



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE FOR CIVIL RIGHTS

ASSISTANT SECRETARY

The Office for Civil Rights in the U.S. Department of Education issues this guidance to provide postsecondary institutions with information on how OCR assesses the use of race in admissions consistent with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d (Title VI). This guidance sets out the applicable Title VI principles, including pertinent standards enunciated by the U.S. Supreme Court in the past five years.

This guidance represents the Department's current thinking on this topic. It does not create or confer any rights for or on any person. This guidance does not impose any requirements beyond those required under applicable law and regulations.

If you are interested in commenting on this guidance, please email us your comment at OCR@ed.gov or write to us at the following address: Assistant Secretary for Civil Rights, 400 Maryland Avenue, SW, Potomac Center Plaza, Washington, D.C. 20202-1100.

Dear Colleague:

AUG 28 2008

I am writing to clarify how the Office for Civil Rights (OCR) in the United States Department of Education evaluates whether the use of race in admissions by a postsecondary institution is consistent with Title VI of the Civil Rights Act of 1964 (hereinafter "Title VI"). OCR is responsible for enforcing Title VI, which prohibits discrimination based on race, color, or national origin by recipients of Federal financial assistance, including public, and most private, postsecondary institutions.

OCR has received numerous inquiries, from postsecondary institutions, individuals and private organizations, about the impact of the Supreme Court's 2003 decisions in *Gratz v. Bollinger*, 539 U.S. 244 (2003) ("*Gratz*"), and *Grutter v. Bollinger*, 539 U.S. 306, (2003) ("*Grutter*"). In *Grutter v. Bollinger*, 539 U.S. 306 (2003), the Supreme Court (hereinafter "the Court") concluded, "student body diversity is a compelling state interest that can justify the use of race in university admissions." The Court therefore found lawful the way that the Law School at the University of Michigan had sought to achieve diversity. In contrast, the Court found the use of race in the related case of *Gratz v. Bollinger*, 539 U.S. 244 (2003), to be unlawful. In *Gratz*, which involved the undergraduate college of the University of Michigan, the Court found unlawful the way the undergraduate school had made race "a decisive factor for virtually every minimally qualified underrepresented minority applicant." *Id.* at 274. The undergraduate school had failed to consider "each applicant's individualized qualifications, including the contribution each individual's race or ethnic identity will make to the diversity of the student body, taking into account diversity within and among all racial and ethnic groups." *Id.* at 277.

The Court's response to the different approaches chosen by the Law School and undergraduate college provides broad parameters to guide postsecondary institutions through the constitutional and Title VI issues that arise if race (as well as color or national origin) is used in admissions. Specifically, the Court applies "strict scrutiny" to admissions policies in order to ensure that burdens placed on individuals because of their race are narrowly tailored to serve a compelling governmental interest.

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Consistent with these decisions, OCR’s policy continues to be that racial classifications in admissions policies are impermissible unless they are “narrowly tailored” to meet a “compelling governmental interest” such as the remediation of past discrimination or, in the context of higher education, to achieve appropriate student body diversity. Due to their highly suspect nature, racial classifications will only be permitted if there exists “the most exact connection between justification and classification.” *Id.* at 270 (quoting *Fullilove v. Klutznick*, 448 U.S. 448, 537, 65 L. Ed. 2d 902, 100 S. Ct. 2758 (1980) (Stevens, J., dissenting))

As a result, if a postsecondary institution seeks to use racial classifications in admissions, it will bear the burden of providing sufficient detail about its process to enable OCR to determine whether the institution is complying with Title VI. Under the Fourteenth Amendment to the U.S. Constitution, a public educational institution is the government actor that must be able to justify its decision to use racial classifications. Both public and private institutions receiving Federal financial assistance are required under Title VI to be able to justify these decisions. The Title VI regulations require recipients to keep records and to submit “timely, complete and accurate compliance reports” when such a report is necessary to enable OCR to ascertain whether the recipient is in compliance with the Title VI regulations, 34 C.F.R. § 100.6(b).

When developing admissions policies, postsecondary institutions must comply with the constitutional principles of equal protection. OCR is available to provide more detailed technical assistance to individual postsecondary institutions on a case-by-case basis.

The parameters outlined below describe factors that have been and will continue to be used by OCR in assessing whether the particular use of race in admissions by a postsecondary institution receiving Federal financial assistance is permissible. OCR will apply these parameters when undertaking Title VI investigations and in OCR’s other applicable enforcement activities:

- e Use of race must be essential to an institution’s mission and stated goals;
- e The diversity sought by the postsecondary institution must be broader than mere racial diversity;
- e Quotas are impermissible;
- e Providing individualized consideration is paramount and there must be no undue burden on other-race applicants;
- e Before using race, there must be serious good faith consideration of workable race-neutral alternatives; and
- e Periodic reviews are necessary and the use of race must have a logical end point.

I look forward to continuing our work together to ensure equal access to education and to promote educational excellence throughout the nation. Thank you for your efforts on behalf of America’s students.

Sincerely,



Stephanie J. Monroe
Assistant Secretary
for Civil Rights