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# A Policy and Legal “Syllabus” for Diversity Programs at Colleges and Universities

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May 2015



### **About the College Board's Access & Diversity Collaborative**

Since its establishment in the wake of the landmark University of Michigan U.S. Supreme Court decisions in 2004, the Access & Diversity Collaborative (ADC) has established itself as the "go to" resources on policy, practice, legal and strategic guidance to colleges, universities, and state systems of higher education to support their independent development of their mission-based diversity goals and their strategies to achieve them. Building on the success of its first decade, the Collaborative pursues three core functions: (1) a voice of national advocacy; (2) a resource for sophisticated and pragmatic policy and practice guidance; and (3) a convener for thought leadership and collaborative engagement on policy and practice development. The ADC is sponsored by a dozen national higher education organizations and a diverse group of more than 40 public and private colleges and universities, listed on page 16. For more information, please visit the ADC's website: <http://diversitycollaborative.collegeboard.org/>.

### **About ACE**

Founded in 1918, ACE is the major coordinating body for the nation's higher education institutions. Its approximately 1,700 members reflect the extraordinary breadth and contributions of degree-granting colleges and universities in the United States. ACE provides leadership and a unifying voice on key higher education issues, and influences public policy through advocacy, research, and program initiatives. For more information, please visit [www.acenet.edu](http://www.acenet.edu) or follow ACE on Twitter [@ACEducation](https://twitter.com/ACEducation).

### **About EducationCounsel**

The syllabus was prepared on behalf of the ADC by EducationCounsel LLC. EducationCounsel is an innovative law, policy, strategy, and advocacy organization committed to strengthening education systems, closing achievement gaps, and expanding access to educational opportunities. The firm collaborates with education leaders from across the country, including state and local leaders, higher education officials, associations, foundations, and pioneering private and public entities to improve educational outcomes for all students. EducationCounsel is affiliated with Nelson Mullins Riley & Scarborough LLP. For more information, please visit [www.educationcounsel.com](http://www.educationcounsel.com).

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### **Acknowledgements**

The syllabus was made possible through the work of many researchers, practitioners, and other higher education leaders over the past decade or more, many of whom are included as recommended reading. Special thanks goes to the ADC's Advisory Council and the ADC's organizational sponsors, are sources of many of the works included here.

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***The syllabus intended for informational and policy planning purposes only and does not constitute specific legal advice. Legal counsel should be consulted to address institution-specific legal issues.***

## A Note to the Higher Education Community

Many, if not most, institutions of higher education define their mission in part through goals associated with the educational benefits of diversity. Though every institution is unique and defines its mission accordingly, many ground their diversity efforts upon a common framework focused on improved teaching and learning, preparation for a 21<sup>st</sup> Century workforce, and enhancing civic engagement. And they define diversity broadly – inclusive of a wide range of student characteristics, experiences, and abilities.

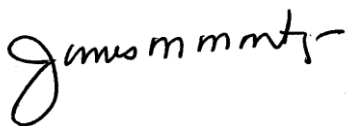
Keeping this commitment to diversity has not always been without challenge, particularly with the specter of lawsuits and state voter initiatives challenging race-and ethnicity-conscious elements of broader diversity policies. Indeed, within the last six months alone, we have seen a new request that the U.S. Supreme Court review Abigail Fisher's case against the University of Texas and two federal court complaints against the University of North Carolina and Harvard University.

Our collective and individual efforts to address diversity issues have not been – nor should they ever be – merely reactive to such developments. Robust and proactive engagement must be our mantra now and over time. To that end, contextually optimal and sustained efforts are necessary to ensure that we maintain our commitment to diversity and work to achieve our many diversity goals in educationally grounded, legally acceptable ways.

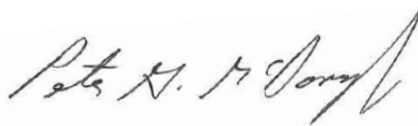
Institutional presidents and provosts, faculty members, and enrollment and student affairs administrators (and, yes, lawyers) all have vital roles to play as they come together to pursue their institutions' mission-driven goals. In undertaking that important work, the good news is that our colleges and universities do not have to address these challenges alone. A bevy of resources exists that can help institutions of higher education meet their educational goals *and* mitigate legal risk. Both the College Board and the American Council on Education have been proud to support the development of actionable resources and research associated with diversity over time. This "Syllabus" is a continuation of that effort.

We hope that the Syllabus can provide a high level view of the issues at play, help readers understand what particular challenges they may have, and provide recommended reading to inform the development of institution-specific strategies and solutions. We intend for the Syllabus to be used by a variety of individuals. Presidents, provosts, and other institutional leaders can take a quick look (and "dive deep" when they like) to refresh their understanding of the issues. At the same time, legal counsel, enrollment officials, and others in academic and student affairs may find the discussion and active web links to policy- and practice-oriented resources to be helpful in their continuing efforts to advance diversity goals.

Summer tends to be a more reflective time for most of us in higher education. Just as many professors sit down to rework their class syllabuses for next year, many of our admissions and enrollment officers and administrators spend the summer reviewing results from the previous year, contemplating process refinements, and refocusing on the next batch of applicants. We hope that the Syllabus will be a useful companion for all in that endeavor.



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## Overview

Over the last decade, the College Board's Access & Diversity Collaborative (ADC) – working in partnership with numerous higher education institutions and organizations, notably including the American Council on Education (ACE) – has developed a significant body of work designed to assist institutions pursuing diversity goals. To create greater awareness of these resources and how to use them, the ADC, working with its sponsors, has created the Syllabus to map relevant issues and to direct institutions to important resources<sup>1</sup> that can help them understand these issues, develop effective policies, and – as appropriate – mitigate legal risk. We hope that the syllabus can be particularly timely, given continued legal activity and public attention to diversity-related race-conscious<sup>2</sup> enrollment practices.<sup>3</sup>

Section I of the Syllabus tracks the central policy and practice elements that should be addressed to achieve success with respect to diversity-related goals. Section II outlines relevant federal and state legal foundations that inform that analysis.

- I. Key Elements of a Diversity Policy and Legal Framework
  - 1. Mission and goals
  - 2. Measures of success
  - 3. Holistic review in admissions decisions
  - 4. Enrollment decisions regarding outreach, recruitment, and financial aid/scholarships
  - 5. Race-neutral strategies
  - 6. Curricular and co-curricular strategies and programs for enrolled students
  - 7. Evaluation and continuous improvement
  - 8. Strategic communications and stakeholder engagement
- II. Legal Foundations
  - 1. U.S. Supreme Court cases
    - A. Grutter v. Bollinger and Gratz v. Bollinger (University of Michigan cases)
    - B. Fisher v. University of Texas at Austin
    - C. Schuette v. BAMN
  - 2. U.S. Department of Education's Office for Civil Rights Decisions and Guidance
  - 3. State Voter Initiatives

Each element in Section I includes brief background and key questions, along with a list of actionable resources (with links) that address policy, research, strategy, legal, and communications issues. The "Tools to get you started" section in each Section I element links to key issues captured in the [ADC's Toolkit](#). Each element in Section II includes a brief description of each case or legal authority as well as references and links to key court opinions, related federal agency policies and statements, amicus briefs, and other general resources

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<sup>1</sup> Resources include those identified by the ADC as particularly relevant and useful to policy makers and practitioners that were not created as part of the ADC's work.

<sup>2</sup> The syllabus uses "race-conscious" as shorthand for race- and ethnicity-conscious policies and practices because, despite meaningful differences between race and ethnicity, federal nondiscrimination law treats them similarly. Most of these considerations also apply to gender-conscious practices, though the marquee Supreme Court cases on admissions have not addressed gender directly and the body of law regarding gender differs somewhat from that governing race and ethnicity.

<sup>3</sup> In addition to ongoing litigation in *Fisher v. University of Texas at Austin*, new complaints were filed against Harvard University and the University of North Carolina in November 2014. Meanwhile, the U.S. Department of Education's Office for Civil Rights continues to receive and resolve complaints of discrimination in the context of institutional race-conscious enrollment practices.

## I. Key Elements of a Diversity Policy and Legal Framework

### 1. Mission and goals

**An institution should clearly articulate its particular, broad-based diversity goals, with a direct connection to its mission and the long-recognized benefits of diversity that include improved teaching and learning, preparation for the 21<sup>st</sup> century workforce, and enhanced preparation for civic participation.** “Diversity” can and should encompass a range of personal characteristics, experiences, and interests (that may include race, ethnicity, and gender). Institution-wide goals (and attendant engagement strategies) can and should be adapted to align with particular disciplines and areas of academic focus. And having a clear statement of mission and goals associated with diversity is a key foundation for mitigating legal risk in cases where race-, ethnicity-, and gender-conscious policies and practices may be challenged.

#### Key questions

- What educational interests does the institution (and its various departments and schools) seek to achieve through its diversity goals? Are those goals directly related to the institution’s mission? Are they clearly communicated?
- Do institutional leaders, administrators, faculty, and other stakeholders have the right information and understanding of the institution’s mission and diversity goals for communicating and building support, both internally and with the public?

<b>Tools to get you started</b>	<ul style="list-style-type: none"><li>• <a href="#">Tool 1: The Diversity Imperative: The Compelling Case</a> (2010).</li><li>• <a href="#">Tool 5: Making Connections: A Holistic View of Key Strategies</a> (2010).</li></ul>
<b>Comprehensive guidance</b>	<ul style="list-style-type: none"><li>• <a href="#">A Diversity Action Blueprint: Policy Parameters and Model Practices for Higher Education Institutions</a> (College Board 2010) (discusses mission and goals and the establishment of key elements of model policies on pages 7-14, including detailed analysis of Diversity Policy Statements from the University of Maryland and the University of Chicago).</li><li>• <a href="#">Roadmap to Diversity and Educational Excellence: Key Legal and Educational Policy Foundations for Medical Schools</a> (2d ed.) (AAMC 2014) (includes discussion of how diversity and educational goals may be framed in the medical school context on pages 19-22).</li></ul>
<b>Other resources</b>	<ul style="list-style-type: none"><li>• <a href="#">Does Diversity Make a Difference?</a> (ACE/AAUP 2000) (presents three research studies on the value of diversity, including faculty views, mission statements at liberal arts colleges, and classroom impact).</li><li>• <a href="#">Step Up &amp; Lead for Equity</a> (AAC&amp;U 2015) (builds the case for higher education leaders to take action to make learning available for all students; includes a checklist of 10 key steps on pages 24-26).</li><li>• <a href="#">ADC Issue Brief: Institutional Leadership</a> (College Board 2014) (includes a joint interview with two university leaders (Nancy Cantor and Jonathan Alger) and identifies relevant research and practical insights into institutional leadership).</li><li>• <a href="#">Falling Short? College Learning and Career Success</a> (AAC&amp;U 2015) (reviews findings from surveys of employers and college students that include several endorsements of the importance of learning and working with diverse peers).</li><li>• <a href="#">Handbook on Diversity and the Law</a> (AAAS/AAU 2010) (includes specific discussion of the benefits of diversity and STEM education on pages 11-22).</li></ul>



## 2. Measures of success

**Establishing key measures by which to gauge success over time is a critical step in evaluating progress and informing policy and practice decisions.** As with most institutional policy issues, an array of qualitative and quantitative measures likely should inform judgments about success – all rooted in an institution’s unique mission and context. At least three dimensions of diversity should inform what success looks like:

1. Compositional diversity (which may include a “critical mass” of underrepresented minority students);
2. Diversity-related curricular and extra-curricular programming (e.g., cultural awareness workshops, core diversity requirements in general education courses, ethnic studies courses, etc.); and
3. Diverse interactions, characterized by students’ exchanges with racially and ethnically diverse people as well as with diverse ideas, information, and experiences.

In cases where race-, ethnicity-, and gender-conscious policies and practices are implicated, having sufficient clarity regarding diversity objectives associated with those practices is very important for compliance with federal nondiscrimination laws.

### Key questions

- What does success look like, both institution-wide and within specific schools and departments?
- How will the institution and its units know when success has been achieved?
- What data and information should inform these decisions? How does the institution’s unique mission and context inform this analysis?

<b>Tools to get you started</b>	<ul style="list-style-type: none"> <li>• <a href="#">Tool 5: Making Connections: A Holistic View of Key Strategies</a> (2010).</li> </ul>
<b>Model practices</b>	<ul style="list-style-type: none"> <li>• <a href="#">The Playbook: A Guide to Assist Institutions of Higher Education in Evaluating Race- and Ethnicity-Neutral Policies in Support of the Mission-Related Diversity Goals</a> (College Board 2014) (summarizes Rice University’s conception of critical mass in terms of its unique residential communities on pages 13-14).</li> </ul>
<b>Other resources</b>	<ul style="list-style-type: none"> <li>• <a href="#">Addis, The Concept of Critical Mass in Legal Discourse</a> (Cardozo Law Rev. 2007) (provides close analysis of critical mass theory in multiple contexts, including possible implications of legal authorities appropriating the term in affirmative action cases).</li> <li>• <a href="#">Garces &amp; Jayakumar, Dynamic Diversity: Toward a Contextual Understanding of Critical Mass</a> (Educ. Researcher 2014) (proposes a new understanding of critical mass that focuses on the symbiotic relationship between students and their environment and argues for a contextual definition of success) [link to abstract only].</li> <li>• <a href="#">Elam et al., Identity, Social Networks, and Relationships: Theoretical Underpinnings of Critical Mass and Diversity</a> (Acad. Medicine 2009) (analyses critical mass as a “contextual benchmark” in the medical school context).</li> <li>• <a href="#">Admissions and Diversity After Michigan: The Next Generation of Legal and Policy Issues</a> (College Board 2006) (analyzes critical mass arguments, including underlying educational theory, put forth by the University of Michigan in <i>Grutter</i> on pages 31-39). <a href="#">The Fifth Circuit Court of Appeal's Second Ruling in Fisher v. University of Texas: The Decision and Its Implications</a> (College Board 2014) (briefly summarizes UT’s conception of qualitative and quantitative critical mass and the Fifth Circuit’s review of it as part of the <i>Fisher</i> litigation on page 3).</li> </ul>

### 3. Holistic review in admissions decisions

**Holistic review is a flexible, highly individualized process by which the strength of applicants is evaluated through multiple factors that incorporate traditional academic measures, relevant co-curricular and work experiences, and other individual characteristics.** The achievement of mission-based diversity goals should align with this process so that applicants are evaluated in light of their potential to succeed *and* to contribute to the learning environment. Necessarily driven by an institution’s unique mission and context, holistic review should be tailored to the institution itself. No two models are likely to be exactly the same. As a matter of law, when factors such as race, ethnicity, and gender are considered as part of the holistic review, it is important that they be considered as no more than a “plus” factor.

#### Key questions

- How does the process of holistic review in admissions reflect the institution’s mission and educational goals?
- Does the admissions process balance both academic accomplishments and personal factors in relation to the institution’s mission-driven goals?
- Is race or ethnicity included in the admissions process? If so, at what stage and in what way?
- Have results been evaluated over time, both qualitatively and quantitatively?

Tools to get you started	<ul style="list-style-type: none"><li>• <a href="#">Tool 6: Admission: Exploring Key Strategies for Achieving Success</a> (2010).</li></ul>
Comprehensive guidance	<ul style="list-style-type: none"><li>• <a href="#">Admissions and Diversity After Michigan: The Next Generation of Legal and Policy Issues</a> (College Board 2006) (discusses the development of admissions policies and provides model illustrations, see especially Section Two, Part III).</li><li>• <a href="#">Roadmap to Diversity: Integrating Holistic Review Practices into Medical School Admissions</a> (AAMC 2010) (specifically designed for medical schools but with broadly applicable lessons, provides a flexible, modular framework and accompanying tools for aligning admission policies, processes, and criteria with institution-specific mission and goals, and establishing, sustaining, and reaping the benefits of student diversity in support of those missions and goals).</li><li>• <a href="#">Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education</a> (U.S. Departments of Education and Justice 2012) (includes several examples of permissible practices in admissions and helps draw distinctions between race-conscious and race-neutral policies).</li></ul>
Model practices	<ul style="list-style-type: none"><li>• <a href="#">Diversity Action Blueprint</a> (College Board 2010) (discusses Admissions Policy Statements that focus on holistic review on pages 15-39, including detailed analysis of those from Harvard University (undergraduate), the University of Michigan Law School, and Rice University (undergraduate)).</li><li>• <a href="#">Toward a Taxonomy of the Admissions Decision-Making Process</a> (College Board 1999) (identifies nine philosophical approaches to admissions and related selection criteria).</li><li>• <a href="#">Admissions Decision-Making Models: How U.S. Institutions of Higher Education Select Undergraduate Students</a> (College Board 2002) (provides different examples of admissions models, including specific examples of holistic or “whole folder” review).</li></ul>

#### 4. Enrollment decisions regarding outreach, recruitment, and financial aid/scholarships

**Institutions should ensure alignment and coherence across the full complement of enrollment policies and practices, including recruitment, outreach, financial aid, and scholarships.** A comprehensive understanding of their interrelationship and impact can yield better judgments about policy development over time. At the same time, like admissions, contextual differences in these practices are subject to probing legal inquiries when race-conscious efforts are involved. That said, each set of practices has unique features that bear on the ultimate legal analysis under federal non-discrimination laws. For example, guidance from the U.S. Department of Education (cited below) distinguishes between race-conscious financial aid/scholarships and race-conscious admissions in its Title VI analysis.

##### Key questions

- How do outreach, recruitment, and financial aid/scholarships reflect the institution's mission and educational goals? How do they align with admissions and curricular/co-curricular programs?
- Is race or ethnicity included in these practices? If so, in what way?
- Have results been evaluated over time, both qualitatively and quantitatively?

<b>Tools to get you started</b>	<ul style="list-style-type: none"> <li>• <a href="#">Tool 5: Making Connections: A Holistic View of Key Strategies</a> (2010).</li> <li>• <a href="#">Tool 7: Financial Aid and Scholarships</a> (2010).</li> </ul>
<b>Comprehensive guidance</b>	<ul style="list-style-type: none"> <li>• <a href="#">Federal Law and Recruitment, Outreach, and Retention: A Framework for Evaluating Diversity-Related Programs</a> (College Board 2005) (provides policy and legal background to help structure diversity-related recruitment, outreach, and retention programs to achieve their diversity goals and mitigate legal risk).</li> <li>• <a href="#">Federal Law and Financial Aid: A Framework for Evaluating Diversity-Related Programs</a> (College Board 2005) (provides guidance on race-conscious financial aid and scholarship policies, including privately endowed scholarships).</li> <li>• <a href="#">Donated Funds and Race-Conscious Scholarship Programs After the University of Michigan Decisions</a> (NACUA 2004) (includes in-depth discussion of various types of financial aid programs: financial aid for disadvantaged students, financial aid authorized by Congress, financial aid to remedy past discrimination, financial aid to create diversity, and private gifts restricted by race; includes sample language for donor agreements tracking USED policy below).</li> <li>• <a href="#">Nondiscrimination in Federally Assisted Programs</a> (U.S. Dep't of Education OCR 1994) (clarifies how institutions can use financial aid to promote diversity and access without violating Federal antidiscrimination laws).</li> <li>• <a href="#">Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education</a> (U.S. Depts of Education &amp; Justice 2012) (includes examples of permissible practices in pipeline programs, recruitment/outreach, and retention/support programs and draws distinctions between race-conscious and race-neutral policies).</li> </ul>
<b>Model practices</b>	<ul style="list-style-type: none"> <li>• <a href="#">The Playbook</a> (College Board 2014) (includes many specific examples of promising recruitment, outreach, and scholarship/financial aid programs based on socio-economic status, geographic diversity, and first generation status; also discusses successful cohort programs such as the Posse Program).</li> </ul>
<b>Other resources</b>	<ul style="list-style-type: none"> <li>• <a href="#">Statement of Ethical Principles</a> (NASFAA 2014) (describes the responsibilities of ethical financial aid officers, including commitment to student access and success).</li> <li>• <a href="#">Scholarship Grants to Individuals and the Validity of Racially Restricted Scholarship Trusts</a> (IRS 1982) (considers the effect of racial limitations on private scholarship trusts for purposes of federal tax exempt qualification).</li> </ul>



## 5. Race-neutral strategies

**For enrollment policies and practices discussed above, consideration and (as appropriate) pursuit of race-neutral strategies is an essential step – especially for institutions pursuing race-conscious policies and practices.** Inventorying all existing race-neutral strategies in place as a foundation for evaluating their impact and effectiveness, individually and collectively, is key. In addition to serving a fundamental *policy* interest in linking policies and practices to the achievement of diversity goals, this practice is also *required* in cases where institutions pursue race-, ethnicity-, and gender-conscious efforts to achieve diversity.

### Key questions

- Have race-conscious and race-neutral policies been inventoried, including a process to evaluate impact and alignment?
- Can diversity goals be achieved without race-conscious policies? Why or why not?
- Have the institution and its schools and departments seriously considered (and, when appropriate, tried) race-neutral alternatives? With what results?
- What "workable" – i.e., effective and achievable – race-neutral strategies are available?

<b>Tools to get you started</b>	<ul style="list-style-type: none"> <li>• <a href="#">Tool 5: Making Connections: A Holistic View of Key Strategies</a> (2010).</li> <li>• <a href="#">Tool 7: Financial Aid and Scholarships: Exploring Key Strategies for Achieving Success</a> (2010).</li> </ul>
<b>Comprehensive guidance</b>	<ul style="list-style-type: none"> <li>• <a href="#">The Playbook: A Guide to Assist Institutions of Higher Education in Evaluating Race- and Ethnicity-Neutral Policies in Support of the Mission-Related Diversity Goals</a> (College Board 2014) (provides an overview of the many race-neutral options available to institutions and guidance on how an institutional policy or practice may apply in different contexts; includes many examples of race-neutral enrollment strategies based on socio-economic status, geographic diversity, first generation status, and percent plans; also discusses collaborative or articulation agreements, cohort programs, and application "inputs").</li> <li>• <a href="#">Race-Neutral Policies in Higher Education: From Theory to Action</a> (College Board 2008) (offers principles to guide race neutral policy development and implementation, based on relevant law and practice lessons).</li> <li>• <a href="#">Handbook on Diversity and the Law</a> (AAAS/AAU 2010) (provides legal analysis of federal requirements related to race- and gender-neutral alternatives in Ch. V).</li> </ul>
<b>Model practices</b>	<ul style="list-style-type: none"> <li>• <a href="#">The Future of Affirmative Action</a> (Lumina Foundation/Century Foundation 2014) (reviews efforts to promote racial, ethnic, and economic inclusion at selective institutions, including a discussion of the legal challenge, research on race-neutral strategies, and state experiences).</li> <li>• <a href="#">The Smart Grid: Developing and Using Collaborative Agreements to Bring More Students into STEM</a> (AAAS 2012) (discusses the development of articulation or collaborative agreements between institutions to expand the pipeline for all students – including but not limited to women, racial minorities, and low income students – into progressively higher levels of STEM education, including several examples and a sample agreement templates).</li> </ul>
<b>Other resources</b>	<ul style="list-style-type: none"> <li>• <a href="#">ADC Issue Brief: Race-Neutral Strategies</a> (College Board 2015) (includes a joint interview of researcher Matt Gaertner and attorney Art Coleman and identifies relevant research and practical insights).</li> </ul>

## 6. Curricular and co-curricular strategies and programs for enrolled students

Enrollment decisions are a necessary but not sufficient foundation for achieving the educational benefits of diversity on campus. Institutions pursuing mission-based diversity goals also should ensure that students have opportunities to interact with and learn from diverse peers inside the classroom, dorm room, and everywhere in between. Studies have shown that having a diverse student population is not enough – the frequency and quality of interactions with diverse peers that matter most for obtaining the benefits of diversity. Institutions should take a close look at a variety of curricular and co-curricular policies and practices, individually and in concert, to produce the intended educational benefits of diversity, including how the institution works to ensure that all students are able to contribute to campus life.

### Key questions

- How does the institution encourage its students to interact with and learn from diverse peers, particularly during students' early years on campus?
- How does the institution help students avoid feeling isolated or as a token representative of a particular group?
- How can these efforts for enrolled students inform the enrollment process?

Tools to get you started	<ul style="list-style-type: none"> <li>• <a href="#">Tool 5: Making Connections: A Holistic View of Key Strategies</a> (2010).</li> </ul>
Comprehensive guidance	<ul style="list-style-type: none"> <li>• <a href="#">Making Diversity Work on Campus</a> (AAC&amp;U 2005) (discusses empirical evidence that demonstrates the educational benefits of diverse learning environments; recommends strategies for engaging diversity in the service of learning, including recruiting a compositionally diverse student body, faculty, and staff; developing a positive campus climate; transforming curriculum, co-curriculum, and pedagogy to reflect and support goals for inclusion and excellence).</li> <li>• <a href="#">Gurin et al., Diversity and Higher Education: Theory and Impact on Educational Outcomes</a> (Harvard Educ. Rev. 2002) (presents a framework for understanding how diversity fosters identity construction and cognitive growth based on results from University of Michigan research on the effects of diversity in classroom and informal interaction among racially diverse student groups).</li> </ul>
Model practices	<ul style="list-style-type: none"> <li>• <a href="#">The Playbook</a> (College Board 2014) (includes several examples of promising retention programs based on socio-economic status, geographic diversity, and first generation status; also discusses successful cohort programs such as the Posse Program that include a retention component).</li> </ul>
Other resources	<ul style="list-style-type: none"> <li>• <a href="#">Quality Matters: Achieving Benefits Associated With Racial Diversity</a> (Kirwin Inst. 2011) (reviews current research that emphasizes the frequency and quality of cross-racial interactions as a bedrock for achieving the benefits of diversity).</li> <li>• <a href="#">Campus and Classroom Climates for Diversity</a> issue of <i>Diversity &amp; Democracy</i> (AAC&amp;U 2014) ( features multiple approaches to creating and evaluating campus and classroom climates that value diversity and that support the success of underserved students, including targeted student success programs and campus-wide initiatives).</li> <li>• <a href="#">Assessing Students' Diversity, Global, and Civic Learning Gains</a> issue of <i>Diversity &amp; Democracy</i> (AAC&amp;U 2013) (features a range of approaches to assessing the impact of students' engagement in diversity, global, and civic learning opportunities).</li> </ul>

## 7. Evaluation and continuous improvement

**Good evaluation practices are a critical part of the successful development and implementation of diversity-related policies.** The information gleaned from meaningful evaluation activities should be used to improve, enhance, or initiate the conditions that must be in place for the benefits of diversity to be achieved on campus. And meaningful evaluation practices require that higher education officials be as prepared to learn what they are not doing well as what they are doing well – and to act on those results. As a matter of, federal law, race-, ethnicity-, and gender-conscious policies must be periodically assessed and modified, as appropriate, to ensure that they continue to meet their intended goals and are weighted appropriately in light of those goals. .

### Key questions

- How often are institution-wide and unit-specific diversity goals evaluated?
- Within each unit, who is responsible for managing and recording decision-making processes (including justification for the use or non-use of various policies)?
- How can important stakeholders (including the Board of Trustees and faculty members) contribute to this process?

Tools to get you started	<ul style="list-style-type: none"><li>• <a href="#">Tool 8: Getting from Here to There: Managing the Process of Policy Change</a> (2010).</li></ul>
Comprehensive guidance	<ul style="list-style-type: none"><li>• <a href="#">Assessing Underserved Students' Engagement in High-Impact Practices</a> (AAC&amp;U 2013) (presents a methodology to support purposeful study and equitable implementation of high-impact practices; includes tools in the appendix that outlines a six-step assessment process, starting with selecting a practice for study through creating equitable benchmarks).</li><li>• <a href="#">Roadmap to Excellence: Key Concepts for Evaluating the Impact of Medical School Holistic Admissions</a> (AAMC 2013) (provides specific guidance on evaluating the impact and effectiveness of diversity policies and practices, with a focus on the holistic review admissions process; intended for a medical school audience but likely relevant in other contexts).</li></ul>
Model practices	<ul style="list-style-type: none"><li>• <a href="#">Summary &amp; Highlights Appendix A: A Step-by-Step Guide to Law-Attentive Design of Campus Diversity and Access Strategies</a> (AAAS/AAU 2014) (provides a guide to policy development and evaluation, including recommendations for diversity-focused student and faculty surveys, how to identify barriers for particular groups, and applicant questions on the conduct of inclusion).</li><li>• <a href="#">Diversity Action Blueprint</a> (College Board 2010) (discusses Evaluation Models on pages 41-43).</li></ul>

## 8. Strategic communications and stakeholder engagement

**The court of public opinion can matter as much as the court of law. Institutions and other higher education leaders should pursue a proactive strategy to build broad support for their access and diversity objectives.**

The public must understand *what* institutions want to do, *why* they want to do it, and *how* they act to achieve their goals. In other words, enhanced institutional transparency can be important in the attainment of diversity goals. Moreover, institutions should have a clear internal strategy that aligns policy and communications efforts across offices, departments, and schools. Engaging with stakeholders and making strategic communications efforts will be important complementary strategies to create understanding and support for the institution's mission-driven goals and objectives.

### Key questions

- Can the institution – and its leaders and other representatives – articulate the core rationale for the educational benefits of diversity? Can they link this rationale to 21st Century learning, career, citizenship goals (e.g., critical thinking, problem solving, working with diverse groups.), for which strong public support exists?
- Does the institution have clear terminology about its diversity goals and link to institutional mission? Do all relevant stakeholders understand and use these terms appropriately?
- Does the institution have a process to educate new administrators, faculty members, and leaders so that they understand important history and context of current policies and practices?
- Are students encouraged to serve as communication agents by sharing their stories within the institution and more broadly?

Tools to get you started	<ul style="list-style-type: none"><li>• <a href="#">Tool 3: Key Terms and Concepts: Knowing the Basics</a> (2010).</li><li>• <a href="#">Tool 4: Mythbusters: Correcting Common Misunderstandings</a> (2010).</li><li>• <a href="#">Tool 10: Taking a Stand: Higher Education Leadership for the 21st Century</a> (2010).</li></ul>
Comprehensive guidance	<ul style="list-style-type: none"><li>• <a href="#">Committing to Equity and Inclusive Excellence: A Campus Guide for Self-Study and Planning</a> (AAC&amp;U 2015) (provides a framework for bringing leaders and educators together across divisions and departments to engage in internal assessment and dialogue to chart a path forward to improve all students' success and learning, particularly those who come from traditionally underserved groups).</li></ul>
Other resources	<ul style="list-style-type: none"><li>• <a href="#">Step Up &amp; Lead for Equity</a> (AAC&amp;U 2015) (citing evidence of widening equity gaps, builds the case for higher education leaders to take action to make learning available for all students).</li><li>• <a href="#">Preparing for the Fisher Decision: Are You Ready?</a> (College Board 2013) (prepared in advance of the Supreme Court's 2013 <i>Fisher</i> decision, pages 4-9 include guidance that remains applicable, e.g., target audiences, messaging guideposts, and key messaging themes for strategic communications related to diversity in higher education).</li></ul>

## II. Legal Foundations

### 1. U.S. Supreme Court cases

#### A. Grutter v. Bollinger and Gratz v. Bollinger (University of Michigan cases)

Today's legal framework for race-conscious policies and practices was established in twin U.S. Supreme Court decisions in 2003: the Court upheld the University of Michigan Law School's admissions program in *Grutter* but struck down the University's undergraduate admissions program in *Gratz*. Both decisions affirmed that the educational benefits of diversity can constitute a "compelling interest" that can justify the limited consideration of race in higher education admissions decisions. But the Court also emphasized that race-conscious policies must be "narrowly tailored" to this goal. The Court specifically approved individualized, holistic review of applicants (i.e., the law school's process), rather than the automatic award of points based on race or ethnicity (i.e., undergraduate school's process). It reached this conclusion by examining factors including the flexibility of the program, the necessity of using race or ethnicity (including evidence of its material impact), the burden imposed on non-beneficiaries, and whether the policy has an end point and is subject to periodic review.

<b>Court decisions</b>	<ul style="list-style-type: none"><li>• <a href="#">U.S. Supreme Court: Grutter v. Bollinger</a>, 539 U.S. 306 (2003) [links to plurality opinion and other concurring and dissenting opinions].</li><li>• <a href="#">U.S. Supreme Court: Gratz v. Bollinger</a>, 538 U.S. 244 (2003) [links to plurality opinion and dissenting opinions].</li></ul>
<b>Case summary and analysis</b>	<ul style="list-style-type: none"><li>• <a href="#">Admissions and Diversity After Michigan: The Next Generation of Legal and Policy Issues</a> (College Board/EducationCounsel 2006) (see especially Section Two, pp. 23-24).</li></ul>
<b>Amicus briefs</b>	<ul style="list-style-type: none"><li>• <a href="#">Fortune 500 Companies brief</a> (2011) (focuses on business case for diversity)</li><li>• <a href="#">Retired Military Leaders brief</a> (2011) (focuses on national security interests in diversity)</li><li>• All other briefs available <a href="#">here</a>.</li></ul>

#### B. Fisher v. University of Texas at Austin

Since 2008, the University of Texas at Austin (UT) and Abigail Fisher have been involved in litigation about the legality of UT's race-conscious admission program. The case took on special importance when the U.S. Supreme Court heard and issued a decision in the case – the first time it had directly addressed these issues since the *Grutter* and *Gratz* decisions in 2003. Ultimately, UT's admission program was upheld by the lower court (the Fifth Circuit Court of Appeals) in 2014, based on the Supreme Court's guidance and earlier precedent in *Grutter*, *Gratz*, and *Bakke* (1978).

<b>Court decisions</b>	<ul style="list-style-type: none"><li>• <a href="#">U.S. Supreme Court: Fisher v. University of Texas at Austin</a>, 570 U.S. ____ (2013).</li><li>• <a href="#">Fifth Circuit's Decision in Response: Fisher v. University of Texas at Austin</a>, No. 09-50822 (5th Cir. July 15, 2014).</li></ul>
<b>Case summary and analysis</b>	<ul style="list-style-type: none"><li>• <a href="#">The Fifth Circuit Court of Appeals' Second Ruling in Fisher v. University of Texas: The Decision and Its Implications</a> (College Board 2014).</li><li>• <a href="#">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</a> (College Board 2013).</li></ul>



	<ul style="list-style-type: none"> <li>• <a href="#">Emphasis Added: Fisher v. University of Texas and Its Practical Implications for, Institutions of Higher Education</a>, in <i>The Future of Affirmative Action</i> (ed. Kahlenberg) (2014) (provides deeper analysis of <i>Fisher</i>, including a review of important precedent and a close analysis of key language in the Court's opinion).</li> <li>• <a href="#">Questions and Answers About Fisher v. University of Texas at Austin</a> (U.S. Depts of Education &amp; Justice 2013) (provides summary of key elements of <i>Fisher</i> decision; confirms relevance of other OCR guidance).</li> </ul>
<b>Amicus briefs</b>	<ul style="list-style-type: none"> <li>• <a href="#">Diversity in the Balance, Part I: Key Educational Principles from Amicus Briefs Filed in Fisher v. University of Texas</a> (College Board March 2013) (summarizes key educational principles present among all 92 amicus briefs to the Supreme Court).</li> <li>• <a href="#">College Board, National School Boards Association, et al. Amicus Brief to U.S. Supreme Court</a> (2012).</li> <li>• <a href="#">American Council on Education, et al. Amicus Brief to U.S. Supreme Court</a> (2012).</li> <li>• <a href="#">American Council on Education, et al. Amicus Brief to Fifth Circuit</a> (2013) (for the Fifth Circuit's second hearing of the case after the Supreme Court's decision).</li> </ul>

### C. Schuette v. BAMN

On April 22, 2014, in a 6-2 decision, the U.S. Supreme Court upheld Michigan's voter ban on the otherwise lawful use of race, ethnicity, and gender by the state's public entities, including race-conscious admission decisions at the state's public institutions. Though no single opinion of the eight voting Justices commanded a majority, the bottom line is clear: after *Schuette*, the U.S. Constitution permits voters through the ballot box to deprive public colleges and universities of their otherwise available discretion to consider race in admissions so long as the voters' purpose (and the likely impact of their vote) is not to inflict harm to individuals on the basis of race.

<b>Court decisions</b>	<ul style="list-style-type: none"> <li>• <a href="#">Schuette v. Coalition to Defend Affirmative Action, Integration, and Immigration Rights and Fight for Equality by Any Means Necessary (BAMN)</a>, No. 12-682 (U.S. April 22, 2014).</li> </ul>
<b>Case summary and analysis</b>	<ul style="list-style-type: none"> <li>• <a href="#">Schuette v. BAMN: What the Supreme Court's Decision Means for Higher Education Institutions Pursuing Diversity Goals</a> (College Board April 2014).</li> </ul>
<b>Amicus briefs</b>	<ul style="list-style-type: none"> <li>• <a href="#">American Council on Education, et al. Amicus Brief to U.S. Supreme Court</a> (2013).</li> </ul>

## 2. U.S. Department of Education's Office for Civil Rights Decisions and Guidance

The U.S. Department of Education's Office for Civil Rights (OCR) is the federal administrative body charged with investigating and resolving complaints (and conducting its own investigations) related to federal civil rights law. Among its areas of responsibility include race-conscious enrollment practices at institutions of higher education that receive federal funding directly or through financial aid programs.

<b>Selected resolutions</b>	<ul style="list-style-type: none"><li>• <a href="#">Complaint Resolution for OCR Complaint #06052020 (Rice University)</a> (OCR Sept. 10, 2013) (found Rice's race-conscious admission program in federal compliance; paid close attention to race-neutral strategies and critical mass). Pages 13-14 of <a href="#">the Playbook</a> summarize and analyze this resolution.</li><li>• <a href="#">Complaint Resolution for OCR Complaint No. 11-07-2016 (University of North Carolina)</a> (OCR Nov. 27, 2012) (found UNC's race-conscious admission program in federal compliance, focusing on the use of standardized test scores).</li><li>• <a href="#">Complaint Resolution for OCR Complaint No. 11-03-2072 (University of Virginia)</a> (OCR Nov. 27, 2012) (found UVa's race-conscious admission program in federal compliance, focusing on holistic review, multifaceted definition of diversity, and gender-neutral admissions process).</li></ul>
<b>OCR guidance</b>	<ul style="list-style-type: none"><li>• <a href="#">Questions and Answers About <i>Fisher v. University of Texas at Austin</i></a> (U.S. Depts of Education &amp; Justice 2013) (provides summary of key elements of <i>Fisher</i> decision; confirms relevance of other OCR guidance).</li><li>• <a href="#">Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education</a> (U.S. Depts of Education &amp; Justice 2012) (reviews standards for OCR investigations and resolutions; provides several examples of permissible practices in admissions, pipeline programs, recruitment and outreach, and retention and support).</li><li>• <a href="#">Nondiscrimination in Federally Assisted Programs</a> (OCR 1994) (clarifies how institutions can use financial aid to promote campus diversity and access of minority students to postsecondary education without violating Federal antidiscrimination laws).</li></ul>

## 3. State Voter Initiatives

Since 1996, voters in Arizona (2010), California (1996), Michigan (2006), Nebraska (2008), and Washington (1998) have passed ballot initiatives that prohibit the consideration and use of race, ethnicity, and sex in public programs, including the admissions and financial aid processes at public college and universities. In 2011, New Hampshire's legislature passed a ban through state statute. (A voter initiative in Colorado was rejected by voters in 2008.) As a result, all public institutions in these states had to adopt exclusively race-neutral policies practices. Also, in 1999, Florida passed a similar ban on public institution admissions through an Executive Order from the Governor and accompanying administrative regulations.

<b>Brief tools to get you started</b>	<ul style="list-style-type: none"><li>• <a href="#">Tool 9: Beyond Federal Law: State Voter Initiatives and Their Consequences</a> (2010).</li></ul>
<b>Comprehensive guidance</b>	<ul style="list-style-type: none"><li>• <a href="#">Beyond Federal Law: Trends and Principles Associated with State Laws Banning the Consideration of Race, Ethnicity, and Sex Among Public Education Institutions</a> (AAAS 2012).</li></ul>

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