

How Colleges, Universities Can Prep for U.S. Supreme Court's Affirmative Action Decision

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Over decades, hundreds of colleges and universities have worked to increase the racial diversity of their student bodies for a host of reasons ranging from eliminating past discriminatory practices to ensuring their students were exposed to people with diverse life experiences and outlooks to prepare them to succeed in an increasingly diverse marketplace. As these educational institutions await the U.S. Supreme Court's decisions in *Students for Fair Admissions Inc. v. President & Fellows of Harvard College* (No. 20-1199) and *Students for Fair Admissions, Inc. v. University of North Carolina* (No. 21-707), they can take steps to prepare.

These actions will help institutions ensure their admissions practices are legally compliant and tailored to meet institutional goals, whether the Court upholds or overturns its previous rulings permitting the limited consideration of race. Importantly, these steps will assist all institutions committed to serving a diverse student body, not just schools engaged in holistic admissions.

#1: Understand Your Current Policies and Practices

Developing a full understanding of your institution's admission practices is critical and more complex than it may seem at first. Even if some or all your practices have been established in writing, institutions will benefit from confirming their practices, including the practices of admission committee members and staff responsible for each geographic region or certain student populations.

Spending time now collecting documents and speaking with key stakeholders from admissions and other administrative offices will put you in a position to know whether aspects of your process adhere to or must be modified to comply with the Court's rulings.

#2: Align Your Admission Criteria With Your Mission and the 2020s

To the extent that your institution uses holistic admissions, race currently can be considered as one of many other factors used to admit students. Once an institution determines who amongst its applicants "qualifies" for admissions, it may consider a host of factors, including the student's geographic location, race, and whether the student has legacy status because a family member is an alum, to select students for admission.

Importantly, as your institution assessed whether its "qualifications" are aligned with its mission and goals for the 2020s? By no means does this suggest that institutions "water down" their standards. However, institutions may want to seize this opportunity to ensure that their admission standards reflect the current environment in which their students live. By way of example, some institutions made standardized testing optional during the height of the COVID-19 pandemic and now are considering continuing to do so. In addition, this review provides institutions an opportunity to consider the most recent research on the efficacy of standardized tests in predicting success and the

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extent to which reliance on the tests may lead to racially biased admissions results.

#3: Do Not Presume Your Institution Does Not Consider Race in Admissions

The potential scope of the Court's decisions in *Harvard College* and *University of North Carolina* cases is not limited to similar types of institutions. Institutions that admit almost all applicants also should understand their policies and practices in preparation of the Court's rulings. For example, some community colleges will admit most applicants to a general education program but, at the same time, offer limited opportunities for more specialized training programs. Unbeknownst to admissions and other institution leadership, specialized programs may have a practice of considering whether there is a shortage of a particular racial group in the profession as part of their selection process. Additionally, at some institutions, departments or schools within the institution are involved with admissions screening. Confirming how department faculty weigh a student's background allows the institution to confirm it is adhering to all legal requirements. In other instances, states may provide special funding to colleges and universities specifically targeted to increase representation of particular, under-represented racial groups in certain professions. Receiving these funds and administering such programs may be problematic, even under current law, and require close assessment.

#4: Revisit Summer Programs

Many institutions run or collaborate with outside organizations and businesses to operate summer camps and enrichment programs to attract high school students from under-represented groups, including persons of color and women. These summer programs aim to spark interest in the institution and, they hope, lead to the participants applying for admission to the institution. Over the last four years, hundreds of complaints have been filed with the U.S. Department of Education's Office for Civil Rights challenging the operation of such programs. Institutions should review their summer and enrichment programs to ensure compliance with current law and any new precedent.

#5: Tap Into Informal or Formal Groups

Don't go it alone. Many groups dedicated to racial diversity in higher education have convened working groups or offered sessions to discuss the *Harvard College* and *University of North Carolina* cases. Discussions include potential strategies if race is no longer a permissible consideration in a holistic process and may range from considering a student's socioeconomic status to how and whether to use standardized test scores during the admission process.

The Jackson Lewis Higher Education Group is carefully monitoring these developments and will provide analysis of the oral arguments and decisions in the *Harvard* and *UNC* cases. The team is prepared to assist institutions to adjust to the changes in the legal landscape and offers confidential full admissions audits and limited reviews of specific aspects of institutions' admission practices. Please contact a Jackson Lewis attorney with any questions about serving racially diverse students and related admission practices.

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