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Roadmap to Diversity: Key Legal and Educational Policy Foundations for Medical Schools

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Roadmap to Diversity: Key Legal and Educational Policy Foundations for Medical Schools

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About this Publication

Roadmap to Diversity: Key Legal and Educational Policy Foundations for Medical Schools is the first in a series of publications to be produced by the AAMC Holistic Review Project to help medical schools align admissions to mission, and establish and implement institution-specific, diversity-related policies that will advance their core educational goals with minimal legal risk. To successfully achieve the educational and health care related benefits that come from a diverse student body requires school-wide, concerted efforts. Therefore, the AAMC encourages medical schools to use this publication as a tool to guide collaboration and discussions among their institution's leadership; faculty; admissions, minority affairs, financial aid, and recruitment officers; legal counsel; students; and others engaged in and affected by diversity-related issues.

Note: The content of this publication should not be construed as legal advice, and readers should not act upon information contained in this publication without professional counsel.

Acknowledgments

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Table of Contents

Foreword iii

Overview v

Chapter 1: The “Rules of the Road”: Key Points Your School Needs to Know
Regarding Access and Diversity Policies 1

Exhibits:

- The United States Supreme Court, Race, and Education: A Retrospective on Key Cases 1
- Equal Opportunity Principles in Key U.S. Supreme Court Opinions 4
- Key Federal Legal Terms 5

Chapter 2: Agreeing on the Destination: Why Student Diversity May Matter at Your Medical School 7

Exhibit:

- Examples of Medical School Goals That May Be Associated with Student Diversity 8

Chapter 3: Staying the Course: Clarity and Consistency on Key Policy Concepts 11

Exhibits:

- Key Points about the AAMC’s “Underrepresented in Medicine” Definition 12
- What about “Race-Neutral Alternatives”? 13

Chapter 4: Reaching the Destination: A Management Strategy and Plan for Enhancing
Diversity at Your Medical School 15

- **Worksheet:** Medical School Diversity Self-Assessment 17

Appendix:

- Action Plan Template: A Process Guide/Checklist and Key Questions from Federal Nondiscrimination Law A-1
- Chapter References and Sources A-7
- Advisory Committee on Holistic Review A-11
- Medical School Admissions Workshop Working Group A-12

Foreword

This publication is a *call to action*.

After all, taking action is what each of us in academic medicine must do if we are serious about creating and sustaining diversity in medical education, biomedical research, and the physician workforce. Building diversity—which includes, but is not limited to, race and ethnicity—is a school-wide responsibility that cannot be delegated solely to our admissions and minority affairs offices. In that diversity is a compelling interest for our institutions, each of us has a civic, professional, and legal responsibility to our fellow citizens to support the diversity efforts at our schools. Together, we must make building diversity a coherent effort in which administrators, faculty, students, and legal counsel are all engaged.

Roadmap to Diversity is the first tool in a series being produced by the AAMC Holistic Review Project. It was written, under the guidance of the project's advisory committee (members are listed in the appendix) and AAMC staff, by Arthur L. Coleman, Scott Palmer, and Steven Y. Winnick, nationally recognized experts in providing legal and policy guidance to higher education and nonprofit institutions. It focuses on the legal underpinnings for developing diversity policies and programs and provides background information, an institutional diversity self-assessment checklist, and an action plan template. The *Roadmap* is a hands-on document intended to mobilize all of the parties whose collaboration is crucial to making diversity a reality at our schools.

The work to be done is ours collectively, and this document will only be as effective as we make it. Therefore, I ask each of you to review *Roadmap to Diversity* and determine what steps your school needs to take so that the *Roadmap* becomes a practical tool for local and national change.

Thank you for joining us in this essential effort.

John E. Prescott, M.D.
Dean, West Virginia University School of Medicine
Chair, AAMC Advisory Committee on Holistic Review,
Aligning Admissions with Mission
March 2008

Overview

A shared objective of many (if not most) U.S. medical schools is to arrive at a destination in which a diverse class—including a racially and ethnically diverse class—enhances teaching and learning for all students and establishes foundations for more expansive, quality medical care in all communities. The *Roadmap to Diversity* provides important policy development foundations for successfully achieving that objective.

Medical school officials should be able to affirm **five fundamental points** if, in fact, those foundations are sufficiently in place:

1. Enrolling and training a diverse class of medical students is central to my medical school's educational mission.
2. My medical school has developed policy statements that articulate the precise benefits associated with a diverse student body, including with respect to race and ethnicity, but *not solely* with respect to race and ethnicity.
3. My medical school has a well-managed, annual process for evaluating its access and diversity goals, as well as the ways in which school policies are designed (and actually work) to achieve those goals—consistent with all core mission objectives.
4. In cases where my medical school considers race or ethnicity when making enrollment management decisions (such as selection in admissions and awarding scholarships), we ensure that:
 - the consideration of race and ethnicity is demonstrably necessary to achieve our access and diversity goals, and
 - the consideration of race and ethnicity materially advances the achievement of our access and diversity goals.
5. As a medical school policymaker or faculty member, I am equipped to talk to internal and external stakeholders about the importance of diversity in medical education and its association with achieving core institutional aims, such as producing a well-qualified physician workforce.

With a discussion of relevant legal principles, illustrations, and tools, this publication expands on these principles to provide medical school officials with a roadmap that can help them chart a course toward achieving their school-specific mission-driven goals.

- **Chapter 1** provides an overview of key legal and policy trends associated with access and diversity efforts in higher education over the past several decades as a foundational framework for medical schools to consider as they establish (or refine) their diversity-related goals.
- **Chapter 2** describes and explains these goals, which may be associated with race- or ethnicity-conscious policies.
- **Chapter 3** supplements that discussion with a description of key policy terms that are frequently integral to diversity-related policies, and that have the potential of becoming a source of confusion or challenge.
- **Chapter 4** provides, in more operational terms, a policy self-assessment guide designed to support medical school officials working to enhance student diversity to achieve their schools' mission-driven goals.
- The **Appendix** presents an action plan for using the information and concepts presented throughout the document. It includes references and sources by chapter.

Finally, throughout *Roadmap to Diversity*, several major themes surface.

- A medical school’s leadership is vital in connection with efforts to achieve diversity goals, along with a commitment to action throughout the school—including admissions, financial aid, recruitment, student affairs, minority affairs, academic affairs, and legal offices. Successful medical school efforts to promote mission-related goals associated with a diverse student body require hard work by many.
- The key to success for any medical school seeking to enroll and graduate a broadly diverse class is the connection the school makes between the diversity it seeks and the educational, mission-driven goals to which it aspires.
- Diversity is not a “one-size-fits-all” concept. To the extent that diversity-related efforts are mission-driven (as they should be), then diversity objectives should reflect the unique goals, settings, and cultures of the various medical schools with which they are associated.
- Correspondingly, diversity should not be viewed as an end goal, but as a means to achieving core educational goals as defined by the medical school.
- Effective development and implementation of diversity-related policies depend in part on:
 - a clear articulation of policies designed to advance those goals; and
 - a process of continual examination regarding the educational goals medical schools seek and the ways in which race or ethnicity policies advance those goals.

CHAPTER 1

The “Rules of the Road”: Key Points Your School Needs to Know Regarding Access and Diversity Policies

In this chapter: Major legal and education trends

This chapter provides an overview of education and legal trends that have a direct bearing on the ways that medical schools articulate and pursue access and diversity goals. This information is central to institutional policy development, aspects of which are discussed in subsequent chapters.

Never underestimate the power of a disgruntled, would-be medical student.

In 1974, Alan Bakke was denied admission to the medical school at the University of California, Davis, despite his record as a Vietnam veteran with a master’s degree in engineering and high scores on three of the four parts of his Medical College Admissions Test (MCAT) and in two of three UC-Davis admissions interviews. He challenged his rejection, alleging that the medical school’s admissions policy—which reserved 16 of 100 spaces for underrepresented minority students—constituted unlawful discrimination. And, in 1978, he won. In that year, for the first time in its history, the U.S. Supreme Court addressed the issue of how institutions of higher education might consider race as part of their admissions process. That decision—and the single “compromise” opinion of Justice Powell, in particular—became the polestar for higher education leaders for over a quarter of a century. The principle that higher education institutions could consider race and ethnicity in appropriately circumscribed ways (“narrowly tailored,” in legal terms) to promote the educational benefits of diversity became the central basis for developing higher education enrollment management policies. That principle

was reaffirmed by the U.S. Supreme Court in 2003, and again in 2007.

Indeed, Justice Powell’s *Bakke* opinion in 1978 set the stage for a set of

evolving, mutually reinforcing trends in education and law, which must be understood if medical schools are to continue to meet their access and diversity goals in lawful ways.

The United States Supreme Court, Race, and Education: A Retrospective on Key Cases

- *Regents of the University of California v. Bakke*, 1978. The Court rules that the University of California, Davis, medical school’s “two-track” admissions policy (16/100 admissions spots reserved for minorities, who were evaluated against different standards) is unlawful. Justice Powell in a key swing vote agrees with the result, but refuses to rule out the prospect of any consideration of race in higher education admissions. In a key passage, Justice Powell recognizes that the educational benefits of diversity constitute a “compelling interest” that can support the limited consideration of race in higher education admissions.
- *Grutter v. Bollinger and Gratz v. Bollinger*, 2003. The Court rules regarding two University of Michigan admissions policies, concluding that the educational benefits of diversity are a “compelling interest” that can justify the limited use of race in higher education admissions. Then, with respect to the means of achieving that interest, the Court approves (in a law school setting) the individualized, holistic review of applicants, where race is one factor among many considered; and strikes down (in an undergraduate setting) as overly mechanical and rigid the process of awarding 20 out of 150 possible admissions points based on the status of students as “underrepresented minority students.”
- *Parents Involved in Community Schools v. Seattle School District No. 1*, 2007. In a series of splintered opinions, the Court strikes down two separate race-conscious student assignment policies in K-12 settings, concluding that the interests advanced by both districts did not track previously recognized “compelling interests” and that the districts had not established the necessity of their respective uses of race to achieve their goals (in particular, by showing demonstrable impact of their race-conscious policies toward the achievement of their goals). At the same time, a majority of the Court (four dissenting justices and Justice Kennedy, through a key swing vote opinion) recognizes compelling interests in achieving the educational benefits of diversity, as well as those (such as avoiding the harms of racial isolation) that implicate equal opportunity interests.

Higher education trends focusing on educational outcomes. In general, higher education's focus on access and diversity has shifted from efforts to remedy the effects of past discrimination (and, correspondingly, to pursue a more central "social justice" agenda, such as broadly addressing population disparities) to efforts to achieve the educational benefits associated with a diverse student body. In part driven by the difficulty of actually establishing court-acceptable connections between past discriminatory practices and present race-conscious policies, and in part driven by an understandable institutional reluctance to publicly air past histories of discrimination, the clear evolution of higher education—and medical school—policies has been toward an educational framing. As a result, corresponding to the efforts of their higher education counterparts, medical schools are increasingly devoting more attention to the relevance of a diverse student body to their ability to achieve their core mission aims of producing highly qualified graduates who will be able to effectively serve all segments of society.

This movement from a historical, remedial vantage to a forward-looking, educational focus has had major policy development implications for medical schools. First, as a result of that shift, the central questions of focus have become more accountability-driven and outcome-driven: What actual benefits might I generate by assembling

...the central questions of focus have become more accountability-driven and outcome-driven:

- What actual benefits might I generate by assembling and training a diverse class of aspiring doctors?
- How can a more diverse class of students improve my school's ability to enhance the delivery of medical services to underserved populations?
- What is my rationale?
- What information supports my position?

and training a diverse class of aspiring doctors? How can a more diverse class of students improve my school's ability to enhance the delivery of medical services to underserved populations? What is my rationale? What information supports my position?

Second, and correspondingly, this movement toward future-oriented educational outcomes has shifted the institutional focus from rigid, "numbers"-oriented, system-wide input measures to specific school-based and department-based outcomes within an institution of higher education. For instance, the focus on outcomes and benefits directly associated with student diversity in a medical school may (and should) be broadly aligned with outcomes and benefits found within its university (for example, in its Ph.D. program in engineering, a law school, or an undergraduate program). However, given inherent contextual differences, the *precise* benefits associated with diversity are certain to be

unique to the medical school setting. In short, the emerging central questions regarding a diverse student body have become more narrowly, programmatically framed within the context of institution-wide related goals.

Third, this trend has begun to force a more robust connection among various segments associated with enrollment management—from all facets involved in recruitment, selection and financial aid (elements focused on the matriculation of a class of students) to the management of the class in academic and student affairs, once the class is admitted.¹ With these connections has emerged a renewed sense (building on Justice Powell's reasoning in *Bakke*) that diversity is about more than numbers; it necessarily includes a focus on the educational dimensions of any institutional program. For medical schools, the focus is, then, on how their instructional strategies and curriculum align with articulated diversity goals, and how they explain those connections.

¹ "Enrollment management" is a term generally used at the undergraduate level and not often found in the medical school context. However, it can be useful for medical schools in designing and implementing an array of strategies integral to a medical school's efforts to enroll and retain a class of students, consistent with its core values and mission-driven goals. More specifically, the term means a strategic, integrated, and holistic process that influences the size, shape, and characteristics of a school's student body—from efforts in recruitment, admissions, and financial aid (all targeted toward the matriculation of the desired entering class) to efforts focused on academic and career advising, as well as retention and student services. In essence, enrollment management constitutes an integrated and holistic approach for analyzing and influencing enrollments, involving a team of individuals on a campus, working together to achieve enrollment goals, with the ultimate aim of ensuring student and school success. See generally, Michael G. Dolence, "Strategic Enrollment Management," *Handbook for the College Admissions Profession* (American Association of College Registrars and Admissions Officers, 1998); and, Don Hossler, *Creating Effective Enrollment Management Systems* (College Entrance Examination Board, 1986).

Federal legal directions affirming educational interests. These educational trends have occurred at the same time as federal decisions amplifying Justice Powell’s Bakke opinion have affirmed and explained the key elements that can support race- and ethnicity-conscious policies and practices.²

In 2003, the U.S. Supreme Court addressed the lawfulness of race-conscious admissions policies at the University of Michigan, in its law school and in its undergraduate program. The Court upheld the law school admissions policy, concluding in part that the educational benefits that the university sought to achieve through student body diversity—improving teaching and learning, enhancing civic values, and preparing students for a twenty-first century workforce—were, indeed, “substantial,”

“real,” and “compelling.” The Court’s conclusion that, as a matter of federal law, the benefits of diversity could support appropriately designed and implemented race-conscious admissions policies was affirmed by all nine members of the Court in 2007 in a case involving race-conscious K-12 student assignment policies.

Thus, the Court’s legal conclusion with respect to the University of Michigan’s law school has set the stage for medical schools to confidently work to articulate and establish evidence supporting core educational goals that may, in appropriate circumstances, support institution-specific, race-conscious policies.

Moreover, a majority of the Court in 2003 and a different majority of the Court in 2007 have expressly recognized the key relationship between principles of access and equal opportunity,

on the one hand, and those associated with the core educational benefits of diversity, on the other. (See Equal Opportunity Principles, below.³) Thus, although the Court has not definitively ruled on the circumstances in which opportunity-related principles might independently support race-conscious practices in a higher education setting, the door remains open for medical schools to incorporate core access and equal opportunity principles into their enrollment management policies, particularly as they address critical access to quality health care issues that are so central to their mission-driven aims. In concrete terms, this means that medical schools might justify interests distinct from (although related to) improved teaching and learning, such as interests in addressing pervasive health care racial disparities (discussed further in Chapter 2).

Myth Buster: Diversity can’t be just about race and ethnicity.

The concept of diversity, as it is associated with achieving educational outcomes, cannot relate solely to race or ethnicity. Nor can it be just about “the numbers.” Otherwise, the concept will likely reflect more of an interest in racial balancing—a forbidden focus under prevailing federal case law.

As used by medical schools in establishing student-related goals and objectives, the term “diversity” should be defined in a broadly inclusive manner, which may include personal attributes, experiential factors, demographics, or other considerations. It may also include a focus on race and ethnicity, to be sure, but it must do so in the context of broader, diversity-related educational interests and goals that the school clearly explains in its policies.

SOURCES: *Grutter v. Bollinger*, 539 U.S. 306 (2003); *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978).

² The terms “race” and “ethnicity,” despite their different meanings, are used interchangeably throughout this guide, given that the relevant “strict scrutiny” analysis required by federal nondiscrimination law (discussed in this chapter) treats them the same. Therefore, for example, references to “race” throughout this guide should be understood to refer to “ethnicity” as well.

³ In its 2007 decision involving K-12 race-conscious student assignments, a majority of the Court (four dissenting justices and Justice Kennedy) agreed that efforts to promote equal opportunity were underpinnings of recognized “compelling interests” in elementary and secondary education settings. See *Parents Involved in Community Schools v. Seattle School District No. 1*, -- U.S. -- (June 28, 2007).

Federal legal directions requiring rigorous review and evaluation. Just as the U.S. Supreme Court has recognized core educational and equal opportunity **interests that may be “compelling”** and therefore support race-conscious practices, it has also explained, operationally, the ways in which those policies must be designed and implemented if they are to be upheld under federal law. Despite limited deference to higher education institutions in establishing their mission-driven educational goals, federal courts have consistently demanded a rigorous evaluation of any race-conscious means designed to achieve those goals. Stated differently, the Court has explained that to survive its **“strict scrutiny”** analysis, race-conscious policies advancing compelling interests must be **“narrowly tailored”**—they must reflect a clear and fundamental coherence between ends and means. Policies must be well-calibrated, materially advancing goals *without* an over-reliance on or overly mechanical consideration of race (such as the University of Michigan’s undergraduate policy under which 20 out of 150 possible admissions points were awarded categorically to underrepresented minority students). Those policies must also be the product of rigorous review and evaluation over time, in which viable race-neutral alternatives are evaluated, and as appropriate, tried; and in which the overall operation of the policies is evaluated in light of mission-driven goals, changing circumstances, and prevailing law.

Equal Opportunity Principles in Key U.S. Supreme Court Opinions

Education is the very foundation of good citizenship...[and, as a result,] the diffusion of knowledge and opportunity through public institutions of higher education must be accessible to all individuals regardless of race or ethnicity....Effective participation by members of all racial and ethnic groups in the civic life of our Nation is essential if the dream of one Nation, indivisible, is to be realized....Moreover, universities...represent the training ground for a large number of our Nation’s leaders...[and] it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity.

– Justice Sandra Day O’Connor, writing for the majority in *Grutter v. Bollinger* (2003)

The Nation’s schools strive to teach that our strength comes from people of different races, creeds and cultures uniting in commitment to the freedom of all....Our tradition is to go beyond present achievements...and to ...confront the ...injustices that remain. This is especially true when we seek assurance that opportunity is not denied on account of race. The enduring hope is that race should not matter; the reality is that too often it does.... This Nation has a moral and ethical obligation to fulfill its historic commitment to creating an integrated society that ensures equal opportunity for all of its children.

– Justice Anthony Kennedy, in the pivotal “swing vote” opinion in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007)

State policy directions. Legal trends—toward greater clarity regarding interests that may support race-conscious practices and rules regarding implementing race-conscious policies—have not been the exclusive province of federal courts. In the course of a decade beginning in 1996, four states adopted partial or total bans on the consideration of race and ethnicity in public higher education enrollment management decisions (three through voter initiatives, one through a governor’s executive order). Thus, for public medical schools in California, Washington, Florida, and Michigan, issues regarding the soundest ways to achieve access and diversity goals must be informed not only by federal nondiscrimination principles, but also by

specific state laws that address those issues. For them, more restrictive state rules apply, in most instances barring any race-conscious enrollment management policy, such as considering race in admissions or financial aid decisions. Collectively, the laws of these four states bring to the fore the central operational question of what, if any, race-neutral avenues might effectively achieve the diversity they seek.

Coupled with the required rigor of federal legal analysis, these state law developments take us back in interesting ways to 1978 and the case in which Alan Bakke prevailed. UC-Davis correspondence to Mr. Bakke—“[i]t seems...that the eventual result of your next actions will be of significance to

many present and future medical school applicants”—was, indeed, prescient. The central objection pressed by Mr. Bakke to the 1974 UC-Davis medical school admissions policy is the underpinning of the ongoing national dialogue regarding race in education: When is it necessary to consider race when making admissions, financial aid, and other enrollment management decisions to achieve access and diversity goals? From both educational and legal vantage points, it is clear that this question can never be answered in isolation, and more to the point, cannot be resolved unless the goals the medical school seeks to achieve are clear. Thus, as a foundation for shaping medical school policy development, attention must first center on: What are your school’s goals, and what is your school trying to achieve? This is the central issue addressed in Chapter 2.

Key Federal Legal Terms

Strict scrutiny is a legal term of art, referring to the most rigorous standard of judicial review. It applies to policies that treat students differently on the basis of race or ethnicity (“race-conscious” policies). Such policies are “inherently suspect” under federal law, and to satisfy strict scrutiny, they must serve a “compelling interest” and be “narrowly tailored” to achieve that interest. This requirement is derived from federal constitutional principles (which apply to public higher education institutions) and identical principles of Title VI of the Civil Rights Act of 1964 (which apply to any recipient of federal funding, public or private).

A **compelling interest** is the end that must be established as a foundation for maintaining lawful race- and ethnicity-conscious programs that confer opportunities or benefits. Federal courts have expressly recognized a limited number of interests that can be sufficiently compelling to justify considering race or ethnicity in a higher education setting, including a university’s interest in promoting the educational benefits of a diverse student body.

Narrow tailoring refers to the requirement that the means used to achieve the compelling interest must “fit” that interest precisely, with race or ethnicity considered only in the most limited manner possible. Federal courts examine several interrelated criteria in determining whether a given program is narrowly tailored, including:

- the flexibility of the program,
- the necessity of using race or ethnicity,
- the burden imposed on non-beneficiaries of the racial/ethnic preference, and
- whether the policy has an end point and is subject to periodic review.

SOURCES: *Assessing Medical School Admissions Policies: Implications of the U.S. Supreme Court’s Affirmative-Action Decisions* (AAMC, 2003); Coleman and Palmer, *Admissions and Diversity After Michigan: The Next Generation of Legal and Policy Issues* (The College Board, 2006).

CHAPTER 2

Agreeing on the Destination: Why Student Diversity May Matter at Your Medical School

In this chapter: Framing diversity-related educational goals and developing relevant evidence

This chapter describes access and diversity goals that may support race-conscious practices, which medical schools may pursue as they seek to provide a high-quality medical workforce for an increasingly diverse American society. This chapter also discusses key points of evidence that may support those goals. Collectively, these are important foundations for sustaining any race-conscious enrollment management policy.

Part of Alan Bakke’s legacy is in the way we think about medical school diversity-related goals and objectives. Notably, the cases following *Bakke* have generated headline-grabbing attention to the issue of which of the access- and diversity-related interests can justify race-conscious admissions practices. As a general rule, the answers appear to be:

- Yes, as to educationally focused diversity interests;
- Potentially yes, as to appropriately circumscribed equal opportunity and access interests; and
- Resoundingly no, as to remediating past societal discrimination or pursuing racial balancing (or population parity) goals.

Less well developed in the headlines, but no less important to effective policy development, is the *Bakke* Court’s legacy regarding the actual benefits that justify the pursuit of diversity-related interests in the first place. Stated differently, Justice O’Connor’s majority opinion approving the University of Michigan’s law school admissions policy in *Grutter* (and building on Justice Powell’s conceptual framing of

those interests in *Bakke*) identified concrete and demonstrable—“substantial” and “real”—educational benefits associated with diversity, reminding us along the way that student diversity is not an end, but a means to an end that will vary from institution to institution.

...student diversity is not an end, but a means to an end that will vary from institution to institution.

In fact, the University of Michigan successfully asserted that a diverse class of students (including a racially and ethnically diverse class of students) would yield specific mission-driven benefits including:

- **Improved teaching and learning**, through, among other things, promoting cross-racial understanding, breaking down racial stereotypes, helping students better understand others of different races—all promoting a “more enlightening and interesting” classroom discussion and better learning outcomes;

- **Enhanced civic values and furtherance of a thriving American democracy**, through, among other things, providing a training ground for our nation’s leaders and in its student body composition, reflecting full participation of all segments of society; and
- **Preparation of students for the twenty-first century workforce and global economy**, through, among other things, exposure of students to “widely diverse people, cultures, ideas, and viewpoints” necessary in the increasingly global marketplace.

Despite obvious contextual distinctions, these core benefits of improving education, enhancing civic values, and preparing students to meet the challenges of a changing world are clear foundations for, and directly correspond to, the kinds of access and diversity benefits associated with core mission aims of many medical schools. That being said, each medical school is different, with a different mission, setting, and culture. Thus, the extent to which these recognized interests may apply to any medical school depends on the unique circumstances associated with the particular medical school.

Moreover, research and experience have established additional connections between typical medical school mission-driven goals and student body diversity. Consistent with broad principles associated with court-recognized compelling interests just described, these goals also may be central to specific medical school diversity interests. (Again, the relevance of any of these goals to any medical school will depend on that school’s particular mission and setting.)

To successfully pursue one or more of the goals set forth above—including possible consideration of race or ethnicity in enrollment management decisions—it is important that medical schools conduct institution-specific research and assemble and retain relevant evidence on a regular, ongoing basis. Although that evidence can take many forms, it should (at a minimum) include the following elements:

1. A clear statement of the **medical school’s core educational mission**, including central educational philosophies and aims, and the school’s view of its role in society;
2. A clear statement that the medical school has reached a deliberative educational judgment that the **student diversity it seeks is essential to its mission-related goals**, with an explanation of the connection between the two;
3. **Institution-specific evidence** through regular, ongoing collection efforts that supports the connection between the medical school’s mission and student diversity, including administration, faculty,

Examples of Medical School Goals That May Be Associated with Student Diversity

Medical School Mission-Related Goals	The Diversity Connection
<p>The medical profession’s core obligation is to meet our nation’s many health needs as comprehensively as possible. This obligation includes training a sufficient number of able physicians in different practice areas and ensuring that competent medical care is available to all citizens—an effort often advanced with a diverse medical school leadership and faculty.</p>	<p>Diversity in medical education:</p> <ul style="list-style-type: none"> • enhances the quality of education for all students, and • translates into more effective and culturally competent physicians better prepared to serve a varied patient population.
<p>Medical schools must address pervasive racial and ethnic disparities in health care, including unequal access to quality services.</p>	<ul style="list-style-type: none"> • Minority physicians may be more likely to practice in underserved population areas. • Medical schools educate students regarding disparities in health care to focus on research agendas and policy strategies, as well as clinical practice.
<p>Medical schools must play active roles in broadening and strengthening our nation’s health care research agenda.</p>	<p>Diversity among biomedical and clinical researchers may more adequately address health issues and diseases affecting different populations in terms of gender, race, ethnicity, sexual orientation, disability, and other characteristics.</p>
<p>Medical schools must provide the supply of professionals that will meet patients’ needs, which may include preferences for professionals of the same race or those proficient in the patient’s native language.</p>	<ul style="list-style-type: none"> • Minority physicians can help meet patient preferences in providing quality health care. • Physicians proficient in languages other than English can help address linguistic and cultural barriers that may exist.

and student perspectives (e.g., testimony, feedback), as well as data analyzing the connection between medical school student diversity over the course of time (perhaps the recent past) and desired educational (and other) outcomes; and

4. **Evidence from other sources** that affirm and/or correspond to the institutionally aligned interests and evidence associated with diversity.

This should include relevant social science research, documented experiences at similar schools, and broad-based data that correspond to core goals and efforts to achieve those goals.

The benefits associated with a diverse medical class that may advance medical school mission-driven aims cannot be optimally established in medical school policy statements (and

effectively implemented) unless drafters of those statements exercise utmost care in framing relevant goals and objectives. This exercise includes, among other things, particular attention to terminology and concepts, which frequently create confusion and invite unnecessary challenge—the central topic of Chapter 3.

Myth Buster: The U.S. Supreme Court has not categorically rejected medical school interests in serving underserved populations as “compelling interests.”

Despite some public discourse to the contrary, the U.S. Supreme Court has *not* rejected as a matter of law the possible interest that some medical schools may assert in serving underserved populations. The only time the Court expressly addressed this interest was in *Regents of the University of California v. Bakke*, where Justice Powell (in his opinion, which no other justice joined) concluded that the University of California, Davis, medical school had *failed to provide sufficient evidence* in that case that such an interest was compelling. He reasoned:

It may be assumed that in some situations a [medical school's] interest in facilitating the health care of its citizens is sufficiently compelling to support the use of [race in admissions]. But there is virtually no evidence in the record indicating that petitioner's special admissions program is either needed or geared to promote that goal....Indeed, [the University of California, Davis, medical school] has not shown that its [race-conscious] preferential classification is likely to have any significant effect on the problem.

The only evidence in the *Bakke* case record regarding the problem of underserved populations was “a newspaper article.”

Since *Bakke*, research results indicate that diversity among physicians improves access for medically underserved populations. This is a fertile area for more research.

SOURCES: *Regents of the University of California v. Bakke*, 438 U.S. 265, 310-311 and n. 47 (1978); *The Rationale for Diversity in the Health Professions: A Review of the Evidence*, U.S. Department of Health and Human Services, Health Resources and Services Administration, Bureau of Health Professions (October 2006)

CHAPTER 3

Staying the Course: Clarity and Consistency on Key Policy Concepts

In this chapter: Key concepts that are foundations for effective policy development

As the University of Michigan established in *Grutter*, well-developed and articulated mission and policy statements can be vital to legal success. This chapter highlights key terms that are typically integral to institution-specific policy development—and which, without sufficient attention, can create confusion and invite challenge. Efforts to develop mission statements and policies that include these concepts should focus on establishing clear, legally aligned definitions of these concepts.

The parties to the *Bakke* litigation agreed on little. Indeed, merits of arguments aside, they couldn't even agree on the concepts at the heart of the dispute. Was the case about “benign affirmative action” or “reverse discrimination”? Did the policy of the law school result in an unlawful “quota,” or did it merely establish permissible goals?

A retrospective on the dispute in *Bakke*, with parallels in the University of Michigan litigation a quarter of a century later, illustrates the central importance of having a clear understanding of key policy concepts. In particular, as illustrated by the University of Michigan in its successful defense of its law school policy in *Grutter*, developing and implementing a clear mission statement and relevant policies associated with student diversity can be a critical foundation for legal success (just as it is for educational success). Thus, a number of important terms must be well defined and understood as foundations for truly effective medical school mission statements and policies on issues of access and diversity—and to help avoid unwarranted confusion or legal challenge along the way.

Affirmative Action. Historically, “affirmative action” has referred to *remedial* efforts, such as race- and ethnicity-conscious practices designed to address the effects of past discrimination. Although not definitively addressed by the courts, strong arguments can be made that affirmative action is not an appropriate characterization of mission-driven, forward-looking, diversity-related policies that include some consideration of race or ethnicity with respect to students. (In fact, neither majority opinion in the University of Michigan cases in 2003 referred to the challenged policies as affirmative action policies.) Moreover, the substantive point aside, the ambiguities inherent in the term “affirmative action” should promote medical school-specific discussions about the value of maintaining a label that means very different things to different people and that, in any event, tends to be a lightning-rod term generating more heat than light on campus. Thus, medical schools should exercise caution when using the term “affirmative action.”

Diversity. “Diversity” is a term inherently institution-specific. As a concept embodying the various qualities and characteristics a medical school may

seek in its students, its meaning is to be derived from the goals the school establishes for itself. That being said, to the extent that diversity encompasses student characteristics of race or ethnicity, then as a matter of federal law, we know at least two things. First, the concept cannot relate solely to race or ethnicity (otherwise, it reflects more of an interest in racial balancing than in educational diversity). Second, the objectives reflected by the concept are a means to an end, not the end in itself. In other words, diversity for diversity's sake is likely to be viewed as little more than an effort to achieve certain numerical goals, divorced from educational objectives—and as a result, unlikely to survive legal review. In short, medical schools should define diversity in an inclusive, institutionally specific, and multidimensional way.

Critical Mass. Social science research reflects that a minority group (especially one that has been historically discriminated against) is easily marginalized when only a small presence in a larger population. “As the group's presence and level of participation grows, at a particular point the perspective of members of the minority group and the character of relations between minority

and non-minority changes qualitatively....The discrete point [at which this occurs] is known as ‘critical mass.’” [(Science 266:51 (1994)].

In the University of Michigan cases, critical mass was framed as “neither a rigid quota nor an amorphous concept defying definition.” Instead, it was defined as a “contextual benchmark that allows the law school to exceed token numbers within its student body and to promote the robust exchange of ideas and views that is so central to the law school’s mission.” (Brief of AERA, et al., p. 25) In the University of Michigan cases, the expert reports of Patricia Gurin and Stephen W. Raudenbush are most directly relevant to the critical mass issue. (See <http://www.vpcomm.umich.edu/admissions/research/#um>.)

Underrepresented students. As a general rule, issues of student diversity tend to focus on “underrepresented students”—with a typical institutional goal of working to increase the numbers of those students to achieve some diversity-related objective. Federal law recognizes—and affirms—this point. In *Grutter*, the University of

Michigan’s law school successfully defended a race-conscious admissions policy aimed at achieving a critical mass of historically underrepresented students (defined as African Americans, Hispanics, and Native Americans at that institution) *in order to achieve the campus-specific educational benefits of diversity—a mission-driven, internal, and educationally focused goal.* The Court approved of the critical mass objective established with respect to these underrepresented students.

By contrast, the term “underrepresented students” within the higher education community is frequently used:

- without a clear articulation regarding the point of reference that triggers a designation for some students as underrepresented; or
- with specific reference to the percentages of groups of students within a larger, relevant population (e.g., for a state flagship institution, with reference to state populations).

In some cases, the aim of enrolling more underrepresented students can translate into the rough equivalent of a

goal of proportionality or statistical parity—historically, a death knell under federal law.

With respect to medical schools, in particular, it is important to recognize the critical distinction between the AAMC’s definition, which is focused on general population numbers, and medical school-specific definitions that are drivers of enrollment management policies. As explained in its March 19, 2004 statement, the AAMC Executive Council in June 2003 adopted a definition of “underrepresented in medicine,” meaning “those racial and ethnic populations that are underrepresented in the medical profession relative to their numbers in the general population.” Although this definition may be an appropriate benchmark to gauge progress regarding access and diversity nationally or regionally, the AAMC explained that this definition cannot serve the purpose as the “driver of institutional admissions policies.” Instead, “medical schools should base their admissions policies on an explicit articulation of legitimate aspirations: to achieve the educational benefits of a diverse student body, including

Key Points about the AAMC’s “Underrepresented in Medicine” Definition

According to the AAMC, “underrepresented in medicine” refers to “those racial and ethnic populations that are underrepresented in the medical profession relative to their numbers in the general population.” Although this definition may be an appropriate benchmark to gauge progress regarding access and diversity nationally or regionally, the AAMC has cautioned that this definition cannot serve the purpose as the “driver of institutional admissions policies.” Instead, “medical schools should base their admissions policies on an explicit articulation of legitimate aspirations: to achieve the educational benefits of a diverse student body, including enhancing the cultural competency of all physicians it educates and improving access to care for underserved populations.”

SOURCES: AAMC memorandum, “The status of the new AAMC definition of ‘underrepresented in medicine’ following the Supreme Court’s decision in *Grutter*.” at <http://www.aamc.org/meded/urm/statusofnewdefinition.pdf>.

What About “Race-Neutral Alternatives”?

Under federal law, higher education institutions that consider the race or ethnicity of students when conferring educational opportunities or benefits (such as making admissions decisions or awarding scholarships) must give “serious, good faith consideration [to] workable race-neutral alternatives that will achieve the diversity they seek.” This federal obligation implicates a number of key questions, including whether the “neutrality” of the contemplated race-neutral alternative is authentic. If race is a predominant motivation behind a facially race-neutral alternative (such as, for example, a percentage plan resembling the Texas 10 percent plan, where race was not an operational element of the policy but was a major motivating factor behind its implementation), then it is likely that the alternative is not truly “race-neutral” for the purposes of federal legal analysis. Thus, great care should be exercised when contemplating “proxies” that may effectively substitute for race-conscious policies. As the term “proxy” is frequently used, it can literally refer to a substitute for a race-conscious policy or program, where the racial diversity goal is precisely the same. In that circumstance, the mere shift to a potentially viable “proxy” for race may mitigate some risk of being sued (nothing on the face of the policy would indicate that race was a factor in relevant decisions), as well as enhance the chances of successfully defending a policy if sued. But, with evidence that racial goals were driving the development and implementation of the policy, such a shift would not likely insulate the “proxy” policy from strict scrutiny review in the first instance.

SOURCES: OCR Letter of Findings, *In re Wake County Public School System*, Complaint Nos. 11-02-1044, 11-02-1104, and 11-02-1111 (August 29, 2003) (citations omitted)

See also Steinecke, et al., “Race Neutral Approaches: Challenges and Opportunities for Medical Schools.” *Academic Medicine* 82, no.2 (2007); 117-26

enhancing the cultural competency of all physicians it educates and improving access to care for underserved populations.”

Individualized, holistic review. As a concept embodying the admissions process approved by the U.S. Supreme Court in *Grutter*, “individualized, holistic review” refers to a process by which, with respect to any applicant’s file, “serious consideration” is given “to all the ways an applicant might contribute to a diverse educational

environment.” It is a process involving “applicants of all races,” without an “automatic acceptance or rejection based on any single ‘soft’ variable” (for example, without any “mechanical, predetermined diversity ‘bonuses’ based on race or ethnicity”). Such a process is also “flexible enough to consider all pertinent elements of diversity in light of the particular qualifications of each applicant, and to place them on the same footing for consideration, although not necessarily according them the same weight.”

With clearly articulated and understood access and diversity goals, and with policies that reflect clear and precise concepts that correspond to those goals, the work of medical school leaders is still not complete until there is a plan in place—one that reflects the medical school leadership’s focus on, and management of, strategies designed to achieve access and diversity goals. The discussion of effective management of these issues is the focus of Chapter 4.

CHAPTER 4

Reaching the Destination: A Management Strategy and Plan for Enhancing Diversity at Your Medical School

In this chapter: Overview of key process elements and a medical school self-assessment guide

This chapter addresses key operational elements associated with success in achieving diversity-related goals—with discussion of assembling the right team of people to lead a medical school’s policy efforts and the outline of an institutional self-assessment that can guide the work of medical school officials seeking to meet their goals in lawful ways.

Justice Powell’s *Bakke* opinion in 1978 set the stage for decades of debate about the ways in which higher education institutions might consider race and ethnicity to achieve their educational goals. Among the many legacies of that decision (as reflected in numerous cases that have followed) is the federal courts’ emphasis on the importance of higher education institutions having a deliberate, thoughtful process of policy development, implementation, and evaluation over time when the consideration of race or ethnicity is integral to those goals.

The right people are key to an effective initial inventory and assessment of diversity-related programs. Therefore, a medical school should assemble (both in the short term and as part of a longer-term process) an interdisciplinary team representative of many facets of the school that can effectively evaluate the relevant policies and programs in light of institutional goals (and legal requirements).

The composition of a medical school’s evaluation team should be carefully considered. In particular, the team should involve representatives from the

school’s top administrative levels, and include representatives of specific programs and of institutional perspectives that have a bearing on diversity-related goals and strategies (from the top down). Also, individuals should be included who can help assemble the research bases upon which policies can be evaluated. In addition, because the consideration of racial or ethnic origin inevitably raises questions of federal (and frequently state) legal compliance, lawyers with an understanding of these issues should be included in the process. Given the connection between medical schools and the larger universities in which they typically are a part (and may have their own distinct set of diversity objectives), representatives of the larger university community (especially key policy and legal officials) should also be periodically included as part of the process.

Medical school officials should also consider the extent to which decisions regarding the establishment of diversity goals and the corresponding considerations of race or ethnicity merit broader public engagement. A communications expert may be a

valuable team addition to facilitate this process. In many cases, broader community input (including, for instance, perspectives of employers of medical school graduates) can be useful as part of the ongoing process of policy development and implementation.

With a multidisciplinary team in place, the following self-assessment can facilitate ongoing development, evaluation, and refinement of access and diversity policies. The self-assessment is organized around four overlapping segments of analysis—the school’s mission, process management, substantive policy, and evaluation of results. Given inherent differences among medical schools—including mission, governance, culture, and politics—this self-assessment should be viewed only as a guide. In some cases, specific elements may make sense; in others, they may not. Ultimately, the destination to success can be charted only with attention to the medical school-specific facts and circumstances that will drive any institution’s effective policy development. This self-assessment can provide an important starting point for that conversation.

Medical School Diversity Self-Assessment

Key Element	Status
Medical School Mission-Related Goals	
<input type="checkbox"/> A medical school's mission should be aligned with (but not necessarily identical to) parent institution's mission.	
<input type="checkbox"/> A medical school's mission statement should be developed and approved by faculty (with review by institution's legal counsel). Express references to corresponding broader institutional mission aims are a good idea.	
<input type="checkbox"/> A medical school's mission statement should express a clear commitment to the benefits of diversity as an institutional priority, including:	
<input type="checkbox"/> A focus on multiple, distinct benefits associated with improved teaching and learning, delivery of better health care services to patients (including service to underserved communities), other external institutional interests, and enhancing active participation of students as citizens	
<input type="checkbox"/> A description of student traits central to the medical school's ability to achieve its access and diversity educational goals, which may include students' personal characteristics (including, but not limited to, race and ethnicity), attributes, life experiences, academic background, medical (and related) interests, and professional goals	
<input type="checkbox"/> An acknowledgment that diversity-related benefits should be pursued throughout all relevant components of the medical school, including admissions and related enrollment efforts, academic affairs, student affairs, institutional research, etc.	
<input type="checkbox"/> A description of any particular history or experience of the medical school (or its parent institution) that may bear on the centrality or quality of the diversity interests essential to the medical school's mission	

Key Element	Status
Enrollment Management Elements ⁴	
<input type="checkbox"/> A medical school should establish a comprehensive plan that ensures key process elements that will support effective and efficient enrollment management decision-making aligned with school goals, including:	
<input type="checkbox"/> Establishing admissions committee membership, as well as membership on other related (recruitment, financial aid) committees, that support the school’s mission	
<input type="checkbox"/> Defining clear roles and expectations for relevant committees and staff	
<input type="checkbox"/> Establishing annual, standardized training for relevant committees and staff, with a curriculum that reflects central school goals and includes relevant psychometric and legal guiding principles	
<input type="checkbox"/> Disseminating admissions, financial aid, recruitment, and other policies and procedures; promoting transparency with respect to the full breadth of the enrollment management process, with particular attention to relevant selection criteria in admissions and financial aid decisions	
<input type="checkbox"/> Establishing a process of annual, periodic review of the implementation of enrollment management policies to ensure that:	
<input type="checkbox"/> Goals are being achieved, and in cases where issues remain, action is being taken to address deficiencies	
<input type="checkbox"/> Key issues of policy implementation are appropriately evaluated for consideration as future policy revisions are considered	
<input type="checkbox"/> Federal and state legal requirements are satisfied, including those related to: <ul style="list-style-type: none"> o The periodic review and evaluation of race/ethnicity-conscious policies and practices to ensure that they materially advance compelling interests in ways that do not overuse or underuse race and ethnicity; and o The ongoing review and evaluation of potentially viable race-neutral alternatives that may advance diversity-related goals as effectively as existing race/ethnicity-conscious practices 	

⁴ The “enrollment management” framing, which is more commonly presented in an undergraduate context, is suggested here for medical schools to ensure appropriate connections among medical school officials responsible for outreach, recruitment, admissions, financial aid, and retention of students, which can help ensure coherence in policy development. Chapter 1 discusses the concept of enrollment management.

Key Element	Status
Admissions Decisions: Substantive Foundations	
<input type="checkbox"/> A medical school should establish substantive criteria for admissions that:	
<input type="checkbox"/> Are aligned with the medical school's mission and goals	
<input type="checkbox"/> Are approved by the faculty	
<input type="checkbox"/> Balance among academic accomplishments and personal factors in applicants designed to achieve mission-related goals, with evidence of how (and why) the selection process considers the following:	
<input type="checkbox"/> Academic background (e.g., major, grade point average, MCAT scores, science background, other academic interests, enthusiasm of recommenders, quality of undergraduate institution, quality of essay, area and difficulty of undergraduate course selection, and coursework loads)	
<input type="checkbox"/> Personal characteristics (e.g., culture, socioeconomic status, geography, rural/inner city, race/ethnicity, gender)	
<input type="checkbox"/> Personal attributes (e.g., altruism, motivation, leadership, perspective)	
<input type="checkbox"/> Personal experiences (e.g., overcoming hardship, work history, being multilingual, community service, health care experience, research experience, success in prior career[s], life experiences)	
<input type="checkbox"/> Other (consistent with your school's goals)	
<input type="checkbox"/> Are explained through policies that provide operational definitions of all selection criteria, including defining parameters for selecting applicants for interviews	
<input type="checkbox"/> Incorporate data analysis in establishing operational elements of admissions policies, including: <ul style="list-style-type: none"> o Identifying probable location of relevant data and information in various application materials o Ensuring consistent collection of relevant data and information for each applicant (e.g., initial and supplementary application materials, essays, interview) o Ensuring consistent presentation, discussion, and assessment of those data and information among all applicants 	

Key Element	Status
Evaluation of Enrollment Management Decisions	
<ul style="list-style-type: none"> □ A well-designed and well-implemented enrollment management process should be periodically evaluated with respect to the major outcomes sought to be achieved and the particular role and validity of criteria used throughout the process. 	
<ul style="list-style-type: none"> □ Targeted outcomes for graduates may include: <ul style="list-style-type: none"> ○ Program completion (e.g., attrition rate, professionalism issues) ○ Time to program completion ○ Performance on national examinations ○ Specialty selection (e.g., primary care, specialization) ○ Career plans (e.g., clinical practice, research, academic medicine) ○ Location of practice and demographics of patient population served ○ Impact on achievement of external goals valued by the school (e.g., supporting urban or rural practice, research to address disparities, care of the underserved, other school-specific goals) ○ Other (consistent with your school’s goals) 	
<ul style="list-style-type: none"> □ Targeted educational benefits may include: <ul style="list-style-type: none"> ○ Increased knowledge of culturally driven health benefits and practices ○ Improved communication with patients who are non-English speakers ○ Improved knowledge and skills for effective use of interpreters ○ Improved levels of comfort when working with culturally diverse patient populations ○ Breaking down stereotypes and forging cross-racial understanding ○ Enhanced learning and improved student performance ○ Improved curriculum and instruction ○ Improved access to medical education for historically underrepresented students ○ Development of more robust and relevant research agendas and investment ○ Improved skills in health advocacy for the underserved ○ Improved skills for promoting health literacy ○ Acquiring skills to promote research among minority populations ○ Promoting equal access for all patient populations, regardless of background ○ Research conducted as appropriate with broad range of institutional collaborators ○ Other (consistent with your school’s goal) 	

Appendix

ACTION PLAN TEMPLATE: A Process Guide/Checklist with Key Questions Derived from Federal Nondiscrimination Law⁵

Although the law has not spelled out all the details of what may be involved in the required periodic review of race-conscious policies and practices, medical schools can follow the series of practical steps described below, designed to focus on the right questions in the right way with the right people—with the goal of achieving the right result: legal compliance *and* educational soundness.

The Process Guide Checklist

<input type="checkbox"/> Step 1. Inventory	Gather information regarding all diversity-related policies and programs, focusing initially on those that are race- or ethnicity-conscious.
<input type="checkbox"/> Step 2. Justify	Ensure that there are very good, institution-specific reasons (“compelling interests,” in legal terms) that justify all identified race- and ethnicity-conscious policies and programs—including supporting evidence.
<input type="checkbox"/> Step 3. Assess	Through a process of periodic review, ensure that race- and ethnicity-conscious policies and programs consider race or ethnicity only to the extent necessary to achieve important goals and, at the same time, that considering those factors materially advances the medical school’s efforts to achieve those goals.
<input type="checkbox"/> Step 4. Act	Take necessary action, based on relevant evidence. When changes need to be made, make them.

⁵ This section is adapted from Coleman and Palmer, *Admissions and Diversity After Michigan: The Next Generation of Legal and Policy Issues* (The College Board, 2006)

STEP 1: INVENTORY—*Know Your Programs.*

The first phase of any effective programmatic review will involve collecting and assembling all relevant information related to the issues to be addressed. Individuals who have relevant institutional expertise or history should be included in conversations to ensure the development of a comprehensive, fact-based initial inventory of diversity-related policies and practices. As part of this initial effort, institutions should ensure that the logic of particular uses of race and ethnicity within discrete programs is well understood.

A critical facet of the information-gathering phase will involve the inventory of all diversity-related policies and practices. The law's demand that institutions evaluate viable race-neutral alternatives (as well as strategies that may achieve the same compelling ends by a less extensive use of race or ethnicity) highlights the need for institutions to cast their nets wide as part of an initial inventory—to include all policies and practices designed to support institutional diversity goals (even when they are race-neutral). Correspondingly, even if an institution's particular focus or concern may relate only to specific race-conscious policies, information regarding all relevant policies and practices should be included in an initial inventory—including, for instance, all admission, financial aid, outreach, recruitment, and retention policies that bear on diversity goals associated with the policy in question. Otherwise, the recommended holistic process of review, discussed above, will be incomplete.

Officials should also include externally funded race- or ethnicity-conscious programs in cases where the higher education institution supports (through, for example, the administration of the program) the operation of those programs. These may include programs funded by private sources, as well as programs authorized by or funded pursuant to federal or state law.

Key Issue for Step 1: What Policies and Programs Are Diversity-Related and Subject to Strict Scrutiny?

- ***Has your school assembled information regarding all diversity-related policies and programs? And, can you...***
 - *Identify individuals involved in their development; and*
 - *Locate copies of documents related to establishing and implementing those policies after their adoption?*

Success in the legal defense of any race- or ethnicity-conscious policy or program begins and ends with evidence. Be sure that appropriate records are maintained to reflect the process, rationales, and support for adopting race- or ethnicity-conscious policies and programs.

- ***Is race or ethnicity a factor in diversity-related policies and programs?***

If the answer to this question is no, then it is less likely that the policies or programs will be subject to strict scrutiny. If the answer to this question is yes, then the question of the probable scrutiny employed by a federal court will in most cases depend on whether tangible benefits are provided to certain students—and not to others—based on their race or national origin. To the extent that race-conscious programs (such as certain recruitment programs) do not provide such benefits and are, instead, designed to expand the pool of qualified applicants, they may be more likely to be viewed as “inclusive” and not subject to strict scrutiny. All other race-conscious policies (even if race is one of many factors), including admission and financial aid policies, will likely be subject to strict scrutiny.

- ***Is the administration and funding for race- or ethnicity-conscious programs provided by private sources? Does your institution support or administer any facet of the program?***

Purely private support of programs—even where based on race or ethnicity—is not subject to federal constitutional or Title VI prohibitions. (Note, however, that at least one federal statute—42 U.S.C. § 1981—may apply to such private conduct.) However, if a university helps administer or otherwise provides “significant assistance” to a private entity that supports those efforts, then strict scrutiny standards under the Equal Protection Clause and/or Title VI will likely be triggered (subject to the analysis suggested in previous bullet).

STEP 2: JUSTIFY—Ensure the Existence of Clearly Defined, Mission-Driven Diversity Goals, Supported by Evidence.

As federal law makes abundantly clear, race- and ethnicity-conscious policies will only survive under strict scrutiny if the justifications for those policies are well developed and supported by substantial evidence. In practical terms, this means several things.

First, medical school officials should ensure that their educational goals are clearly stated and understood. With respect to diversity goals, in particular, there must be clarity regarding what kind of student body the institution wants to attract (and why) and how the school conceptualizes (or defines) its goals and objectives. Ultimately, given the obligation to ensure that race- and ethnicity-conscious measures are limited in both scope and time, medical school officials should be able to define success with respect to their goals, and know it when they have achieved it.

Second, federal law should affirm sound educational judgments. By definition, those judgments should have a solid empirical foundation, with clear and relevant supporting evidence. The sources of evidence can be (and likely will be) many, including:

- Institution-specific policies, including relevant mission statements and strategic goals;
- Institution-specific research and analysis (e.g., student surveys, student data, etc.), including information that reflects assessments about the relative need for and success of the policies in question;
- Social science research (regarding, for example, the educational benefits of diversity) that supports institution-specific goals; and
- Statements or opinions (e.g., testimonials, comments on surveys) by institutional leaders, professors, students, and employers, which are based on actual experience, shedding light on the educational foundations and justifications that support the institution's diversity-related goals.

In the end, the totality of the evidence should support conclusions that race- and ethnicity-conscious policies and practices are supported by compelling, mission-driven interests.

Key Issue for Step 2: Why Does a Medical School Consider Race or Ethnicity?

- ***What are the educational justifications for using race or ethnicity as part of diversity-related efforts? Are those policies and programs mission driven?***

Race- or ethnicity-conscious policies and programs must be supported by a compelling interest. According to current case law, this means that the justifications must relate to remedial efforts to eliminate the effects of past or present discrimination, or they must relate to mission-driven, diversity-related educational goals.

As a practical matter, and as the *Roadmap* suggests, most (if not all) medical schools will likely seek to achieve mission-driven, diversity-related goals in a nonremedial setting. Typically, institution- or system-specific federal court orders or U.S. Department of Education Office for Civil Rights findings trigger remedial obligations under federal law. Absent those orders or findings, the burden in legally justifying race- or ethnicity-conscious policies based on remediating discrimination is exceedingly high.

- ***Are educational benefits associated with a diverse student body a foundation for race- and ethnicity-conscious policies and programs?***

If your school's justification for race- or ethnicity-conscious policies and programs is related to the educational benefits of diversity, then your school should have educational foundations that support this position. These foundations should include evidence of mission-related benefits that stem from a diverse student body. The kinds of educational benefits that stem from student diversity that might support your program include improved teaching and learning, better understanding among students of different backgrounds, and enhanced preparation as citizens and professionals for an increasingly diverse workforce and society.

- ***Is there evidence that the educational benefits that you have identified flow from your school's race- and ethnicity-conscious policies and programs?***

The justifications for race- or national origin-conscious policies and programs should include substantial evidence, such as institution- or program-specific evidence. In this context, evidence is not confined to research and data analysis, although these are very important. Evidence also refers to mission statements, institutional policies, and statements and opinions from professors, students, and others.

- ***Does the medical school work to ensure that its diversity-related education goals are implemented throughout the institution?***

The authenticity of the interests articulated as a justification for race- and ethnicity-conscious policies and programs will likely receive scrutiny by those who challenge them. As a consequence, courts can be expected to examine the institutional commitment to the diversity-related interests that serve as a predicate for race- or ethnicity-conscious practices. Therefore, attention to those goals and the across-the-board implementation of diversity policies are important.

- ***How is diversity defined? What are the measurable objectives by which success in achieving diversity goals is evaluated?***

From a federal legal standpoint, the term “diversity” must include more than a reference to race or ethnicity. Moreover, the educational goals associated with diversity should be defined with reference to benchmarks against which their success in helping achieve diversity-related goals can be assessed.

STEP 3: ASSESS—Evaluate the Design and Operation of the Policies in Light of Institutional Goals.

Once relevant information has been gathered regarding a medical school's race- and ethnicity-conscious policies, and institutional goals are clearly defined and grounded in relevant evidence, the design and operation of those programs should be evaluated in light of narrow-tailoring standards, with the overarching aim being to ensure that the use of race or ethnicity is as limited as possible given the compelling institutional interests that those policies promote. This means that race- and ethnicity-conscious policies must be:

- as **flexible** as possible with regard to the use of race or ethnicity, given institutional aims;
- **necessary**, in light of possibly viable race-neutral (or less race-restrictive) alternatives;
- of **minimal burden to nonqualifying students**, based on race or ethnicity; and
- **periodically reviewed and evaluated** against legal standards, with the goal of ultimately eliminating the use of race or ethnicity when institutional goals can be met and sustained without such policies.

Key Issue for Step 3: How Have Diversity-Related Policies and Programs Been Designed and Implemented?

- ***Have race-neutral strategies (as supplements to and/or as possible alternatives to your race- or ethnicity-conscious program) been evaluated or tried?***

A key element of the narrow-tailoring requirement is the consideration of race-neutral alternatives. All race-neutral alternatives, regardless of how likely to achieve institutional goals, need not be exhausted to comply with federal legal standards. However, universities must give “serious, good faith consideration [to] workable, race-neutral alternatives that will achieve the diversity that the [institution] seeks.” (*Grutter v. Bollinger*, 539 U.S. 306 (2003), p. 32)

- ***Why were certain race-neutral strategies not tried? What were the conscious educational judgments that supported such a conclusion?***

There should be an empirical basis for not trying race-neutral strategies. The experiences of similar institutions or programs with race-neutral efforts can provide a basis for considering—and not trying—those strategies. By the same token, lessons derived from such experiences may suggest the need to try similar strategies.

- ***What results were achieved with the race-neutral strategies that were tried? Has a complete evaluation of those strategies been undertaken? To what end?***

An evaluation of race- and ethnicity-neutral strategies that are tried is a critical step in assessing the viability of such programs in light of overall goals and objectives. The failure to evaluate race-neutral strategies limits the credibility of any institutional claim about the real need for any race- or ethnicity-conscious program.

- ***What evidence establishes that the use of race- or ethnicity-conscious policies is necessary to achieve the educational goals associated with diversity objectives?***

The empirical foundation for making the case that such policies are necessary should include institution- or program-relevant research, data, and opinions (based upon academic judgments) about the need for race- and ethnicity-conscious policies. The use of race or ethnicity should demonstrably and significantly further diversity-related goals without (unjustifiably) underreaching or overreaching.

- ***What role does race or ethnicity play in the design of diversity-related policies and programs? Is race or ethnicity an explicit condition of eligibility, or is it one factor among many?***

In admissions, race or ethnicity (if considered) must be one factor among many, rather than an automatic qualifier, to withstand “strict scrutiny.” In other contexts, certainly, programs will be more easily sustained where race operates as one factor among many.

- ***What impact does the use of race or ethnicity have on applicants or students who do not receive the benefit of race or ethnicity consideration? Are applicants or students displaced from eligibility because of the use of race or ethnicity?***

If the use of race or ethnicity has the effect of displacing students who do not receive favorable consideration because of their race or ethnicity, the practice is less likely to withstand legal review. If, however, the impact is more diffuse, then the program is in relative terms more likely to withstand federal scrutiny.

- ***How frequently is the program’s use of race or ethnicity reviewed to determine the need for the ongoing consideration of race or ethnicity and the viability of race-neutral alternatives that (in conjunction or alone) may as effectively achieve the program’s diversity-related goals?***

Under federal standards, race- or ethnicity-conscious programs are expected to have a “logical end point” once the goals associated with the program are met and can be sustained without the consideration of race or ethnicity, or once it is determined that the program does not materially advance diversity-related goals.

STEP 4: ACT—Take Necessary Action Steps.

Over time, a review of outcomes of race- and ethnicity-conscious efforts (in light of institutional goals) should lead to appropriate adjustments—to ensure that policies and practices are in fact materially advancing goals in appropriate ways and that, when goals are met, relevant policies and practices are modified to reflect changes in circumstances. As part of that process, medical schools should consider ways to address key stakeholder groups to facilitate their understanding about the legal standards that must inform any institutional action.

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APPENDIX

Action Plan Template: A Process Guide/Checklist with Key Questions Derived from Federal Nondiscrimination Law

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ADVISORY COMMITTEE ON HOLISTIC REVIEW

Aligning Admissions to Mission

(Established 2007)

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The AAMC Advisory Committee on Holistic Review is charged with advising the association as it develops, distributes, promotes, and assesses the impact of information and tools for use by medical schools in their efforts to create and sustain institutional diversity. The project's specific focus is on the application and admissions process and how it links to medical school mission and goals, as well as to the constellation of enrollment management functions that support diversity, such as outreach, recruitment, financial aid, and retention.

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