

Key Terms and Concepts: Knowing the Basics

The Issue

Language surrounding access and diversity policies can often be confusing and highly charged. To help avoid debates that result in little more than “two (or more) ships passing in the night,” as well as unnecessary polarization among key stakeholders, it’s important to identify, clearly define, and frame key terms that are typically integral to institution-specific policy development on access and diversity issues.

Terms and Concepts

Affirmative Action

Historically, “affirmative action” has referred to remedial and social justice policies designed to cure the problems of the past. Although not definitively addressed by the courts, strong arguments exist that the term “affirmative action” isn’t an appropriate characterization of mission-driven, forward-looking, access- and diversity-related student policies that include some consideration of race or ethnicity. Moreover, the ambiguities inherent in the term “affirmative action” (everyone has their own definition) should cause one to pause and consider 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. At a minimum, the term lacks precision, is inherently ambiguous, and is often used effectively by those whose aim is to confuse and obfuscate meaningful, educationally grounded policy discussions regarding access- and diversity-related issues.

POLICY TIP: It’s best to stay away from using the term “affirmative action” as part of your institution’s vernacular regarding student access and diversity. In any event, focus on describing your institution’s precise policy aims and operations.

Diversity

“Diversity” must be defined in relation to a specific institution as its meaning is derived from the goals an institution establishes for itself. Further, as a matter of federal law, “diversity” can’t be defined only with reference

to race and/or ethnicity. Otherwise, it reflects more of an interest in racial balancing than in promoting authentic educational diversity, an interest that has been uniformly rejected by federal courts. The term must encompass the range of student backgrounds, talents, skills, and experiences needed to ensure full access or advance the benefits of student diversity on campus. This array of characteristics may be (and frequently is) wide ranging, including, for instance, first-generation status (or, similarly, those whose backgrounds reflect a significant “distance traveled” in reaching the doors of higher education), socioeconomic status, racial and ethnic background, artistic talents (for instance, piano virtuosos), athletic skills and accomplishment, fluency in certain languages, unique life experiences (ranging from notable volunteer activities to having lived in areas that tend to be underrepresented on campus), and more.

POLICY TIP: The use of the term “diversity” should be premised upon a shared, clear understanding of what the term means for a specific institution.

Critical Mass

Social science research reflects that a minority group (especially one that has been historically discriminated against) is easily marginalized when it’s 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 nonminority changes qualitatively. ... The discrete point [at which this occurs] is known as ‘critical mass’” (Etkowitz et al., 1994). “Critical mass” is premised on the need to attract sufficient numbers of underrepresented students who will advance education goals based on institution-specific research and experience.

POLICY TIP: “Critical mass” should be understood and defined as a contextual benchmark relative to a particular student body, rather than as a particular number or percentage of students and rigid quota.

Quota

Much like “affirmative action,” the term “quota” can be a lightning rod term that obfuscates rather than enlightens. “Quota” has a very specific legal definition: According to the U.S. Supreme Court, quotas impose “a fixed number or percentage [of students and/or faculty] which must be attained, or which cannot be exceeded” (*Grutter v. Bollinger*, 2003). The use of quotas is not a legally acceptable method for achieving the educational benefits of diversity.

POLICY TIP: “Quotas,” as defined in federal law, can’t drive access and diversity policies—at least to the extent that they’re associated with the racial, ethnic, and gender composition of a class.

“Race Conscious” and “Race Neutral”

Federal law establishes two categories of policies that may bear on access and diversity goals: “race-conscious” policies, which trigger a heightened review by courts, and “race-neutral” policies, which do not. Although not definitively settled (see Resource 3), race-conscious policies are ones that involve explicit racial classifications, as well as those that are neutral on their surface but that are motivated by a racially discriminatory purpose, principally resulting in racially discriminatory effects. Race-neutral policies are those that, with respect to both language and intent, are neutral, as well as those that expand efforts to generate additional applicant interest, which may be “race conscious” in intent, but which don’t confer material benefit to the exclusion of nontargeted students.

POLICY TIP: Language in a policy isn’t the only thing that can result in a policy being characterized as “race conscious” and therefore subject to heightened judicial review. The intent behind a facially neutral policy can also trigger this probing scrutiny.

SELECTED RESOURCES

1. Etkowitz et al., “The Paradox of Critical Mass for Women in Science: Change in Workplace Structure Needed to Integrate Women Successfully in Academic Science Departments,” *Science* 266 (1994): 51.
2. Coleman, Palmer, and Winnick, *Race-Neutral Policies in Higher Education: From Theory to Action* (The College Board, 2008) at www.collegeboard.com/accessanddiversity (This paper explains in depth the concepts of “race-conscious” and “race-neutral” under federal law.)
3. *Admissions and Diversity After Michigan: The Next Generation of Legal and Policy Issues* (The College Board, 2006) at www.collegeboard.com/accessanddiversity (Chapter 4 of this manual addresses the concepts of “critical mass” and “underrepresented students,” and how arguments regarding critical mass were successfully framed in the University of Michigan litigation.)

Underrepresented Students

In the context of race- and ethnicity-related diversity policies, consideration should be given to defining this term with respect to groups of students for whom there are insufficient numbers to establish a critical mass that will advance the educational benefits of diversity. Who qualifies as an “underrepresented student” will vary by institution.

POLICY TIP: Defining those who qualify as “underrepresented students” should be done with specific reference to an individual institution’s current and historical student body composition. Importantly, identifying and/or targeting “underrepresented students” doesn’t mean ensuring that the student body is proportional to its relevant service area (community, state, or national). If there is a goal associated with the aim of increasing “underrepresented students,” it should be framed in the context of achieving a critical mass, as defined above—at least to the extent that institutional leaders intend to align their policies with the central elements of those successfully defended by the University of Michigan in *Grutter v. Bollinger*.

Key Action Steps

- 1 Review all policies, website materials, and other publications to ensure coherence, consistency, and transparency on the institution-specific meaning of key terms.
- 2 Ensure that key enrollment and external relations staff are trained on the correct definitions of key terms and concepts—and that they can connect them to their work.

4. *Roadmap to Diversity: Key Legal and Educational Policy Foundations for Medical Schools* (Association of American Medical Colleges, 2008) at www.aamc.org
5. Brief of the American Educational Research Association, et al., filed in *Grutter v. Bollinger* at www.civilrightsproject.ucla.edu/policy/legal_docs/michigan.php
6. *Grutter v. Bollinger*, 539 U.S. 306 (2003).