FREQUENTLY ASKED QUESTIONS

The Supreme Court of the United States on Race-Conscious Admissions

On June 29, 2023, in *Students for Fair Admissions vs. Harvard* and *Students for Fair Admissions v. University of North Carolina* (together referenced as SFFA in this document), the U.S. Supreme Court ruled in a consolidated opinion that Harvard University and the University of North Carolina (UNC) violated federal non-discrimination law by considering race as one factor among many in their undergraduate admissions programs in order to promote the educational benefits of a diverse student body. Much has been written about this ruling. The purpose of this resource is to go behind the headlines to address the ruling’s practical implications for higher education institutions. Our aim is to highlight what is clearly permissible in light of the new admissions restrictions imposed by the Court.

Please note: Nothing in this document should be construed as providing institution-, organization-, or individual-specific legal advice. This resource has been prepared to provide information to inform higher education diversity, equity, and inclusion policy and legal conversations, which are inherently fact- and context-specific.
CAN COLLEGES AND UNIVERSITIES COLLECT DATA ON THE RACE/ETHNICITY OF APPLICANTS?

There is nothing in the Court’s SFFA decision prohibiting the collection and use of disaggregated data on the basis of race and ethnicity, which are important for research, program evaluation and reporting purposes. There are independent federal obligations associated with collecting data on race/ethnicity for the purposes of analyzing racial disparity and racially/ethnically discriminatory effects of higher education policies and practices.

Higher education institutions may take steps to limit access to the racial/ethnic composition of the emerging class to anyone involved in the admissions selection process. That effort may help assure that the racial demographics of the emerging class do not influence admissions decisions.

CAN STUDENTS SHARE THEIR RACIALIZED EXPERIENCES IN ADMISSIONS QUESTIONS OR ESSAYS? CAN LETTERS OF RECOMMENDATION ACKNOWLEDGE A STUDENT’S RACE/ETHNICITY?

The Supreme Court’s SFFA decision affirms that college applicants may share how their race may have influenced their experiences, perspectives and goals. Even as they may not consider an applicants’ race in admissions under the Court’s ruling, colleges and universities may consider an applicant’s discussion of how race affected their life. Likewise, a teacher or counselor can, in a letter of recommendation, relay information about a student’s lived experiences and overall character that may be tied to their racial identity.

CAN RACE/ETHNICITY-SPECIFIC SCHOLARSHIPS CONTINUE TO BE AWARDED?

The Supreme Court did not discuss financial aid or scholarships in the SFFA decision. But, the Court’s analysis that eviscerates long-standing precedent regarding what qualifies as a compelling interest (necessary to justify any race-conscious action) likely has a real impact on gauging institutional legal risk with respect to such practices. At the same time, in line with the Court’s ruling, scholarship criteria should be able to reflect a focus on student experience or other institutionally valued qualities that are not race-limited but that may be associated with an individual’s race or ethnicity.
CAN OUTREACH AND RECRUITMENT EFFORTS TARGETING UNDERREPRESENTED RACIALLY/ETHNICALLY MINORITIZED STUDENTS CONTINUE?

The Supreme Court, in the SFFA decision, did not address issues of outreach and recruitment. Relevant caselaw establishes that colleges and universities can pursue “inclusive” recruitment and outreach efforts that include a racial focus identifying prospective students for outreach and recruitment (that, by definition, do not confer individual benefits or opportunities to individual applicants based on their race/ethnicity status).

Colleges and universities can continue to take affirmative steps to recruit talented and qualified underrepresented students, including students that have been historically excluded from higher education because of their race/ethnicity, low-income students, geographically marginalized students, and other minoritized students, to enroll a robust and diverse student body. Those efforts should be integrated into a broad-based recruitment plan.

CAN COLLEGES AND UNIVERSITIES CONTINUE TO ARTICULATE MISSIONS AND GOALS FOR A DIVERSE STUDENT BODY?

Nothing in the Supreme Court’s SFFA decision prohibits colleges and universities from articulating diversity goals and implementing strategies that expand college opportunity for all. To the contrary, the Court ruled that “[u]niversities may define their missions as they see fit.” And, the Court found that the diversity goals advanced by Harvard and UNC were, in fact, “commendable” goals. The precise point of the Court’s ruling with respect to institutional goals was that the institutional diversity goals were insufficiently coherent and measurable to justify the consideration of an applicants’ race in admissions.

DOES THE SUPREME COURT DECISION HAVE ANY IMPACT ON CURRICULAR COURSE OFFERINGS LIKE ETHNIC STUDIES OR CRITICAL RACE THEORY?

No. The Supreme Court’s SFFA decision does not deal with any aspect of education curriculum. The Supreme Court has previously ruled that issues and subjects do not have a “race,” and therefore, curricula, such as Latinx, African American or Asian American studies, do not have a race and are not in violation of the SFFA decision.
FOR MORE INFORMATION:

WATCH
Overview of the Supreme Court Decision on Race-Conscious Admissions with Thomas A. Saenz, President and General Counsel, Mexican American Legal Defense and Education Fund and Arthur L. Coleman, Managing Partner, EducationCounsel.

READ

Dear Colleague Letter to colleges and universities from the U.S. Department of Justice, Civil Rights Division and the U.S. Department of Education, Office for Civil Rights.

Letter to College and University Presidents, Deans of Admissions, and General Counsels with critical points on the Supreme Court SFFA decision from The Lawyers Committee for Civil Rights Under Law

Affirmative Action in Higher Education: The Racial Justice Landscape After the SFFA Cases by the NAACP Legal Defense Fund

LEARN
Affirming Equity, Ensuring Inclusion, Empowering Action is a national initiative launched by the Campaign for College Opportunity to promote evidence-based solutions that advance more equitable strategies in college preparation, access, and completion to ensure those who have been historically excluded and underserved by our colleges and universities have a real opportunity to go to college and succeed despite the Supreme Court decision.

Strategies for Increasing Diversity and Opportunity in Higher Education, published by the U.S. Department of Education Office of the Undersecretary, offers a comprehensive look at promising strategies for promoting college diversity in the aftermath of the Supreme Court’s decision.