

**PRESERVING
DIVERSITY
IN HIGHER EDUCATION**

**A Manual on Admissions Policies and Procedures
After the University of Michigan Decisions**



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The authors and editors thank the following individuals for their invaluable contributions to the Manual: Brooks Allen, Angelo Ancheta, Jack Blackburn, Demetrius Chapin-Rienzo, Liz Eng, Nira Geevargis, William Kidder, Robert Laird, Wandralee Lindtzie, Spencer Overton, Susan Serrano, Christine Stouffer, Bill Villa, Bruce Walker, Cynthia Williams, and Fane Wolfer.

The Manual is being distributed by the Equal Justice Society free of charge. The Equal Justice Society acknowledges the following institutions and individuals for their generous support in making the Manual possible:

Elizabeth Cabraser
California Teachers Association
Quinn Delaney and Wayne Jordan
The Ford Foundation
Wallace Alexander Gerbode Foundation
Jack Londen
Open Society Institute

Production and distribution of the Manual has been made possible by a special grant from the MK Level Playing Field Institute, www.LPFI.org.

Electronic copies of the Manual are available at [www.equaljusticesociety.org/compliance manual](http://www.equaljusticesociety.org/compliance_manual).

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Introduction

Many factors contribute to how an educational institution chooses to design its admissions policies. The primary goal of an admissions policy is to admit students who will help further the academic mission of the school. Admissions offices want to recruit and admit students who are qualified, eager to learn, able to contribute to the broader education of the entire student body, and able to contribute to society in their personal and professional lives after graduation.

Prior to the *Grutter v. Bollinger* and *Gratz v. Bollinger* decisions, most colleges, universities, and graduate programs looked to the U.S. Supreme Court's decision in *Regents of University of California v. Bakke* for guidance in creating race-conscious admissions policies that promoted student body diversity. Many institutions modeled their plans after the Harvard undergraduate admissions policy, described by Justice Powell in *Bakke* as an exemplary plan. Yet, during the 1990s, opponents of affirmative action challenged admissions plans like the Harvard Plan that were designed to increase minority enrollments. While the Court's decision in *Grutter* fully embraces Justice Powell's opinion in *Bakke* and cites with approval the Harvard Plan, it also provides more guidance regarding what is permissible in a race-conscious admissions policy. Meanwhile, the *Gratz* opinion analyzes an undergraduate admissions program that the Court deemed to violate constitutional boundaries.

Therefore, *Grutter* and *Gratz* provide institutions with an opportunity to reexamine their admissions policies and other policies designed to promote diversity in light of new guidance from the Court. Even schools that modeled their admissions policies on the Harvard Plan should reevaluate their policies to determine whether the policies are constitutionally sound. Ultimately, some institutions may find it necessary to create new admissions policies. Others may need only to modify their current plan. Whether or not an institution has a constitutionally sound admissions policy in place, the reevaluation process may prove useful; it provides the opportunity for an institution to improve its policy to ensure that it fully advances its educational mission and diversity goals.

Each institution approaches the admissions process from a unique perspective, and thus the Supreme Court allows considerable flexibility in constructing race-conscious admissions plans. A large, public university, for example, faces a different set of challenges than a small, private graduate school program. The suggestions contained in this Manual, therefore, may not apply to all schools, and are not exhaustive. Instead, this Manual provides guiding principles that admissions officers, faculty, and lawyers should use to design a program that meets the context-specific characteristics of a particular institution.

Retooling or redrafting an admissions policy to fully comply with the law and to fulfill an institution's educational mission may seem daunting. Some institutions may be hesitant to take on the added burdens that a constitutional, race-conscious plan might impose. Other institutions, threatened by the prospect of litigation, may feel pressured into eliminating effective, legal race-conscious programs.

Institutions should not simply abandon race-conscious admissions programs or other academic values in favor of less effective “race-neutral” alternatives. With some effort, and using this Manual as a guide, colleges and universities can design workable, effective, and constitutional race-conscious admissions procedures. The potential benefit is a diverse, vibrant educational environment that is, in the words of the U.S. Supreme Court, “open and available to all segments of American society, including people of all races and ethnicities.”¹

This Manual is divided into three Parts. Part One describes the basic legal and constitutional framework appropriate for reviewing race-conscious higher education admissions policies. In particular, the Part examines key passages from the Supreme Court’s *Grutter* decision and identifies the “compelling interest” and “narrow tailoring” requirements established by the Court. Part Two provides guidelines for developing race-conscious admissions policies in the aftermath of the Michigan decisions. The Part provides suggestions for institutions seeking to maintain a diverse student body through the use of constitutionally sound race-conscious admissions procedures, as well as general guidelines for institutions in states where the consideration of race in admissions is prohibited. Part Two also describes evidence and documentation that may be useful for institutions that are defending challenges to their programs. Part Three offers detailed legal analyses of important issues not directly addressed in *Grutter* and *Gratz*. The Part examines race-conscious admissions programs that seek to remedy past discrimination; discusses the appropriate use of race in admissions-related programs, such as financial aid, scholarship, recruitment, outreach, retention, preparation and support programs; and explores the legality of considering race in faculty and staff hiring.

While the Manual contains legal analyses and offers suggestions on the design of policies that should comply with the constitutional guidelines established in the *Grutter* and *Gratz* cases, it is not a substitute for legal advice. Officials should consult with the general counsel’s offices and other legal experts at their own institutions to ensure that their policies comply with the Constitution, federal laws, and the laws of their state and locality.