



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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November 27, 2012

Dr. Randy Woodson
Chancellor, North Carolina State University
Suite A, Holladay Hall
Box 7001
20 Watauga Club Drive
Raleigh, North Carolina 27695-7001

Re: OCR Complaint No. 11-04-2009
Letter of Findings

Dear Dr. Woodson:

This is in reference to the above-referenced complaint received by the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), on November 17, 2003, against North Carolina State University (the University). The complainant alleged that the University's consideration of race and national origin as factors in admissions to achieve diversity in its undergraduate classes violates Title VI.

OCR has responsibility for enforcing Title VI, 42 U.S.C. §§ 2000d *et seq.*, which prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance from the Department. The regulation implementing Title VI is found at 34 C.F.R. Part 100. The University is a recipient of Federal financial assistance from the Department and is, therefore, subject to the provisions of Title VI and its implementing regulation.

OCR's investigation included extensive interviews of University administrators and faculty, as well as a review of relevant University policies, records, and applicant files.

The Admissions Process

The University does not have a "general college" or a "college of arts and sciences" into which new students are admitted. The University instead contains nine Colleges, each of which offers a range of degree programs, and applicants for admission must apply to a specific program and College. Students may select a specific degree program (for example, Chemistry, in the College of Physical and Mathematical Sciences), an undecided program in a particular College (for

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness
by fostering educational excellence and ensuring equal access.*

example, Physical and Mathematical Sciences Undecided), or the program for undecided students (First Year College).

Prior to the start of the admissions cycle, the University administration, in consultation with each College, establishes overall enrollment targets for the size of the entering classes; however, these targets do not include numerical goals for students by race or national origin. Admissions Office staff then meet with representatives of each College to agree upon the academic criteria used to admit freshman applicants.

Freshman Processing

Applications generally are reviewed in the order in which the University receives them.¹ Until several years ago, the freshman application process operated on a rolling basis, and applicants were notified of admissions decisions as the decisions were made. Those decisions could be to admit, deny, or defer the application for Final Review. More recently, the University instituted three application deadlines (October 15, November 1, and February 1) with corresponding notification dates (December 15, January 30, and March 30). In the first two rounds, the decision can be to admit, deny, or defer the application for later review; in the final round, the decision can be to admit, deny, or place the student on the Wait List. Wait List decisions generally are made after May 1 and no later than June 15.

Complete applications from in-state students who attended a public high school are first reviewed by a Freshman Evaluator in the University Undergraduate Admissions Office (Admissions Office). The Freshman Evaluator determines whether the applicant meets the criteria for “presumptive admit.” If the applicant does meet all those criteria, the Freshman Evaluator admits the applicant to the applicant’s first choice of College and program (if that program is not one that requires additional documentation (*see* note 1)). The presumptive admit criteria consist of specified minimum weighted and unweighted grade point averages (GPA), SAT scores, and class rank, as well as course requirements. These criteria vary by College and program. In addition to making presumptive admit decisions, Freshman Evaluators also presumptively deny applicants whose weighted GPA is below an established threshold. SAT and ACT scores are not used in presumptive denials.

OCR’s review of the applicant database revealed that approximately half of the accepted applicants were offered admission because they met the presumptive admit criteria. An applicant’s race is given no consideration in the presumptive admit process.

If an in-state applicant does not meet one or more of the presumptive admit criteria and also does not meet the presumptive deny criterion (of a minimum weighted GPA), the Freshman Evaluator may refer his or her application for a second review by a professional member of the Admissions Office staff (Admissions Officers) or defer the application for Final Review. That decision is

¹ Applications for programs requiring additional documentation and applications from international students are processed separately. In addition, applicants for the Park Scholarship Program, which has an earlier deadline, are processed separately, as are students who were positively reviewed by the Admissions Office under the process described below but require review by the Office of Student Conduct and students who were recruited as student athletes.

based on the applicant's academic profile. Admissions Office staff, including Freshman Evaluators, consistently stated to OCR that Freshman Evaluators did not consider race, national origin, or other diversity factors in their review of the applications in this process and the application of the presumptive admit or deny criteria.

Prior to the Final Review period, Admissions Officers review applications from out-of-state applicants and applicants who attended a private high school, as well as applications that were referred by Freshmen Evaluators for second review. An Admissions Officer may accept the applicant, deny admission, or defer the application for Final Review. The factors considered by Admissions Officers in reaching these decisions are discussed below.

Final Review generally begins around March 1, after the Freshmen Evaluators have completed their review of all applications that were received by February 1. During Final Review, applications are sorted by College and within that by geography, read by the Admissions Officers, and may be reviewed by a College representative who makes the College's recommendation to the Admissions Office. Freshmen applicants are accepted, denied, or placed on the Wait List.

The extent of College involvement in the admissions process varies by College. The Director of Undergraduate Admissions indicated that some Colleges review all applicants who reach Final Review and other Colleges review a smaller portion. For example, representatives of the College of Natural Resources review the files of all applicants to the College who were not admitted or denied under presumptive admit / deny criteria or as a result of Second Review. However, the College of Agriculture and Life Sciences asks to review only the files of applicants who have some background that relates to College programs.

After reviewing the applications, the Colleges submit their recommendations to the Admissions Office. Although the Admissions Office retains the final say on whether an applicant is offered admission, the Admissions Director stated that the Colleges' recommendations are almost always followed.

Factors Considered During Second and Final Review

The University informed OCR that reviews by Admissions Officers and the Colleges rely entirely on the holistic review of the applications, and each admissions decision is individual to the specific circumstances of the applicant. An applicant's race and national origin are among the factors considered during Second Review and Final Review (that is, for applicants who did not get a presumptive admit or deny). The University identified the following factors as among those typically considered as part of this holistic process: the rigor of high school courses taken, performance in dual enrollment (college) courses, weighted and unweighted GPA, performance in specific college preparatory coursework, most recent academic performance, standardized test scores (SAT I or ACT), rigor of high school attended, work experience, extracurricular activities, special talent and abilities, race or ethnicity, status as a first-generation college student, community service, demonstrated leadership, demonstrative academic initiative, exceptional experiences, University legacies, recommendations, geography, academic interest, status as a child of faculty/staff, first language, personal statement, overcoming obstacles, reason for choosing the academic program, socioeconomic status, suspension or dismissal from school, and criminal conduct. The University indicated to OCR that these are only examples of factors that

are typically considered, and that other factors can be and are considered as applications are reviewed, case-by-case. The University reported that no specific weight is assigned to any factor during Second and Final Review, and all factors used in the holistic review of applications are weighed collectively based on an individual applicant's circumstances and the professional judgment of the Admissions Officers.

The University asserted that race, like the other factors just listed, is sometimes used as a "plus factor" in the Second Review and Final Review of applications. This plus factor is used, at times, for applicants who are Native American Indian, African American, Hispanic, and Asian American student. The plus factor, if given, is based on the applicant's race in combination with all of the applicant's attributes and experiences. Although an applicant's race can be a consideration in the Second Review, the Admissions Director informed OCR that the main focus of Second Review is on academic credentials, with the overall strategy being to offer admission to the most competitive applicants as early as possible.

During Final Review, all diversity factors, including race, are considered holistically with other academic and non-academic criteria. The Admissions Director said that, within the standards of each college, each file is reviewed using the same criteria during both Second Review and Final Review. The Admissions Director stated to OCR that, while he is aware of the tentative composition of the entering class before Final Review, that is *not* a factor in the way race or other diversity factors are considered during Final Review. File reviews of late stage admissions were consistent with the Director's statements.

Randomly selected application files reviewed by OCR were consistent with the admissions staff's description of a holistic review process, including consideration of diversity factors not related to race. For example, a reviewer made notes on a White applicant's file that the applicant's father had died in the applicant's eighth grade year. A different reviewer noted on another White applicant's file that the applicant had enlisted in the Army at age 18 and played tennis competitively. Numerous files included notations regarding applicants' out-of-state status and other diversity factors, such as being a first-generation college student or being very involved in extra-curricular activities.

Selective Colleges

The manner in which race may be taken into account varies from college to college within the University. OCR considered that some colleges are less in demand than others and that virtually all who apply to those colleges are admitted. On the other hand, some colleges and programs within those colleges are very popular with applicants. Within those selective colleges, the procedures and factors considered in deciding whether to grant or deny admission to students who do not automatically qualify under the presumptive admit criteria vary. Consequently, diversity factors such as race also receive different emphasis. For example, a representative from the College of Management stressed the importance of preparing students to work in a global marketplace, including international settings, and placed greater emphasis on diversity factors than the College of Design, where students' demonstrated design or artistic talents are of nearly exclusive importance. The number of applications reviewed by any particular college varies widely.

For the four most selective colleges at the University – Engineering, Design, Management, and Physical & Mathematical Sciences – OCR selected² samples of applications and interviewed decision-makers from each college to determine whether race was a factor in the decision to admit or deny the applications, and, if so, what role or weight race played.

Representatives from the College of Engineering and the College of Management³ indicated that they consider applicants' contributions to diversity, including race, life experiences, rural background, international experiences, and family background. The Colleges of Engineering and Management review only the files of candidates who do not meet the presumptive admit criteria but whose qualifications are not sufficiently weak that the Admissions Office will deny them without College input.

OCR's file reviews from the Colleges of Engineering and Management were consistent with the College representatives' assertions that each applicant is given a holistic review in which diversity, defined in many ways, is considered. The files included White Engineering applicants who benefited from being from out-of-state or from small towns, and a Native American applicant who benefited from his race as well as from being from a rural area. The applications to the College of Management included an African American applicant with relatively low grades who benefited from having attended school in Zimbabwe for two years and a relatively low scoring White applicant who similarly benefited from having attended high school in France.

For the Colleges of Physical & Mathematical Sciences (PAMS) and Design, College representatives reported to OCR that the key factor for admission is an applicant's demonstrated ability in the subject area. Applicants to Design programs (Architecture, Graphic Design, Art & Design, and Industrial Design) are ranked primarily based on the strength of their portfolios and then screened for academic preparation. Design faculty review student portfolios with no information about the applicant's race. Design representatives indicated in 2006 that, in some cases, an applicant might be moved up or down in the rankings for possible admission based on diversity characteristics, including race, but such movement is rare. The Dean of the College of Design told OCR in 2012 that after the faculty reviews portfolios and ranks the applicants, he reviews the list of applicants for a variety of diversity factors, including race and national origin. He reported that on occasion diversity factors have an admissions decision in an applicant's favor, but that these applicants had met the program's technical or artistic standards and that his review has never resulted in denying a student because of race. The files reviewed by OCR were consistent with the assertions that the prevailing emphasis is on demonstrated talent and design ability.

The College of PAMS similarly reported that the key factor in the College's review is an applicant's performance in science and math courses. The Associate Dean for Academic Affairs

² Applications were grouped by College/Program, decision, race, high or low SAT scores, residence, first-generation college, legacy and SES. The selected files were then rank ordered by grade point average. For each of the highly selective colleges, OCR selected applications to review, identifying applicants who demonstrated racial and non-racial diversity characteristics; some of the randomly selected files were also from the highly selective colleges.

³ OCR interviewed the Director of Enrollment Management for the College of Engineering and the Director of Admissions for the College of Management in 2006 and the Director of Undergraduate Programs in the College of Management and the Associate Dean for Academic Affairs in the College of Engineering in 2012.

in the College of PAMS told OCR in 2006 that she is not aware of race being used as a determinative factor in the College's application review process; similarly, the Director of Undergraduate Enrollment for the College of PAMS (PAMS Director) told OCR in 2012 that he does not take race into account in his recommendations. The PAMS Director said he looks at such factors as the applicant's major, GPA, class rank, SAT or ACT scores, and high school attended. For students who do well on these factors, he might consider their transcripts to see how they did in math and science courses. If an applicant meets the presumptive admit criteria, he would not contact the Admissions Office. If an applicant does not meet those criteria but nonetheless impresses him, he would let the Admissions Office know that the applicant might be successful in the College. For example, he discussed an applicant last year who did not meet the presumptive admit criteria because his GPA and class rank were a bit low. However, the applicant had good math and science grades and had come in to meet with officials at the College, and these officials told the PAMS Director that the applicant could be successful in their program. The PAMS Director contacted the Admissions Office, which then admitted the student. OCR's file reviews were consistent with the assertion that race is not involved in the College's recommendations to the Admissions Office. For example, one Hispanic applicant who was denied admission had several additional diversity factors such as out-of-state, female, and overseas educational experiences, but the Director of Admissions and the Associate Director of Admissions told OCR that her grades and test scores were borderline.

Legal Standards and Analysis

Title VI prohibits discrimination on the basis of race, color or national origin in any program or activity that receives Federal financial assistance. The Title VI implementing regulation, at 34 C.F.R. § 100.3(b)(2), provides that a recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color or national origin when the recipient determines the type of services, benefits or facilities it will provide or the class of individuals to whom such services, benefits or facilities will be provided.

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.⁴ 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*, 539 U.S. 306 (2003), and *Gratz v. Bollinger*, 539 U.S. 244 (2003).

Under Title VI, strict scrutiny review is applied to the use of an individual's race in admissions in federally assisted programs. Under the strict scrutiny standard of review, the recipient must have a compelling interest for using race and its use of race must be narrowly tailored to that interest.

⁴ 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.)).

Compelling Interest

The University has a compelling interest in achieving the educational benefits of diversity, as recognized by the U.S. Department of Education and the U.S. Department of Justice in the Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education.⁵ The Guidance confirms “the compelling interest that postsecondary institutions have in obtaining the benefits that flow from achieving a diverse student body.”⁶ The former Chancellor explained that the use of various diversity factors is aligned with the University’s core objectives and educational programs. The former Chancellor also cited the educational benefits of enriched classroom learning. He said that interaction with students from a variety of backgrounds, cultures, attitudes and perspectives improves learning and prepares students to adapt to a variety of situations after graduation. The Provost observed that a diverse student body contributes to a variety of perspectives, experiences and skills that improve robust, critical thinking, help break down racial stereotypes, and prepare students for a global marketplace and life beyond the university. Thus, the University may consider individual students’ race and national origin in admissions decisions to achieve diversity so long as that use of race is narrowly tailored.

In *Grutter*, the Court held that the Law School could permissibly seek a “critical mass” of students of underrepresented groups as part of its pursuit of student body diversity. The concept of critical mass accepted by the Supreme Court was “defined by reference to the educational benefits that diversity is designed to produce.” *Grutter*, 539 U.S. at 330. The Court acknowledged that a critical mass is necessary to dispel stereotypes about minorities, including assumptions that minorities share the same characteristic viewpoints, as well as to ensure that there are enough members of underrepresented minority groups for those students to participate in the classroom without feeling isolated or feeling like spokespersons for their race. *Id.* at 318-19, 330.⁷

The University’s pursuit of diversity is informed by critical mass principles that are consistent with *Grutter*. University administrators, including the Admissions Director and the Provost, indicated that a “critical mass” of traditionally underrepresented groups is necessary in order for the University to achieve the educational benefits of diversity. The Admissions Director noted that a sufficient number of students is needed to break down racial stereotypes, to improve cross-racial understanding and for underrepresented-minority students not to feel isolated or that they are “carrying the flag” for their group. He and the Provost indicated that the “critical mass” concept and the goal of achieving a critical mass apply to non-racial diversity factors as well as racial diversity factors and apply within Colleges as well as in the University as a whole. The Provost and the Admission Director denied that any specific number is required to achieve a critical mass.

Particular enrollment numbers are not used to represent critical mass; rather, the Admissions Director and Provost rely on information about whether the educational benefits of diversity are realized on campus. The Admissions Director gets feedback on whether critical mass has been

⁵ <http://www.ed.gov/ocr/docs/guidance-pse-201111.html>

⁶ Guidance at p.1 (December 2011).

⁷ See Guidance at p.3.

achieved from a variety of sources. On whether the mix of students on campus is producing the educational benefits of diversity he gets input from academic deans, the Provost and an admissions committee of faculty and students. On campus climate issues, affecting the realization of the benefits of diversity, the Director gets feedback from students (e.g., from incoming and continuing students on campus climate), alumni (surveys on how comfortable they felt on campus), student services staff, and university/community advisory groups. The Provost relies on the same types of information in making the judgment that critical mass has not been attained for racial diversity. While critical mass is not a factor in individual decisions, the Director concluded that the lack of critical mass justifies the continued consideration of race as part of the holistic review.

Narrow Tailoring: Consideration of Race-Neutral Alternatives

Under *Grutter*, several criteria apply to whether a use of race is narrowly tailored: whether the university in good faith 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.

Grutter establishes that in order to use race as a factor in individual 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 may deem unworkable a race-neutral alternative that would be ineffective or would require it to sacrifice another component of its educational mission.⁹ The 2011 OCR/DOJ joint guidance provides: “Institutions are not required to implement race-neutral approaches if, in their judgment, the approaches would not be workable. In some cases, race-neutral approaches will be unworkable because they will be ineffective to achieve the diversity the institution seeks.”¹⁰

The Admissions Director advised OCR in 2006 and in 2012 that the University had evaluated student grades to determine whether the incoming class would be as diverse if race were not taken into account. The Admissions Director said it was clear from the data that if race were not used, the University would not end up with as diverse a class as they had with the consideration of race. The Admissions Director further indicated in 2006 that his office had considered various race-neutral options, such as 10% plans, but rejected them after discussions. The University is currently using some race-neutral factors, including socio-economic status and first generation college status. However, the Admissions Director said that at the University those factors would not be a workable substitute for consideration of race as one factor among others and would not alone achieve as racially diverse a class. As reported below, the University has decided to review its use of race in admissions this year, including whether there are workable alternatives that do not use race or that use race to a lesser extent.

⁸ *Grutter*, 539 U.S. at 339.

⁹ *Id.* at 340.

¹⁰ 2011 Guidance at p. 6.

Narrow Tailoring: Individualized Review of Applicants

The Supreme Court has made clear in the context of admissions that in order to survive scrutiny, a program that includes consideration of race must “focus on each applicant as an individual, and not simply as a member of a particular racial group.” *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 722 (2007). The Court wrote that the “program must remain flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes an applicant’s race or ethnicity the defining feature of his or her application. The importance of this individualized consideration...is paramount.” *Grutter*, 539 U.S. at 337.

As described in detail above, the admissions program implemented at the University provides for flexible and individualized review of applicants. The University typically considers a host of factors, including quality of high school courses, grade point average, performance in specific college preparatory coursework, standardized test scores (SAT I or ACT), rigor of high school attended, work experience, extracurricular activities, special talent and abilities, race or ethnicity, status as a first-generation college student, community service, demonstrated leadership, academic initiative, exceptional experiences, University legacies, recommendations, geography, academic interest, status as a child of faculty/staff, first language, personal statement, overcoming obstacles, reason for choosing the academic program, socioeconomic status, suspension or dismissal from school, and criminal conduct. The University stated that no particular weight or points are assigned to any of these factors. As also noted below, the University does not use race inflexibly through racial quotas. Nor are separate or different admissions criteria or standards applied based on race. Thus, applicants are not denied independent competitive consideration because of race.

The Admissions Director indicated that under this system, lower scoring White applicants could be admitted because of a contribution to diversity, such as having come from a low socioeconomic status or first generation college status. In addition, relatively high scoring African American applicants could be denied if they did not contribute to diversity in other ways, particularly if they were applying to a program in high demand.

OCR reviewed application files and interviewed staff responsible for admissions about individual decisions. The applicant files reviewed by OCR and the explanations provided by admissions officers and College representatives were consistent with these assertions of individualized consideration. For example, a White applicant with low SAT scores was admitted to the College of Physical & Mathematical Sciences based in part on non-racial diversity factors; that student was from a rural area of North Carolina and is a first generation college student. An Hispanic applicant to that College was denied admission despite being from out-of-state, female, and having overseas educational experiences; she was denied because her grades and test scores were borderline. An African American applicant with relatively low grades and a White applicant with relatively low test scores were each admitted to the College of Management in part because of their international experiences. Yet an African American applicant with low SAT scores and low class rank was not admitted because it was determined that those negatives were not overcome by his legacy status, single parent family situation, and race. The University’s consideration of applicants does not make an applicant’s race or ethnicity the defining feature of his or her application.

In support of its contention that the University's consideration of race is "too heavy" to comport with Title VI, the Complainant specifically noted differences among average SAT scores of admitted students based on race. As noted above, SAT scores are one of several criteria in the presumptive admit decision. That decision is based on strictly academic criteria and does not include any consideration of an applicant's race or national origin. For applicants who do not meet the presumptive admit thresholds, admissions officers consistently reported to OCR that a candidate's SAT scores are one of many factors they consider when reviewing all the information in an application. They reported that the weight given to the scores varies (for example, the College of Engineering places greater weight on an applicant's math SAT score than on the verbal SAT score) and they consider an applicant's score in the context of the average scores from the applicant's high school. As discussed in more detail above, the applicant files reviewed by OCR showed that some White applicants with lower SAT scores were admitted while some racial minority applicants with higher SAT scores were rejected; this supports a conclusion that neither SAT scores nor race are predominant factors that prevents individualized consideration of all applicants. Indeed, we note that, while applicants might be presumptively denied admission based on a low-weighted GPA, they will not be denied admission based on low SAT scores.

Under Title VI, a recipient has academic discretion to decide on admissions criteria, including how test scores will be used. SAT scores are not a decisive admissions factor in the University's process, and the gaps in and of themselves do not establish that race is the predominant factor. OCR will not substitute its judgment for the University's by deciding that SAT scores have greater significance than the University confers, within its academic discretion.

Narrow Tailoring: Burden on Students of Other Racial Groups

Next, OCR must also consider the negative impact that the admissions process has on students who are not African American, Hispanic, or Native American. In the context of race-conscious admissions, the Court has indicated that narrow tailoring requires that the program "not unduly burden individuals who are not members of the favored racial and ethnic group." *Grutter*, 539 U.S. at 341 (citing *Metro Broadcasting, Inc. v. FCC*, 497 U.S. 547, 630 (1990)). The Supreme Court held in *Grutter* that the Law School did not unduly burden members of any racial group because admission decisions were based on individualized consideration of "all pertinent elements of diversity." *Id.* at 309 (quoting *Bakke*, 438 U.S. at 317). The Court noted that the Law School's program also resulted in the admission of certain "nonminority applicants who have greater potential to enhance student body diversity over underrepresented minority applicants." *Id.* at 341.

In this regard, it is important to note first that the University does not use quotas, weights, points, or racial goals in its admissions process. Race is not used to sort applicants nor is it used to vary the impact of admissions criteria. The admissions office uses no numerical diversity goals or targets and focuses solely on whether candidates contribute to the University's interest in the educational benefits of diversity. Furthermore, most of the persons offered admission to the University are admitted solely on the basis of grades, test scores and other academic criteria without any consideration of other contributions they may make to the University, including diversity. Further, the number of applications for which race might become a factor is reduced by the fact that not all colleges at the University are in high demand and they therefore do not have

a competitive admissions process. This substantially lessens the chance in these colleges that the use of race, if any, might impose any burdens at all.

In the selective colleges, race is only one among the many criteria considered in giving applicants an individualized, holistic review. As described above, members of non-favored racial and ethnic groups can and do benefit from exhibiting other diversity characteristics, such as being from a rural area or from out of state, having international educational experiences, or coming from a single family home.

Narrow Tailoring: Periodic Review

Another important element, as indicated by the Supreme Court, is the duration of the racial classification. *Grutter*, 539 U.S. at 342. The Supreme Court held that the use of race and national origin in admissions must be limited in time and subject to periodic review “to determine whether racial preferences are still necessary to achieve student body diversity.” *Id.* The Court accepted the Law School’s assurances that it would “terminate its race-conscious admissions program as soon as practicable.” *Id.* at 343. *See also* OCR/DOJ 2011 Guidance.¹¹

The former Chancellor conceded that they have not reviewed or evaluated whether race continues to be necessary to achieve diversity. However, the University has committed to conduct a review of its use of race and national origin in admissions by September 30, 2013. The review will comply with the strict scrutiny requirements established by the Supreme Court, including consideration of the continued necessity of the use of race and national origin in admissions in order to achieve the University’s compelling interest in the educational benefits of diversity. The University has further committed to end or reduce the consideration of race or national origin if the review shows that the University can achieve diversity to a sufficient degree without, or with a lesser reliance on, race or national origin as among the factors used holistically in admissions.

Based on the evidence gathered in the course of OCR’s investigation and the commitment made by the University, OCR has concluded that the University’s consideration of race and national origin as factors to achieve diversity in its undergraduate classes is consistent with Title VI strict scrutiny requirements. Therefore, OCR is closing this complaint effective the date of this letter.

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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

Please be advised that the University may not harass, coerce, intimidate, or discriminate against an individual because that individual filed a complaint or participated in the complaint resolution process. If this happens, the individual may file another complaint alleging such treatment.

¹¹ “[T]he institution should periodically review its programs to determine whether the use of racial classifications remains necessary and should modify its practices as needed.”

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

We greatly appreciate the University's cooperation during the resolution of this complaint. If you have any questions, feel free to contact Howard Kallem, Chief Regional Attorney, at 202-453-5918.

Sincerely,

/s/

Alice Wender

Director

District of Columbia Office

Office for Civil Rights

Cc: Eileen S. Goldgeier, Vice Chancellor and General Counsel (by e-mail)