schools with their rigorous standards such as at Stuyvesant High School, the Bronx High School of Science, Brooklyn Technical High School, and LaGuardia High School, which, as noted, admitted students on the basis of portfolios or auditions.<sup>33</sup>

The bone of contention in New York City, unlike in school systems such as Chicago, “which operates a more inclusive, geographically-based policy,”<sup>34</sup> focuses on the HC Act. The HC Act statutorily obligates officials to admit students to eight select schools exclusively on the basis of their

<https://newyorkschooltalk.org/2017/08/nyc-needs-accelerated-high-schools-charter-schools-answer/> [<https://perma.cc/G6X4-X49C>].

28. *See id.*

29. *See* Chester E. Finn & Jessica A. Hockett, EXAM SCHOOLS: INSIDE AMERICA’S MOST SELECTIVE PUBLIC HIGH SCHOOLS 205–15 (2012).

30. According to 2019 report from the United States Census Bureau, based on 2017 data, the New York City Board of Education enrolled 984,462 students as compared with the 633,621 children who attended school in the next largest district, the Los Angeles, California, Unified District. *See Top 10 Largest School Districts by Enrollment and Per Pupil Current Spending*, U. S. CENSUS BUREAU (May 21, 2019), <https://www.census.gov/library/visualizations/2019/comm/largest-school-districts.html> [<https://perma.cc/63C4-UFH4>].

31. *See* N.Y. EDUC. LAW § 2590 (McKinney 2020).

32. As stated in the 1996 iteration of this statute “[t]he special schools shall be permitted to maintain a Discovery Program to give disadvantaged students of demonstrated high potential an opportunity to try the special high school program without in any manner interfering with the academic level of those schools.” *Id.* § 2590–g (12).

33. *See* Chris M. Kwok, *The Inscrutable SHSAT*, 27 ASIAN AM. L.J. 32, n.2 (2020) (citing Alina Adams, *Adams: Michael Bloomberg Made Sweeping Changes in NYC Schools as Mayor. What Might He Do as President?*, THE74 (Dec. 9, 2010), <https://www.the74million.org/article/adams-michael-bloomberg-made-sweeping-changes-in-nyc-schools-as-mayor-what-might-he-do-as-president> [<https://perma.cc/UB3G-BPNX>]) (noting that “[i]n 2005, five additional high schools were added as schools admitted on the basis of the SHSAT”).

34. *See* Reeves & Schobert, *supra* note 25.

results on a single competitive standardized examination, the Specialized High School Admissions Test (SHSAT).<sup>35</sup>

Against this background, and aware that change is likely to occur in New York City under recently elected Mayor Eric Adams<sup>36</sup> in a manner similar to what has already transpired in the other urban selective examination schools discussed above, the remainder of this short Essay examines the debate around standard testing in four substantive parts. The first Part briefly reviews the history of standardized testing in American education because it occupies such a central role in the operations of exam schools. The second and third parts, respectively, present an overview of arguments in favor of, and opposed to, the use of one-time high stakes tests as the standard for gaining admission to selective high schools.

The fourth Part of the Essay reflects on what educational leaders, policymakers, and lawmakers, whether in New York City or other urban school systems, as well as systems in urban and rural communities, may wish to consider moving forward for exam schools designed to benefit children with higher levels of achievement in various areas. This final Part maintains that while high stakes tests should continue to carry some weight in admissions decisions, they should by no means be the sole, or even primary, criterion. Instead, this Part ruminates on ways in which educational leaders, policymakers, and lawmakers working with parents and community members can work together to improve admissions processes to these select schools. In particular, this Part recommends making admissions processes more holistic,<sup>37</sup> equitable, and authentic, evaluating and assisting students as whole persons as opposed to focusing on a single criterion in their records such as a standardized examination. The Essay ends with a brief conclusion.

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35. The eight schools are Bronx High School of Science, Brooklyn Latin School, Brooklyn Technical High School, High School for Math, Science and Engineering at City College, High School for American Studies at Lehman College, Queens High School for Sciences at York College, Staten Island Technical High School, Stuyvesant High School. *See Specialized High School Admissions Test*, N.Y.C. DEP'T OF EDUC., <https://www.schools.nyc.gov/learning/testing/specialized-high-school-admissions-test> [<https://perma.cc/VN9P-X6HQ>] (last visited Sept. 30, 2022); *see also Specialized High Schools*, *supra* note 10.

36. *See, e.g.,* Vince Bielski, *Genius Move? NYC's Black Mayor Bucks Progressives on the Racial Chessboard of 'Gifted' Education*, REAL CLEAR INVESTIGATIONS (May 19, 2022), [https://www.realclearinvestigations.com/articles/2022/05/19/genius\\_move\\_nycs\\_black\\_may\\_or\\_bucks\\_progressives\\_on\\_the\\_racial\\_chessboard\\_of\\_gifted\\_education\\_832652.html](https://www.realclearinvestigations.com/articles/2022/05/19/genius_move_nycs_black_may_or_bucks_progressives_on_the_racial_chessboard_of_gifted_education_832652.html) [<https://perma.cc/6QBW-YSNW>]. *But see* Edelman & Linge, *supra* note 24 (reporting that standards for entry into many competitive high schools has been lowered).

37. *See* *Grutter v. Bollinger*, 539 U.S. 306, 337 (2003).



### I. BRIEF SELECT HISTORY OF MODERN STANDARDIZED TESTING

In order to set a basis for the later discussion of issues associated with standardized testing, this Part briefly highlights major developments associated with the use of such measures. Standardized tests,<sup>38</sup> which are measures that constitute the most significant criterion in admitting students to the majority of exam schools, trace their earliest roots to seventh century Imperial China dating to about 200 BC.<sup>39</sup> Early forms of standardized tests in the West, spurred on by the invention of the printing press,<sup>40</sup> can be defined as “any test that’s administered, scored, and interpreted in a standard, predetermined manner.”<sup>41</sup>

In the modern era, Horace Mann, secretary of the Massachusetts State Board of Education in the mid-nineteenth century, is considered the father of standardized testing because he introduced written examinations in lieu of oral tests in order to gauge students’ academic ability.<sup>42</sup> Subsequently, in 1890 the President of Harvard University, Charles William Eliot, called for a common set of entrance examinations to colleges and universities not relying on measures developed and administered by individual institutions while initiating an individualized system at Harvard.<sup>43</sup>

A decade later, in 1900, the College Entrance Examination Board (College Board), a non-profit organization with 6,000 member institutions,<sup>44</sup>

38. See *History of Standardized Testing in the United States*, NAT’L EDUC. ASS’N (June 25, 2020), <https://www.nea.org/professional-excellence/student-engagement/tools-tips/history-standardized-testing-united-states> [https://perma.cc/CQB8-W3HQ] (providing a brief overview of the history of standardized testing in the United States).

39. See generally Carl Kaestle, TESTING POLICY IN THE UNITED STATES: A HISTORICAL PERSPECTIVE (2012), [https://www.ets.org/Media/Research/pdf/kaestle\\_testing\\_policy\\_us\\_historical\\_perspective.pdf](https://www.ets.org/Media/Research/pdf/kaestle_testing_policy_us_historical_perspective.pdf) [https://perma.cc/NUC4-MGHF].

40. Jay Matthews, *Just Whose Idea Was All This Testing?: Fueled by Technology, Nation’s Attempt to Create a Level Playing Field Has Had a Rocky History*, WASH. POST (Nov. 14, 2006), <https://www.washingtonpost.com/archive/politics/2006/11/14/just-whose-idea-was-all-this-testing-span-classbankheadfueled-by-technology-nations-attempt-to-create-a-level-playing-field-has-had-a-rocky-historyspan/a68da35c-075b-458f-8db0-7333f009fcc5/> [https://perma.cc/4KB3-WDWS].

41. W. James Popham, *Standardized Testing Hails The Exam*, GEORGE LUCAS EDUC. FOUND. (Mar. 23, 2005), <https://www.edutopia.org/standardized-testing-evaluation-reform> [https://perma.cc/9HWJ-58N4].

42. See *History of Standardized Testing*, LEHIGH UNIV. COLL. OF EDUC. (Oct. 18, 2013), <https://ed.lehigh.edu/news-events/news/history-standardized-testing> [https://perma.cc/VX7W-JRB6]; OFF. TECH. ASSESSMENT, U.S. CONG. OTA-SET-519, TESTING IN AMERICAN SCHOOLS: ASKING THE RIGHT QUESTIONS 106–07 (1992).

43. See *Elliott, Charles W.*, HARV. SQUARE LIBR., <https://www.harvardsquarelibrary.org/biographies/charles-w-eliot-harvard-university-president/> [https://perma.cc/HZ7B-UGB5] (last visited Sept. 29, 2022).

44. COLL. BD., <https://collegeboard.org/> [https://perma.cc/MS7L-9VQ9] (last visited July 22, 2022).

began operating to administer the first standardized examinations, including the Scholastic Aptitude Test, which was first used in 1926 and renamed as the Scholastic Assessment Test (SAT) in 1992.<sup>45</sup> The SAT was used to help prepare students for higher education.<sup>46</sup> The College Board admitted its first secondary school members in 1959.<sup>47</sup> That same year, Everett Franklin Lindquist, a faculty member at the University of Iowa, introduced the examination known as American College Testing (ACT)<sup>48</sup> as an alternative to the SAT; both tests are used widely in the United States and other nations.

The twentieth century saw other nations adopt standardized testing. For example, starting in 1905, the French government commissioned psychologist Alfred Binet<sup>49</sup> and Theodore Simon to work on a test to measure the intelligence of students with intellectual impairments based on their mental ages, attention spans, memories, and verbal skills. The test was designed and used to help place students in what today would be described as special education settings.<sup>50</sup>

About a decade later, in 1916,<sup>51</sup> Stanford psychologist Lewis Terman modified Binet's original test by adding some items and deleting others, naming it the "Stanford Revision of the Binet-Simon Scale," or "Stanford-Binet," now in its fifth edition.<sup>52</sup> Due to the test's popularity, the military<sup>53</sup> followed the advice of the American Psychological Association's president, Robert Yerkes, that it rely on standardized tests, leading to such classifications as the Army Alpha. This classification system ranked highest

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45. Maureen Wilson, *The College Entrance Examination Board: Members and Governance, Programs and Services, Newer Ventures and Future Outlook*, EDUC. ENCYCLOPEDIA (July 22, 2022), <https://education.stateuniversity.com/pages/1854/College-Entrance-Examination-Board.html> [<https://perma.cc/UUS9-V935>].

46. *About Us*, COLL. BD., <https://about.collegeboard.org/> [<https://perma.cc/3H9F-UPTV>] (last visited July 21, 2022).

47. See Maureen Wilson, *The College Entrance Examination Board: Members and Governance, Programs and Services, Newer Ventures and Future Outlook*, EDUC. ENCYCLOPEDIA (July 22, 2022), <https://education.stateuniversity.com/pages/1854/College-Entrance-Examination-Board.html> [<https://perma.cc/UUS9-V935>].

48. See Samantha Lindsay, *The History of the ACT Test*, PREPSCHOLAR, (June 15, 2015), <https://blog.prepscholar.com/the-history-of-the-act-test> [<https://perma.cc/HP5P-4WE3>].

49. See *A Science Odyssey: People and Discoveries: Binet Pioneers Intelligence Testing*, PBS, <https://www.pbs.org/wgbh/aso/databank/entries/dh05te.html> [<https://perma.cc/FLB6-DF8H>] (last visited Sept. 15, 2022); Kendra Cherry, *Alfred Binet and the History of IQ Testing*, VERYWELLMIND (Apr. 13, 2022), <https://www.verywellmind.com/history-of-intelligence-testing-2795581> [<https://perma.cc/TYM9-MLY8>].

50. *Id.*

51. See Cherry, *supra* note 49.

52. See *(SB-5) Stanford-Binet Intelligence Scales, Fifth Edition*, W. PSYCH. SERVS. (July 31, 2022), <https://www.wpspublish.com/sb-5-stanford-binet-intelligence-scales-fifth-edition> [<https://perma.cc/JLY4-QWLH>].

53. See *History of Standardized Testing*, *supra* note 42; Kaestle, *supra* note 39; OFF. TECH. ASSESSMENT, *supra* note 42.

scorers as potential officer candidates, while those identified as Army Betas were rejected for military service.<sup>54</sup>

As a sign of the growing acceptance of standardized testing, the National Education Association, now the largest organization of teachers in the United States,<sup>55</sup> voiced its support for all of these examinations in 2014.<sup>56</sup> However, while the use of standardized tests as a means of evaluating student progress became popular in the wake of World War I, in 1922, highly influential educational philosopher and reformer during the Progressive era, John Dewey, questioned over-reliance on these tests.<sup>57</sup> According to Dewey,

Our mechanical, industrialized civilization is concerned with averages, not percents. The mental habit which reflects this social scene subordinates education and social arrangements based on averaged gross inferiorities and superiorities . . . the schools apparently “welcome a procedure which under the title of science sinks the individual in a numerical class . . . .”<sup>58</sup>

In other words, Dewey seemed to be concerned that reaching significant education decisions based on scores and percentages on one single examination may not have been the best way for educators to proceed.

Officials at the University of Iowa created the first state-wide system of testing in 1929, the Iowa Statewide Assessment of Student Progress or Iowa Test of Basic Skills<sup>59</sup> for students, a measure that continues to be used widely today. In 1935, educators first relied on high-speed computing to grade large numbers of tests, dropping costs from about five dollars per examination to fifty-cents per test, thereby helping to create greater reliance on these

54. *Psychological Testing: Stanford-Binet IQ Test*, MENTALHEALTH.NET (July 31, 2022), <https://www.mentalhelp.net/psychological-testing/stanford-binet-iq-test/> [<https://perma.cc/F386-GJJB>].

55. *About Us*, NAT'L EDUC. ASS'N (July 31, 2022, 9:05 AM), <https://www.nea.org/about-nea> [<https://perma.cc/A7QS-QSQF>].

56. *History of Standardized Testing in the United States*, NAT'L EDUC. ASS'N (June 25, 2020, 9:06 AM), <https://www.nea.org/professional-excellence/student-engagement/tools-tips/history-standardized-testing-united-states> [<https://perma.cc/LZW3-DFVQ>].

57. Although it is beyond the scope of this Essay, it is worth noting that the LSAT was pretested in 1947 and has been administered, albeit in various forms, since 1948. See Lynda M. Reese & Ruth Anne Cotter, A COMPENDIUM OF LSAT AND LSAC-SPONSORED ITEM TYPES 1948–1994 5 (Apr. 1994); see also Ruth Colker, *Extra Time as an Accommodation*, 69 U. PITT. L. REV. 413, 435–38 (2008);

Eremipagamo M. Amabebe, Note, *Beyond “Valid And Reliable:” The LSAT, ABA Standard 503, and the Future of Law School Admissions*, 95 N.Y.U. L. REV. 1860 (2020).

58. John Dewey, *Individuality, Equality, and Superiority*, NEW REPUBLIC, Dec. 13, 1922, at 33, 61–63; see also DAVID TYACK, *THE ONE BEST SYSTEM: A HISTORY OF AMERICAN URBAN EDUCATION* 198 (1974).

59. See *Student Assessment (PK-12)*, IOWA DEP'T EDUC. (July 31, 2022, 9:14 AM), <https://educateiowa.gov/pk-12/student-assessment-pk-12> [<https://perma.cc/3V39-DFQT>]; ISASP, IOWA STATEWIDE ASSESSMENT OF STUDENT PROGRESS, <https://iowa.pearsonaccess.com/> [<https://perma.cc/VWG6-KSZF>] (last visited July 31, 2022).

measures. By the time a variety of states adopted the Iowa Assessments in the mid-1930s, the rudimentary IBM 805 computer emerged as the first automatic test scanner; this device largely operated without changes until the test eliminated the analogies part of the exam by adding a writing section.<sup>60</sup> In 1958, the Iowa Assessments introduced computerization to the scoring of tests and production of reports that were sent to school officials.<sup>61</sup>

In light of the growing reliance on standardized entrance examinations, mostly for admissions to higher education, the Educational Testing Service (ETS) was founded in 1947.<sup>62</sup> The ETS plays a major role in administering and scoring various standardized examinations along with notifying both test takers and the institutions to which they are applying of their results.<sup>63</sup>

Adopted in 1971, New York State's HC Act<sup>64</sup> requires applicants to take the controversial SHSAT as the sole criterion for entry into the City's then existing examination schools.<sup>65</sup> Along with essentially codified standards that had been in place since the 1930s, the HC Act included the Discovery Program, effectively a remedial affirmative action-type program that had been in effect since the 1960s, to help students from families with low socioeconomic status.<sup>66</sup>

In 1983, the National Commission on Excellence in Education's seminal report issued by the National Commission on Excellence in Education, an 18 member committee, *A Nation at Risk: The Imperative for Educational Reform*, provocatively declared that "[i]f an unfriendly foreign power had attempted to impose on America the mediocre education performance that exists today, we might well have viewed it as an act of war."<sup>67</sup> The committee that authored *A Nation At Risk* suggested a two-pronged approach

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60. See *History of Standardized Testing in the United States*, *supra* note 56.

61. *Id.*

62. *Who We Are*, EDUC. TESTING SERV. (July 31, 2022, 9:32 AM), <https://www.ets.org/about/who/> [<https://perma.cc/MS4S-Q7B3>].

63. *A (Mostly) Brief History of the SAT and ACT Tests*, ERIK THE RED (July 31, 2022, 9:32 AM), <https://www.erikthered.com/tutor/sat-act-history.html> [<https://perma.cc/CK44-M49L>] (including a lengthy bibliography of relevant publications on the history of standardized testing).

64. N.Y. EDUC. LAW § 2590 (McKinney 2020).

65. See Corey Hirsch, Note, *Constitutional Diversity in New York's Specialized High Schools: The SHAST, The Discovery Program, and The Fourteenth Amendment*, 41 CARDOZO L. REV. 1627 (2020); Priscilla A. Consolo, Note, *A Single Score No More: Rethinking the Admissions System for New York City's Specialized High Schools to Preserve Academic Excellence and Promote Student Diversity*, 94 N.Y.U. L. REV. 1244 (2019); Ayyan Zubaira, *Brown's Lost Promise: New York City Specialized High Schools as a Case Study in the Illusory Support For Class-Based Affirmative Action*, 11 CAL. L. REV. ONLINE 557 (2021).

66. Kwok, *supra* note 33.

67. NATIONAL COMMISSION ON EXCELLENCE IN EDUCATION *A NATION AT RISK: THE IMPERATIVE FOR EDUCATIONAL REFORM* 6 (1983) [hereinafter *A NATION AT RISK*].

to fight what it pithily described as “the rising tide of mediocrity”<sup>68</sup> in schools threatening the United States’ place as a world leader. First, the report urged educational leaders to raise academic standards by using rigorous tests to ensure that students are moving forward academically while challenging them to succeed in school and beyond.<sup>69</sup> Second, the report sought to raise standards for those wishing to become teachers while urging higher pay to attract the “best and brightest” to enter into the profession.<sup>70</sup>

In the wake of *A Nation At Risk*, a plethora of books and reports aimed at reinvigorating the quality of American schools led to an era of reform.<sup>71</sup> Observing that “[o]ver half of the population of gifted students do not match their tested ability with comparable achievement in school,”<sup>72</sup> *A Nation at Risk* further suggested that “most gifted students, for example, may need a curriculum enriched and accelerated beyond the needs of other students of high ability.”<sup>73</sup> While this part of the report focused on the gifted, a good case can be made that the same can be said for students who apply to examination schools. More specifically, if high achieving young people are not able to demonstrate their strengths by showing how they excel on standardized test as one criterion for admission to examination schools, the Nation risks squandering the valuable human resources they offer because these students can underachieve if they are not challenged to their full potential.<sup>74</sup>

The obsession with testing to measure, and hopefully improve, student achievement seemingly peaked when President George Bush signed the No Child Left Behind Act of 2001<sup>75</sup> (the “NCLB”) into law on January 8, 2002.<sup>76</sup> The NCLB was the then most recent reauthorization of the

68. *Id.* at 5.

69. *Id.* at 22.

70. *Id.* at 24–25.

71. See, e.g., ERNEST L. BOYER, *HIGH SCHOOL: A REPORT ON SECONDARY EDUCATION IN AMERICA* (1983); CARNEGIE FORUM ON EDUCATION AND THE ECONOMY, *A NATION PREPARED: TEACHERS FOR THE 21ST CENTURY* (1986); JOHN GOODLAD, *A PLACE CALLED SCHOOL: PROSPECTS FOR THE FUTURE* (1984); HOLMES GROUP, *TOMORROW’S TEACHERS: A REPORT OF THE HOLMES GROUP* (1989); CARNEGIE COUNCIL ON ADOLESCENT DEVELOPMENT, *TURNING POINTS: PREPARING AMERICAN YOUTH FOR THE 21ST CENTURY* (1989).

72. *A NATION AT RISK*, *supra* note 67, at 8.

73. *Id.* at 24.

74. See, e.g., Kate E. Snyder et al., *Pay Attention to Inattention: Exploring ADHD Symptoms in a Sample of Underachieving Gifted Students*, 64 *GIFTED CHILD Q.* 100, 100–16 (Apr. 2020); Esther Berkowitz & Terry Cicchelli, *Metacognitive Strategy Use in Reading of Gifted High Achieving and Gifted Underachieving Middle School Students in New York City*, 37 *EDUC. AND URB. SOC’Y* 37–57 (2004); Donna Y. Ford, Sheila R. Alber, & William L. Heward, *Setting ‘Motivation Traps’ for Underachieving Gifted Students*, 21 *GIFTED CHILD TODAY MAG.*, 28–30, 32–33 (Mar.–Apr. 1998).

75. 20 U.S.C.A. §§ 6301–6578.

76. Robert Holland, *School Choice Comfort*, *WASH. TIMES*, Nov. 13, 2002, at A19.

Elementary and Secondary Education Act (the “ESEA”), a federal law which opened the way for the increased use of standardized testing<sup>77</sup> that was enacted during the heart of the Civil Rights Movement ushered in by *Brown v. Board of Education*'s<sup>78</sup> still unfulfilled promise of equal educational opportunities for all students.<sup>79</sup>

The controversial<sup>80</sup> and far-reaching NCLB was designed to create a framework to improve the performance of America's elementary and secondary schools as well as that of their students. The NCLB required annual testing of all students in grades three through eight and ones in grades nine through twelve<sup>81</sup> along with annual statewide progress objectives. This testing was designed to ensure that all groups of students meet or exceed their states' levels of academic achievement. Concomitantly, even though the NCLB required 95% of students with disabilities to participate in annual assessments based on state standards, it did not permit the use of alternative assessments for these children regardless of their academic impairments.<sup>82</sup>

By placing such great emphasis on the results of standardized or high stakes testing, the NCLB failed to consider where children started or to treat them as individuals in measuring any progress or upward trajectories they may have achieved. Moreover, the NCLB's testing was anything but holistic because, in focusing on primarily basic skills, as important as they are, it largely disregarded the arts and humanities, all but ignoring multiple intelligences.<sup>83</sup>

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77. *The ABC's of ESEA, ESSA and No Child Left Behind*, ED POST (Jan. 14, 2015), <https://www.edpost.com/explainer/the-abcs-of-esea-essa-and-no-child-left-behind> [<https://perma.cc/G7Z3-UMTQ>].

78. 347 U.S. 483 (1954).

79. *See, e.g.*, DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* 6–7 (2004); Paul Green, *The Paradox of the Promised Unfulfilled: Brown v. Board of Education and the Continued Pursuit of Excellence in Education*, 73 J. NEGRO EDUC. 268–84 (2004).

80. *See, e.g.*, Philip T.K. Daniel, *No Child Left Behind: The Balm of Gilead Has Arrived in American Education*, 206 EDUC. L. REP. 791 (2004); Gina Austin, *Leaving Federalism Behind: How the No Child Left Behind Act Usurps States' Rights*, 27 T. JEFFERSON L. REV. 337 (2005); Thomas Risberg, Note, *National Standards and Tests: The Worst Solution to America's Educational Problems . . . Except for All the Others*, 79 GEO. WASH. L. REV. 890 (2011).

81. *See* 20 U.S.C.A. § 6311(b)(2)(B)(v)(I)(aa).

82. *See* 20 U.S.C.A. § 1412(a)(16)(A); § 6311(b)(2)(D)(i).

83. The NCLB directed that no later than the end of the 2005–06 school year all students should have been taught by highly qualified teachers (“HQTs”) in core academic subjects, meaning “English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography.” *See* 20 U.S.C.A. § 6319(a)(2); 34 C.F.R. § 200.55(b); 20 U.S.C. § 6319(a)(2). The NCLB required new “highly qualified” elementary teachers to meet two requirements: they must have had at least a bachelors’ degree and demonstrated, by passing rigorous state, not federal, tests, that they had subject knowledge and teaching skills in reading, writing, mathematics, and other areas of basic

The latest reauthorization of the ESEA, the Every Student Succeeds Act (ESSA),<sup>84</sup> became law on December 10, 2015<sup>85</sup> when President Barack Obama signed it into effect, replacing the controversial NCLB. The ESSA retains some key features of the NCLB but made significant changes to the law, such as reducing its emphasis on standardized tests.

Student assessment remains a key concern of the ESSA with three major changes. First, educators must assess “not less than 95 percent of all students, and 95 percent of all students in each subgroup,”<sup>86</sup> requiring them to take state-wide examinations in mathematics and reading or language arts in each of grades three to eight and at least once in grades nine through twelve.<sup>87</sup> In science, students are tested not less than once during grades three through twelve.<sup>88</sup> As to other subjects, students can be tested at the discretion of state officials.<sup>89</sup> These provisions grant state officials greater flexibility in limiting how much time students spend taking tests while reducing the impact of so-called high stakes testing on schools in which pupils underperform. The ESSA allows state officials to replace state-wide high school standardized tests with exams used nationally.<sup>90</sup>

A second significant change in the ESSA relevant to this Essay and testing applies to students with disabilities. When educators test children with disabilities who receive the services specified in their individualized education programs, which often supplement general curricula by providing them with specialized aids and programming, the ESSA permits school officials to use alternative measures for students with the most significant cognitive impairments.<sup>91</sup>

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elementary school curriculum. *See* 20 U.S.C.A. § 7801(23)(B)(i). New middle and secondary “highly qualified” teachers also had to have had at least bachelors’ degrees and demonstrated high levels of competency in each of the subjects they teach either by passing rigorous state academic subject tests in each of these areas or successfully complete academic majors, graduate degrees, course work equivalent to undergraduate academic majors, or advanced certification in credentialing in these areas. *See* 20 U.S.C.A. § 7801(23)(B)(ii). Teachers in elementary, middle, or secondary schools who were not new to the profession had to have at least bachelors’ degrees, meet the requirements for teachers who are new to the profession, and have passed a rigorous State test or demonstrate competence in all academic subjects in which they taught. *See* 20 U.S.C.A. § 7801(23)(C).

84. *See* 20 U.S.C.A. §§ 6301 (2015).

85. *See id.*

86. *See* § 6311(c)(4)(E)(i).

87. *See* § 6311(c)(4)(B)(iv).

88. *See* § 6311(b)(2)(B)(v)(II).

89. *See* 20 U.S.C.A. § 6311(b)(2)(B)(v)(III).

90. *See* § 6311(b)(2)(H).

91. *See* § 6311(b)(2)(D)(i). In a significant change, the ESSA no longer employs the term HQTs for regular or special educators. The original language of this provision in the NCLB was codified at § 7801(23).

## II. POSITIONS ON STANDARDIZED ENTRANCE EXAMINATIONS

A controversial topic in education, the administration of standardized tests for admissions, whether to examination schools or more generally to higher education, remains a contentious issue. One can debate whether there is a correlation between the work of Frederick W. Taylor and his theories of scientific management in the early twentieth century,<sup>92</sup> under which school administrators largely ignored educational goals in pursuit of following the demands of business operations by standardizing procedures, such as by seeking to hire the best “experts” without regard for the academic success of students and standardized examinations. Still, a case can be made that such a narrow perspective of efficient organizational operations resulted in treating schools as factories of sorts in which educators placed too much reliance on standardized tests rather than evaluating and treating children, and for that matter teachers, as individuals, instead viewing educators, and especially children, as the functional equivalent of interchangeable “widgets.”

As with many controversies, and readily conceding that such measures are far from perfect,<sup>93</sup> because good arguments are often raised on both sides of such issues, this Part briefly examines arguments both in favor of and against their use in student admissions. Thus, this Part briefly summarizes support on both sides of the argument over the role, if any, of standardized tests in admissions to examination schools as well as other educational institutions.

### A. Arguments in Favor of Entrance Examinations

Supporters of standardized tests offer a variety of defenses in favor of their use. For example, advocates maintain that these examinations are based on merit,<sup>94</sup> they set standards for all takers, they are objective insofar as all examinees take the same or similar tests under like standards, and they are graded or scored objectively by machines such that the results are

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92. See generally RAYMOND E. CALLAHAN, *EDUCATION AND THE CULT OF EFFICIENCY* (1962).

93. For an insightful commentary, see Richard Phelps, *The US Test Mess*, JAMES G. MARTIN CTR. FOR ACAD. RENEWAL (April 22, 2022), <https://www.jamesgmartin.center/2022/04/the-us-test-mess/> [https://perma.cc/RFW5-37TY].

94. See, e.g., Sam Erman & Gregory M. Walton, *Stereotype Threat and Antidiscrimination Law: Affirmative Steps to Promote Meritocracy and Racial Equality in Education*, 88 S. CALIF. L. REV. 307 (2015) (suggesting that equality and merit can reinforce one another). See generally KENNY XU, *AN INCONVENIENT MINORITY: THE ATTACK ON ASIAN AMERICAN EXCELLENCE AND THE FIGHT FOR MERITOCRACY* (2021) (describing challenges to the New York SHSAT exam). But see LANI GUINIER, *THE TYRANNY OF MERITOCRACY: DEMOCRATIZING HIGHER EDUCATION IN AMERICA* (2015) (rejecting testing as not a fair indicator of students' success in higher education).



comparable.<sup>95</sup> Proponents are of the opinion that the use of these examinations can help leaders to focus on accountability for both students and teachers as indicators of whether learning is taking place in classrooms.<sup>96</sup> Supporters also point out that the use of standardized tests for admission to examination schools in particular represents another form of school choice for parents, a movement born in the wake of the reform reports following *A Nation At Risk*,<sup>97</sup> especially in urban areas,<sup>98</sup> a topic receiving a great deal of attention in educational circles in recent years.<sup>99</sup>

### B. Arguments in Opposition to Entrance Examinations

Critics of standardized tests offer an array of arguments for why they should be discarded. A series of related criticisms maintain that standardized examinations only consider some forms of intelligence, such as the ability to take specific types of tests, while ignoring or downplaying multiple intelligences<sup>100</sup> and students who learn differently,<sup>101</sup> and that these tests are

95. See, e.g., Aaron Churchill, *Bless the Tests: Three reasons for Standardized Testing*, THOMAS B. FORDHAM INSTIT. (Mar. 18, 2015), <https://fordhaminstitute.org/national/commentary/bless-tests-three-reasons-standardized-testing> [<https://perma.cc/KMK6-6TN2>].

96. See *id.*

97. See JOHN E. CHUB & TERRY M. MOE, POLITICS, MARKETS, AND AMERICA'S SCHOOLS (1990) (arguing in one of the earliest, and arguably most significant, works for school choice, that parents needed to be afforded greater choice in terms of where they could send their children to school, insofar as reforms of failing traditional public educational systems, which often focused on internal bureaucracy rather than the needs of students, were insufficient); see also Richard Phelps, *supra* note 93.

98. See, e.g., Michael Lewyn, *The Middle Class, Urban Schools, and Choice*, 4 BELMONT L. REV. 85 (2017).

99. See, e.g., Stephen D. Sugarman, *The Promise of School Choice for Improving the Education of Low-Income Minority Children*, 15 BERKELEY LA RAZA L.J. 75 (2004); Terry M. Moe, *Beyond the Free Market: The Structure of School Choice*, 2008 B.Y.U. L. REV. 557.

100. See, e.g., HOWARD GARDNER, FRAMES OF MIND: THEORIES OF MULTIPLE INTELLIGENCE (1983); see also HOWARD GARDNER, MULTIPLE INTELLIGENCES, THEORY IN PRACTICE: A READER (1993). The nine intelligences Gardner theorized are Naturalist Intelligence; Musical Intelligence ("Musical Smart"); Logical-Mathematical Intelligence ("Number/Reasoning Smart"); Existential Intelligence ("Spirit Smart"); Interpersonal Intelligence (People Smart); Bodily-Kinesthetic Intelligence ("Body Smart"); Linguistic Intelligence ("Word Smart"); Intra-personal Intelligence ("Self Smart"); Spatial Intelligence ("Picture Smart"). See *id.* In a 2016 video interview, "Intelligence Isn't black and white: There are 8 different kinds," along with considering adding the teaching-pedagogical intelligence, he indicated that he rejected other suggested intelligences such as humor, cooking and sexual intelligence. See *Intelligence Isn't Black-and-White: There Are 8 Different Kinds*, BIG THINK, <https://bigthink.com/videos/howard-gardner-on-the-eight-intelligences/> [<https://perma.cc/F9JZ-BL5J>] (last visited Oct. 2, 2022).

101. See *Effects of Standardized Testing on Students & Teachers: Key Benefits & Challenges*, AMERICAN UNIV. (July 2, 2020), <https://soeonline.american.edu/blog/effects-of-standardized-testing> [<https://perma.cc/3774-Q9QV>] (positing that standardized tests devalue instruction in areas such as the arts, history, and elective subjects).

not accurate measures of student intelligence or achievement because they are biased based on race,<sup>102</sup> sex or gender,<sup>103</sup> linguistic ability,<sup>104</sup> or socio-economic status, thereby contributing to racial disparities, including in examination schools.<sup>105</sup> Other criticism include that standardized tests push educators to “teach to test,”<sup>106</sup> increase student stress,<sup>107</sup> are not always the best predictors of success,<sup>108</sup> but are only snapshots of how individuals perform on a given day, and may offer those whose families can afford preparation programs unfair advantages.<sup>109</sup>

The validity of many of these arguments notwithstanding, many of which are no doubt exacerbated in public schools that do not receive adequate funding, discounting standardized tests entirely unfairly disadvantages students who excel on such measures. Thus, the final Part of this Essay

102. See Donna Y. Ford & Janet E. Helms, *Overview and Introduction: Testing and Assessing African Americans: ‘Unbiased’ Tests are Still Unfair* 81 J. NEGRO EDUC. 186, 186–89 (2022).

103. See, e.g., William C. Kidder, *Portia Denied: Unmasking Gender Bias on the LSAT and its Relationship to Racial Diversity in Legal Education*, 12 YALE J.L. & FEMINISM 1,14 (2000) (addressing race and gender); Sasha Badian, *Standardized Testing*, 3 GEO. J. GENDER & L. 369 (2002) (focusing on gender).

104. See, e.g., Jean G. Blaise. *The Effects of High-Stakes Accountability Measures on Students with Limited English Proficiency*, 53 URB. EDUC. 1154 (2018).

105. See Aaron Saiger, *Racial Disparity Persists in NYC’s Examination High Schools*, CITY LAND (Mar. 10, 2015), <https://www.citylandnyc.org/citylaw-racial-disparity-persists-in-nycs-examination-high-schools/> [<https://perma.cc/H8VK-Q6MD>]. See generally Dan Subotnik, *Does Testing = Race Discrimination? Ricci, The Bar Exam, The LSAT, and the Challenge to Learning*, 8 U. MASS L.R. 332 (2013) (questioning the undermining of standardized tests as being discriminatory based on race). But see Richard Delgado, *Standardized Testing as Discrimination: A Reply to Dan Subotnik*, 9 U. MASS. L. REV. 98 (2014); Harvey Gilmore, *Standardized Testing, Learning, and Meritocracy: A Reply to Dan Subotnik*, 32 TOURO L. REV. 387 (2016).

106. Matthew Lynch, *Three Important Critiques of Standardized Assessments*, EDUC. WEEK (June 28, 2016), <https://www.edweek.org/education/opinion-three-important-critiques-of-standardized-assessments/2016/06> [<https://perma.cc/3H4U-68VC>].

107. See Grace Tatter, *Tests and Stress Bias: Strengthening the Correlation Between Student Stress Levels and High-Stakes Tests*, HARV. GRADUATE SCH. OF EDUC. (Feb. 12, 2019), <https://www.gse.harvard.edu/news/uk/19/02/tests-and-stress-bias> [<https://perma.cc/R2WY-YZ2U>].

108. But see Jonathan Wai & Don Zhang, *The Most Revealing Screen: Standardized Tests Have Their Problems, But They Remain the Best Way of Assessing Students’ Academic Merits*, CITY J. (Oct. 16, 2019), <https://www.city-journal.org/standardized-tests> [<https://perma.cc/KYQ6-2QAL>] (conceding that standardized tests are not perfect while supporting New York City’s SHSAT examination and the use of standardized examinations as predictive of student academic performance).

109. See Valerie Strauss, *34 Problems with Standardized Tests*, WASH. POST (Apr. 4, 2017), <https://www.washingtonpost.com/news/answer-sheet/wp/2017/04/19/34-problems-with-standardized-tests/> [<https://perma.cc/K9Q2-6WTV>] (offering a non-research-based critique of standardized tests offering common objections).

offers reflection on moving forward with the use of standardized tests as one criterion for admission to examination schools.

### III. MOVING FORWARD

Moving forward, this Essay offers six suggestions for educational leaders, civic activists, policy-makers, and politicians to consider when debating the future of examination schools designed to serve high-achieving students who desire learning environments in which they can be challenged to the limits of their abilities.

First, as reviewed earlier, this Essay suggests that although standardized measures including written tests or auditions such as at the Fiorello H. LaGuardia High School of Music & Art and Performing Arts are flawed because they fail to provide authentic assessments of students, they should not be discounted entirely. Instead, this Essay recommends that school officials move away from single high-stakes tests by adopting “a highly individualized, holistic review of each applicant’s file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment,” as the Supreme Court maintained in *Grutter v. Bollinger*.<sup>110</sup> In so doing, this Essay urges educational leaders to evaluate students as individuals by treating standardized tests as just one aspect of applications in light of evidence that these examinations add significant value to the process of selecting students.<sup>111</sup>

A legitimate criticism of standardized tests is that they fail to take the breadth of students’ knowledge and abilities into account. Yet, categorically refusing to take test scores into consideration could well short change academic achievers who do well on these examinations even if they may lack other desired criteria that might emerge in interviews or they may not have participated in a wide range of school activities for various reasons. As such, in seeking to obtain authentic, far-ranging holistic assessments of students and their abilities, officials should rely on multiple measures while considering their trajectories in terms of whether each applicant’s academic records display continuous improvement, not relying on one sole criterion to

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110. See 123 S. Ct. 2327 (2003) (upholding the university’s holistic race-conscious admissions policy in its law school on the basis that insofar as diversity is a compelling governmental interest, officials could use race as a factor in admissions decisions because the criteria were sufficiently narrowly tailored to achieve the compelling state interest of having a racially diverse student body); see also Robert P. George, *Gratz and Grutter: Some Hard Questions*, 103 COLUM. L. REV. 1634 (2003); William E. Thro & Charles J. Russo, *The Constitutionality of Racial Preferences in K-12 Education After Grutter and Gratz*, 211 EDUC. L. REP. 537 (2006).

111. Although focused on higher education, the points remain valid for K-12 schools. See generally MEASURING SUCCESS: TESTING, GRADES, AND THE FUTURE OF COLLEGE ADMISSIONS (Jack Buckley et al. eds., 2018).

the exclusion of others. In so doing, educational decision-makers should be better able to admit the best qualified students to examination schools.

Against this background, as long as tests are valid, reliable measures of what students have been taught,<sup>112</sup> and students receive sufficient notice to prepare for the examinations they take, especially when doing so voluntarily,<sup>113</sup> it is difficult to understand why there is so much objection to their being included among multiple entrance criteria as they form part of a holistic picture of applicants. In line with former President Bill Clinton's call to "mend don't end,"<sup>114</sup> affirmative action and race-based admissions or hiring programs, then, rather than end standardized testing completely,<sup>115</sup> this Essay suggests that they be improved to better measure students' abilities and be retained as one criterion in admissions decisions. Put another way, educational officials should try to raise the bar and set high standards, neither prejudging the ability of students to do well on these tests nor excluding the results by those who excel on such measures by looking at the "big picture" as it relates to individual applicants.

Second, educational leaders, civic activists, policy-makers, and politicians should work to provide support programs and equitable funding not just for schools generally, but to children who are achievers in various intelligences to ensure that they receive all they need to succeed.

Along with funding, a perennial problem in many school systems regardless of where they are located,<sup>116</sup> programs should consider such alternatives as advanced placement type classes designed for students who need to be challenged, another controversial topic to be sure.

Third, at the same time, local city councils, as in municipalities such as New York City, and state legislatures, working in conjunction with their departments of education and colleges of education, must marshal their efforts to meet the needs of all students who wish to attend examination schools.<sup>117</sup> A central goal of cooperation between and among these key

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112. See *Debra P. v. Turlington*, 730 F.2d 1405 (11th Cir. 1984); *Anderson v. Banks*, 520 F. Supp. 472 (S.D. Ga. 1981), *modified*, 540 F. Supp. 761 (S.D. Ga. 1982), *appeal dismissed sub. nom.*, *Johnson v. Sikes*, 730 F.2d 644 (11th Cir. 1984).

113. See *Turlington*, 730 F.2d at 1407 (striking down 13-month notice).

114. Helen Dewar, *Minority Set-Aside Survives in Senate; Affirmative Action is Backed 58 To 37*, WASH. POST, March 7, 1998, at A01.

115. See, e.g., Glenn H. Reynolds, *Harvard and Others Nixing Standardized Tests Reinforce Privilege and Harm Minorities*, N.Y. POST (Dec. 25, 2021), <https://nypost.com/2021/12/25/harvard-and-others-nixing-standardized-tests-reinforce-privilege-and-harm-minorities/> [<https://perma.cc/ZMW4-NART>].

116. See Lisa Kelly, *Yearning for Lake Wobegon: The Quest for the Best Test at the Expense of the Best Education*, 7 S. CAL. INTERDISC. L.J. 41 (1998) (critiquing standardized tests including a discussion of its potential impact on funding).

117. See generally Charles J. Russo, *Unequal Educational Opportunities for Gifted Students: Robbing Peter to Pay Paul?*, 29 FORDHAM URB. L.J. 727 (2001).

players should be to strengthen certification and licensing standards for all prospective teachers and administrators in order to help them best serve high-performing students who aspire to attend examination schools.

Fourth, schools and colleges of education, in accordance with the standards of appropriate accrediting agencies, should expand existing course work and field experiences so that all prospective educators, whether paraprofessionals, support personnel such as nurses, classroom teachers, or administrators, among others, can have greater exposure to children who are high achieving in their quest for admission to exam schools and their unique learning needs. While it may not be feasible to require separate courses on working with these students in general professional preparation programs, at the very least an introductory course on meeting their needs should devote a significant amount of time and interest in providing them with the intellectual and other challenges they need. Adopting such an approach is especially important for institutions of higher education located in states that do not require teacher certification for educators who work specifically with high-achieving students because it can help to better prepare those who work with these children.

Fifth, at the elementary and/or middle schools, educational leaders should provide professional development via in-house preparation programs to assist school personnel in identifying and assessing students who wish to attend examination schools, if this is not already done. Such programming should help staff members to devise challenging course work and other learning experiences to assist them to reach their full potential. Moreover, educators should deliver programs for children of all ages, beginning in pre-school, to address, and redress, past and on-going inequities by paying particular attention to the needs of economically challenged, urban, and children of color who have been historically under-represented or excluded from programs leading to admission to examination schools.

Finally, in light of the key role parents and community members play in the growth and development of their children, school officials should work to assist them in nurturing their young. In particular, and as appropriate, school officials should offer a wide range of services including classes on parenting, child development, and working with children to enhance their chances for success. Further, school officials, perhaps in conjunction with local, regional, and state associations as well as local colleges and universities, might wish to consider bringing in outside experts on the gifted who can offer workshops to parents of high-achieving children, those typically aspiring to attend examination schools.

### CONCLUSION

In offering limited support for continuing to place some reliance on standardized measures for evaluating student applications, the words of former President George W. Bush, decrying the “soft bigotry of low expectation” come to mind.<sup>118</sup> This soft bigotry condemns many children, especially those from economically deprived backgrounds, to attending low-performing schools from which they have little, if any, chance of succeeding academically and beyond, denying them, their parents, and families opportunities to participate in the “American Dream.” It is unwise not to afford children who perform well academically opportunities to be challenged by allowing them to attend schools designed to both to test them to their full potentials and to help them improve their skills. Thus, if educational leaders are to help all students succeed, they must do so maintaining standards, even raising, not lowering the proverbial bar by providing them with chances to attend examination schools.

In one of their best-known songs, the musical group Sha Na Na, and my late, great friend and colleague at the University of Dayton School of Law, Professor Dennis Greene, one of the band’s founders,<sup>119</sup> sang that “rock and roll is here to stay, it will never go away . . . .” Similarly, it seems that while often heated debate is likely to continue over whether high stakes entrance examinations are here to stay, if they do survive, their weight should be reduced so that all students can be evaluated equitably. Stay tuned . . .

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118. Sam Dillon, *Democrats Make Bush School Act an Election Issue*, N.Y. TIMES (Dec. 23, 2007), <http://www.nytimes.com/2007/12/23/us/politics/23child.html> [<https://perma.cc/6QJT-V4LQ>].

119. See Dennis Greene, *Sha Na Na Singer Who Became Law Professor, Dies at 66*, L.A. TIMES (Sept. 10, 2015), <https://www.latimes.com/local/obituaries/la-me-dennis-greene-20150910-story.html> [<https://perma.cc/EFL6-XLK6>]; see also *In Memoriam: Professor Dennis Greene*, U. DAYTON BLOGS (Sept. 10, 2015), <https://udayton.edu/blogs/daytondocket/2015/09/201500910-dennis-greene.php> [<https://perma.cc/3DES-EPGP>].