UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

1999 BRYAN ST., 1620
DALLAS, TX 75201-6810

September 10, 2013

Dr. David W. Leebron
President
Rice University
6100 Main Street
Houston, Texas 77005

Re: OCR Complaint #06052020

Dear Dr. Leebron:

The United States Department of Education, Office for Civil Rights (OCR), Dallas Office, has completed its investigation of the above-referenced complaint filed against Rice University (Rice). The complainant alleged that Rice's decision in November 2003 to change its prior race-neutral admissions system by adding race and national origin as admissions factors for the class entering in Fall 2004 violated Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d.

OCR enforces Title VI and its implementing regulation, 34 C.F.R. Part 100, which prohibits discrimination based on race, color, or national origin in institutions or organizations that receive or benefit from Federal financial assistance from the United States Department of Education (Department). Rice is a recipient of Federal financial assistance from the Department. Therefore, OCR has jurisdiction to resolve this complaint. To reach a determination in this complaint, OCR analyzed information provided by both the complainant and Rice, visited the campus, and conducted interviews with Rice officials.

Based on a review of the evidence, OCR has determined that there is an insufficient basis to conclude that Rice violated Title VI and its implementing regulation with regard to the issue investigated. A summary of the relevant legal standards, investigative approach, and factual basis for OCR's determination is set forth below.

Legal Standards

A use of race or national origin in admissions that violates the Equal Protection Clause of the Fourteenth Amendment to the Constitution also violates Title VI.[1] In investigating the use of race by programs that seek diversity, OCR considers not only Title VI and its regulations, but also case law interpreting the Equal Protection Clause, particularly the Supreme Court's decisions in Grutter v. Bollinger (Grutter),[2] Gratz v. Bollinger (Gratz),[3] and Fisher v. University of Texas at Austin (Fisher).[4] Under Title VI standards, as interpreted in *Grutter, Gratz,* and *Fisher*, a university has a compelling interest in student body diversity, '"of which racial or ethnic origin is but a single though important element.'"[5] Thus, to achieve diversity, a university may consider individual students' race and national origin as a factor in admissions decisions so long as that use of race is narrowly tailored.

In *Fisher,* the Court, quoting from Justice Powell's opinion 35 years earlier in *Bakke*, made it clear that the use of individual race in the context of postsecondary admissions must meet the constitutional requirements of strict scrutiny: "It is therefore irrelevant that a system of racial preferences in admissions may seem benign. Any racial classification must meet strict scrutiny, for when government decisions 'touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest.'"[6]

Fisher followed *Grutter*'s holding of a compelling interest in student body diversity, and the Court cited the core *Grutter* standards for the determination of whether a use of race in postsecondary admissions meets the requirements of narrow tailoring.[7] Under *Grutter*, several criteria apply: whether the university considered workable race-neutral alternatives; whether the admissions program provided for flexible and individualized review of applicants; whether it unduly burdened students of any racial group; and whether the consideration of race was limited in time and subject to periodic review.

With regard to the first criterion, *Grutter* establishes that before using race as a factor in individualized admissions decisions, a postsecondary institution must conduct a "serious, good faith consideration of workable race-neutral alternatives that will achieve the diversity" that it seeks.[8] An institution is not required to exhaust every conceivable race-neutral alternative, and it

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[1] *See Alexander v. Sandoval*, 532 U.S. 275, 280-81 (2001) (citing *Regents of the University of California v. Bakke*, 438 U.S. 265, 287 (1978) (opinion of Powell, J.)).

[2] 539 U.S. 306 (2003).

[3] 539 U.S. 244 (2003).

[4] 133 S.Ct. 2411 (2013).

[5] 539 U.S. at 325 (quoting *Bakke*, 438 U.S. at 315 (opinion of Powell, J.)).

[6] *Fisher*, 133 S.Ct. at 2417.

[7] *Fisher*, 133 S.Ct. at 2421**:**"In *Grutter*, the Court approved the plan at issue upon concluding that it was not a quota, was sufficiently flexible, was limited in time, and followed 'serious, good faith consideration of workable race-neutral alternatives.'"

[8] 539 U.S. at 339.

may deem unworkable a race-neutral alternative that would be ineffective or would require it to sacrifice another component of its educational mission.[9] In *Fisher*, the Court noted its discussion of race-neutral alternatives in *Grutter* and stated: "Although '[n]arrow tailoring does not require exhaustion of every *conceivable* race-neutral alternative,' strict scrutiny does require a court to examine with care, and not defer to, a university's 'serious, good faith consideration of workable race-neutral alternatives.' Consideration by the university is of course necessary, but it is not sufficient to satisfy strict scrutiny: The reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity. If '"a nonracial approach ... could promote the substantial interest about as well and at tolerable administrative expense,"' then the university may not consider race."[10]

Compelling Interest in Diversity

The complainant here did not question that Rice has a compelling interest in diversity. The Department and the United States Department of Justice, in their jointly issued "Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education," confirmed "the compelling interest that postsecondary institutions have in obtaining the benefits that flow from achieving a diverse student body."[11] *Fisher* also supported the compelling interest in diversity that Justice Powell recognized in *Bakke*, and which the Court restated in both *Gratz* and *Grutter*. For example, in *Fisher*, the Court said: "*Grutter* made clear that racial 'classifications are constitutional only if they are narrowly tailored to further compelling governmental interests.' And *Grutter* endorsed Justice Powell's conclusion in *Bakke* that 'the attainment of a diverse student body ... is a constitutionally permissible goal for an institution of higher education.'"[12]

During OCR's investigation, Rice demonstrated how, through its core objectives and educational programs, it sought to realize its mission-based interests in diversity in accordance with the Title VI standards set forth in *Gratz* and *Grutter*.[13] For example, Rice stated to OCR that achieving a "critical mass" of minority students is not about achieving a particular number but, rather, achieving a meaningful level of participation at which "the diversity of voices—racial, ethnic, and otherwise—becomes an integral part of Rice's learning and student living environment."

Rice asserts that a sufficient presence of underrepresented students is necessary so that these students can express their opinions without feeling as though they must be "representatives" of their underrepresented group. Rice also asserts that achieving diversity is of particular importance to reaching a critical mass of underrepresented students in the university's residential

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[9] 539 U.S. at 340.

[10] *Fisher*, 133 S.Ct. at 2420 (quoting *Grutter*, 539 U.S.at 339-340 (emphasis added), and *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 280 n.6 (1986) (quoting Greenawalt, *Judicial Scrutiny of "Benign" Racial Preference in Law School Admissions*, 75 Colum. L.Rev. 559, 578-579 (1975))).

[11] Guidance at p. 1 (November 2011).

[12] *Fisher*, 133 S.Ct. at 2419 (quoting *Grutter*, 539 U.S. at 326, and citing *Bakke*, 438 U.S. at 311-312 (separate opinion)).

[13] "A court, of course, should ensure that there is a reasoned, principled explanation for the academic decision." *Fisher*, 133 S.Ct. at 2419.

colleges. The residential colleges are considered to be integral to the overall learning environment and experience of Rice students. Each residential college serves as a self-contained community. Every student admitted to Rice is assigned to one of the nine residential colleges, whether the student will be living on campus or not. Each college has its own eating hall, student government, sports teams, budgets, traditions and social structures. In addition, each college may develop and provide courses of instruction for credit outside the normal departmental class schedule. Rice asserts that this structure requires a critical mass of underrepresented students as would be necessary to develop a meaningful level of participation by those students in each of its nine residential colleges.

OCR is satisfied based upon its examination of the record that Rice sought to achieve a compelling interest in diversity that was consistent with the interest recognized in the Supreme Court's decisions. Thus, the compelling interest in diversity is not at issue in this complaint.

Issue for Investigation

The sole allegation in this complaint is that Rice had no basis to include race and national origin as admissions factors because, without considering race, the university had achieved what the complainant claimed was essentially the same percentage of African American students and almost triple the percentage of Hispanics as the enrollment percentages at the university of Michigan Law School "upheld in *Grutter*." The complainant asserted: "Not only has Rice considered race-neutral alternatives, but they have worked." On this basis, the complainant challenged the decision to include race and national origin as admissions criteria. OCR thus focused its investigation on whether Rice's addition of race and national origin, given its previously race-neutral admissions process, was not narrowly tailored because workable race-neutral alternatives were currently capable of producing, at Rice, the educational benefits of diversity as sought by the university.

Findings

Prior to 1996, Rice considered race and national origin among many other criteria in admitting students. In 1996, the United States Court of Appeals for the Fifth Circuit Court decided *Hopwood v. University of Texas*,[14] holding that the consideration of race or national origin in admissions to achieve the benefits of diversity violated the Equal Protection Clause, and therefore, Title VI. As a recipient of Federal funds located in the Fifth Circuit, Rice was bound by the *Hopwood* decision.

After *Hopwood* was decided, Rice did not consider the race of individual applicants in its outreach, recruitment, and admissions through the 2002-03 academic year. Rice implemented numerous race-neutral approaches in an attempt to attract a more diverse pool of applicants.

In June 2003, the Supreme Court effectively overruled *Hopwood* in its *Grutter* decision. Rice and other institutions located in the Fifth Circuit[15] were thus again permitted under Title VI to

[14] 78 F.3d 932 (5th Cir. 1996), reh'g en banc denied, 84 F.3d 720, cert. denied, 518 U.S. 1033 (1996).

[15] The Fifth Circuit is comprised of Texas, Louisiana and Mississippi.

consider applicants' race and national origin in admissions, in a narrowly tailored manner, in order to achieve the educational benefits of diversity.

In response to the release of the *Grutter* decision, Rice's then-president Malcolm Gillis announced that, "To the extent the decision allows us to go back to considering race as one factor in admissions, we will be doing exactly that."[16] Then, in order to determine whether *Grutter* would allow Rice to reinstate the consideration of race, Rice conducted a multi-faceted review of whether the university had unmet diversity needs, whether race-neutral alternatives would be workable to address those needs, and whether the addition of race and national origin to an holistic admissions process would be aligned with Rice's compelling diversity interests and necessary to achieve them.

Rice's review included a working group comprised of the Director of Student Financial Services, the Vice Provost for Research and Graduate Studies, the Associate Provost, the Director of Development-Scholarships, and the Associate General Counsel. The review process also included actions by the Board of Trustees and the Faculty Council. The final stage of the review was conducted by the Provost who convened a meeting of key faculty knowledgeable about admissions and Rice's educational diversity interests, the Vice President of Enrollment, the Dean for Undergraduate Enrollment, the General Counsel and Associate General Counsel. A recommendation was prepared for decision by the President.

The working group and the Provost's committee reviewed substantial written information including research about diversity, university enrollment data from 1993 through 2003, materials related to Rice's objectives and mission, including how the role of the nine residential colleges in the educational, residential and social life of undergraduates, and the central educational role of small classes dependent on close interaction among students and faculty, affected Rice's diversity interests. Faculty and staff offered educational judgments about the absence of sufficient critical mass on campus to produce the educational benefits of diversity necessary to fulfill Rice's mission. The process included lengthy consideration of the race-neutral approaches that Rice used between 1997 and 2003 in attempting to achieve diversity through outreach, recruitment, admissions, and other means, as well as consideration of published reports about additional race-neutral alternatives in use by other states and public and private colleges and universities in pursuit of the educational benefits of diversity.

This review produced several educational judgments, based upon the information considered and the opinions of participating faculty and staff with knowledge and expertise on the issues reviewed:

- The Working Group concluded: "To date, these [race-neutral] programs, despite their laudable goals and their successes on many fronts, have not provided Rice the level of educational diversity that its faculty and administrators desire in its student body. More specifically, these efforts have not sufficiently provided the experiences and viewpoints that are often found in students from underrepresented minority groups. . . . Alone, the race-neutral alternatives available to Rice cannot achieve the level of diversity that Rice seeks."

[16] Todd Ackerman, "Rice admissions policy to include race as factor," Houston Chronicle, August 9, 2003 at 31A.

- Rice's Board of Trustees and its Faculty Council, respectively, adopted separate resolutions confirming the educational benefits of diversity, based on research and the experiences of Rice's faculty. Both resolutions supported the necessity of continued efforts to foster diversity, including considering race and national origin among the many other race-neutral factors considered in admissions to achieve the educational benefits of diversity. The Trustees and Faculty Council also resolved that race and national origin should be taken into account in accordance with the narrow tailoring requirements of *Gratz* and *Grutter*.

- The Provost summarized his committee's conclusions: "The clear consensus . . . was that attainment of a broadly diverse student body in a wide range of ways at Rice was vital to Rice's educational mission. The group also agreed that racial and ethnic diversity was a significant part of this educational diversity, and that while Rice had worked hard under Hopwood to achieve diversity without including race and ethnicity as factors in the process, we had not been able to achieve the critical mass of minorities we desire, and that Rice falls far short of having the meaningful presence of students from diverse [sic] that is needed to meet our educational objectives."

On November 10, 2003, President Gillis, having reviewed the materials and recommendations produced by the campus review of race-neutral alternatives, decided "that reintroduction of race and ethnicity as 'plus' factors in the undergraduate admission process was necessary for Rice to have the critical mass of racial and ethnic diversity in the classroom and campus life necessary to achieve Rice's educational goals and mission." Rice began using race as one admissions factor among other diversity factors for the class admitted for Fall 2004. Rice continued to use most of the race-neutral approaches that it had previously relied upon.

Analysis

Complainant asserted that Rice's decision to add race or national origin as factors in admissions was not narrowly tailored because, by using race-neutral approaches, Rice had achieved the same or a higher percentage of underrepresented minority students as the University of Michigan Law School in *Grutter*. In its decision, however, the *Grutter* Court did not establish that either the admissions or enrollment numbers achieved by the University of Michigan Law School were any kind of cap. To the contrary, in *Grutter* the Court recognized not only the Law School's academic judgment that the educational benefits of diversity were necessary to fulfill its particular mission, of which student body diversity was a central component, but also the Law School's assessment that a "critical mass" of underrepresented minority students was needed to achieve these benefits. The Court accepted the Law School's definition of critical mass as aligned with educational interests, including the consideration of "meaningful numbers," "meaningful representation," and circumstances where underrepresented minority students do not feel isolated or like spokespersons for their race.[17]

Grutter recognized that sufficient diversity is not a number but the point at which a university concludes that it is achieving the educational benefits of diversity in light of its circumstances

[17] 539 U.S. at 316, 318-319, 333, 338.

and educational mission.[18] As the Court said in *Grutter*: "The Law School's interest is not simply 'to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin.' That would amount to outright racial balancing, which is patently unconstitutional. Rather, the Law School's concept of critical mass is defined by reference to the educational benefits that diversity is designed to produce."[19]

Thus, the levels of diversity and other circumstances that produce critical mass at a particular institution are not about enrollment numbers *per se* and are not susceptible to a uniform numerical rule across institutions. The Law School enrollment percentages in *Grutter* were not a numerical diversity ceiling that, as a matter of law, limits every higher education institution, regardless of its varied missions and educational interests. Instead, consistent with *Grutter*, a university's determination of whether it has attained a critical mass can be based on factors such as the university's mission and educational goals, its teaching methods, its size, and other factors particular to the institution and the population it serves.

Consistent with *Grutter*, Rice has determined that achieving a "critical mass" of minority students is not about achieving a particular number but, rather, achieving "the educational benefits that diversity is designed to produce." For Rice, this goal includes having a diversity of voices – racial, ethnic, and otherwise – become an integral part of Rice's learning and student living environment. Rice's diversity goals also include having underrepresented students able to express their opinions without feeling as though they must be "representatives" of their underrepresented group, and having diverse student leadership in the college governments and diverse membership in student organizations and student activities on campus. Rice stated that it also believes its student body will benefit from greater diversity than it has experienced in the past (including before the *Hopwood* decision).

OCR examined Rice's assessment of whether race-neutral alternatives were sufficient to achieve these goals. In determining whether an institution has conducted a serious, good-faith review of race-neutral alternatives, and in satisfying itself that these alternatives are not sufficient to achieve the benefits of diversity as sought by a university, OCR will examine the review process used by the university, including the information considered by the institution, the expertise of its participants and the nature of their deliberations. OCR will also examine the educational objectives of the institution and satisfy itself that, in OCR's view, there were no race-neutral alternatives that would have worked about as well.[20]

Rice, as a result of the *Hopwood* decision discussed earlier, actually implemented a wide array of alternatives to considering race as a factor in admissions; in *Grutter* and *Fisher*, as discussed above, the Court has required of universities only serious, good-faith consideration of workable alternatives. Rice emphasized recruiting applicants "who have distinguished themselves through

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[18] 539 U.S. at 330.

[19] 539 U.S. at 329-330 (quoting *Bakke*, 438 U.S. at 307 (separate opinion)).

[20] "Narrow tailoring also requires that the reviewing court verify that it is 'necessary' for a university to use race to achieve the educational benefits of diversity. This involves a careful judicial inquiry into whether a university could achieve sufficient diversity without using racial classifications," *Fisher*, 133 S.Ct. at 2420 (quoting *Bakke*, 438 U.S. at 305).

initiatives that build bridges between different cultural, racial and ethnic groups." It revised its admissions guidelines to include, in addition to standardized test scores and traditional numeric indicators, consideration of many other factors, such as, but not limited to, an applicant's potential contributions and interactions that will enrich the educational experience of all students; geographic, socioeconomic, and cultural origins; applicants whose parents did not attend college; challenges applicant faced in life; succeeding academically in an environment relatively indifferent to intellectual attainment; and characteristics that will contribute to a residential community that fosters creative, inter-cultural interactions and provide a place to confront and dispel prejudices.

In 1995, Rice assigned an Assistant Admission Director the additional duty of serving as Coordinator of Minority Recruitment. This required coordination of Rice's outreach to underrepresented groups to encourage such students to apply to Rice. Rice later assigned another Assistant Director to also serve, as an additional duty, as Coordinator of Hispanic Recruitment. Rice also created scholarship opportunities to be awarded to students who have made efforts to help bridge racial and cultural divisions. Its Office of Admissions recruited university students to serve on the Student Admission Council, which among other activities encourages prospective applicants with "high diversity contributions" to apply for admission to Rice.

Other alternatives to considering race in admissions at Rice have included, and continue to include, recruitment trips to high schools that are not traditionally feeder schools for Rice; direct mail efforts to underrepresented groups; participation by admission staff in community sponsored events aimed at informing underrepresented groups; partnerships with organizations such as the Urban League that aim to serve underrepresented groups; and telemarketing to encourage students from underrepresented groups to apply. Rice also has sought to expand socioeconomic diversity within its student body, actively recruiting students from varying socio-economic backgrounds and offering a needs-blind admission process, in which an applicant's financial needs are not considered until after he or she has been admitted, with the university committed to then meeting the demonstrated financial need of everyone it admits.

Rice also has strived to increase its public profile, and hence attract more applicants and a more diverse array of applicants, by operating or participating in more than 70 different outreach programs targeted at either K-12 students or K-12 teachers. For example, Rice is a partner in the GEAR-UP program with McReynolds Middle School of the Houston Independent School District. Rice volunteers provide tutoring and mentoring support to the middle school students. Rice also has partnered with the Boys & Girls Clubs of Houston in supporting an Upward Bound program. This program targets students from low-income backgrounds who will be first generation college students. The students are identified in their first year of high school and participating students receive tutoring and campus visits throughout high school. The South Texas Science Academy Project also has brought South Texas high school students to Rice each summer. The students have lived on the campus, attended classes and participated in labs.

Rice also has operated or participated in 38 programs focusing on the professional development of K-12 classroom teachers and administrators, including one of the largest programs in the country aimed at training high school teachers to prepare their students for Advanced Placement

(AP) exams. Some of the teachers who have attended this program at Rice teach at high schools located in predominantly racial-minority school districts. Rice stated to OCR that this and other professional development programs provide a means to magnify the impact it can have on preparing K-12 students for college and, hopefully, Rice matriculation. The programs also help to raise Rice's visibility in communities throughout the country.

Rice has stated that its relatively small size and being a private instead of public institution also affected its determination of which race-neutral alternatives were not workable. For example, Rice said it determined that the "Top Ten" program in the state of Texas, in which students who graduate within the top ten percent of their high school graduating class are guaranteed admission to a public university, to be an "unrealistic option" for Rice. It said the small size of its student body, with a freshman class that typically consists of less than 700 students, and the competitiveness of its applicant pool did not allow it to guarantee spaces to students based on high school class rank – and that to do so "would require sacrificing Rice's mission of providing a top quality education to a purposefully small body." According to Rice, a "highly selective university would also have great difficulty assimilating an entire cross section of students without regard to their level of preparation; such students may not be able to meet the academic demands of a Rice education." Further, Rice noted, "the Texas [Top Ten] program preserves the ability to send eligible students through further preparatory courses in order to ready them for attending [the University of Texas's] flagship campus in Austin. Rice, however, does not have the resources or the luxury of operating a preparatory or remedial program to ready its students for a Rice education."

These explanations are consistent with the Supreme Court discussion of "Top Ten" programs in *Grutter* and the contours of what constitutes workable race-neutral alternatives. The Supreme Court said in *Grutter* that percentage plans such as Texas's Top Ten program also "may preclude the university from conducting the individualized assessments necessary to assemble a student body that is not just racially diverse, but diverse along all the qualities valued by the university."[21] The Court also noted that the District Court in *Grutter* had taken the Law School "to task for failing to consider race-neutral alternatives such as 'using a lottery system' or 'decreasing the emphasis for all applicants on undergraduate GPA and LSAT scores.'"[22] But these alternatives, the Court stated with disapproval, "would require a dramatic sacrifice of diversity, the academic quality of all admitted students, or both."[23] In the end, the *Grutter* Court concluded, after assessing the Law School's serious, good-faith consideration of an array of race-neutral alternatives, that it agreed "with the Court of Appeals that the Law School sufficiently considered workable race-neutral alternatives."[24] The Court said it was "satisfied that the Law School adequately considered race-neutral alternatives currently capable of producing a critical mass without forcing the Law School to abandon the academic selectivity that is the cornerstone of its educational mission."[25]

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[21] 539 U.S. at 340.
[22] *Ibid*.
[23] *Ibid*.
[24] *Ibid*.
[25] *Ibid*. *See also* Fisher, 133 S.Ct. at 2420: "Narrow tailoring also requires that the reviewing court verify that it is 'necessary' for a university to use race to achieve the educational benefits of diversity. *Bakke*, [438 U.S.] at 305.

Conclusion

OCR finds that Rice conducted a serious, good faith and comprehensive review of workable race-neutral alternatives before including race and national origin among the many race-neutral factors that Rice already was using in its admissions process. The evidence shows that Rice used a multi-faceted deliberative process to evaluate whether race-neutral alternatives were working to produce the diversity it sought, and it used that process to assess the educational value and need for adding race and national origin as factors in an already multi-faceted, holistic admissions process. Rice sought substantial participation and input from faculty, the Provost and other staff with the expertise to gauge whether the sought-after benefits of diversity were evident to a sufficient extent throughout Rice's academic, residential, and other educational programs. The process produced a recommendation to the university president that race and national origin be added to the existing holistic admissions system in order to address as yet unrealized interests in the educational benefits of diversity within the context of Rice's programs. Moreover, Rice continues to use most of the race-neutral alternatives that it considered, as part of the university's ongoing comprehensive efforts to achieve its diversity goals.

OCR, in its review, is satisfied that Rice "adequately considered race-neutral alternatives currently capable of producing a critical mass without forcing [Rice] to abandon the academic selectivity that is the cornerstone of its educational mission."[26] Rice was not required to consider every "*conceivable*" race-neutral alternative.[27] Rice did consider a wide range of race-neutral alternatives, including those aimed at developing strong future applicants to Rice, raising the university's profile within communities not traditionally served by Rice, encouraging admitted students from underrepresented groups to matriculate, and expanding admissions opportunities for applicants from low socioeconomic backgrounds. OCR – consistent with *Grutter* and *Fisher* – is satisfied, in its review of Rice's assessment, that Rice's consideration of race-neutral alternatives met legal requirements, was thorough and comprehensive, and that no workable race-neutral alternatives are currently capable of producing, at Rice, the educational benefits of diversity as sought by the university.[28]

The conclusions drawn after Rice's serious, good-faith consideration of race-neutral alternatives supported the decision of then-President Gillis that adding race and national origin to supplement – not supplant – the existing holistic admissions process was necessary to pursue Rice's compelling interest in diversity, an interest not yet satisfied. Whether this interest had been

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This involves a careful judicial inquiry into whether a university could achieve sufficient diversity without using racial classifications."

[26] *Ibid*.

[27] "Narrow tailoring does not require exhaustion of every conceivable race-neutral alternative. Nor does it require a university to choose between maintaining a reputation for excellence or fulfilling a commitment to provide educational opportunities to members of all racial groups." *Grutter*, 539 U.S. at 339; *see also Fisher*, 133 S.Ct. at 2420 ("Although '[n]arrow tailoring does not require exhaustion of every *conceivable* race-neutral alternative,' strict scrutiny does require a court to examine with care, and not defer to, a university's 'serious, good faith consideration of workable race-neutral alternatives.'").

[28] "Consideration by the university is of course necessary, but it is not sufficient to satisfy strict scrutiny: The reviewing court must ultimately be satisfied that no workable race-neutral alternatives would produce the educational benefits of diversity." *Fisher*, 133 S.Ct. at 2420.

satisfied, as stated above in accordance with *Grutter*, is not about enrollment numbers *per se*, but about whether the benefits of the compelling interest have been achieved.

Based on the facts as presented in this letter, OCR has determined that there is insufficient evidence to support a conclusion that Rice violated Title VI and its regulations with respect to the allegation of this complaint.

The determinations discussed in this letter are not intended and should not be construed to pertain to any compliance issues under the regulations implementing Title VI or any other statute enforced by OCR that may exist but are not specifically addressed herein. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

It is unlawful to harass or intimidate an individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Under the Freedom of Information Act, 5 U.S.C. § 552, it may be necessary to release this letter and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personally identifiable information that, if released, could constitute an unwarranted invasion of personal privacy.

Sincerely,

/s/
Paul Edward Coxe
Supervisory Attorney/Team Leader
Office for Civil Rights
Dallas Office