

PART TWO: DEVELOPING ADMISSIONS PROCEDURES

Chapter II Admissions Programs

As discussed above, the Supreme Court allows considerable flexibility in constructing race-conscious admissions plans aimed at furthering student body diversity. Indeed, each educational institution will face a different set of goals and challenges when developing or modifying its admissions plan, and many factors will play a part in how each institution designs its admissions procedures.

This Chapter provides general principles and suggestions for institutions seeking to retool their race-conscious admissions procedures in compliance with the *Grutter* and *Gratz* decisions. The Chapter first sets out initial considerations, including “Articulating a ‘Diversity Rationale’” and “Evaluating Race-Neutral Options.” It then offers general guidelines on (1) flexibility, (2) moving away from a rigid, formulaic reliance on test scores and grades, and (3) periodic review, which should inform the entire process of developing or modifying an admissions policy. Finally, the Chapter provides more detailed recommendations on developing admissions criteria, engaging in individualized review, asking questions that will provide a more complete picture of a candidate, anticipating the increased burdens of individualized review, and attaining goals or reaching a “critical mass.”

A. Initial Considerations

Many institutions include enrolling a diverse student body as a fundamental component of their educational mission. In *Grutter*, the Supreme Court reaffirmed the special importance of diversity in higher education by noting that institutions of higher learning are quintessential arenas for a “robust exchange of ideas.” Diversity, in this regard, encompasses a number of different factors—including race—each of which contributes to the overall educational mission of the school.

The Supreme Court firmly upheld diversity as a “compelling state interest” and recognized that substantial, important, and laudable educational benefits flow from a diverse student body. It also ruled that race-conscious admissions programs are a proper means to further this compelling interest. However, it is important that institutions tailor their admissions policies so that race is used only in a constitutionally permissible way.

1. Articulating a “Diversity Rationale”

A college or university needs a formal admissions policy statement. Such a statement should describe the goals and objectives of the admissions policy and should be tied directly to the mission statement of the institution. This policy should be crafted by the senior policy-making body, whether a faculty committee, a senior administrator committee, a combination of the two, or a committee of the board of trustees or regents. A campus then needs to develop an admissions plan or process that will enable the admissions office to carry out that

admissions policy. The admissions plan or process is the operational means by which the campus achieves its admissions goals. There are three important reasons for this policy structure.

First, most schools find that a clearly articulated policy helps to harmonize and coordinate the admissions procedure for all admissions officers and the people reviewing applicant files. Second, it serves as a statement to those who may wish to challenge a school's admissions policy, and gives guidance to those who would question the school's motives. Third, if an admissions plan is challenged, a court will grant considerable deference to an institution's declaration that diversity is vital to accomplishing its educational mission. Articulating the diversity rationale for a race-conscious admissions program will help a judge and other individuals understand the goals of the program.

The policy statement should articulate how diversity plays a part in the admissions process. Specifically, the statement should explain how diversity furthers the educational goals of the institution and advances the mission of the school.

Note:

Diversity should encompass a number of factors, and should not focus solely on race. It is acceptable, however, for an institution to declare that an important factor in achieving a diverse student body is to ensure that underrepresented minorities are adequately represented at that school. There is no need for an institution to shy away from declaring its support for an admissions policy that takes race into account.

There are many reasons why diversity in general and racial diversity in particular benefit every student at a school and the school as a whole.

Benefits of diversity in general:

- Promotes lively and spirited classroom discussion;
- Exposes students to a diversity of viewpoints and life experiences;
- Helps prepare students for a diverse workplace by, for example, exposing students to common goals and values, which is critical to many professions that are based on teamwork and mentoring;
- Encourages a belief that our society is more fair and just.

Benefits of racial diversity:

- Helps students avoid or overcome stereotypes by providing a range of experiences and viewpoints within a particular racial or ethnic group;
- Promotes cross-cultural understanding and helps students

- develop interpersonal skills for a multiracial world;
- Prepares students for a racially diverse workplace;
- Trains and educates a diverse group of leaders;
- Contributes to better decision making on issues affecting our multicultural society;
- Fosters diversity among civic and business leaders.

Describing the benefits of diversity also sends a message to potential applicants that the institution is committed to diversity, and will assist in attracting a diverse pool of applicants.

Note:

The consideration of diversity should not be limited to the admissions process, but should be actively pursued in practice throughout the year. Certain policies or practices may prevent an institution from reaching its diversity goal, while others will foster that goal. For more information on continuing the commitment to diversity after completion of the admissions process, see Chapter VI.

Remedial Justification—An Alternative Rationale

In adopting a race-conscious program, an institution must be careful not to confuse a remedial justification with a diversity rationale. The Supreme Court has repeatedly struck down race-conscious programs that claimed to remedy past discrimination, yet sought to increase overall minority representation without regard to evidence of past discrimination. Because documenting prior discrimination can be an arduous undertaking, and because remedial programs may encompass only a limited range of beneficiaries, most institutions will pursue a diversity program. Given the broad authority the Court has provided educational institutions in *Grutter*, there appears to be little practical benefit in rejecting a diversity justification and exclusively employing a remedial justification. Nevertheless, it is still legal for an institution to take race into account under a remedial program pursuant to a federal court order, even in states that prohibit race-conscious admissions decisions. For a more detailed discussion of the remedial justification, see Chapter V.

2. Evaluating Race-Neutral Options

Before embarking on a race-conscious admissions program, an institution must assess whether race-neutral alternatives can be used to achieve its diversity goals. A school is required to undertake a good faith evaluation of race-neutral options, but it is not required to exhaust every possible nonracial means of increasing diversity.⁹¹ Nor must it implement a

race-neutral program that might fail to meet its diversity objectives simply to prove compliance. The only race-neutral option that an institution must implement, therefore, is one that is both workable *and* achieves the institution's diversity goals.

In theory, creating a race-neutral plan that satisfies these criteria is possible. In practical terms, however, such plans are often unworkable. Thus, while evaluating race-neutral options is a mandatory component of maintaining a constitutional race-conscious admissions program, it is important to note that an institution does not need to sacrifice its other admissions goals for the sake of race-neutrality.

a. Evaluating Alternative Plans

If an institution currently uses a race-conscious program, it should first evaluate its admissions policy to determine whether the student body would be racially diverse even if race were not taken into account. One way to make this determination is to conduct simulations based on the institution's most recent applicant pool. If sufficient numbers of minority students to meet an institution's particular admissions goals would be enrolled under a race-neutral version of the policy, then the institution should consider revising or ending its race-conscious measures.

Assuming an institution determines that its current, race-conscious policy contributes to the level of diversity it seeks, the next step is for the institution to consider whether alternatives exist that allow it to achieve its diversity objectives without using race as a factor.

When evaluating other options, an institution should make sure that the composition of the student body admitted under a race-neutral plan complies with the goals and objectives of its admissions policy statement.

AVOID:

Lowering Admissions Standards. A race-neutral plan that will diminish an institution's reputation or sacrifice its educational goals is not constitutionally required. While a school may wish to alter the weight it gives to various application factors, it need not take steps that will reduce selectivity. If a school cannot achieve its desired diversity by race-neutral means, without diminishing its reputation or selectivity, it may adopt a race-conscious policy. Even if an institution adopts a "race-neutral" plan, it may want to examine whether the race-neutral selection criteria have a disparate impact upon minority groups.

AVOID: Plans That Are Not Workable. An institution is not required to adopt a race-neutral plan that cannot logically or effectively be applied. For example, percent plans are impractical for graduate and professional schools. Similarly, they are ineffective for use at private colleges, national universities, and state-run universities where significant numbers of out-of-state students apply. If such race-neutral plans would not work for a particular institution, even if they work for others, that institution may permissibly adopt a race-conscious admissions plan.

A school does not need to exhaust every possible race-neutral alternative. If, after reasonable study, the institution determines that no feasible race-neutral alternative will help it achieve all of its admissions goals, it may use a race-conscious admissions policy.

Example: The University of Michigan Law School attempted to achieve diversity through minority recruitment programs, but found that recruitment alone was unsuccessful in obtaining the desired “critical mass” of minority students. Rejecting a lottery system, which would have required the law school to lower its admissions standards, the school adopted its race-conscious program. This evaluation of race-neutral alternatives was deemed sufficient by the Supreme Court.

Why Certain “Race-Neutral” Plans May Fail to Meet Diversity Objectives

“Percent plans” have received a lot of media attention. But these plans may not be workable alternatives because they do not allow an institution to fully meet *all* of its admissions goals.

- In the rare instance that institutions using a percent plan have been able to maintain existing levels of minority representation, that success has been attributable to vigorous recruitment and generous scholarships focused on minority candidates.
- In states that have many public institutions, percent plans admit minority students into the public school *system*. However, minority students continue to be underrepresented at the flagship universities of that system.
- The Supreme Court has criticized percent plans, insofar as they are purposely used to increase minority representation at an institution, because they do not allow for the kind of nonmechanical, flexible admissions decisions that the Court has stated are essential in any valid race-conscious program.
- Percent plans are unworkable in many settings, particularly in graduate and professional schools.

For a more detailed analysis and discussion of percent plans, see Appendix 4.

B. Developing an Admissions Plan/Process

1. General Considerations

While there are specific things an institution can do when developing or modifying an admissions plan, there are general considerations that should inform the entire process: (a) flexibility; (b) moving away from a rigid, formulaic reliance on test scores and grades; and (c) periodically reviewing the admissions program. An admissions office should keep these in mind when developing its admissions policy.

a. Flexibility in Admissions

The hallmark of any constitutional race-conscious admissions plan is individualized review. A necessary component of such a review is flexibility.

An admissions process should be flexible enough to allow the consideration of a number of different factors that would contribute to diversity, including race. These factors can be weighted differently, and a single factor can and should be given more or less weight depending on the applicant. Rigid reliance on a mathematical formula will render an admissions policy legally vulnerable.⁹²

Diversity includes more than just racial diversity. A school should be able to give a “plus” to any factor that it thinks would contribute to diversity.

Example: Many schools give a “plus” to factors such as race and ethnicity, gender, socioeconomic class, sexual orientation, geography, or residency. Many also give a “plus” for more intangible characteristics such as leadership qualities, artistic talent, or musical abilities. For a list of other potential “plus” factors, see Chapter II.B.2.b., below.

Although a school should consider many factors in order to create a diverse student body, any “plus” factor—including race—may be given a bigger “plus” compared to other factors, although *no single factor* should dominate an application.

Example: An underrepresented minority may be given a bigger “plus” than an individual who is a concert cellist.

A school should allow flexibility in awarding a “plus” for any factor. The same factor may warrant a different “plus” for different applicants. Reviewers of applications should have the discretion to change the weights they give for any one factor.

Example 1: Applicant A is Latino. Applicant B is Black. Although both applicants are members of underrepresented minority groups, Latino students are more underrepresented than are Black students at this particular institution. Both applicants receive a “plus” for their race, but the reviewer should have the flexibility to give Applicant A a larger “plus” than Applicant B.

Example 2: Applicant A is a woman who expresses an interest in political science. Applicant B is a woman who expresses an interest in electrical engineering. The university reviewing their applications has noticed that female engineering students are underrepresented at the school, but female political science majors are adequately represented. A reviewer should have the discretion to give a “plus” to Applicant B, but not to Applicant A.

AVOID: Rigidity. A school should not direct reviewers to automatically give the same weight for a certain factor to all applicants who fit the criteria, without allowing the reviewer discretion. For example, directing every reviewer to automatically give an underrepresented minority a “plus” that is the equivalent of raising an applicant’s G.P.A. by 0.5 points is likely to be unconstitutional. Reviewers should have the flexibility to (a) grant a “plus” for a certain characteristic, and (b) make a determination, on a case-by-case basis, of how much weight that “plus” factor will have in the final decision about the applicant, but not so much as to guarantee admission to that applicant.

Finally, having flexibility in an admissions program means that an institution cannot have a mechanical formula that allows race, by itself, to determine whether an applicant is admitted. In some limited cases, mechanical cutoffs may be appropriate. In most instances, however, mechanical formulas will hinder a school’s ability to individually review an applicant, and will subject the admissions policy to scrutiny.

AVOID: Mechanical Formulas. Any admissions policy that employs a mechanical formula that automatically assigns points based on race, is much more likely to be challenged as unconstitutional. Automatic assignment of points to diversity characteristics appears rigid and does not allow for enough nuance and flexibility in the admissions decision. Moreover, a mechanical admissions policy will hinder an institution’s ability to individually review applications, and could hurt its efforts to create a diverse student body.

b. Moving Away From a Rigid and Formulaic Reliance on Test Scores and Grades to a Contextual Analysis of Test Scores and Grades

Institutions should take a critical look at factors that traditionally have been viewed as “objective,” including a formulaic reliance on test scores and grades. Test scores and grades are valuable evaluation tools—when used properly—especially for an admissions office facing a large number of applications. But a simple focus on the “hard numbers” of a candidate prevents a reviewer from looking at those numbers in the context of the individual or at other admirable qualities of the candidate. Instead, an institution should evaluate a candidate’s grades and test scores in the context of the candidate’s experiences and background to better assess the applicant.

The Law School Admission Council’s recommendation regarding the appropriate use of test scores and grades for law school admissions applies with equal force to undergraduate admissions:

- “A sound admission program is not merely an exercise in predicting first-year academic performance. Its goal is much broader—assembling a class of individuals who contribute to each other’s learning experiences, and who possess talents and skills that will contribute to the profession, frequently talents and skills *not* measured by the LSAT or captured in undergraduate grades.”⁹³

Moreover, the commissioned report on undergraduate admissions by the National Research Council includes the following recommendations about test scores:

- “Admissions policies and practices should be derived from and clearly linked to an institution’s overarching intellectual and other goals.”
- “The use of test scores in the admissions process should serve those institutional goals.”
- “Colleges and universities should review their uses of test scores in the admissions process and, if necessary, take steps to eliminate misuses of scores. Specifically, institutions should avoid treating scores as more precise and accurate measures than they are and should not rely on them for fine distinctions.”⁹⁴

While test scores and grades provide information, they say different things about different people, and they should be viewed within the context of the candidate’s entire background. A number of factors affect test scores and grades, including race, socioeconomic class, parental education, language, home environment, quality of school, and access to exam-preparatory courses. A candidate’s test scores and grades should be viewed with these factors in mind.

A rigid, noncontextual emphasis on test scores and grades poses inherent problems. Studies have shown that the formulaic consideration of standardized test scores has a disparate impact on minorities even though standardized test scores may be poor or incomplete predictors for future performance past the first year. Indeed, several recent examples demonstrate that alleged misuse of test scores in admissions, such as with rigid cutoffs, may expose colleges and universities to state or federal lawsuits, as well as complaints with the U.S. Department of Education’s Office for Civil Rights.⁹⁵ (*For a more complete description of these studies, see the inset on the following pages*).

High school grades, while a better predictor of future performance than test scores, also are problematic. For example, some high schools offer far more AP courses than other high schools do. If a university or college admissions office gives extra points for AP courses, grade

point averages may be deceptively skewed upward for those with more opportunity. Applicants at high schools that do not offer AP classes simply do not have the same opportunity to demonstrate their abilities and to achieve a weighted grade point average. Evaluating an applicant's grades, without looking at the context in which the applicant received those grades, does not give an admissions officer a full picture of the candidate.

A contextual analysis of test scores and grades will allow an institution to engage in a more holistic review of each candidate and account for those students whose lack of opportunity or whose scores on one-shot exams do not accurately reflect their academic potential.

The Problem With a Formulaic Reliance on Standardized Test Scores

Disparate Impact on Minority Students

Numerous recent studies document the negative impact that a formulaic consideration of standardized test scores in university admissions has on minority students.

- According to the College Board, among American college-bound seniors in 2003, African Americans scored an average of 206 points lower than Whites on the SAT, Mexican Americans 158 points lower, and Native Americans 101 points lower.⁹⁶
- There is a greater danger of standardized tests causing disparate impact because SAT scores consistently correlate more highly with race, ethnicity, and socioeconomic status than other measures such as high school rank or high school GPA.⁹⁷

Finally, the Intervenor in *Grutter* noted that "the LSAT gives white students an unearned advantage of 9.2 points over their black counterparts at the same college with the same GPA. The unearned advantage of white test-takers relative to Latinos and Native Americans is smaller but still highly significant in competitive law school admissions systems."⁹⁸

There are a number of theories about why this disparity persists. Economics is an obvious contributing factor, but is only part of the answer. Among American college-bound seniors in 2003, those with family income of \$10,000 to \$20,000 averaged 889 points on the SAT, those with incomes of \$50,000 to \$60,000 averaged 1012 points, and those with incomes above \$100,000 averaged 1123 points on the test.⁹⁹ A study by Christopher Jencks and Meredith Phillips suggests that the problem is rooted in historic discrimination in housing, education, and employment.¹⁰⁰

An Incomplete Predictor of Future Performance

Placing undue weight on standardized tests is not a problem just because of its

disparate impact on minorities. Standardized tests predict a student's performance during his or her *first year* in a college or graduate program. They are not an accurate predictor of (a) a student's overall performance in college or in a graduate program; (b) whether the student will graduate; or (c) whether a student will succeed after graduating.¹⁰¹

- For example, in a study of 28 elite colleges and universities, Bowen and Bok report that after controlling for other factors such as school selectivity and socioeconomic status, SAT scores were a very weak predictor of graduation. Those with SAT scores under 1000 graduated 83% of the time, students with 1000-1090 SATs graduated 86% of the time, students with 1200-1290 also graduated 86% of the time, and students with 1300+ SAT scores graduated 87% of the time.¹⁰²

Thus, the notion that standardized tests such as the SAT and LSAT are "the measuring stick" of academic ability has been steadily eroding in recent years. Even the Educational Testing Service itself recognizes the limits of its test, admitting that there is "no single, primary ordering of people as 'best-qualified' or 'most meritorious' as simple notions of merit require."¹⁰³

Too much reliance on standardized test scores may result in a *less* academically capable student body. For instance, Bates College, which has moved to a "test score-optional" admissions policy, reports that the move "has had no visible negative impact on the quality of enrollees, and seems in fact to have had a positive impact."¹⁰⁴ In fact, those who chose not to submit their test scores had a higher rate of "academic survival." The same results have been found at large public institutions as well. In Oregon, 1990 data indicates that had the state institutions relied heavily on test scores, the admitted student body would have been somewhat less academically able.¹⁰⁵

c. Periodic Review

Grutter establishes that any institution that uses a race-conscious admissions program should periodically review that program to see whether race-conscious policies are still necessary to achieve the goal of diversity. If and when race-conscious policies are not needed, the institution should stop considering race during the admissions process.

Note: The Supreme Court did not provide any guidelines about how often a periodic review should take place. In fact, it has been willing to defer to the educational judgment of a particular institution. At the very least, however, an institution should probably review its admissions program every few years.

Evaluating race-neutral alternatives is not the only reason an institution should undertake a periodic review. Because so many different factors play a part in an individualized review of an applicant, reevaluating an admissions program will allow an institution to reassess its diversity goals and to tailor its admissions program to meet those goals. A school should seek to periodically reassess the different factors that will create a diverse student body, the criteria for admissions, and the different relative weights given to “plus” factors. An institution should also review its target goals for admitting minority students at the school. This type of periodic reevaluation will help an institution ensure that its diversity goals are advancing the educational mission of the school.

There is no 25-year sunset provision for race-conscious admissions programs.

Some opponents of race-conscious admissions programs seized upon language in the Supreme Court’s *Grutter* opinion that reflected an expectation that race-conscious admissions programs will be unnecessary 25 years from the date of the decision. That statement, however, merely expressed an aspiration. **As long as *Grutter* is good law, student body diversity in higher education will always be a compelling state interest.**

Flexibility also means that an institution’s policy should allow for different “plus” factors to take on different importance from year to year, as needed. As part of this process, an admissions office should periodically reevaluate the criteria for admission, as well as the goals for diversity, to ensure that the institution is meeting new challenges.

Example 1: For a number of years, Mexican American students have been adequately represented at an institution, and no “plus” factor is given to Mexican American students. In recent years, however, the institution has noticed a drop-off in Mexican American students. The institution’s admission policy should be flexible enough to allow reviewers, in the coming years, to give a “plus” to Mexican American students.

Example 2: Another institution, which draws students from a given state, obtains data indicating that although the number of Vietnamese American students in that state has dramatically increased in recent years, that change in demographics is not reflected in

admissions at the institution. At the same time, the institution recognizes that it has attained strong representation of Japanese Americans in its student body. The institution's admission policy should be able to adjust to these changes.

2. The Admissions Process

a. Recruitment

Perhaps the most important stage in creating a diverse student body occurs before a single application is reviewed. If a school is able to recruit a diverse group of competitive candidates to apply, the admissions process is much more likely to meet institutional goals because the school will have more candidates from which to make its admissions decisions.

Efforts such as targeted mailings, outreach programs, and recruiting at schools with greater proportions of minority students can help an institution obtain a diverse applicant pool. For more information on the constitutionality of these recruiting programs and others, see Chapter VI.

b. Developing Admissions Criteria

Developing admissions criteria is an integral part of the admissions process. Along with grades and test scores, other factors that may play a part in admissions include personal statements, essays, activities, recommendations, and interviews. In addition, certain characteristics may give an applicant a "plus," including race, gender, socioeconomic background, geography, leadership qualities, legacy status, and the quality of the applicant's high school or undergraduate institution.

Example: The following factors may be considered in addition to the student's courses, grades, and test scores, and may more accurately reflect the potential contributions of the student:

- **Intellectual vitality:** as demonstrated in outstanding achievement in the arts and sciences, original work in writing, leadership, public, or community service, or other special projects;
- **Evidence of academic promise:** as demonstrated by achievement in specific areas of study or recent marked improvement in academic performance;
- **Quality of performance relative to the educational context available in the school:** as evidenced by the extent to which an applicant has utilized what is available

and/or by recognition of school officials;

- **Quality of effort:** as demonstrated in special projects undertaken by students either in the context of the high school curriculum or in conjunction with special school events or projects co-sponsored by the school, post-secondary institutions, community organizations, agencies or private firms;
- **Academic fit:** as demonstrated by special attributes, achievements, or projects indicating an applicant's ability to fit in or contribute to the particular academic environment or campus, or to a specific academic program on a campus;
- **Leadership qualities:** as evidenced by extracurricular participation in a variety of projects or events, service in the community or student government, and/or by the ability to manage difficult personal situations;
- **Persistence and determination:** as evidenced by attainment of academic success while overcoming challenges, such as poverty, disadvantaged social or educational environment, family circumstances, physical disability and other impediments;
- **Cross-cultural experience:** as evidenced by participation in special programs offered by the school, such as exchange/education abroad programs, experience or proficiency in other languages, or by the demonstrated individual effort of an applicant to get to know and experience other cultures;¹⁰⁶
- **Special talent:** as demonstrated in art, music, science, drama, debate, or athletics; and
- **Service:** to others as demonstrated by volunteer or community service.¹⁰⁷

When an institution evaluates its admissions policy, it should also reevaluate the criteria for admissions. Of course, institutions employ admissions factors to further legitimate institutional goals other than diversity (such as factors that enhance fundraising). Many of those factors work against minority applicants, and as a result, institutions must work even harder to achieve diversity. Having a race-conscious admissions program can help level the playing field.

As noted earlier, studies have shown that formulaic consideration of standardized test scores has a disparate impact on minorities. But other “plus” factors may also disproportionately disadvantage minorities.

Example 1: Many minority applicants do not have parents or grandparents who attended college or graduate school, thus removing them from the pool of applicants eligible to be considered as legacies. Legacy admissions favor White applicants.

Example 2: Many colleges and universities tend to favor applicants who have attended affluent, prestigious public and private high schools. Minority students are often underrepresented at these schools. Therefore, minority students do not have the same opportunity to receive the “plus” as other students.

There may be many reasons that an institution needs to use factors that negatively impact minority enrollment. But if the admissions office is cognizant of the effect that such factors have on admissions, it can take steps to counterbalance the impact with race-conscious policies. Therefore, an admissions office should evaluate all factors used in its admissions criteria and determine what effect they may have on the admission of minority applicants. When possible, an institution should avoid criteria that can place an undue burden on minorities.

When developing admissions criteria, a school should also determine which factors merit a “plus” to increase diversity at the school, and the relative weight or importance a certain factor will have on admissions. But as noted previously, an institution must ascribe a *relative* weight to each factor, and the weight must not be a hard, inflexible number.

When instructing reviewers about admissions criteria, the admissions office should stress that the weights are relative and not fixed for any group of candidates. Moreover, since an individualized review process is more subjective, there will probably be more variance between reviewers. An institution can reduce variance by spending more time training reviewers on the relative weight to be given to different admissions criteria.

c. Ask Questions That Will Provide a More Complete Picture of the Candidate

Developing new criteria will not help an institution’s admissions process if its application does not give the applicant the opportunity to provide relevant information. Formulating questions that will solicit this information will help an institution achieve its diversity goals.

Clearly, certain questions will tell a school about some of the factors that may play a part in the admissions decision. Asking about the race, gender, socioeconomic status, hometown, or highest level of education of an applicant’s parents will give a school much of

the pertinent information. But achieving a diversity goal and having individualized review involves more than demographics, grades, and test scores. Since schools are evaluating the individual, it is important to know who the applicant is.

Many schools discover more about the applicant by asking short essay questions. The information provided in essays may relate characteristics that the institution feels will contribute highly to the diversity of its student body. Certain questions may be particularly helpful in achieving a diverse class:

- How do you stand out from other candidates?
- How can you contribute to the diversity of this institution?
- What obstacles or challenges have you faced or overcome in your life?

Questions such as these will allow an applicant to distinguish himself or herself from other candidates.

d. Engage in Individualized Review

Applications considered under a constitutional race-conscious admissions program must undergo an individualized review. This process is also referred to as a “whole-file” review, and contemplates a holistic review of the applicant’s entire file, as well as a holistic evaluation of the candidate. An institution should consider all of the applicant’s qualities, including any “plus” factors that indicate the student would contribute to diversity, and judge those factors in totality. A decision of whether to admit the applicant should be based on this complete evaluation.

Information about “plus” factors may be found in explicit questions on the application—examples include asking the race or gender of the applicant, asking where he or she is from, or asking if the applicant’s parents attended college. Alternatively, information about “plus” factors may be found in the applicant’s personal statement or essays. For example, an applicant may discuss several obstacles he or she has overcome in an essay. Or an applicant may describe in his or her personal statement a project the applicant has undertaken that demonstrates leadership ability. All of these qualities may influence an admissions decision, and all should be considered.

No single factor, however, should dominate an application. For example, an institution should not give an applicant’s race such undue weight that all other qualities of the applicant are subsumed under that single consideration. In practical terms, this means that an applicant’s race should not automatically allow the applicant to gain admission, without considering other factors of that applicant or other applicants.

AVOID: “Automatic” admissions based on race. It would be illegal if every candidate with certain minimum test scores and grades automatically gained admission because each candidate belonged to an underrepresented minority group.

Even though one factor cannot dominate the selection process, *any factor, including race, can be determinative in a single admissions decision.*

Example: Applicants A and B have similar test scores and grades, have similar life experiences, and come from the same socioeconomic background. The applicants both have average recommendations, personal statements, and essays. Each applicant, after considering the entire file but before considering race, are borderline admits. Applicant B belongs to an underrepresented minority group while Applicant A does not. Applicant B may be admitted while Applicant A is not, *solely because of the “plus” factor given for Applicant B’s race.*

When reviewing applications, an institution should ensure that each applicant is considered on the same footing as every other candidate. Any two-track admissions program, in which applicants of one race compete only against applicants of the same race, is unconstitutional. Because each applicant is compared to all others, and because many factors are considered, some nonminority applicants may be admitted over minority candidates with better test scores and grades.

Example: Applicant A belongs to an underrepresented minority group, comes from a middle class family, and has average grades and test scores. She is a solid, but unremarkable candidate. Applicant B has poorer grades and test scores, but comes from a disadvantaged background and is an accomplished jazz saxophonist. She is White. A reviewer may decide to admit Applicant B over Applicant A because Applicant B will contribute more to the diversity of the student body than Applicant A.

Note:

Under an admissions policy that truly follows a flexible, individualized review selection process, admissions decisions similar to the example above would be expected to happen. The Supreme Court noted this expectation and credited the University of Michigan Law School's evidence that showed nonminority applicants sometimes gained admission over minority candidates that had better grades and test scores. For example, at the University of Michigan Law School, the applicant admitted with the lowest undergraduate grades in the 1990s was usually white.¹⁰⁸

Evaluating candidates using the "whole-file" method may be accomplished in a number of ways. The previous examples are simply illustrative and are not meant to be exhaustive. As long as files are reviewed properly, a school can and should develop a reviewing system that best suits its needs and capabilities. The University of California at Berkeley, the University of Virginia, the University of Texas at Austin, and the University of Michigan all currently employ some form of individual review in their admissions processes.

e. Address and Anticipate the Increased Burdens of Individualized Review

Whatever method a school decides to undertake to individually review applications, such a review will probably impose added burdens on an admissions office. Although this individual review will likely require increased resources, the benefits of a vibrant educational environment are enormous in comparison. The main way to address the administrative burdens that may accompany an individualized review system is for institutions to tap all potential resources available to it, both on campus and in the community, to assist in the review process.

At the very least, institutions will need to expand their admissions committees by finding more people to review applications. First and foremost, a school should identify its own untapped resources, such as faculty members, who might serve as readers. Although the time commitment required of a reader may prevent some faculty from participating, faculty can be excellent application readers since they have firsthand knowledge of the type of student who is best suited for their institution. Universities might offer incentives to faculty members who are willing to serve as readers by releasing them from committee assignments or by giving them credit for service to the university.

Other potential volunteer readers include graduate or doctoral students, recent university graduates, former university admissions officers, and present and former high school guidance counselors. Doctoral students may be especially well suited for this task, given their obvious interest in the educational process. Recent graduates are already familiar with the requirements to succeed in the institution and may be especially willing to serve as

volunteer readers for their alma mater. Former admissions officers generally understand the admissions process and have prior experience in reading applications efficiently.

Using high school guidance counselors as readers offers several potential benefits. For example, it can promote relationships between a particular university and the guidance counselor's high school. The guidance counselor may become known at his or her high school for having special knowledge about the admissions process. Counselors would thus be well positioned to assist the university with its recruitment efforts by identifying and encouraging a diverse group of students to apply to the institution.

Institutions that have the resources to give each applicant an individualized review should do it. However, if that cannot be done, either by paid staff or by volunteer reviewers, there are still ways to design a workable, constitutional race-conscious program.

Paring down the applicant pool will ease the burden on an admissions office. But a school should carefully examine how it initially reduces the number of applicants under consideration. Mechanical cuts based on test scores and grades are easy, but they can be imprecise and counterproductive because an applicant with low numbers may still succeed as a student, and may contribute to the diversity of an institution's student body. Moreover, as explained above, test scores are problematic when used mechanically as a significant factor in an admissions decision.

Nevertheless, making some sort of first cut may be advantageous, particularly for institutions that receive a large number of applications. The following are some examples of how to achieve that first cut:

Example 1: A school can use a mechanical cut to tentatively eliminate a certain percentage of applications. Then a group of reviewers can look at these applications to determine whether any of them should be moved back into the group receiving a second review. It is important that under this methodology, an application can be moved into the group for secondary review for any reason that would enhance diversity, not just because of the race of the applicant. This method has the advantage of allowing an admissions office to make individual assessments of *all* applications. But the office would avoid making initial assessments of all applications, including those that would clearly survive a first cut based solely on test scores and grades.

Example 2: Instead of employing a mechanical cut, a small group of reviewers may first quickly screen each application to determine whether the applicant should receive a more thorough review. This method allows reviewers to make

individualized decisions about applicants. A reviewer will always be able to consider grades and test scores. But he or she can also quickly review the file to see if there are other reasons why an applicant should get a second review.

AVOID:

A two-tier system. Any mechanical cut that sets one cutoff level for underrepresented minorities and a different cutoff level for other students is subject to challenge. Such a system would violate the Supreme Court's proscription against any two-tier admissions policy and would violate the requirement that each applicant must compete with every other applicant.

Each application that makes the first cut should still go through an individualized review. Note that if an individualized assessment is done at this initial stage (as in Examples 1 and 2), the reviewer should take into account any factor that may count as a "plus" under the admissions criteria the school has chosen, and the system for awarding a "plus" should be in accordance with the procedures outlined above.

Regardless of who is selected to participate in the admissions process, all readers must be trained in order to provide a consistent standard of review. This training helps to ensure that the quality of the admissions process is not compromised. Such training must guard against potential reader bias and must ensure that all readers are focused on the values articulated in the admissions policy and in the admissions process itself. The integrity of an admissions process centered on individual review must be based on the experienced professional judgment of its readers. Because individualized review necessarily focuses on the nonquantifiable or subjective components of an application, it would be most efficient to train a group of readers that can participate in the admissions process over several seasons.

Schools that are willing to make a short-term investment with a long-term payoff may wish to consider implementing an electronic application system. Many colleges and universities currently either offer students the option of submitting their entire application via the Internet or scan the applications and store them in electronic form. Not only does this type of system let the school quickly sort applications based on numeric scores and other criteria, it also allows readers in remote locations to access the applications, thus expanding the potential pool of readers available to a particular institution.

f. Setting and Reaching Goals

In *Grutter*, the Supreme Court held that setting goals for minority enrollment and making a "good faith effort" to reach those goals is *not* equivalent to a quota system. The goal of admitting a "critical mass" of minority students is aspirational rather than automatic. In a quota system, the outcome is predetermined and admissions decisions are based on the desire to satisfy that outcome. In a "critical mass" system, however, there is a desired outcome, but

that outcome is not predetermined or mandated.¹⁰⁹ As a result, a school will not necessarily reach the desired outcome from year to year, and in some years an institution may even exceed its targets.

Note: It is important to understand that even when a school seeks to admit a “critical mass” of minority students, it must be done through a flexible system that takes race into account—even by tracking admissions demographics—*without sacrificing individualized review.*

Many feel that admitting a “critical mass” of minority students is necessary to achieve true diversity and to combat problems that may occur when only a few individuals of a minority group are admitted at a school.

When only a few minorities are admitted, they may feel:

- Isolated or alienated;
- Unsafe or uncomfortable;
- Obligated to be a spokesperson for their race;
- Under pressure to prove the abilities of their race;
- Stereotyped or stigmatized.

There are benefits to achieving a “critical mass.” The Supreme Court acknowledged that a critical mass of minority students will promote livelier, more spirited, and more enlightening and interesting classroom discussion. Students will no longer worry that they are being asked to “represent” their race or ethnicity. In addition, as students encounter *intragroup* diversity and recognize that races are not monolithic, racial stereotypes will break down.

When striving to admit a critical mass of minority students, an institution is permitted to set minimum *goals* for minority enrollment. The first step for an admissions office is to define what “critical mass” means for its institution.

Note: Because the definition is dependent on the location and circumstances of a particular institution, each institution’s definition of “critical mass” will be unique. Therefore, a school should not feel compelled to mirror the target enrollment goals of other institutions. *There is no one goal or “critical mass” for every institution at every point in time.*

The Court did not define “critical mass,” and stated that it would defer to a school’s determination of “critical mass.” It is unclear, however, whether institutions have unlimited

discretion in defining “critical mass.” Many institutions may wish to set their target goals for minority admissions based, in part, on the demographic composition of the community from which they recruit students. For example, a large state institution that mainly attracts a regional student body may choose its target partly based on the racial composition of the state. At the same time, it is important that the racial composition of a state or region not be presented in such a way that the institution’s target figures appear to be de facto quotas.

In setting its goals, an institution may also wish to refer to existing social science research or commission its own studies. See Chapter III for examples of these studies.

There is no requirement that a school announce specific numeric goals for minority enrollment. The more specific an institution makes its goals, the more the program may appear like a quota. If an admissions office chooses to set down written goals, it is better off having some fairly broad range of “acceptable” minority enrollment in mind as it enters the admissions process. By setting a target *range* the institution is explicitly acknowledging the practical reality that under a “critical mass” system, admissions demographics will vary from year to year.

Note:

Over time, a school may find that its needs have changed, or that its initial assessment is deficient in some regard. If the goal is sufficiently broad, this may not be an issue, but a school should nonetheless be prepared to reassess its goals periodically.

During the admissions process, institutions are permitted to make a good faith effort to come within a range demarcated by the goal itself. The Supreme Court recognized that achieving a “critical mass” *necessarily* entails looking at minority enrollment numbers. An institution can look at statistics on race to track progress during the admissions process.

Moreover, this data will be very useful for an admissions office as it periodically assesses and contemplates changes in a diversity admissions plan. The Court expressly stated that administrators can permissibly track the demographic statistics of admissions during the admissions process in order to assess how well they are doing at meeting their goals.

Example:

The University of Michigan Law School’s Dean of Admissions kept track of the evolving demographics of each admitted class and informed the Admissions Committee in daily reports so that admissions officers were generally aware of the makeup of the students who had already gained admission to the school. The Supreme Court held that this was constitutional.

Although admissions officers may be aware of the evolving demographics of those admitted to the school, that information may not be determinative as to whether an individual

applicant is admitted. Although race can still be the determinative factor in an individual admissions decision, that decision must be based on the individual review of a candidate, not based on the fact that a school is falling behind in its goals for minority enrollment.

Example:

Assume a school determines that to achieve a “critical mass” of Black students, they should comprise 10-15 percent of the incoming class. During the course of the admissions season, the admissions dean informs admissions officers that only 5 percent of admitted students are Black. The reviewers should not simply start accepting more Black students without regard to individual candidates’ overall qualifications, in an effort to achieve the target. However, when reviewing an individual application of a borderline candidate who is Black, a reviewer may still decide to accept the applicant because of the “plus” awarded based on his or her race.

Although a school is permitted to make a good faith effort to reach its goal, that goal cannot become a mandate. Ultimately, each admissions decision must still be based on individualized review, not the more general goal of creating the “critical mass.”

AVOID:

The appearance of a quota system. Consistent with the fact that the institution is setting goals but not mandating a particular outcome, its results will probably vary over time. Of course, an institution does not automatically have a quota simply because its enrollment levels remain relatively constant. But where possible, a school should avoid even the appearance of a quota.

Finally, there are some long-term issues that should inform an institution’s consideration of a “critical mass.” By tracking the admissions process over several cycles, a school will be able to assess how well its current plan meets its diversity goals. This long-term assessment will allow it to adjust its goals if necessary.

Over time, an institution should assess how close it has come to meeting its goal of creating and maintaining a “critical mass” for any underrepresented group.

Example:

An admissions office can conduct follow-up research by asking the same questions (about the level of classroom discourse, campus interaction, stereotyping, alienation, etc.) that it asked when it initially studied the meaning of a “critical mass” at the school. Ideally, the institution will hear that significant improvements have been made. It may find, however, that the current goals are not resulting in a “critical mass” and must be reassessed.

In addition to reassessing goals, a school may decide to change the weight given to race or the definition of underrepresented groups from year to year. Some institutions try to meet their diversity goals by:

- Keeping admissions officers aware of the demographic statistics from previous years. By being more conscious of the institution’s progress toward achieving its goal, admissions officers are more likely to properly account for race and ethnicity in the future.
- Indicating that greater emphasis should be placed on race and ethnicity in the upcoming admissions cycle, if the school is not meeting its goals. Of course, the school cannot demand a certain level of minority enrollment, but there is nothing improper about asking admissions officers to give race “more weight” in the upcoming year.
- Evaluating data on race and ethnicity in a sophisticated manner. The terms “Asian” and “Latino,” for example, include many communities that face different obstacles and reflect varying histories. Some may be underrepresented or disadvantaged while others are not. This can be understood only by reviewing the data in depth.

g. Extend Post-Admission Efforts in Recruiting and Financial Aid

As with pre-application recruiting, post-admission recruiting plays a very important role in creating a diverse student body. After all, admitting a diverse group of students is less meaningful if many of the minority students admitted either decide not to attend or are unable to attend. Many institutions have had success with programs aimed at encouraging minority students to attend the school, such as minority admit weekends. Similarly, financial aid is another important factor that may convince minority students to attend a school.

For more information on the constitutionality of such programs and how an institution can use post-admission recruiting techniques and financial aid to create a diverse student body, see Chapter VI.