

The Diversity Test

By Steven Menashi

"Test use has been a problem area for a lot of colleges," Gary Kelsey, director of admissions at the University of Colorado at Boulder, told *The Chronicle of Higher Education*. "Even in the best of institutions, the abuse of test scores, the sole dependency or high amount of dependency on test scores alone—when making decisions on admissions and financial aid—has the tendency to exclude a lot of people, including, disproportionately, the students who don't do well on tests."

Though Kelsey's observation seems obvious, the phenomenon is highly troubling to the Department of Education's Office of Civil Rights, especially given a disparity in test scores between white and non-Asian minority students.

Last May, the Office of Civil Rights circulated among college officials a draft resource guide, "Nondiscrimination in High-Stakes Testing: An Overview," which warns that colleges could be subject to legal prosecution or loss of federal funds if they rely primarily on SAT or ACT scores to make admissions or financial aid decisions.

"The use of any educational test which has a significant disparate impact on members of any particular race, national origin, or sex is discriminatory, and a violation of Title VI [of the Civil Rights Act of 1964] and/or Title IX [of the Education Amendments of 1972], respectively, unless it is educationally necessary and there is no practicable alternative form of assessment," the guidelines read.

"In a sense, tests are on trial," said Anthony Carnevale, vice-president for public leadership at Educational Testing Service, which administers the SAT. "To what extent should pure academic merit—test scores and grades—be made the primary screen for admissions and access?"

No one disputes the disparate racial and ethnic impact of the SAT. White and Asian students, on average, score significantly higher than their black and Hispanic peers. Colleges continue to employ the SAT in admissions, however, because the test reliably predicts academic performance in college. Standardized test scores also enable admissions officers to overcome the ambiguity inherent in data like class rank and GPA, as grade inflation and course difficulty vary among high schools.

Contrary to claims of cultural bias in the test, moreover, a study of the University of California system found that SAT scores actually over-estimate the grades of black and Hispanic college freshmen by a small margin.

Still, for the past few decades, universities have created an exception to the merit principle in college admissions in order to create ethnically diverse student bodies. At Dartmouth College, according to 1992 data, the average SAT score of black students is 218 points below that of whites. In her 1997 book, *A is for Admission*, Michelle Hernandez, former assistant director of admissions at Dartmouth College, writes that, to bolster the count of admitted non-Asian minority applicants, admissions officers will "give less weight to test scores and class rank than would be accorded to nonminority applicants."

Indeed, when Stephan and Abigail Thernstrom examined data presented in William Bowen and Derek Bok's pro-affirmative action book, *The Shape of the River*, they found that only preferential admissions policies could explain why "black applicants with scores around 1200 were nearly as likely to be accepted at Bowen and Bok's five institutions as whites with scores of 1500 or better."

At least for public institutions, however, preferential admissions policies for minority applicants are facing increasing legal scrutiny. Most notable is the Fifth Circuit Court of Appeals' 1996 decision in *Hopwood v. Texas*—which ended preferential admissions policies in Louisiana, Mississippi, and Texas—holding that "diversity" is not a sufficiently compelling state interest to warrant racial preferences in student admissions. The Universities of Michigan and Washington are currently facing similar discrimination lawsuits.

What's more, state referenda have outlawed racial preferences in California and Washington and threaten to do the same in Florida.

In the face of judicial rulings and public opinion, affirmative action advocates have endeavored to find new ways to preserve race-based admissions policies. Among

those advocates is Norma Cantu, Assistant Secretary of Education for Civil Rights. In 1997, Cantu sent a letter to Texas lawmakers threatening to revoke federal funds from any institution that discontinued race-based college admissions programs. She withdrew the letter after the Justice Department directed her to follow the law under *Hopwood*. Increasingly unable to preserve double standards in

admissions, Cantu and others have signaled their willingness to eliminate standards altogether. Thus, Cantu's office released the draft guidelines on high-stakes testing—four years in the making—last May.

"When we had admissions policies that used race as a factor, nobody, including the critics, did anything to challenge these tests," Maria Blanco, regional counsel of the

Striving Backward

By Alexander Nazaryan

Situated amidst Ivy League foliage in Princeton, NJ, the Educational Testing Service has the exterior that one would expect of a company with such a name, simply a few nondescript buildings. But ETS, the company which administers the SAT, influences the composition of the student body of America's colleges and universities more than any other institution in existence.

That power brings ETS scrutiny. With federal courts increasingly ruling against affirmative action in college admissions, it also brings an unwelcome liability. African-Americans, Hispanics, certain Asian-American groups and economically disadvantaged whites all tend to score lower on the SAT than those from other racial and economic backgrounds. This is clearly a problem for a society that

wants all racial groups and social classes represented at all levels of higher education, from community colleges to the Ivy League—and which also wishes to use the putatively objective SAT and other standardized tests to decide who gets in and who doesn't.

In the past, ETS could claim its exams are not perfect, simply a sort of estimate, and that schools should interpret them as such. Most colleges and universities responded through subtle and not so subtle ways of compensating in the admissions process for racial discrepancies in SAT scores. For a growing number of schools (most notably public institutions such as the University of California and the University of Texas), that avenue is now out. The burden has fallen to ETS to enable colleges and universities to admit a racially diverse student body without violating court rulings.

Clearly aware of the pressure, ETS recently unveiled its first effort at explicitly manipulating SAT scores to achieve desired social results: the Strivers score. To compensate under the Strivers scoring system, ETS would simply raise the scores of students whose race and economic class suggests that their background has depressed their results. For example, an African-American student from the inner city who receives a base score of 1000 on the SAT, the national average, would have his score increased to 1200, his Strivers score. "A combined score of 1000 on the SAT is not always a 1000," ETS Vice-President Anthony Carnevale told *The New Republic*. "When you look at a Striver who gets a 1000, you're looking at someone who really is scoring much higher."

ETS received significant press when it announced the Strivers score and plans for it to be instituted sometime this fall. ETS planned to release a formula for calculating Strivers scores to high schools, which could then use the formula to their preference. High schools would have received the raw SAT score with instructions on how to augment it into the Striver score. Strivers scoring would have been applicable, for the most part, to students scoring between 1000 and 1190 as a raw score. It is these students who would supposedly benefit most from a Strivers score, ETS claimed. Those who score upwards of 1200 are doing well enough on their own.

According to ETS, the Strivers score would have accounted for a student's race, socioeconomic background, quality of high school, strength of coursework, and GPA.

presenting a more balanced view of a student than 3 hours' performance on an exam. Given to all students taking the SAT, the Student Descriptive Questionnaire would readily allow ETS access to the information necessary to compose a Strivers score, which would have been computed by an as yet unrevealed formula. After the recent public outcry over the Strivers concept, however, the College Board's president insisted he would veto any such plan. As it now stands, that pledge may have ended the Strivers score's chance for imminent implementation.

Yet while the specific Strivers proposal now appears dead, the rationale behind the proposal is very much alive. In effect, ETS has now conceded what its critics have always alleged: The SAT is biased against certain ethnicities and social classes. If the Strivers score will not remedy that bias, another proposal must sometime be brought in its stead.



In the event that the Strivers score does get off the ground (or if a similar proposal does so in the future), it may suffer the same constitutional problems that felled the affirmative action programs it was intended to replace. If it is unconstitutional for a university to admit one student and reject another on the basis of race, it seems that grading exams by race would be as well. ETS officials hoped the Strivers score would withstand a legal battle with the defense that they were merely attempting to provide a richer context for SAT scores, and

not explicitly giving preference to students of color. That argument, however, is strikingly similar to the defense unsuccessfully used by universities wishing to maintain affirmative action.

As might be expected, the critics of Strivers scores or similar proposals are legion. Anti-affirmative action crusader Ward Connerly derides them on the grounds that they tell black children that they are not supposed to perform at the same level as their white counterparts: "All this does is legitimize the stereotypes of black kids and Latinos," says Connerly. "This is creating a profile, saying, 'This is all we expect from you as a black kid.' Connerly does not believe that the SAT is flawless and argues that certain concessions must be made for disadvantaged children. But ETS should not immediately dismiss all blacks and Hispanics as incapable, he insists, as it seems to have done with the Strivers score.

Jeff Rubenstein, senior director of research at Princeton Review, calls the Strivers score a "Band-Aid" that conceals a larger problem. He concedes, "There are people who come from difficult circumstances who don't do well on this test." Yet Rubenstein asserts that using race as a primary factor in scoring exams only reinforces deeply rooted stereotypes against minorities.

Other critics of the Strivers score contend that the SAT is better off without any kind of concession for disadvantages. Once the door for mitigating factors is open, it may never shut. The purpose of the SAT as an objective measure of a student's likelihood for success in college would be lost.

Writes Abigail Thernstrom in *The New Republic*: "ETS is simply adding more variables to a victimology index and reinforcing the already-too-widespread belief that demography is destiny. And once you start factoring in variables that lead to disadvantage, where do you stop? Should you take into account an applicant's birth order? Her relationship with her parents? The psychologists haven't even gotten into the act yet."

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the piano player could never have been more than mediocre as a classical pianist.

CHECK YOUR WORK ON
SECTION IN THE TEST.

STOP

Mexican-American Legal Defense and Educational Fund, told *The Los Angeles Times*. "The civil rights community felt that the discriminatory effects were mitigated by affirmative action. But in places like California, if you use a test that has discriminatory effects, the issue is much more valid."

Before her appointment to the top post at the Education Department's Office of Civil Rights, Cantu herself was MALDEF's regional counsel, in which capacity she sued states and colleges to preserve affirmative action. Many now accuse Cantu of using her authority at the OCR to continue her advocacy efforts. Educational leaders, Cantu's traditional allies in promoting her civil rights agenda, were outraged when the testing guidelines were released.

"We were stunned. We had no idea that this had been in process for four years," John Childers, vice-president for government relations at the College Board, told *The Wall Street Journal*. "It is basically a blueprint for litigation against schools, states, and admission offices. And any test that doesn't have equal results by group could trigger an investigation by the Office of Civil Rights."

Stanley Ikenberry, president of the American Council on Education, told Cantu that university officials required

"These guidelines undermine the notion of an objective test of student achievement," said Jerry Martin, president of the American Council of Trustees and Alumni. "Ignoring test results will make college admissions more arbitrary and less fair. These guidelines will be a death blow to the idea that individual merit counts."

"The guidelines, if adopted, would have an even worse effect on elementary and secondary schools," added Abigail Thernstrom in the pages of *The New York Times*.

Even if educational necessity is established, moreover, "the use of the test is still not permissible under Title VI or Title IX if the test is not the least discriminatory practical alternative that can serve the education institution's educational purpose"—a tough standard to meet, especially since colleges have long extolled alternative admissions criteria where minority applicants are concerned.

To continue use of the SAT, then, universities would need to prove not only the test's educational necessity, but that absolutely no other "valid and reliable" means of assessment is available.

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The OCR maintains, however, that the guidelines represent

merely a restatement of settled law. "We're not saying anything here that doesn't already exist on the books," said Arthur Coleman, deputy assistant secretary for civil rights. "We are trying to capture existing, long-standing anti-discrimination principles and to discuss test measurement standards in a way to help educators and policy makers devise and craft appropriate test-use policy." But others allege that the OCR is skewing the law to further its agenda. While disparate impact analysis has been accepted in employment discrimination cases, courts have not established its applicability to educational admissions.

Last February, eight minority students filed a class-action lawsuit against the University of California at Berkeley, accusing the school of racial bias because of its use of test scores in admissions. Some education leaders accuse the OCR of weighing in against the university, by misappropriating employment discrimination law.

"It seems to put a novel twist on the current state of jurisprudence," said Sheldon Steinbach, vice-president and general counsel of the American Council on Education. The guidelines' legal foundation, he told the *Chronicle*, is "skimpy."

The outcome of the legal debate will have implications

beyond the academy, as many professional certification exams exhibit racial disparities similar to the SAT. A 1994 study in the *Journal of the American Medical Association* discovered that 84% of whites, compared to only 49% of blacks, passed part one of the National Board of Medical

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Examiners test. Racial gaps also exist in the bar exam for lawyers, and the certification exam for Certified Public Accountants, as well as other professions. Many worry that educational and professional institutions will be subject to legal prosecution if they employ tests of merit in evaluating their applicants.

The release of the guidelines also raises serious questions about the role of the OCR, an executive agency, in performing the judicial function of legal interpretation. The OCR's legal brief represented "a transparent attempt to intimidate colleges" into de-emphasizing the SAT, Linda Chavez, president of the Center for Equal Opportunity, told the House Education and the Workforce Subcommittee on Oversight and Investigations in June—a break from the traditional executive role of law enforcement.

The Congressional hearings focused, however, on the guidelines' threat to admissions standards.

"The Office for Civil Rights is putting the burden on colleges rather than someone else proving that a test is discriminatory," Subcommittee Chairman Rep. Peter Hoekstra told Cantu. "It's the college having to say, 'It's not only okay, there isn't anything else out there that would have less of a disparate impact but would be just as good a predictor [of academic success]. That to me is a tough standard to meet. Is it reasonable to expect that that language is going to change, or will something like that stand?"

Cantu replied that "Yes, the language will change" in the final draft guidelines to be released later this fall. Many are skeptical, however, observing the Education Department's governing desire to preserve racial preferences, whatever the consequences for educational institutions.

Cantu "has made it clear that she intends to expand 'diversity' by just about any means necessary," wrote Nat Hentoff in *The Washington Post*. Her blueprint for college admissions, however, is an extension of the arguments the education establishment has been advancing all along: that ethnic diversity possesses a social value that outweighs equal opportunity. That notion now threatens to undermine the integrity and mission of their institutions and, for perhaps the first time, the establishment is questioning it. ■

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at least two months to consider the guidelines—a far cry from the four-day comment period initially allotted by the OCR.

"Of greatest concern," he wrote to Cantu, "is the fact that premature release of the documents would cause confusion among our constituents and possibly lead to costly litigation with no resulting positive achievement."

The guidelines state that, though a test may be race-neutral, its use as a primary basis for admissions is unlawful when minority test scores are below those of whites. In other words, a test is discriminatory because it has a disparate impact on minority groups.

In the guidelines, the OCR suggests that schools compile "evidence" to demonstrate the "educational necessity" of tests that have a disparate impact.

Colleges can, as has been proven, demonstrate that the SAT is a reliable measure of academic talent. The guidelines, however, seem to preclude such an argument. The OCR quotes case law to say that if a test predicts that an applicant "is probably going to be a poor student, a school cannot on that basis alone deny that child the opportunity to improve and develop the academic skills necessary to succeed in our society."

Test scores may detect "poor student[s]," then, but to withhold admission to an applicant because of poor academic performance would constitute a denial of educational access and, given the test's disparate impact, illegal discrimination.

