



National Association of College and University Attorneys  
Presents:

**Preparing for Court Action in Admissions – Policy,  
Practice, Implementation (Hint: The Work Started  
Yesterday!)**

**Webinar**

**May 9, 2022**

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**Presenters:**

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EducationCounsel LLC

**Lorelle L. Espinosa**

Alfred P. Sloan Foundation

**Shannon Gundy**

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### Preparing for Court Action in Admissions – Policy, Practice, Implementation (Hint: The Work Started Yesterday!)



**Art Coleman** is Managing Partner and co-founder of EducationCounsel LLC. He provides policy, strategic, and legal counseling services to national non-profit organizations, school districts, state agencies, and postsecondary institutions throughout the country, where he addresses issues associated with: student access, diversity, inclusion, expression, and success; faculty diversity, inclusion and expression; and institutional accountability and accreditation.

Mr. Coleman previously served as Deputy Assistant Secretary of the U.S. Department of Education's Office for Civil Rights, where, in the 1990s, he led the Department's development of the Department's Title VI policy on race-conscious financial aid, as well as OCR's first comprehensive Title IX sexual harassment policy guidance.

Mr. Coleman was instrumental in the establishment of the College Board's Access and Diversity Collaborative (ADC) in 2004, which he has helped lead since its inception. With a focus on issues of diversity and inclusion, he has authored amicus briefs in *Grutter v. Bollinger* (2003), *Gratz v. Bollinger* (2003), and in *Fisher v. University of Texas at Austin* (I and II, 2013 and 2016). His advocacy work also includes the development of a federal amicus strategy and numerous briefs on behalf of transgender students in federal court litigation throughout the United States.

A former litigator, Mr. Coleman is a 1984 honors graduate of Duke University School of Law and a 1981 Phi Beta Kappa graduate of the University of Virginia. He has testified before the U.S. Senate and the U.S. Commission on Civil Rights. He is a member of the Board of Directors of GLSEN (the Gay, Lesbian, Straight Education Network); the Lab School of Washington, which serves students with learning differences; the National Council for State Authorization Reciprocity Agreements (NC-SARA); and a past chairman of the Board of Directors of the Institute for Higher Education Policy.

Mr. Coleman is currently an adjunct professor at the University of Southern California's Rossier School of Education, where he teaches a course on enrollment management law and policy.



**Lorelle L. Espinosa** serves as program director at the Alfred P. Sloan Foundation, where she is responsible for developing and implementing evidence-based strategic priorities for the Foundation's grantmaking to effectively advance diversity, equity, and inclusion (DEI) in STEM higher education. Her portfolio includes oversight of the Foundation's MPhD program, which supports eight University Centers of Exemplary Mentoring (UCEMs) nationwide. UCEMs provide fellowships, peer and faculty mentoring, and networking and professional development resources aimed at helping graduate students from underrepresented groups successfully complete

graduate study in STEM fields. Espinosa also oversees the Sloan Indigenous Graduate Partnership, a Sloan initiative that partners with eight U.S. campuses to help meet the specific needs of American Indian and Alaska Native students, enabling them to pursue advanced degrees in STEM while continuing to participate meaningfully in tribal life.

Prior to joining the Foundation in 2020, Espinosa was Vice President for Research at the American Council for Education. In this role, she was responsible for building the organization's research portfolio with special emphasis on diversity, equity, and inclusion; for promoting innovation and data use to close equity gaps; and for helping shape the national conversation around issues of access to and success in higher education for diverse populations. Espinosa began her career in student affairs and undergraduate education at the University of California, Davis, Stanford University, and the Massachusetts Institute of Technology.

With more than 20 years of experience in higher education practice, policy, and research, Espinosa is a national voice on issues pertaining to college access and success for diverse populations and on the role of equity-minded leadership in postsecondary settings. She is the lead author of [Race, Class & College Access: Achieving Diversity in a Shifting Legal Landscape](#), an influential study of how recent legal jurisprudence is changing race-conscious policies in education and was PI of the national study, [Race and Ethnicity in Higher Education](#). Espinosa served as committee co-chair of the National Academies of Sciences, Engineering, and Medicine study that produced the report, [Minority Serving Institutions: America's Underutilized Resource for Strengthening the STEM Workforce](#), and has spent much of her career focused on DEI in STEM higher education with an early emphasis on women of color in these fields.

Espinosa has contributed opinion and scholarly works to peer-reviewed journals, academic volumes, and industry magazines, including the Harvard Educational Review, Research in Higher Education, the Chronicle of Higher Education, Inside Higher Ed, Diverse Issues in Higher Education, and CNN.com. She has held leadership roles in the Association for the Study of Higher Education and the American Educational Research Association and is a research affiliate of the University of Southern California's Pullias Center for Higher Education.

A Pell Grant recipient and first-generation college graduate, Espinosa earned her Ph.D. in higher education and organizational change from the University of California, Los Angeles; her bachelor of arts from the University of California, Davis; and her associate of arts from Santa Barbara City College.



**Shannon Gundy** is Assistant Vice President of Enrollment Management at the University of Maryland in College Park, Maryland where she began as an Admission Counselor in 1990. She currently oversees freshman and transfer recruitment, admission and enrollment; marketing and strategic communications for Enrollment Management, the University Visitor Center, Passionate about helping students to navigate the college admission process, she has served in a variety of capacities in Maryland's admission office.

A graduate of Howard University in Washington, D.C., she began her career in college admissions as an Admission Counselor at College of Notre Dame of Maryland. In addition to her role in Enrollment Management, Shannon also serves as a member of the International Baccalaureate College and University Task Force, the Maryland/Delaware/District of Columbia ACT Council, and the College Board Access and Diversity Collaborative Advisory Committee. She is also a faculty member for the AACRAO (American Association of Collegiate Registrars and Admission Officers) Admissions Counselor-Recruiter professional development course.

Committed to issues of access in college admission, Shannon is particularly interested in serving traditionally underrepresented students as they work to pursue higher education. She, like Nelson Mandela, believes that "Education is the most powerful weapon which you can use to change the world."



## Resources

### Diversity and Law

- [“Diversity and the Law: 2021 Overview of Resources for Lawyers and Policymakers”](#) (AAAS) (provides an overview of materials on diversity issues and the law)  
*Note: This overview is included on page 4 of this document.*
- Art Coleman, Steve Winnick, Jamie Lewis Keith, and Lyndsey Stults, [“Handbook on Diversity and the Law, 2d ed.”](#) (AAAS) (provides an overview of diversity issues and the law, including definitions, race-neutral alternatives, student diversity, faculty diversity, enforcement, and a variety of relevant statutes and case law)
- [“Access & Diversity Collaborative”](#) (College Board) (discusses College Board’s Access & Diversity Collaborative)
- [“Diversity and the Law”](#) (AAAS) (discusses resources created to help diversity and equity in STEMM in higher education)

### Race-Conscious Admissions Court Cases

- [“Students for Fair Admissions, Inc. v. President and Fellows of Harvard College”](#) (1<sup>st</sup> Circuit) (provides the 1<sup>st</sup> Circuit’s decision)
- [“Students for Fair Admissions, Inc. v. President and Fellows of Harvard College \(Harvard Corporation\)”](#) (D. Mass) (provides the U.S. District Court for Massachusetts’s opinion from 2019)
- [“Students for Fair Admissions, Inc. v. University of North Carolina”](#) (M.D.N.C.) (provides the U.S. District Court for the Middle District of North Carolina’s opinion from Oct. 18, 2021)

### Additional Materials

- Joanna Carey Cleveland, James Jorgensen, & Laurence Pendleton, [“Admissions Decisions & The Law: What You Need to Know”](#) (2021 NACAC National Conference) (see pages 10-15 for a brief discussion on race-conscious admissions)
- Sankar Suryanarayan & Rosina E. Mummolo, [“Diversity Initiatives: Where We Are and How Far Can We Go”](#) (NACUA Spring 2021 Virtual CLE Workshop) (see pages 2-11 for the SFFA v. Harvard lawsuit and a discussion of race neutral alternatives)

## DIVERSITY AND THE LAW: 2021

### Overview of Resources for Lawyers and Policymakers

Funded by the Alfred P. Sloan Foundation (Grant No. G-2019-11443)

#### Primary Resources

##### Policy Guides

- \* [5-Step Design Guide-Faculty](#)
- \* [5-Step Design Guide-Students](#)

- \* [Neutral Strategies Guide-Faculty](#)
- \* [Neutral Strategies Guide-Students](#)

##### In-Depth Legal Resources

- \* [Handbook on Diversity & the Law, 2d Ed.](#)

- \* [State Law Bans Guide, 2d Ed.](#)

#### Quick-Study & Key-Issue Resources

- \* [Brief Legal Overview](#)
- \* [Key Definitions](#)

- \* [Federal Non-Discrimination Law on Sex & Gender](#)
- \* [Definition of "Sex" Under Federal Non-Discrimination Law](#)

- \* [Amplification of Underutilization in Employment](#)
- \* [Graduate Students and Post Docs DEI Guidance](#)

#### Tools & Reference Materials

- \* [Key Fundamentals & Staircase DEI Diagram-Faculty](#)
- \* [Key Fundamentals & Staircase DEI Diagram-Students](#)
- \* [Research Charts](#)

##### Adaptable Models

- \* [Model Charter for Multi-Office DEI Team](#)
- \* [Customizable DEI Statements and Survey QCs](#)
- \* [Sample Target of Opportunity Policy-Faculty](#)
- \* [Sample Target of Opportunity Policy-Students](#)
- \* [Example Application QCs-Faculty and Students](#)

Diversity and the Law: 2021

## Neutral Strategies - Students<sup>1</sup>

Jamie Lewis Keith

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Policy | Strategy | Law | Advocacy

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<sup>1</sup> This Diversity and the Law: 2021 resource is funded by the Alfred P. Sloan Foundation (Grant No. G-2019-11443). It does not constitute legal advice, providing only general directional law-attentive guidance. Consult your own lawyer for institution-, fact- and jurisdiction- specific legal advice. With permission, portions of this resource are adaptations of or expand provisions of the College Board's *The Playbook: Understanding the Role of Race-Neutral Strategies in Advancing Higher Education Diversity Goals, 2d Edition*. Coleman, A. L., Keith, J. L., Webb, E. L. <https://professionals.collegeboard.org/pdf/playbook-understanding-race-neutral-strategies.pdf> . (2019). The authors thank Candice Nelson formerly of EducationCounsel and Melinda Grier for their many contributions to identifying practices in the field. The authors gratefully acknowledge the editorial contributions of Rachel Pereira of EducationCounsel and the input of the Project's Advisory Council.

## Introduction

This resource addresses court-labeled race- and gender-“neutral alternatives” to considering individuals’ race and gender when conferring benefits and opportunities. The term “neutral” is a misnomer. Unless and until we can eliminate the added burdens of racism and sexism in society, people of all races, ethnicities,<sup>2</sup> and genders are not on equal footing to compete for opportunities, making equality or neutrality under the law impossible.<sup>3</sup> However, prevailing Supreme Court precedent and state law bans adopt a faulty neutrality formulation; and institutions of higher education (IHEs) must wisely navigate it to advance their diversity- and equity-related educational missions in ways that are both effective and legally sustainable.

These strategies fall into two major categories:

- (1) those that do not consider the race or gender of any individual and aim to advance authentic institutional priorities other than increasing race or gender compositional diversity—but also involve an awareness that the strategies may contribute to increasing compositional diversity and intend that effect as an ancillary matter;<sup>4</sup> and
- (2) those that have an inclusive effect even though they target individuals of certain races or gender; do not confer material benefits or opportunities based on an individual’s race or gender; and do not involve a winnowing or selection process—but, rather, serve to expand availability of the

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<sup>2</sup> Race and ethnicity are distinct identities. However, federal non-discrimination law treats them in the same manner, and we use “race” to encompass both throughout this guide for brevity.

<sup>3</sup>See, e.g., **Research Charts**, <https://www.aaas.org/programs/diversity-and-law>; U.S. Department of Education Office of Civil Rights. (June 9, 2021). *Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students*. <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf> ; National Academies. (June 2021). *National Academies Reports on Diversity, Equity, Inclusion and Racism In STEMM Education and Workforce*. [file:///C:/Users/JLK/Downloads/summit%20paper%20june%202021%20\(2\).pdf](file:///C:/Users/JLK/Downloads/summit%20paper%20june%202021%20(2).pdf) ; Malcom-Piqueux, L. (2020). *Transformation in the U.S. Higher Education System: Implications for Racial Equity*. National Academies. [file:///C:/Users/JLK/Downloads/malcompiqueux%20symposium%20paper%20\(5\).pdf](file:///C:/Users/JLK/Downloads/malcompiqueux%20symposium%20paper%20(5).pdf) ; National Academies. (2018). *Assessing and Responding to the Growth of Computer Science in Undergraduate Enrollments, Consensus Study Report*. <https://www.nap.edu/download/24926> ; National Academies. (2021). *Investigating the Potential Impact of COVID-19 on the Careers of Women in Academic Science, Engineering, and Medicine*. <https://www.nationalacademies.org/our-work/investigating-the-potential-impact-of-covid-19-on-the-careers-of-women-in-academic-science-engineering-and-medicine> ; National Science Foundation. (2021). *Women, Minorities, and People with Disabilities in Science and Engineering*, at <https://ncses.nsf.gov/pubs/nsf21321/report/executive-summary> (all data are pre-COVID-19 pandemic, but indicate high barriers even before the pandemic for “Blacks or African American, Hispanics or Latinos and American Indians or Alaska Natives,” as well as to a significant but lesser extent to women, in science and engineering education and the workforce); Riegle-Crumb, C., King, B., Irizarry, Y. (April 2019). *Does STEM Stand Out? Examining Racial/Ethnic Gaps in Persistence Across Postsecondary Fields*, Educational Researcher, Vol. 48 No. 3, pp. 133-144.

<sup>4</sup>The Supreme Court refers to race neutral strategies as “alternatives” to race-conscious strategies as a means to advance legitimate institutional objectives, apart from increasing racial compositional diversity, and which will also work “about as well” as race-conscious strategies to enhance such compositional diversity in order to provide compelling beneficial educational experiences for all students that are associated with a broadly diverse student body. See *Fisher v. Univ. of Texas*, 136 S.Ct. 2198, 2208 (2016) (“*Fisher II*”) (quoting *Fisher v. Univ. of Texas*, 570 U.S. 297 (2013) (“*Fisher I*”).

same consequential information or opportunities for all, including, e.g., by expanding the applicant pool.

These strategies may be useful to IHEs seeking to advance educational diversity aims, as well as societal equity interests.

The strategies addressed do not comprise an exhaustive list. They include strategies in use in the field and some promising ideas. Recognizing the broad variety of public and private IHEs in the U.S. in mission, size, location, students, and societal interests served, resources, and other distinguishing characteristics, a strategy that works well for one IHE will not necessarily work at all for another. However, the strategies presented here cover a panoramic landscape of options, some of which an IHE may find worthwhile to evaluate for suitability in science, technology, mathematics and medical (STEMM) fields and beyond in its own context.

Corresponding with STEPs 3 and 4 of the **5-Step Design Guide—Students**, the neutral strategies included in this resource are organized in four categories, each with a distinctive objective that contributes to overarching mission-driven educational diversity interests:

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- ***Arguably, if experience of people of all races is authentically equally valued, this is not a race-conscious consideration, but rather a pure locale-associated experience criterion.*** However, this point has not been reviewed or determined by the Supreme Court or a federal appellate court.

**5. Expertise/Knowledge Criterion** on issues of racial and gender in society, with a passion and ability to elevate others' understanding (with 6., below)

**Important Rationale.** This criterion focuses on an individual's expertise, knowledge or experience related to race and gender, however acquired (not on race or gender identity). Societal inequities may result in disproportionate representation of some identity groups in those satisfying the criterion.

**6. Commitment Criterion** to ameliorate racial or gender inequities in society and/or serve communities targeted by such inequities (with 5., above)

**Important Rationale.** This criterion focuses on an individuals' commitment to ameliorating racial and gender inequity and advancing social justice (not individuals' race or gender identity). Societal inequities may result in disproportionate representation of some identity groups in those satisfying the criterion.

**Additional Key Design Elements (for 5 & 6)—**For effectiveness and legal sustainability:

- a. ***Recognize that 5 and 6 are distinct criteria and give due attention to all aspects of each criterion.*** Not everyone with knowledge of inequity and passion to share that knowledge is committed to ameliorating inequity in college or beyond. Not everyone with knowledge has passion and/or ability to share it.
- b. ***Do not assume these criteria are satisfied by all people of color, women, and LGBTQ+ people, or that they are not satisfied by others.*** That would perpetuate stereotypes and is likely to be at odds with federal non-discrimination law. Expertise and knowledge may be gained from personal experience, book learning, or service. Commitment may be demonstrated through a record of action.
- c. ***Elicit information from the application to determine whether either or both of these criteria are satisfied.*** This information is specific to an individual. It is not based on assumptions and stereotypes associated with racial- or gender- identity status.
  - ***Consequently, specific information must be elicited from each applicant to determine whether either criterion is satisfied.*** See Example Application Questions—Faculty and Students, <https://www.aaas.org/programs/diversity-and-law> for a menu of example application questions that address these criteria.)

- d. ***Reflect the authenticity of the importance of these knowledge and commitment based criteria to the quality of the educational program by documenting and communicating publicly about the connection, incorporating them in definitions of high merit and in qualifications for student leadership positions, and the like.***  
Engage stakeholders in exploring and embracing the importance of these qualities.
  - ***The focus is on enhancing the IHE's or program's climate, elevating the understanding of issues of race and gender, not an individual's identity status,*** to advance the IHE's educational program and service mission and students' experience living in an increasingly diverse environment and global society.

**Implementation Examples**—Strategies from the field and ideas of promise in support of advancing educational diversity interests by recruiting and empowering students with the knowledge and passion to elevate understanding of issues of race and gender in society, as well as students with the demonstrated commitment to ameliorate related inequities:

- a. ***In addition to considering these criteria (as two distinct criteria) in admission, aid and program selection and participation, create distinct awards to recognize exemplary contributions*** to the elevation of understanding of issues of race and gender at the IHE and in society—and exemplary contributions to ameliorating related inequities—at the IHE or beyond.

## C. Neutral System Strategies

**Distinctive Objective:** These strategies reflect a broader **system** design. Similar to barrier removal, they may be part of a complement of other diversity-associated enrollment efforts, or they may enhance the impact of other efforts. Many barrier removal efforts, if undertaken with system-wide reach are also barrier removal strategies. We will not repeat them here, but rather focus on additional system-wide initiatives and approaches to the leadership of an IHE's diversity effort. As is the case with neutral selection criteria, the substantial and authentic aim of neutral systems strategies is to advance important institutional aims related to their education programs, apart from increasing racial and gender compositional diversity. They do not consider an individual's race or gender in determining who receives (or does not receive) an opportunity or benefit. However, as with neutral selection criteria, these strategies also are an alternative to race or gender consciousness and may contribute to compositional racial and gender diversity, as a welcome and intended ancillary benefit.

### 1. Universal Key Design Elements

For effectiveness and legal sustainability of neutral system strategies, these design elements are common and are not repeated with each example:

- a. ***The criteria and design for these policies have IHE- or discipline- wide application and substantially serve their important interests—apart from increasing race- or gender-compositional diversity.*** As a “race-neutral



occur. See **Brief Legal Overview** at <https://www.aaas.org/programs/diversity-and-law>. The strategies addressed in this section may contribute significantly to an IHE's diversity and equity aims but do not fit neatly into the category of race and gender neutral or conscious. Often, they may be designed to be clearly neutral and when that is possible, that is a wise course because it avoids legal ambiguity.

## 1. Macro Race- and Gender-Attentive Strategies

**Key Design Elements**—For effectiveness and sustainability:

- a. ***Strategies that do not fit cleanly into the category of race- and gender-neutral or conscious are referred to here as “macro race-attentive”<sup>18</sup>—these are strategies that:***
  - ***Have a driving aim to increase racial or gender compositional diversity in the student body but they do not seek to advance another important institutional objective*** (distinguishing them from neutral strategies).
  - ***Have an ultimate compelling purpose of creating a sufficiently diverse setting to provide beneficial educational experiences for all students*** (same as neutral strategies).
  - ***Do not consider the race or gender of any individual in deciding who receives or does not receive an opportunity or benefit*** (same as neutral strategies).
  - ***Apply criteria that individuals of any race or gender may satisfy*** (same as neutral strategies).
- b. ***While the Supreme Court has remarked in Fisher II that a percent plan strategy whose driving aim was to increase racial compositional diversity would not result in a “more neutral” admission program, the Court has not definitively characterized such a strategy (or other macro-attentive strategies) or ruled, one way or the other, whether exacting legal standards apply.*** Arguably exacting standards should not apply, where these strategies avoid identity-status stereotyping, do not use criteria that define or value individuals by their identity status (i.e., they use criteria that people of all races and genders may satisfy), and advance an ultimate compelling educational goal to provide beneficial educational diversity for all students. And if they do apply, these strategies should more easily satisfy the standards, than would a race- or gender-conscious strategy.
- c. ***Distinguishing Macro-Attentive from Neutral.***

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<sup>18</sup> “Macro-attentive” is our term, not the Supreme Court’s. It reflects policies with macro-level racial and gender awareness and aims, without consideration of individuals’ identity status, and for a purpose that is substantial and has been recognized by courts as justifying race- and gender-consciousness when evidence demonstrates the need.

- *Whether a strategy is neutral or macro race- or gender-attentive depends on whether there is an authentic and substantial aim other than increasing race or gender compositional diversity, in addition to the ancillary benefit of increasing such compositional diversity.*
- *However, IHEs should consider whether a clearly neutral design would be authentic and workable, avoiding the uncertainty of macro race attentive strategies; that is always the lowest risk for high reward, if available.*

**Implementation Examples**—Macro-attentive strategies from the field that often may be authentically designed to be neutral.

- Percent plans developed in a state with segregated residential and school districts.*
  - Targeting opportunities to students from zip codes known to have high concentrations of people of color.*
  - Partnerships with HBCUs and HSIs that target their students for opportunities.*
  - Example a may be neutral if, e.g., the authentic aim is for a flagship institution to serve its entire state. Examples b and c may be neutral if the IHE authentically values and seeks students of all races who have particular valuable experiences from living and learning in these settings that contribute to the broad diversity of the student body beyond individual racial status.*
- *Among experience that may be valued by an IHE is an individual's membership in the majority or minority culture of a high school or residential district, where that status is different for the individual in other societal settings (e.g., a student of color in an almost all white high school or a white student in a predominantly Asian, black and Latinx high school).*

# EXCERPT



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## **Engaging Campus Stakeholders on Enrollment Issues Associated with Student Diversity: A Communications Primer**

Art Coleman

Jamie Lewis Keith

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To learn more visit [collegeboard.org](https://collegeboard.org)

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October 15, 2020

Dear Colleague,

We are pleased to share with you a copy of *Engaging Campus Stakeholders on Enrollment Issues Associated with Student Diversity: A Communications Primer*. This resource is intended to support enrollment and campus leaders as they engage with colleagues and their communities on issues associated with student diversity and admissions.


During a time in which higher education admissions practices are under intense scrutiny, clarity regarding key concepts that are integral to institutional mission aims and aligned with legal principles has never been more essential. Indeed, issues associated with student diversity—and particularly those relevant to the consideration of race and ethnicity in admission—predominate in media and, increasingly, in litigation. In the court of public opinion, as in courts of law, strict scrutiny defines the landscape. To successfully navigate that landscape, clear and sustainable policy foundations are a must.

Further, in this moment of a national reckoning on issues of systemic racism and racial justice and given the momentous effects of the COVID-19 pandemic, communications that are grounded in sound, clear, and transparent policies have never been more important.

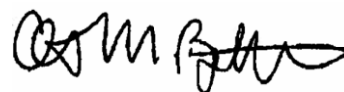
We hope this guide will be of assistance as you meet the challenges of the day with ongoing attention to diversity-related policy and program development efforts.



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# Introduction

## Background

Higher education admissions programs play a critical role in advancing institutional mission through processes that should be rigorous, calibrated, and fair. Every year, college admissions professionals make tens of thousands of decisions that result in educationally sound matches of institutions and students. Unfortunately, the reality of that decision-making is often misunderstood and frequently controversial. Issues surrounding admissions and aid policies and practices, in fact, are “among the most visible” and reflect an “area where those outside the academy feel most justified in launching attacks.”<sup>1</sup>

The opacity of the perceived “black box” of decision-making and ill-conceived notions of “merit” contribute to this skepticism, stemming in substantial part from “the conflicts among appearances, an abstract standard of equity, and the realities and pragmatism known by insiders to be part of the complex admissions task.”<sup>2</sup> Such controversy is particularly notable regarding debates on issues like “affirmative action”<sup>3</sup> that are often ill informed; and others like Varsity Blues, where alleged fraud in admissions by privileged parents and coaches are legitimately scorned.

Overall, it can be fairly said that “strict scrutiny” is not just a legal concept; it reflects the reality of life in higher education admissions.

This reality has led many campus enrollment leaders to engage more directly and pursue more transparency regarding their decision-making, particularly with members of their own campus communities. In that context, they have asked for guidance and tools to help them better engage with other leaders, faculty, staff and students on issues associated with student diversity and enrollment decisions.

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*This guide ... provides practical information about core concepts that undergird educationally- and legally-sound enrollment policies associated with student diversity goals that can enhance communications and engagement strategies with faculty, staff, and students.*

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This guide is responsive to those requests associated with campus community engagement. It provides practical information about core concepts that undergird educationally- and legally-sound enrollment policies associated with student diversity goals that can enhance

<sup>1</sup> Sandy Baum, Taking Fairness Seriously in College Admissions and Financial Aid, Forum Futures 2010, 46, 47 (2010).

<sup>2</sup> Baum at 47.

<sup>3</sup> See Text Box, Section I.A., below: “Affirmative Action Isn’t The Right Term To Describe Student-Focused Diversity Policies.”

communications and engagement strategies with faculty, staff, and students. This guide is not intended to be prescriptive or to suggest that a single framework or definition is appropriate for all schools. To the contrary, as reflected here, institutional (as well as departmental and disciplinary) missions should guide relevant conversations, informed by the guidance offered here. More specifically:

- **Section I** discusses the concept that grounds most college and university diversity efforts today—the educational benefits of diversity. Reflecting the convergence of educational research and court opinions with respect to the “ends” that institutions want to achieve, it offers an illustrative definition of “diversity,” followed by a simple, adaptable framework to consider when communicating information about prospective underlying educational interests associated with student diversity.
- **Section II** frames the companion issues associated with the “means” of achieving those aims. Based on institutional experience and research—and reflecting concepts embedded in federal nondiscrimination law—it describes the core principles and elements related to individualized holistic review in admission that should be well understood and, as appropriate, implemented, and then effectively communicated on campus.
- **Section III** rounds out this discussion by lifting up many of the key terms associated with diversity policies that implicate the consideration of race. Clarity around these concepts are often important starting points for internal deliberations and, ultimately, stakeholder engagement.

This guide concludes with reflections on the importance of assuring that, as policy leaders work to develop policies and engage with others about their aims and strategies, they must be intentional about deciding what to communicate, and how.

The **Appendix** includes illustrations of how institutions and disciplines within institutions may consider ways to communicate to increase clarity about their admissions process and its ties to institutional mission, as well as a practical self-evaluation tool to help institutions as they begin to reconsider and refresh their current communications strategy.<sup>4</sup>

<sup>4</sup> Many wise perspectives were important in shaping the final version of this guide. We are very appreciative of the valuable feedback and thought-provoking insight provided by reviewers including David Hawkins, Executive Director for Educational Content and Policy at the National Association for College Admission Counseling; Frank Trinity, Chief Legal Officer of the Association of American Medical Colleges; and Connie Betterton and Wendell Hall from the College Board. The authors appreciate the continuing support of these individuals in helping advance understanding of complex topics for the benefit of the field.



## Successful Engagement Relies on Sound Policy and Practice

Institutions of higher education can and should better communicate to shed light on their admissions aims, rationales and processes so that all internal and external stakeholders are better informed and engaged. This focus on transparency is not a call to open all doors and all files, nor is it premised on a conviction that there is a “perfect” admissions policy that all members of the public will support if only they better understood it.

Rather, enrollment officials can and must do a better job of striking the right balance. They must preserve interests in student privacy, as well as institutional interests in allowing critical room to engage in the tough decision-making that accompanies admissions and related enrollment programs. At the same time, they must better explain in clear terms the what, why, and how of the admissions process. Conversations regarding clarity should address both the goals and objectives that drive institutional policies, as well as the means of achieving those aims, as reflected in the decision-making process.<sup>5</sup>

The success of any stakeholder engagement and communication strategy will ultimately depend on the strength of the underlying policy at issue. That foundation can be assessed by assuring that policies are authentically mission-aligned, developed in line with principles of validity and fairness, grounded in evidence, and subject to rigorous review and continuous improvement over time.<sup>6</sup>

<sup>5</sup> Holistic review in admissions, an issue central to the question of means, is relevant to selective and semi-selective institutions, and may as well be relevant to those institutions with open access admissions policies, where students who satisfy publicized course and grade prerequisites are automatically admitted. Holistic review principles discussed here can, in fact, be adapted to financial aid and other enrollment-related practices.

<sup>6</sup> See, e.g., Arthur L. Coleman & Jamie Lewis Keith, *Understanding Holistic Review in Higher Education Admissions: Guiding Principles and Model Illustrations*, 14-15 (2018); Arthur L. Coleman & Teresa E. Taylor, *Building an Evidence Base: Important Foundations for Institutions of Higher Education Advancing Education Goals Associated with Student Diversity* (2017).

## Section III: Understanding Key Concepts

Many concepts and terms central to conversations related to diversity policies are not well understood. Through engagement with members of their campus community, enrollment management leaders can help counter misimpressions and remove ambiguity associated with these terms.

This section provides a quick reference of definitions (embedding reflections regarding relevant federal law and social science research) that may provide useful baselines for postsecondary institutions to consider as they adopt and modify definitions.

**Critical Mass:** Social science research reflects that a group of people (especially one that has historically and/or currently targeted for discrimination) is easily marginalized when it is only a small presence in a larger population. “As the group’s presence and level of participation grows, at a particular point the perspective of members of the minority group and the character of relations between minority and nonminority changes qualitatively. ... The discrete point [at which this occurs] is known as ‘critical mass.’”<sup>29</sup> “Critical mass is ... neither a rigid quota nor an amorphous concept defying definition. Instead, it is a contextual benchmark that allows [higher education institutions] to exceed token numbers within [their] student bod[ies] to promote the robust exchange of ideas and views that is so central to [their] mission.”<sup>30</sup> In considering “adequacy of diversity,” an institution must consider how it will know when it has achieved the level of diversity desired and/or needed to support its institutional mission. This concept relates to the benefits that all students derive when all students can fully participate as individuals.

**POLICY TIP:** “Critical mass” should be understood and defined as a contextual benchmark relative to a particular student body, rather than as a particular number or percentage of students and rigid quota. Standing alone, “critical mass” is not a definition of success, but it may be a key factor in establishing the necessary conditions associated with student experiences and outcomes necessary to achieve success.

**Quota:** Much like the term “affirmative action” (see p. 7 above), the word “quota” can be a term that obfuscates more than it enlightens. “Quota” has a very specific legal definition in the context of college admissions: According to the U.S. Supreme Court, quotas impose “a fixed number or percentage [of students and/or faculty] which must be attained, or which

<sup>29</sup> Henry Etzkowitz et al., *The Paradox of Critical Mass for Women in Science*, 266 Science 51, 51 (1994).

<sup>30</sup> Brief of the American Educational Research Association et al. as Amici Curiae in Support of Respondents at 25, *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002).

cannot be exceeded.” They may include set-asides or caps related to race.<sup>31</sup> The use of quotas is not a legally acceptable method for achieving the educational benefits of diversity.

**POLICY TIP:** “Quotas,” as defined in federal law, can’t sustain student diversity goals—at least to the extent that they’re associated with the racial, ethnic, and gender composition of a class.

**Race-Conscious and Race-Neutral:** Federal law establishes two categories of policies that may bear on diversity-related goals: “race-conscious” policies, which trigger a heightened review by courts applying strict legal standards, and “race-neutral” policies, which do not. Although not definitively settled under federal law, courts generally characterize race-conscious policies as policies that involve explicit racial classifications, as well as those that are neutral on their face but that are principally motivated by a racially discriminatory purpose, and that (in either circumstance) confer a material benefit or opportunity to some students and not others based on their race or ethnicity. Race-neutral policies are those that, with respect to both language and intent, are neutral, as well as those that expand efforts to generate additional applicant interest, which may be race targeted in intent, but which don’t confer material benefit to the exclusion of nontargeted students. They often include policies that provide the same consequential information to all interested students, while also targeting some outreach to individuals of particular races to ensure effective communications to everyone.<sup>32</sup>

**POLICY TIP:** Language in a policy isn’t the only thing that can result in a policy being characterized as “race conscious” and therefore subject to heightened judicial review. The aims behind a facially neutral policy, combined with practices relating to how individual considerations influence decision-making, can also trigger this probing scrutiny.

**Underrepresented Students:** Race- and ethnicity-related diversity policies often include references to “underrepresented students.” That term is often undefined or defined in ways that do not align with the research bases associated with the educational benefits of diversity.

The question that should always be addressed is: “underrepresented in relation to what?” Research associated with the educational benefits of diversity (as affirmed by federal law) suggests that the answer is *not* in relation to geographic or service area demographics, but rather in relation to desired within-institution student experiences and broader educational outcomes (see Part I). In other words, a goal of enrolling a specific number of students of a particular race when compared to some external referent is not the same thing as attaining

<sup>31</sup> *Grutter v. Bollinger*, 529 U.S. 306 (2003).

<sup>32</sup> See generally Arthur L. Coleman et al., *Race-Neutral Policies in Higher Education: From Theory to Action* (2008) <https://professionals.collegeboard.org/pdf/race-neutralpoliciesinhighereducation.pdf> (last visited July 21, 2020); Arthur Coleman et al., *The Playbook: Understanding the Role of Race Neutral Strategies in advancing Higher Education Diversity Goals* (2d Ed. 2019) <https://professionals.collegeboard.org/pdf/playbook-understanding-race-neutral-strategies.pdf> (last visited July 21, 2020).

compositional diversity sufficient for all students to be able to fully participate as individuals and optimally engage with and learn from their peers. The former is inconsistent with the social science theory associated with the benefits of diversity; the latter is aligned with that theory. Who qualifies as an “underrepresented student” should vary by institution—including by discipline or department within the same institution.<sup>33</sup>

**POLICY TIP:** Defining those who qualify as “underrepresented students” should be done with a focus on the student experience and outcomes, within the overall institutional context including its student body composition. Importantly, identifying and/or targeting “underrepresented students” doesn’t mean ensuring that the student body is proportional to its relevant service area (community, state, or national). If there is a goal associated with the aim of increasing “underrepresented students,” it should be framed in the context of achieving the educational benefits of diversity for all students, as described in Part I.

<sup>33</sup> See generally American Association of Medical Colleges, *Roadmap to Diversity and Educational Excellence: Key Legal and Educational Policy Foundations for Medical Schools* (2d Ed., 2014), 14, [https://store.aamc.org/downloadable/download/sample/sample\\_id/192/](https://store.aamc.org/downloadable/download/sample/sample_id/192/) (last visited July 21, 2020).

## Mythbusters<sup>34</sup>

Myth	Truth	Points of Reference
<b>1. “Diversity” is code for policies that focus only on race and ethnicity preferences in higher education.</b>	Properly understood, “diversity” is a concept that reflects institutional interests in an array of student backgrounds, characteristics, and interests—of which race and ethnicity may be two factors among many.	<ul style="list-style-type: none"> <li>The U.S. Supreme Court has in many cases affirmed that true educational benefits derive from broad diversity, implicating much more than race and ethnicity; otherwise, it is likely to mean little more than racial and ethnic balancing.</li> <li>Although often reflecting many common elements across similarly situated higher education institutions, “diversity” is an inherently institution-specific value that should reflect institution-specific, mission-driven interests.</li> </ul>
<b>2. The consideration of race and ethnicity in admission leads to unqualified, underqualified, or less qualified students receiving benefits to the detriment of others who are more qualified and entitled.</b>	Properly considered in the admission process [1] individual experiences and perspectives associated with race and ethnicity operate along with a mix of other legitimate factors in shaping complex and inherently academic judgments about who to admit; and [2] as “tipping point” factors in some individual decisions, considerations of race and ethnicity don’t lead to the admission of unqualified, underqualified or less qualified students. <sup>35</sup>	<ul style="list-style-type: none"> <li>The pursuit of higher education interests in diversity—to achieve educational, economic, and other core goals—is a strategy that is fully aligned with (and often indispensable to) the pursuit of educational excellence for all students.</li> <li>See <i>Grutter v. Bollinger</i> (2003): <ul style="list-style-type: none"> <li>“... all underrepresented minority students admitted by the [University of Michigan] Law School have been deemed qualified.”</li> <li>“We also find that ... the race-conscious admission program adequately ensures that all factors that may contribute to student body diversity are meaningfully considered.”</li> </ul> </li> </ul>
<b>3. Standardized test scores and grade point averages are the only basis upon which the merit of a student should be judged when making admission decisions.</b>	The inherently academic judgments regarding who is qualified for admission and who should be admitted typically involve an assessment of an array of factors—some quantitative and others qualitative, and all needed to advance the institution’s educational goals. Teacher recommendations, student interests, records of major accomplishments (including, for some in the context of “distance traveled” and for others in the context of maximizing opportunities), particular skills, backgrounds, and life experiences shape judgments about a student’s likely success at, as well as, importantly, the ways in which the student is likely to contribute to an institution’s learning environment.	<ul style="list-style-type: none"> <li>Consistent with universally recognized principles regarding test use, numerous higher education organizations explicitly recognize that admission tests, although helpful in predicting student success, shouldn’t be the only factor in assessing a student’s potential for success at an institution, or the student’s likely capacity for contribution at that institution. Such principles are also reflected among postsecondary institutions pursuing test-optional policies.</li> <li>For example: <ul style="list-style-type: none"> <li>Regarding the SAT<sup>®</sup>, “Test scores should always be used in conjunction with other components of a candidate’s portfolio ... [and] should only be used as a[n] ... approximate indicator of a student’s preparation for college-level work rather than a fixed or exact measure.”<sup>36</sup></li> <li>Regarding the LSAT<sup>®</sup> The LSAT does not measure every discipline-related skill necessary for academic work, nor does it measure other factors important to academic success.”<sup>37</sup></li> <li>Regarding the MCAT, the Association of American Medical Colleges reports that nearly 9 percent of medical school applicants with the highest test scores and GPA did not receive any admissions offers.<sup>38</sup></li> </ul> </li> </ul>

<sup>34</sup> This table is adapted from the Access and Diversity Toolkit, Tool 4 –Mythbusters: Correcting Common Misunderstandings (2018) <https://professionals.collegeboard.org/higher-ed/access-and-diversity-collaborative/guidance-resources/advocacy-toolkit/tool-4-mythbusters> (last visited July 23, 2020).

<sup>35</sup> For example, medical schools using holistic review in their admissions process report that both the average GPA and standardized test scores have remained steady or increased for incoming classes. See Greer Glazer & Karen Bankston, *Holistic Admissions in the Health Professions*, 14, (2014).

<sup>36</sup> See College Board Task Force on Admissions in the 21<sup>st</sup> Century, *Preserving the Dream of America: A Message to a Community of Educational Leaders* at 22 (2008).

<sup>37</sup> See *LSAT Fairness Procedures*, <https://www.lsac.org/about/lisac-policies/lisat-fairness-procedures>

<sup>38</sup> Brief for the Association of American Medical Colleges et al. as Amici Curiae Supporting the Respondents at 25, *Fisher v. University of Texas at Austin*, 579 U.S. \_\_\_\_\_ (2016) (No. 14-981).

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# The Playbook: Understanding the Role of Race Neutral Strategies in Advancing Higher Education Diversity Goals

2nd Edition

Arthur L. Coleman  
Jamie Lewis Keith  
Emily L. Webb

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# Executive Summary

This resource provides a substantive overview and practical guide to the use of race- and ethnicity-neutral strategies and selection criteria (“plays”) that may qualify as race- and ethnicity-neutral under federal law, and that can advance institutional diversity interests—including those associated with race and ethnicity. Framed in the context of federal nondiscrimination law, and established and emerging practices in the field, this second edition of *The Playbook* focuses on the following plays:

<ul style="list-style-type: none"><li>▪ <b>Race Attentive and Inclusive Outreach and Recruitment</b></li></ul>	This play addresses foundational considerations commonly associated with effective enrollment strategy.
<ul style="list-style-type: none"><li>▪ <b>Flexible Admission and Aid Criteria and Test Use</b></li><li>▪ <b>Socioeconomic Status</b></li><li>▪ <b>Geography</b></li><li>▪ <b>Experience or Service Commitment Associated with Race</b></li><li>▪ <b>First-Generation Status and Other Special Circumstances</b></li></ul>	These plays illustrate the kinds of selection criteria that may be considered as part of individualized, holistic review of applicants for institutional/program admission, as well as for recruitment, pathways programs, and aid.
<ul style="list-style-type: none"><li>▪ <b>Percent Plans</b></li><li>▪ <b>Educational Collaboration Agreements</b></li><li>▪ <b>Cohort Programs</b></li></ul>	These plays reflect a broader system design focus, with key elements that may be part of a complement of other enrollment efforts; and some also may enhance the impact of other efforts.

In light of an evolving legal, policy, and demographic landscape, this edition retains and amplifies all of the plays of the first edition and adds new plays. As in the first edition, plays described are among the most commonly used or the most promising; have some evidence of effectiveness; and are legally sustainable when properly designed and executed. All plays include institutional (and sometimes organizational or state) examples to illustrate particular design and operation features. Specifically:

- Six plays from the first edition have been expanded to include new insights, institutional/organizational examples and/or research (socioeconomic status, geography, first-generation and other special circumstances, percent plans, educational collaboration agreements, and cohort programs).

- Three plays are new—race attentive and inclusive outreach and recruitment, flexible admission and aid criteria and test use, and experience or service commitment associated with race. These plays illustrate foundational design considerations; and they offer promising ideas regarding ways to think about race as part of enrollment policy and planning to advance a broad diversity-associated institutional mission.

In addition, new features in this version of *The Playbook* include:

- An expanded Legal Landscape section, which provides a more detailed look at the key questions that should be addressed as part of any institutional review of the diversity-associated goals and the means of achieving them. It also describes recommended practices for documenting a process of periodic review that involves those inquiries.
- Inclusion of a new “Legal Lines” component in most of the plays. This component provides a synthesis of play-specific legal takeaways of relevance from court opinions and U.S. Department of Education Office for Civil Rights resolution agreements.
- The addition of a “Tools You Can Use” component highlighting tools and resources that may help institutions advance their race- and ethnicity-neutral efforts.
- Expanded and more practical practice highlights in “From Research to Practice” that focus on practice-focused strategies that are promising or proven.
- Over 40 highlighted examples that illustrate applications and outcomes of the plays included in this guide.

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# Introduction

Pursuing the benefits associated with student diversity is an imperative for many, if not most, institutions of higher education today. In addition to defining clear educational aims and rationales associated with diversity, higher education leaders must also invest in policies and programs wisely—pursuing the means most likely to achieve success. When those efforts include a focus on race and ethnicity, federal nondiscrimination law enters the picture, with particular requirements including that the institution consider, use, and evaluate neutral (non-race- and ethnicity-conscious) strategies.

In this guide, we explore race neutral strategies and factors [“plays”] in the context of an evolving legal, policy, and demographic landscape.<sup>1</sup> This edition is an updated and expanded version of *The Playbook* first published in 2014, and includes several new plays, as well as multiple expanded plays. These plays incorporate the expanded guidance continued in the U.S. Supreme Court’s 2013 and 2016 decisions in *Fisher v. University of Texas (Fisher I and Fisher II, respectively)*. Building on those legal foundations, this edition also incorporates important developments in the field, including new research on emerging topics.

While recognizing the unique mission and context of each institution, we included plays that appear to be among the most commonly used or are the most promising; have some evidence of effectiveness; are legally sustainable when properly designed and executed; and have concrete examples to illustrate how they work in practice.<sup>2</sup>

This *Playbook* is intended to spur and inform robust conversations among institutional leaders charged with establishing, implementing, and evaluating institution-specific, diversity-related policies and programs. It does not purport to offer simple, cookie cutter solutions to highly context-specific and fact-based considerations unique to any single institution.<sup>3</sup>

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1. For brevity, *The Playbook* often uses “race” to encompass both “race” and “ethnicity” (despite these terms’ different meanings), given that the applicable strict scrutiny legal rules under federal nondiscrimination law treat them the same.
  2. Many wise perspectives were important in shaping this guide. This work was informed by members of the Access and Diversity Collaborative’s Advisory Council, who provided key insights and information that informed the guide’s development. We are also grateful for the idea-generating research of Albin Quan and Josh Warner, who were summer interns with Nelson Mullins Riley & Scarborough, EducationCounsel’s affiliate firm, as well as that of Sam Kobbah and Joe Fretwell, and the editorial assistance of Sandy Rinck from EducationCounsel. We are also very appreciative of the valuable feedback and thought-provoking insight provided by reviewers including Alexandra Schimmer, the General Counsel of Denison University; Frank Trinity, the Chief Legal Officer of the Association of American Medical Colleges; and Connie Betterton and Wendell Hall from the College Board. Finally, we are grateful for the vision and insights of Terri Taylor of the Lumina Foundation, who led much of the development of the first edition of this guide in 2014. The authors appreciate the continuing support of these individuals in helping advance understanding of complex topics for the benefit of the field.
  3. Some race neutral efforts—particularly those adopted by public institutions in states that limit or bar the use of race in admission—have been more rigorously examined than others by practitioners and researchers. Even though the specific efforts in these institutions may not be workable at many other institutions due to differences in mission and context, the body of research and analysis on the impact and effects of these policies is likely to yield important lessons for all institutions pursuing mission-based diversity goals, regardless of their legal context.

Some institutions with “open enrollment” admission policies may find some neutral strategies outlined here to be relevant to aid awards or the selection processes of special programs, but not admission. Institutions may draw insight and inspiration from a wide variety of plays in different ways, even if they do not actually put every strategy into place or cannot apply these strategies to all enrollment programs.

## A SNAPSHOT

### *The Playbook*

- **Provides a brief description of each play, with guidance on ways in which it may be effective in various enrollment settings.** Recognizing policy and legal limitations that may be relevant, the description of each play includes pertinent research and legal background of note, as well as illustrations of notable institutional practices that shed light on potential utility and outcomes.
- **Can assist institutions in their efforts to adhere to relevant federal nondiscrimination law requirements when considering race and ethnicity—an imperative for such strategies' sustainability and success.** Institutions that consider an applicant's race or ethnicity in enrollment decisions, such as admission and aid, are obligated to conduct a periodic, evidence-based evaluation of the adequacy of neutral strategies that also may advance racial diversity goals. Further, these institutions are also obligated to pursue "workable" neutral strategies where warranted. Helping policy leaders and practitioners understand and consider promising new strategies for pursuing those imperatives is a major objective of this guide.

To begin that analysis, this guide asks the following questions in regard to each play:

1. What is this strategy? How is it used by institutions?
2. What kinds of institutions tend to use this strategy? What leading examples of success exist?
3. What conditions should likely be present to maximize this strategy's likely success?
4. What initial questions and prospective roadblocks should be evaluated as this strategy is considered?
5. What are the necessary investments an institution should be prepared to make to engage this strategy in a meaningful way?

Finally, it's important to remember:

- **Race neutral strategies should not be evaluated mechanically or in isolation.** Although race conscious and race neutral policies trigger different legal standards and levels of scrutiny by reviewing courts, it's a good practice to understand and evaluate specific strategies alongside the full array of enrollment strategies. This review should include due consideration of how different policies may affect and interact with one another, within the context of the institution and its educational mission-driven diversity goals.

And, although institutions can benefit from one another's experience with race neutral strategies, each institution must identify its own blend of race neutral and (when appropriate) race conscious policies needed to achieve the educational benefits of diversity for all students in its unique context.

- **Periodic review is essential.** The strategies outlined here—and others—should be considered as part of a dynamic, periodic review process in line with relevant federal rules governing the consideration of race and ethnicity. An institution is unlikely to use all of the strategies presented in this *Playbook* at any one time. And, institutions may change diversity strategies over time as part of their periodic review process.

## The Road Map

In the pages that follow:

- **Section I** provides an overview of the relevant legal landscape;
- **Section II** provides a brief policy primer of some key principles to consider as plays are contemplated and pursued, along with a description and overview of relevant plays; and
- **Section III** offers perspectives regarding broader issues of foundational barrier removal and equity that are important for meaningful and sustained advancement of diversity-related aims.

Throughout this guide, notable practical tips illustrated in text boxes reflect the following:



### LEGAL LINES

Brief references to key legal cases of particular relevance to plays discussed



### FROM RESEARCH TO PRACTICE

Notable practical application of research evident in the field



### TOOLS YOU CAN USE

Information regarding resources available to enrollment leaders that address particular plays

In addition:

- **Appendix A** provides a brief summary of federal nondiscrimination law rules that apply to institutions pursuing race conscious practices.
- **Appendix B** provides references to some useful resources associated with each of the plays within this guide.
- **Appendix C** provides references to some useful resources associated with other key policy and legal issues related to diversity.
- **Appendix D** provides additional information regarding the College Board Access and Diversity Collaborative.

## The Playbook ...



**is** a resource to help institutions understand an array of options related to race neutral strategies.



**is** a collection of different resources and research findings designed to assist institutional teams considering race neutral approaches to advance diversity aims.



**is not** an exhaustive checklist of neutral strategies.



**is not** a substitute for inherently institution-specific judgments on whether (or not) to pursue certain policies and practices.



**is not** a *pro forma* substitute for an institution's own review of neutral strategies in light of its unique mission and goals, and associated legal advice.

## SECTION I

# Legal Landscape

### DIFFERENT LEGAL REGIMES

- **Some institutions pursue race- and ethnicity-neutral policies in concert with race- and ethnicity-conscious policies.** These institutions must follow federal “strict scrutiny” legal rules that are triggered by their consideration of the race and ethnicity of individuals when deciding who will (and will not) receive a benefit in enrollment or education programs. (See Legal Lines on page 7 and Appendix A.) These strict legal rules *require* institutions to consider and use race neutral strategies as a condition to pursuing race conscious ones. For these institutions, the legal rules influence the use, design, and evaluation of neutral strategies.
- **Other institutions pursue only race- and ethnicity-neutral strategies,** typically for one or more of these reasons: some state laws ban public institutions from using race conscious strategies (so there’s no choice); some institutions lack or have not yet have assembled the federally required evidence to demonstrate that neutral strategies alone are inadequate to achieve diversity goals; and some institutions choose not to use race- and ethnicity-conscious practices (even though they may be able to justify doing so). The federal “strict scrutiny” legal rules should not apply to these institutions.

## A. Key Baselines

### 1. Distinguishing between ends and means

When evaluating legal risk, distinguishing between ends and means is essential. As a general rule, institutional goals and objectives associated with diversity (the ends) should not raise legal concerns. However, when institutions advance those goals through race conscious means, “strict scrutiny” legal standards apply. In that event, the ends must be recognized by law as compelling (e.g., educational benefits of diversity for all students) and race conscious means must be shown to be necessary. In other words, institutions must demonstrate that their existing diversity is not sufficient and race neutral strategies are not enough to achieve the compelling educational benefits a diverse class brings.

In most cases, the subject matter and goals of a program may be explicitly race focused without incurring substantial legal risk. For example, an institution may design a session (applicant, student recruitment, or orientation program) focused on the experience of students of color at the institution and related programs of interest. Anyone who is interested in participating in the session may do so, space permitting and first come, first served. As long as there is no consideration of race in who may attend, the program should be considered to be race neutral.

## 2. Distinguishing between race conscious and race neutral

The difference between “race conscious” and “race neutral,” in legal terms, is often not intuitive or well understood. Both may advance diversity goals but distinctions between these concepts are critical as a foundation for knowing whether strict scrutiny legal standards will apply. (See Legal Lines on page 7 and Appendix A for more background on strict scrutiny requirements.) That determination is critical to making wise and sustainable decisions on the combination of enrollment strategies that advance an institution’s diversity goals.

In general, two questions drive whether a policy is deemed race conscious or race neutral:

- ♦ **Intent:** Is the intent of the policy sufficiently motivated by race?
- ♦ **Effect:** Does the policy confer material benefits or opportunities associated with a beneficiary’s race?

The set of plays in this document will highlight practical examples that illustrate the importance of intent and effect when making judgments about whether a strategy or factor is race conscious or race neutral under federal law.

In practical terms, race conscious policies include two types:

1. Those that involve explicit racial classifications when conferring benefits or opportunities; and
2. Those that are neutral on their face but that are motivated by a sufficiently racially discriminatory purpose with racially discriminatory effects.

Thus, facially neutral policies may in some cases actually qualify as race conscious, given the underlying motivation. (See Legal Lines on page 43 (regarding the Texas Ten Percent Law.) This can occur when a facially neutral criterion fails, in fact, to reflect an authentic defining goal apart from increasing racial diversity. Simply put, if a seemingly neutral strategy is being applied as a proxy for race, the policy is likely to be deemed race conscious if it also provides some benefit or opportunity associated with an applicant’s race.

In contrast, race neutral policies include two types of policies: (1) those that, with respect to both intent and operation, are neutral; and (2) those “inclusive” outreach and recruitment policies intended to generate additional applicant interest, which may be facially race conscious or race conscious in intent, but which do not confer material benefits to the exclusion of non beneficiaries.

The later type is typically seen when outreach and recruitment efforts are targeted to students of particular races in the context of more general robust outreach and recruitment to all potentially qualified applicants. (See discussion of Race Attentive and Inclusive Outreach and Recruitment on page 13.)<sup>4</sup>

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4. See generally Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education (December 2, 2011). Washington, D.C.: U.S. Departments of Education and Justice. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/guidance-pse-201111.pdf>; Coleman, A.L., Palmer, S. R., and Winnick, S.Y. *Race Neutral Policies in Higher Education: From Theory to Action*. (2008). New York: College Board. Retrieved from <https://professionals.collegeboard.org/pdf/race-neutralpoliciesinhighereducation.pdf>. (Elaborating on definitions and key distinctions between “race neutral” and “race conscious” under federal law.)

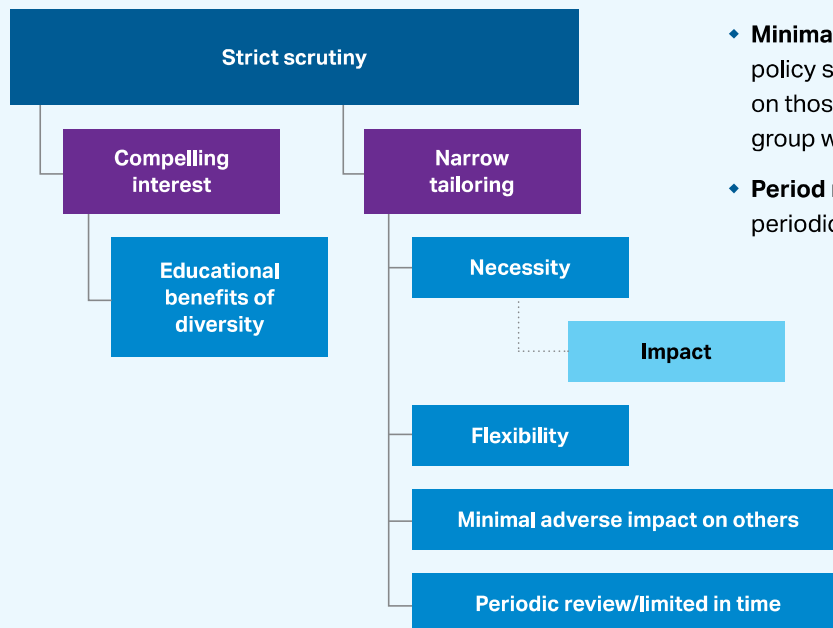




## Overview of Types of Aid and Federal Nondiscrimination Law Implications

If a policy qualifies as race conscious and is challenged in court, it will trigger the most rigorous type of judicial review—"strict scrutiny."<sup>5</sup> For an institution to satisfy the strict scrutiny test, it must establish:

- **Compelling interests**, which are the *ends* that must be established as a foundation for maintaining lawful race- and ethnicity-conscious programs that confer opportunities or benefits to students.
  - ♦ **Educational benefits of diversity:** Federal courts have recognized a limited number of compelling interests sufficient to justify the consideration of race or ethnicity in a higher education setting. The most clear example is a university's mission-based interest in promoting the educational benefits of diversity for all students.



- **Narrow tailoring**, which refers to the requirement that the *means* used to achieve the compelling interest "fit" that interest precisely, with race or ethnicity considered only in the most limited manner possible to achieve compelling goals. Federal courts examine several interrelated criteria to determine whether a given policy is narrowly tailored. Based on the premise that existing diversity is insufficient to achieve specific educational goals, they examine:
  - ♦ **Necessity:** Whether using strategies that consider race or ethnicity is necessary because neutral alternatives are used but are insufficient alone and the race conscious strategies employed are effective;
  - ♦ **Flexibility:** The individual focus of the policy's consideration of race and ethnicity (i.e., not mechanically weighing race the same for all individuals of the same race and not making race determinative in decision making);
  - ♦ **Minimal adverse impact on others:** Whether the policy sufficiently minimizes the burden imposed on those who are not members of the racial/ethnic group whose participation is targeted; and
  - ♦ **Period review:** Whether the policy is subject to periodic review with an end point in mind.

5. The Fourteenth Amendment prohibits any state actor, including public institutions of higher education, from denying "any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1. Title VI prohibits discrimination on the basis of race or ethnicity "under any program or activity receiving federal financial assistance," applying similar equal protection principles to both private and public institutions. 42 U.S.C. § 2000d. The Fourteenth Amendment prohibits any state actor, including public institutions of higher education, from denying "any person within its jurisdiction the equal protection of the laws." U.S. Const. amend XIV, § 1. Title VI prohibits discrimination on the basis of race or ethnicity "under any program or activity receiving federal financial assistance," applying similar equal protection principles to both private and public institutions. 42 U.S.C. § 2000d.



## B. Federal Nondiscrimination Rules: Key Questions Associated with Neutral Strategies

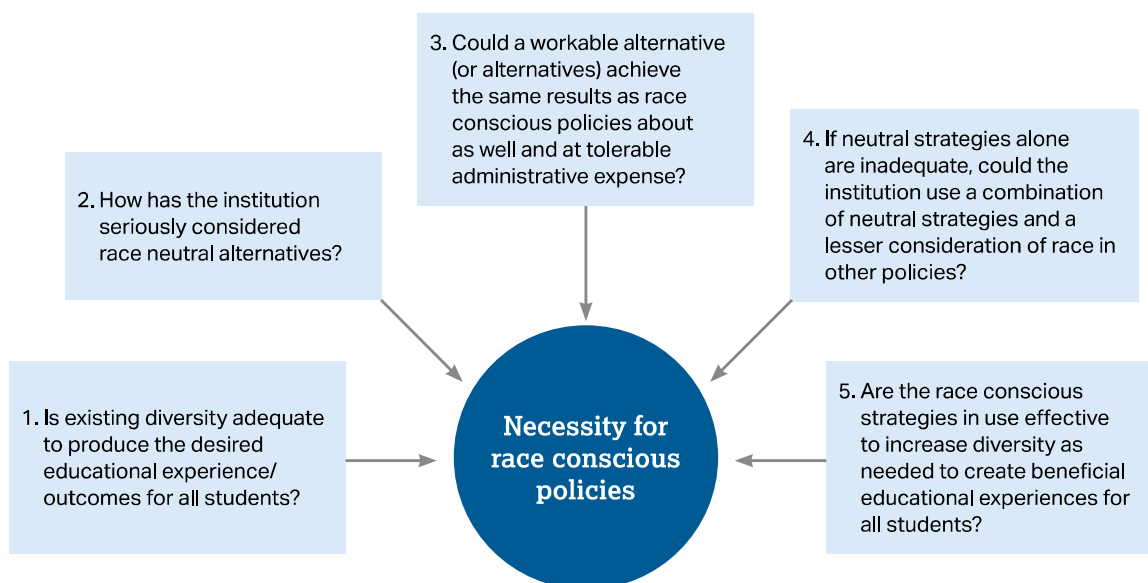
It is important to reiterate that institutions with race conscious policies must satisfy “strict scrutiny” legal standards under federal law. (See Legal Lines on page 7.) These standards require actual evidence of the need for their race conscious policies by demonstrating that they have “seriously considered” and are using “workable” race neutral alternatives to those policies in order to create and reap the benefits of a diverse student body.<sup>6</sup> Institutions may not use race or ethnicity if a workable race neutral strategy exists, i.e., one that “could promote the substantial interest [in diversity] about as well [as the race conscious strategy] and at tolerable administrative expense.”<sup>7</sup>

In other words, to justify the use of a race conscious policy or policies, institutions should be able to produce evidence that answer the following questions:

1. Based on student experience and the institution’s diversity-associated educational goals for all students, is the institution’s current diversity adequate to achieve its goals?

2. If not, has the institution “seriously considered” and, when “workable,” pursued race neutral strategies?
3. Has the institution evaluated whether one or more race neutral strategies are adequate alone to achieve diversity-associated educational goals at tolerable administrative expense? Why or why not?
4. If race neutral strategies alone are inadequate, has the institution evaluated whether it would suffice to use a combination of neutral strategies and a lesser (as light as possible) consideration of race in other policies? What is the conclusion? Why or why not?
5. Are the race conscious strategies that are in use effective to increase diversity as needed to create beneficial educational experiences for all students?

The institution should be able to explain its answers to these questions with sufficient supporting evidence and information—both to guide future deliberations and in the event of a legal challenge.



6. For a full discussion of the U.S. Supreme Court’s 2013 *Fisher v. University of Texas* opinion that established this requirement, see Understanding *Fisher v. the University of Texas: Policy Implications of What the U.S. Supreme Court Did (and Didn’t) Say About Diversity and the Use of Race and Ethnicity in College Admissions*. (July 9, 2013). New York: College Board. <http://diversitycollaborative.collegeboard.org>.

7. The U.S. Supreme Court has not ruled on what expense is tolerable. However, because individual civil rights are given considerable weight, the expense may need to pose a very substantial and possibly disruptive burden to be intolerable. See *Fisher v. University of Texas at Austin*, 570 U.S. \_\_\_\_ 2013.

Although challenging, these questions are grounded in an institution's ability to incorporate its "experience and expertise" into its decision to use race conscious strategies.<sup>8</sup> Not every race neutral strategy will work for every institution and no strategy will work in exactly the same way in every context. Though courts do not expect perfection from institutions seeking to achieve mission-based diversity goals, they do expect an institution using race conscious policies to:

- provide evidence of a robust effort to set meaningful goals,
- design appropriate policies to meet those goals, and
- assess those policies' performance and necessity over time.

A central part of that inquiry involves consideration and use of race neutral alternatives, with documentation of all relevant deliberations and actions.

**Institutions seeking to achieve the educational benefits of diversity should focus as deliberately on race neutral practices as they do on race conscious practices.**

As a foundation for considering the viability of the neutral strategies and approaches, several practical considerations merit attention:

### 1. Value mission alignment and authenticity

The identification, consideration, and pursuit of neutral strategies should be clearly aligned with the institutional mission. Evaluating that alignment as part of design and periodic review is critical. If that relationship is not clear, advancing such strategies is likely to be more vulnerable to attack as not being principally to advance neutral aims (i.e., institutional goals) and, therefore, not neutral for the purposes of relevant legal analysis.

### 2. Define merit with clarity

Effective and efficient enrollment policymaking relies on a clear understanding of enrollment goals and the ways institutions see the "merit" of applicants. That judgment often involves a mix of factors and considerations that should be well understood not only as a foundation for making high-stakes decisions in admission and aid, but also when designing the overall enrollment program. In concrete terms, it is not only advisable,<sup>9</sup> but often an imperative, to assure that judgments about the "merit" of prospective students inform the balance and design of outreach, recruitment, and aid policies as a complement to admission decisions.

### 3. Pursue a comprehensive enrollment approach

The consideration of a full range of neutral strategies is important in any review intended to align with federal legal requirements. Institutions should develop a full inventory and examine all relevant policies and programs associated with enrollment, such as outreach, recruitment, aid, and admission.

### 4. Evaluate progress over time, grounded in research and experience

In conducting the evidence-based evaluations required to satisfy legal rules and advance effective race conscious strategies, an institution should consider two types of research to inform the viability of strategies considered:

- a. Independent research with a focus on what proposition[s] the research really stands for and how likely it is to be relevant to the specific institutional context.
- b. Institution-specific research should reflect how the information collected impacts relevant questions and should focus on formal studies, surveys, and consequential anecdotal information.<sup>10</sup>

8. *Fisher v. University of Texas at Austin*, 570 U.S. \_\_\_\_ 2013.

9. See Coleman, A.L., and Keith, J.L. *Understanding Holistic Review in Higher Education Admissions: Guiding Principles and Model Illustrations*. (2018). Washington, D.C.: College Board and EducationCounsel, 5–11. Retrieved from <https://professionals.collegeboard.org/pdf/understanding-holistic-review-he-admissions.pdf>; See also Coleman, A.L., and Keith, J.L. *Federal Nondiscrimination Law Regarding Diversity: Implications for Higher Education Scholarship Policies and Programs*. (2019). Washington, D.C.: College Board and EducationCounsel. Retrieved from <https://professionals.collegeboard.org/pdf/federal-nondiscrimination-law-regarding-diversity.pdf>

10. That review of information may include modeling approaches to help evaluate the effects of various strategies and the need to consider race and ethnicity, or not, in enrollment programs. Modeling allows an institution to evaluate whether there would be a significant difference in compositional diversity outcomes if particular neutral criteria were used, with and without consideration of race and ethnicity, by analyzing data from actual or hypothetical, but representative, prior applicant offer and yield pools. This can be done manually or by using technology tools. For example, see Applications Quest, available at <http://www.applicationsquest.org/> (last visited Aug. 30, 2019).

##### **5. Document a multidisciplinary process of review over time**

Finally, in order to address federal nondiscrimination principles explained elsewhere in this guide, institutions should establish a process for annual review and evaluation of all enrollment policies associated with diversity that incorporates the elements above. A multidisciplinary team including counsel should assess the impact of policies and practices involving race and ethnicity over time on diversity goals (student experiences, compositional diversity, and educational outcomes). The review should include an evaluation of neutral strategies and factors that may be viable additional or alternative approaches. Establishing a record on policy effectiveness and potential variations over time is a key element that can help establish compliance with the legal requirements of federal nondiscrimination law.



## ADDITIONAL CONSIDERATIONS

### Program Aggregation and Pooling

Program aggregation and pooling are race neutral design concepts that may enable an institution to deploy limited race conscious resources to create an inclusive (neutral) effect.

**Aggregation:** To pursue aggregation in the design of a program, an institution puts aside any race-based participation criterion and inventories and aggregates programs that offer similar benefits into a single, neutral program (e.g., mentoring, community building, experiential learning) in which participation is not limited on the basis of race. Then, within the larger program, one or more focus groups related to issues of race or ethnicity are created, based on authentic, documented interests of the institution. The focus groups are available to all, but are designed to address issues of particular interest to students of color.

**Pooling:** To pursue pooling, fungible resources (e.g., aid dollars) dedicated to the same overarching purpose (e.g., financial need, merit apart from race, or a combination) and most of which have no restrictions based on race are combined in a single pool. Race and ethnicity are not considered at all in making decisions regarding all details (e.g., type and amount of benefit, etc.) related to the provision of those resources to individuals. Only after that race-blind decision making is final are the fungible resources matched to selected individuals. At that point, the restricted resources are allocated to the already selected students who also satisfy the restrictions; then, the predominant unrestricted resources are allocated to the already selected students who do not satisfy the restrictions. The effect is to reduce the number of students who otherwise would be competing for the unrestricted resources, thereby expanding the unrestricted resources that are available to students who do not qualify for the restricted resources.

A variant to financial aid pooling is determining who will participate in an experiential learning program using criteria that do not include consideration of race in any way. After selecting the participants, provide a title (to the students of color who may be funded under an associated race-targeted grant [e.g., National Science Foundation-scholar]). The substantive program benefits (e.g., mentors, time in the research lab, meetings with senior researchers, funding) are the same for all participants. The title merely acknowledges the funding source (and may help students who might otherwise not be inclined to apply).

Well-executed pooling strategies should be considered neutral, even though their aim is to increase racial and ethnic diversity. That is because dollars are fungible to the recipients, and pooling has an inclusive effect, expanding rather than limiting opportunities available to students who do not satisfy racial and ethnic restrictions associated with a small proportion of total funding in the pool. However, rigorous design and execution are required, and the U.S. Supreme Court and federal appeals courts have not ruled on this strategy.

See also Coleman, A.L., and Keith, J.L. *Federal Nondiscrimination Law Regarding Diversity: Implications for Higher Education Financial Aid and Scholarship Policies and Programs*. (2019). Washington, D.C.: College Board, EducationCounsel, and NASFAA, at 12–13, which discusses aid-related pooling in more detail.

## IN BRIEF

# Experience or Service Commitment Associated with Race

## WHAT IS IT?

- The approach identifies students who, regardless of their own race, have meaningful experiences or deep knowledge involving societal issues of race, demonstrate learning from those experiences or study, and are expected to contribute to elevating understanding of such issues and enhancing the quality of learning and associated living and work outcomes for all students on campus.
- This approach may also include a focus on students who demonstrate a commitment to equity and service.

## WHO USES IT?

- Public and private institutions whose educational missions include preparing students to contribute and prosper in a diverse society.
- Public and private institutions whose mission priorities and educational goals require creation of a broadly diverse and inclusive academic community and emphasize preparing students to contribute to the elimination of societal inequities.

## CONDITIONS FOR LIKELY SUCCESS

- A method/criterion to evaluate a student's experience, knowledge, and commitment to community service and addressing inequities.
- An authentic purpose to seek students of all races and ethnicities whose experience, knowledge, or demonstrated commitment to service satisfy the criterion.
- Clear documentation of the criterion, its purpose and use, and a strong understanding by those applying the criterion on how to do so properly regardless of a student's race without making assumptions associated with an individual's race.
- Advice of knowledgeable legal counsel and alignment of goals and coordination of efforts across enrollment programs.

## POTENTIAL ROADBLOCKS AND QUESTIONS TO CONSIDER

- How can the institution demonstrate in its actions and document that its purpose for using the criterion is authentic?
- How can the institution gauge the depth of an individual's experience, not based on assumptions tied to their racial/ethnic status, but on their individual life journey?
- How can the institution ensure application of this criterion to individuals of all races and avoid inaccurate perceptions and misuse of this criterion?

## NECESSARY INVESTMENTS

- An evaluation system to ensure the criterion is used authentically, applied properly, and effective.
- Development of specific curricular, cocurricular, and support programs whose subject matter focus (not participant selection criteria) is on elevating knowledge of societal issues and inequities associated with race, thereby also demonstrating authenticity of this interest.

## Overview

This play involves the development and use of application criteria that seek students who, regardless of their own race or ethnicity, express and demonstrate an authentic commitment to advance one or all of the following interests that are important to the institution's diversity-related mission and educational goals:

1. Elevating knowledge of issues of race in society to help prepare all students to contribute to and prosper in a diverse society after graduation;
2. Breaking down barriers based on race in cocurricular and extracurricular activities, research, work, and/or social activities; and
3. Serving the needs of communities that are targeted for racial bias and societal inequity.

## Experience or Service Commitment Associated with Race, In Action

This approach centers on students' ability, based on knowledge and experience, to advance an institution's diversity-related and other priority educational objectives when selecting students to participate in programs or receive benefits, such as admission and aid. Disciplines within institutions that are particularly dependent on understanding and addressing issues of race and ethnicity in society, such as health and other science fields, law, social work, and political science, may choose to include experience associated with race as part of their program admission criteria. Separate scholarship programs may target students who demonstrate such qualities.

In addition, institutions or programs interested in attracting and supporting students with an intentional and expressed commitment to addressing inequities and to service can include application criteria focused on such characteristics. Such criteria can be expressed through essays, interviews, or information on activities and experiences in which a student has engaged, as well as the student's aspirations and interest (not racial or ethnic status per se).

## Examples

The **McQuown Scholarship Program** at the **University of Florida College of the Liberal Arts and Sciences** provides annual financial aid awards to undergraduate and graduate students in the Humanities, Social Sciences, Individual Interdisciplinary Studies, and Women's Study. Among the criteria considered in determining awards, the McQuown Scholarship Program emphasizes the following qualifications:

- "Regardless of an applicant's own race or gender, an applicant's record or promise to break down barriers, create a welcoming environment, and include individuals who are racial minorities or women (or otherwise reflect broad diversity) in academic, cocurricular, and/or research endeavors;
- An applicant's success in overcoming barriers—to helping others to overcome barriers—to academic achievement (including low socioeconomic background); and
- An applicant's record or promise to contribute to the student's university, local or larger community."<sup>56</sup>

These qualifications are evaluated as part of the application process, which includes both an essay and an interview process.<sup>57</sup>

The **Doris Duke Conservation Scholars Program** at the **University of Florida, University of Arizona, University of Idaho, North Carolina State University, and Cornell University** is a two-year experiential learning program for undergraduate students "with a demonstrated interest in environmental issues and cultural diversity." As Doris Duke Conservation Scholars, students participate in paid research, leadership, and mentorship opportunities.<sup>58</sup>

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56. O. Ruth McQuown Scholarship Awards. (n.d.). University of Florida College of Liberal Arts & Sciences. Retrieved from <https://legacy.clas.ufl.edu/scholarships/mcquown/ruthmcquown.html>

57. O. Ruth McQuown Scholarship Awards. (n.d.).

58. Doris Duke Conservation Scholars Program. (2019). University of Florida. Retrieved from <https://programs.ifas.ufl.edu/doris-duke-conservation-scholars>

When considering applicants, the program selection criteria includes a “demonstrated community service orientation and personal qualities to succeed in conservation fields (including perseverance and resilience, ability to scale barriers, communication skills, and other characteristics),” and “[r]egardless of each applicant’s own race or ethnicity, [a] demonstrated commitment to and experience with breaking down ethnic barriers to create a welcoming environment for all—including individuals from racial and ethnic minority groups” among other criteria.”<sup>59</sup> The use of such criteria stem from the program’s belief that such qualifications are critical “to identify[ing] and address[ing] the conservation needs of all segments of U.S. and global society.”<sup>60</sup>

Also see the **University of Georgia’s Cousins Scholars Program** under Cohort Programs, which uses commitment to service as a driving participation criterion in a program providing college transition, academic, and financial benefits.

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59. Eligibility. (n.d.). University of Florida—Doris Duke Conservation Scholars Program. Retrieved from <https://www.ddcsp-ufl.com/eligibility>

60. Doris Duke Conservation Scholars Program. (2019).



## **First-Generation Status and Other Special Circumstances**

### **WHAT IS IT?**

- Students from different backgrounds experience an array of challenges that may impede their efforts when preparing for and applying to college—and that may also reflect kinds of diversity an institution seeks to attain. This area of focus recognizes that challenges exist due to a variety of factors such as first-generation status, experiencing homelessness, undocumented status, and more.

### **WHO USES IT?**

- Institutions aiming to provide access for students who have demonstrated an ability to bring strengths of value to the institution and peers (including an ability to navigate challenging pathways successfully) and to contribute greater experience- or circumstance-related diversity to enhance the richness of the academic environment.
- Institutions that have a broad view/definition of diversity, which includes an array of life circumstances that may be important to mission and admission aims.

### **CONDITIONS FOR LIKELY SUCCESS**

- Willingness to partner with community-based organizations (CBOs) and/or federal programs like TRIO and Upward Bound.
- Ability to devote admission staff to providing additional assistance to applicants who successfully address challenges in their lives that may have affected their college application.
- Clear admission process accessible to all students, with clear communications about admission/enrollment policies for first-generation and other targeted students.
- Training for admission staff in the standards of admission for first-generation students and other students who have navigated challenging pathways.

- Partnerships with faculty focused on leveraging student backgrounds to benefit all.
- Advice of knowledgeable legal counsel and alignment of goals and coordination of efforts across enrollment programs.
- Monitoring and program evaluation to assess the impact of program and policies focused on first-generation students and other students who have navigated challenging pathways.

### **POTENTIAL ROADBLOCKS AND QUESTIONS TO CONSIDER**

- How can an institution support equitable consideration of the barriers students may have overcome given numerous readers and subjectivity?
- How can an institution train those involved in decision making about how to apply this strategy in a race neutral manner?
- How can an institution measure the impact on racial diversity to demonstrate insufficiency of this approach if it does not result in greater racial diversity?

### **NECESSARY INVESTMENTS**

- Reaching out to CBOs that assist first-generation students with the application process.
- First-generation and other targeted student-oriented opportunities for academic and social supports.
- Tracking of first-generation and other targeted students' experiences on campus to inform policy development.
- Development of a common set of characteristics as indicators of successful navigation of challenging pathways for consideration when assessing applicants who are relevant to diversity goals.



## Overview

Focusing on first-generation students in enrollment policies may be especially important, given demographic trends and workforce needs. Approximately 24% of the undergraduate population (4.5 million students) are first-generation, usually low-income students.<sup>61</sup> As a group, first-generation students are disproportionately overrepresented among the groups of students facing the most significant barriers to postsecondary completion; compared to students whose parents went to college, first-generation students are more likely to be female, older, black or Latino, have dependent children, and come from low-income families.<sup>62</sup> And it is likely that this population will grow, given demographic changes and trends.

Similar realities also confront students from other backgrounds who may factor into institutional diversity interests, including:

- **Students who have experienced homelessness.** At four-year institutions, students are experiencing homelessness at rates of 8% to 28%, and data suggest that black students are at an even greater risk of experiencing homelessness compared to their peers.<sup>63</sup>
- **Students connected to the foster care system.** Over 430,000 postsecondary students are involved in the foster care system, which correlates with a higher likelihood of dropping out of school. Compared to a national college completion rate of 32.5% (BA), students who were formerly in the foster care system complete college at a rate of under 11%.<sup>64</sup>
- **Students without citizenship or immigration documentation.** Each year, 65,000 students who do not have immigration documentation graduate from high schools, yet only 5% to 10% attend college due to a range of factors including federal, state, and institutional aid policies.<sup>65</sup>

## First-Generation Status and Other Special Circumstances, In Action

**Outreach/Recruitment.** Engaging with first-generation students during middle and high school may be essential to ensuring their later success in college. Specific guidance may focus on enrolling in a rigorous course schedule (including AP or honor courses), planning an appropriate standardized testing schedule, and learning the fundamentals of college costs and financing options. Organizations like Advancement Via Individual Determination (AVID), Talent Search, and the National Urban League have all produced resources to assist with the recruitment of first-generation students. As a complement to student-facing efforts, staff and faculty should receive training on the unique challenges, experiences, and value that first-generation students bring to campus. The same applies to students who navigate other challenging pathways, such as students who come from low-income backgrounds, have experienced homelessness, and/or are connected to the foster system.

**Admission.** Institutions should ensure that application procedures and requirements are clearly communicated to students who may be unfamiliar with the admission process (and lack the benefit of family members' experiences). Many colleges already include special guidance directed toward first-generation and other applicants who navigate challenging pathways. Institutions may also give these students special consideration in the admission process. When choosing this option, institutions should ensure that application materials will identify these students and that application reviewers are aware of the institution's emphasis on recruiting and admitting these students who meet the necessary academic qualifications.

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61. Engle, J., and Tinto, V. (2008). *Moving Beyond Access: College Success for Low-Income, First-Generation Students*. The Pell Institute. Retrieved from <http://files.eric.ed.gov/fulltext/ED504448.pdf>.

62. Engle, J. S. (2007). "Postsecondary Access and Success for First-Generation College Students." *American Academic*, (3), 25–48. Retrieved from [https://pdfs.semanticscholar.org/e27f/6b423579e29231e22446c0b7777d7b5946bf.pdf?\\_ga=2.192055274.1921179504.1566585965-1295634766.1566585965](https://pdfs.semanticscholar.org/e27f/6b423579e29231e22446c0b7777d7b5946bf.pdf?_ga=2.192055274.1921179504.1566585965-1295634766.1566585965)

63. Goldrick-Rab, S., Baker-Smith, C., Coca, V., Looker, E., and Williams, T. (2019). College and University Basic Needs Insecurity: A National #RealCollege Survey Report. Hope Center. Retrieved from [https://hope4college.com/wp-content/uploads/2019/04/HOPE\\_realcollege\\_National\\_report\\_digital.pdf](https://hope4college.com/wp-content/uploads/2019/04/HOPE_realcollege_National_report_digital.pdf)

64. Legal Center for Foster Care and Education. (2018). Fostering Success in Education: National Factsheet on the Educational Outcomes of Children in Foster Care. Retrieved from <https://foster-ed.org/fostering-success-in-education-national-factsheet-on-the-educational-outcomes-of-children-in-foster-care/>

65. Advising Undocumented Students. (2019). College Board. Retrieved from <https://professionals.collegeboard.org/guidance/financial-aid/undocumented-students>



## The Walmart Minority Student Success Initiative

This initiative awarded 30 minority-serving institutions \$100,000 capacity building grants to serve first-generation students. As a complement to these grants, the initiative produced a brief highlighting several best practices for institutions to use in the future, *Supporting First-Generation College Students Through Classroom-Based Practices*. The report identifies four key institutional practices that can

increase first-generation student retention and academic performance: (1) using faculty to bridge department divides and to generate opportunities for professional development; (2) promoting curricular and pedagogical reforms; (3) creating a culture of ongoing inquiry, innovation, and creativity; and (4) establishing partnerships with allies to provide benefits for long-term and sustained project success.

Resource: Institute for Higher Education Policy. (2012). *Supporting First-Generation College Students Through Classroom-Based Practices*. Retrieved from [http://www.ihep.org/assets/files/publications/sz/Issue\\_Brief\\_Walmart\\_MSI\\_Supporting\\_FGS\\_September\\_2012.pdf](http://www.ihep.org/assets/files/publications/sz/Issue_Brief_Walmart_MSI_Supporting_FGS_September_2012.pdf).

**Aid and Support.** Students who have faced any of these challenges are likely to have significant financial need. Linking admission priorities with sufficient financial aid is likely to result in higher enrollment rates for admitted students. This group of students may also need special supports, particularly during their first year of enrollment, to help with the transition to college.<sup>66</sup> Identifying faculty and peer mentors, offering academic support and tutoring opportunities, and creating inclusive programming may all contribute to students' long-term success at the institution and beyond. Depending on the unique student population served by the institution, special programming for students who have navigated challenging pathways (e.g., students from similar neighborhoods or cultural backgrounds) may have additional impact.

## Examples

### SUPPORT FOR FIRST-GENERATION STUDENTS

In 2008, the **University of South Carolina** created the **Gamecock Guarantee** program that provides low-income, first-generation college students an opportunity to gain access to a quality education, academic support, and a coordinated network of social support. These students meet the same admission criteria as the rest of the freshman class and come from families with incomes of less than \$18,000 per year. Through coordinated efforts of the Office of Student Financial Aid and Scholarships and the Opportunity Scholars program (our federal TRIO student support services grant program), the Gamecock Guarantee was created to recruit, retain, and graduate low-income and first-generation students from the University of South Carolina. Students receive a minimum financial aid package of \$4,500 per year for up to four years that, when combined with state scholarships and other aid, "guarantees" that at least their cost of tuition and technology fees will be covered. Financial support is coupled with required participation in program support, such as the Opportunity Scholars Program, the Capstone Scholars Program, or the South Carolina Honors College.<sup>67</sup>

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66. First-generation students are less likely to be academically prepared upon enrollment and are less likely to persist over time. These students are nearly four times as likely to leave their institutions after the first year. After six years, only 11% had earned bachelor's degrees (compared with 55% of more advantaged peers). Further complicating the picture is that first-generation students tend to have much better outcomes at four-year institutions, but only about a quarter enroll in four-year institutions. See Warburton, E. C., Bugarin, R., Nunez, A. M., and Carroll, C. D. (2001). *Bridging the Gap: Academic Preparation and Postsecondary Success of First-Generation Students*. National Center for Education Statistics. Retrieved from <https://nces.ed.gov/pubs2001/2001153.pdf>

67. Gamecock Guarantee. (n.d.). University of South Carolina. Retrieved from [https://www.sc.edu/about/offices\\_and\\_divisions/financial\\_aid/grants/gamecock\\_guarantee/index.php](https://www.sc.edu/about/offices_and_divisions/financial_aid/grants/gamecock_guarantee/index.php)

Since this program's inception, USC has matriculated 1,600 low-income, first-generation students and has been able to meet, on average, 90% of each student's overall cost of attendance. At the six-year mark, the Gamecock Guarantee students are graduating at rates above their low-income peers and are on par with the overall university graduation rate of 73%.<sup>68</sup>

At **Bloomfield College**, a review of data informed the university about struggles that first-generation and other students had meeting mathematics graduation requirements and passing developmental math courses. A Task Force was created to examine the issue and to consider elimination of the developmental math courses. The math faculty created a college-level mathematics curriculum designed to increase student performance. The year after piloting the program was initiated, the fall-to-spring retention rate increased from 6% to 77%, and over 80% of students passed the first of two college-level freshman math courses. The success of the program led to adoption of the new curriculum in 2013.<sup>69</sup>

Numerous universities provide targeted scholarship support to first-generation students.

- The **University of Michigan's Kessler Presidential Scholars Program** provides aid to first-generation students with opportunities for participation in academic and professional workshops; opportunities for experiential education, study abroad, and internship programs; mentorship and service projects; and academic and financial support services.<sup>70</sup> In addition to these supports and opportunities, the Kessler program helps create a supportive community among first-generation students and staff to help students as they navigate the college experience.<sup>71</sup>
- **Georgetown University** links its strong admission results to a program they call the **Georgetown Scholars Program (GSP)**. Started in 2004, GSP enrolls approximately 650 students each year. To date, over 1,000 GSP students have graduated at a 96% graduation rate. GSP students are offered a need-based aid package that meets their full financial need; it offers \$3,000 more in scholarships (funded in part by a 1789 scholarship) and less in loans in each of their years here. This program offers its students the support to ensure they have the tools they need to thrive while at Georgetown. 425+ peer, alumni, faculty, and staff mentors advise GSP students; and the program provides support in the form of funds for tutoring, winter coats, one trip home over and above the two rounds trips built into the aid budget, grocery grants for periods when the dining services are closed, summer storage grants, and professional development grants.<sup>72</sup>
- **Texas Tech—First Generation Transition & Mentoring Programs** is a peer coaching model centered on an assets and holistic approach to student transition and success. The programs offer first-generation students scholarships, academic workshops, service learning opportunities, individual and group peer coaching sessions, and support from staff.<sup>73</sup>
- **Colorado State University—First Generation Award Program** provides aid of up to a maximum of \$4,000 annually, contingent upon full-time enrollment at the Fort Collins campus.<sup>74</sup>

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68. Gamecock Guarantee, (n.d.), University of South Carolina.

69. Cook, G., and Spies, C. (2019) Personal interview.

70. Kessler Scholars: A Rare Opportunity. (2019). University of Michigan. Retrieved from <https://lsa.umich.edu/scholarships/irene-and-morris-b-kessler-presidential-scholarship/rare-opportunity.html>

71. Kessler Scholars. (2019). University of Michigan. Retrieved from <https://lsa.umich.edu/scholarships/irene-and-morris-b-kessler-presidential-scholarship.html>

72. McWade, P. (2019). Personal interview.

73. First Generation Transition & Mentoring Programs. (2019). Texas Tech University. Retrieved from <http://www.depts.ttu.edu/diversity/FGTMP/>

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## SUPPORT FOR STUDENTS WITH OTHER SPECIAL CIRCUMSTANCES

The **Florida State University Unconquered Scholars Program** provides supports for students who have experienced foster care, homelessness, relative care, or ward of the state status, in recognition of the unique needs that these student populations face in their transition to and through college. These services include advising, summer bridge programs, financial aid services, tutoring, and workshops.<sup>75</sup>

**Kennesaw State University** is committed to supporting diversity, and toward that end offers a series of scholarships and supportive services for students who are dealing with homelessness and food insecurity, and/or students previously or currently in foster care. This includes the Triumph Scholarship to support one student who has experienced/is experiencing homelessness, and the university's Campus Awareness, Resource, and Empowerment (CARE) Services, which provide resources including those related to admission, financial aid, campus housing, nutrition, and assistance in accessing housing.<sup>76</sup> Between August 2018 and June 2019, CARE Services served 520 students. Among those students, 135 received individual case management services.<sup>77</sup>

**Pomona College** supports students who do not have immigration documents, including through a student-led organization on campus, confidential emergency grant funding that includes the cost of DACA applications

and access to the College's pro bono immigration legal resources network to answer immigration issues or for legal representation resources in case of detention for students, alumni, and immediate family members. Pomona College reviews the applications of these students by applying the same process and criteria that is applied to all applicants, regardless of race or immigration status, and accepts students on a need-blind basis.<sup>78</sup>

**Tufts University** offers optional opportunities for students who do not have immigration documentation to support their transition to and experience on campus, including summer outreach and early academic advising, and a weekly advising course, as well as legal support, mental health counseling, and community building.<sup>79</sup>

The **Dean College Arch Learning Community** is designed for students with diagnosed learning disabilities and/or other learning challenges (such as attention and memory difficulties) who would benefit from additional support while taking part in a traditional college curriculum. Through individualized academic coaching, Arch-designated courses, and specialized Success and Career Advising, students work within the program to acquire the necessary skills to be successful in their degree programs. These supports have bolstered participant success as reflected in a 90% four-year graduation rate.<sup>80</sup>

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## Students Tell Their Stories in Application Questions

### OVERVIEW

Answers to application questions for admission, aid, and experiential learning opportunities can provide students an opportunity to make their best case for how they could contribute to the achievement of the institution's diversity-related goals. They may, for instance, generate information about their life experiences associated with diversity, their particular commitment to achieving social goals associated with diversity, and more. Such questions may be used in conjunction with admission, scholarships, and other selective programs—in essence any program that applies selection criteria.

Broadly speaking, questions posed by an institution as part of an application should reflect the mission, and it's a good practice to train application readers in regard to the kind of answers that would be the most compelling. Questions may be identified as required or optional, and their inclusion can have resource implications that include the additional time required to assess applications.

One prominent example involves the **Meyerhoff Scholars Program at UMBC** (University of Maryland, Baltimore County). The Meyerhoff Scholars Program offers a different emphasis that focuses on highly able students who aspire to become leading research scientists and engineers. It is open to people of all backgrounds committed to increasing the representation of minorities in science and engineering. The program generates questions to assist selection committee members in assessing applicants' personal alignment with Meyerhoff Program goals. These inquiries include: willingness to discuss issues of academic performance and diversity within science and engineering; involvement with activities and organizations that serve and support others; and other related activities. This program provides financial support, mentoring, advising, and research experience to undergraduate students committed to obtaining Ph.D. degrees in science, technology, engineering, and math (STEM) fields.

Other approaches are evident in the field. They include:

- **Chapman University**

"The 'I am Chapman' campaign on our campus was created to foster an appreciation and awareness of diversity, inclusion, equity, and social justice for all. We celebrate our students' individuality in all of its forms, including their personal experiences, culture, religious beliefs, opinions, ancestry, race, ethnicity, interests, ability, geographic backgrounds, and family traditions. Given the diverse experiences and perspective of our community members, the admission committee would like to know what makes you 'Chapman'?"

- **North Carolina State University**

"NC State is a community that is strong because of the diversity of our perspectives and experiences. Please describe how you could contribute to or benefit from campus diversity."

- **Southern Methodist University**

"SMU is a diverse learning environment shaped by the convergence of ideas and cultures. How will your unique experiences and background enhance the university, and how will you benefit from this community?"

- **University of Washington**

"Our families and communities often define us and our individual worlds. 'Community' might refer to your cultural group, extended family, religious group, neighborhood or school, sports team or club, coworkers, etc. Describe the world you come from and how you, as a product of it, might add to the diversity of the University of Washington. Tip: Keep in mind that the University of Washington strives to create a community of students richly diverse in cultural backgrounds, experiences, values, and viewpoints."

Sources: Maton, K., Hrabowski, F.A., and Özdemir, M. "Opening an African American STEM Program to Talented Students of All Races: Evaluation of the Meyerhoff Scholars Program 1991–2005, 125–156. (2007). In G. Orfield, P. Marin, S. M. Flores, and L. M. Garces (eds.) *Charting the Future of Affirmative Action: Legal Victories, Continuing Attacks, and New Research*. Los Angeles, Calif.: The Civil Rights Project at UCLA. Retrieved from <https://files.eric.ed.gov/fulltext/ED517800.pdf>. See also Jackson, S. "How Will You Contribute to Our Diverse Population?" (2016, Nov. 28) *Insight Into Diversity*. Retrieved from <https://www.insightintodiversity.com/how-will-you-contribute-to-our-diverse-population/>.



*The authors of this report have developed the following question that may be adapted to serve diversity-related institutional interests:*

Our institution is committed to serving our local community, state, nation, and world by enhancing access to exceptional educational opportunities for students who have the promise to contribute their talents, perspectives, and life experiences to a broadly diverse and inclusive academic community. We are also committed to creating a community where all of our students can fully participate, reach their fullest potential, and benefit from experience living, learning, working, and socializing with people who have different socioeconomic backgrounds, races, faiths, cultures, identities, talents, perspectives, and roads traveled.

The following question is intended to provide insight to us on how your life experiences and personal commitment would both contribute to and benefit from the campus climate and experience we seek to provide for all of our students as they prepare for life in an increasingly diverse society. We encourage you to be open about your relevant experiences, depth of understanding, and commitment, even if that is difficult. Our objective is to truly understand you. We value students who have navigated challenging circumstances beyond their control, as well as students who have helped remove barriers that others may have had to face.

**Please describe specific experiences in which you have meaningfully come to understand differences, hostilities, or barriers (e.g., cross-socioeconomic, -racial, or -faith); or experiences in which you may have contributed to enhancing understanding and elimination of such challenges. Please let us know:**

- **How did you respond and, in hindsight, would you have responded differently?**
- **How would this experience or understanding affect your engagement in and benefits from the university's programs?**
- **How would these experiences contribute to your peers' experience at the university?**
- **How is this experience likely to benefit society and contribute to your personal and work-related satisfaction after graduation?**

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