

**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).

SUMMARY TABLE OF CONTENTS

Introduction	1
PART ONE: GENERAL GUIDELINES	
Chapter I Basic Legal and Constitutional Principles.....	3
PART TWO: DEVELOPING ADMISSIONS PROCEDURES	
Chapter II Admissions Programs	14
Chapter III Useful Documentation to Support and Defend Admissions Policies.....	38
Chapter IV Developing Admissions Policies When Considering Race is Prohibited	65
PART THREE: LEGAL ANALYSES	
Chapter V Remedial Justifications For Race-Conscious Policies	70
Chapter VI Recruitment, Financial Aid, Support, and Other Admissions-Related Programs	75
Chapter VII Faculty and Staff Hiring	100
APPENDICES.....	131

TABLE OF CONTENTS

	<u>Page</u>
Introduction	1
 PART ONE: GENERAL GUIDELINES	
Chapter I Basic Legal and Constitutional Principles.....	3
A. Constitutional and Statutory Framework	3
1. Equal Protection	3
2. Title VI and 42 U.S.C. § 1981.....	4
B. Compelling Interests Under Equal Protection	4
1. Diversity Is a Compelling Interest.....	4
2. Remedying Past Discrimination Is a Compelling Interest	6
C. Narrow Tailoring Under Equal Protection	6
1. Narrow Tailoring When Diversity Is a Compelling Interest	6
a. Race-Conscious Admissions Programs Must Be Flexible and Nonmechanical.....	7
b. Workable Race-Neutral Alternatives Must Be Considered.....	9
c. Race-Conscious Admissions Programs Must Not Unduly Burden Nonminority Applicants.....	10
d. Race-Conscious Admissions Programs Should Periodically Be Reevaluated.....	10
2. Narrow Tailoring When Remedying Past Discrimination Is a Compelling Interest.....	12
D. State Statutory Requirements	12
 PART TWO: DEVELOPING ADMISSIONS PROCEDURES	
Chapter II Admissions Programs.....	14
A. Initial Considerations.....	14
1. Articulating a “Diversity Rationale”	14
2. Evaluating Race-Neutral Options.....	16

TABLE OF CONTENTS

(continued)

	<u>Page</u>
a. Evaluating Alternative Plans	17
B. Developing an Admissions Plan/Process.....	19
1. General Considerations.....	19
a. Flexibility in Admissions	19
b. Moving Away From a Rigid and Formulaic Reliance on Test Scores and Grades to a Contextual Analysis of Test Scores and Grades	21
c. Periodic Review	24
2. The Admissions Process.....	26
a. Recruitment	26
b. Developing Admissions Criteria	26
c. Ask Questions That Will Provide a More Complete Picture of the Candidate	28
d. Engage in Individualized Review	29
e. Address and Anticipate the Increased Burdens of Individualized Review	31
f. Setting and Reaching Goals.....	33
g. Extend Post-Admission Efforts in Recruiting and Financial Aid	37
Chapter III Useful Documentation to Support and Defend Admissions Policies.....	38
A. The Benefits of Diversity	38
1. Useful Internal Documentation.....	39
2. External References.....	41
B. Considering Alternative Admissions Policies.....	48
1. Useful Internal Documentation.....	50
2. External References.....	52
C. Designing a Flexible Plan That Promotes Diversity	55
1. Useful Internal Documentation.....	55

TABLE OF CONTENTS

(continued)

	<u>Page</u>
a. Document the Process of Designing the Plan.....	55
b. Create an Admissions Process	57
c. Track Progress During the Admissions Process	59
2. External References.....	61
D. Showing that the Policy Achieves Diversity Goals.....	62
1. Useful Internal Documentation.....	63
2. External References.....	63
E. Periodic Review	64
Chapter IV Developing Admissions Policies When Considering Race is Prohibited	65
A. Reaffirm Your Commitment to Overall Diversity	65
B. Develop an Inclusive Plan.....	65
1. Recruit Diverse Applicants.....	65
2. Consider Test Scores in Context and Evaluate Other Factors.....	66
3. Ask Questions That Will Provide a More Complete Picture of the Candidate.....	66
4. Engage in Individualized Review.....	67
5. Aim for Diversity of Experience	67
 PART THREE: LEGAL ANALYSES	
Chapter V Remedial Justifications For Race-Conscious Policies	70
A. An Entity’s Remediation of Its Own Discrimination	71
B. Remedying the Discrimination of Others: “Passive Participant” Theory	71
C. The “Strong Basis in Evidence” Requirement	72
Chapter VI Recruitment, Financial Aid, Support, and Other Admissions-Related Programs	75
A. Financial Aid and Scholarship Programs.....	75

TABLE OF CONTENTS

(continued)

	<u>Page</u>
1. Race-Conscious or Race-Targeted Financial Aid and Scholarship Decisions Will Be Subject to Strict Scrutiny.....	76
2. Evidence of Past Discrimination in Remedial Cases: <i>Podberesky v. Kirwan</i>	77
3. Current Federal Guidelines Support Race-Conscious and Race-Targeted Financial Aid and Scholarships	78
4. Race as a “Plus” Factor in Financial Aid or Scholarship Decisions.....	80
5. Race-Exclusive Awards.....	82
a. Race-Exclusive Awards to Promote Diversity.....	82
b. Race-Exclusive Awards to Remedy Past Discrimination.....	84
B. Recruitment and Outreach Programs.....	86
1. Overview	87
2. Recent Recruitment and Outreach Cases.....	89
3. “Inclusive” vs. “Exclusive” Recruitment Programs.....	91
4. Programs That Trigger Strict Scrutiny	92
5. Lessons for Race-Conscious Recruitment and Outreach.....	95
C. Retention, Preparation, and Support Programs.....	97
Chapter VII Faculty and Staff Hiring	100
A. Remedial Measures and Race-Conscious Hiring.....	100
1. Requirements Under the Equal Protection Clause and Title VI.....	100
2. Private Institutions and Title VII.....	101
B. Diversity and Race-Conscious Hiring	104
1. <i>Grutter</i> as Applied to Faculty Hiring.....	105
2. Limitations	105
C. Title VII and Diversity-Based Affirmative Action	106

TABLE OF CONTENTS

(continued)

Page

APPENDICES131

Appendix 1: *Grutter* and *Gratz* Majority Opinions

Appendix 2: *Reaffirming Diversity: A Legal Analysis of the University of Michigan Affirmative Action Cases*, A Joint Statement of Constitutional Law Scholars, The Civil Rights Project at Harvard University

Appendix 3: University of Michigan 2003-04 Undergraduate “Application, Guidelines and Process”

Appendix 4: “Race-Neutral” Policies

Appendix 5: U.S. Department of Education Final Policy Guidance, *Nondiscrimination in Federally Assisted Programs; Title VI of the Civil Rights Act of 1964*

Appendix 6: Additional Resources

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.