
Beyond Admissions:
Applying Federal
Nondiscrimination
Laws To Financial Aid

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Lawyers...just sayin'

Nothing in this discussion constitutes institution-specific legal advice...

It depends.

It's a question of evidence.

Facts matter.



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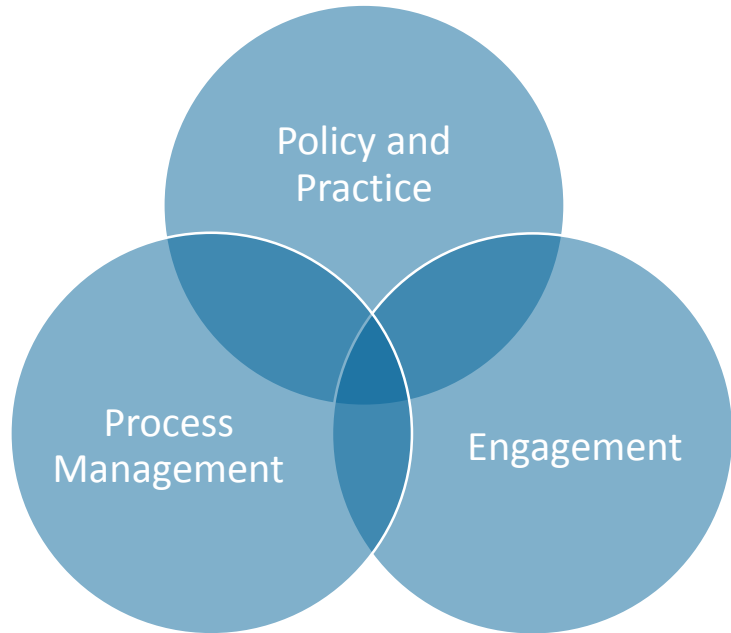
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Mission Driven Enrollment Continuum



The Big Picture: The Foundations for Success



Policy and Practice

- **Goals and Objectives:** What am I trying to achieve? How will I gauge success? How do my diversity goals align/intersect with other institutional goals—and with what consequences?
- **Strategies and Design Principles:** What is my theory of action, and how do I design policies most likely to achieve institutional aims? Do I fully understand the connection between and among relevant programs and policies?

Process Management

- **Vision, Direction, and Management:** Is leadership engaged in key issues regarding efforts to achieve goals, and has a strategic plan been developed to facilitate achievement of those aims? Are systems essential to success aligned, and are stakeholders talking?
- **Rigor and Evidence to Inform Judgment:** Are processes with evidence-based protocols and procedures established to assure strategic, grounded decision-making at all levels?

Engagement

- **Stakeholder Engagement/Communication:** Are key stakeholders at all levels connected to efforts to achieve diversity goals? Is there transparency about the principles and values that drive the work, as well as the ways in which efforts will enhance educational outcomes?

Good Enrollment (Including Aid) Policy

- Mission driven
- Educational goals align across the Enrollment Management continuum
- Designed within legal “design parameters”
 - Same legal standards apply as in admissions for racial, ethnic, gender diversity goals

Financial Aid Defined

- Goal: Yield, sustain a class advancing mission, outcomes
- Power: Leverage other enrollment investments
- Forms: Need—Merit—Hybrid
 - Clarity of design, criteria
 - Merit reflects what mission values
- Sources: Federal/State—Institutional—Donor
 - Donor relationship aimed at alignment with mission, legal design parameters
 - Donor is institutional under law if “significant assistance”

Diversity: Are you paying equal attention to aid as admissions?

Strict Scrutiny If Race/Ethnicity Is Considered For Benefits to Individuals

- **Compelling Goals** – Specific Diversity-associated Educational Outcomes and Goals Sought
- **Narrowly Targeted Means** -- Precision to Achieve Goals, Demonstrated **Need To Use Race, At All or As Much**
- **Need to Consider Race Depends on Evidence of:**
 - *Inadequacy of Existing Diversity* (student experience, not just #s)
 - *Inadequacy of Neutral Strategies Alone to Increase Racial Diversity*
 - *Effectiveness of Race-based Strategies* (% impact, not necessarily large #s)
- **Deliberative Ongoing Evaluative Process** – Update Mission/Goals and Means In Light Of Changed Context, Facts Over Time

Good Practices

- **Mission- and Diversity- Associated Goals Drive Programs**—but not proscribed “racial balancing” or “social justice”
- **Periodically Document a “Reasoned, Principled Explanation” of Student Diversity’s Connection to Compelling Goals**—specific educational and societal outcomes benefiting all students
- **Align Diversity-Associated Goals and Programs Across the Enrollment Management Spectrum**
- **Periodically Document Evidence (Not Just Opinion) of Need to Consider Race, Ethnicity, At All or As Much**

Diversity: Are you paying equal attention to aid as admissions?

- Imperative of neutral criteria
- Power of pooling
- Focus on effective communications

Race-Neutral Investments and Design: Inventory and Research

Neutral strategies do not on their face—or in their aim—confer individual benefits to individuals of a particular race or ethnicity.

- They serve other authentic—mission tied—purposes
- An authentically neutral program’s increase in racial/ethnic diversity—as an ancillary benefit—should not destroy its neutrality or trigger strict scrutiny (e.g., socio-economic diversity)
- If a strategy is not facially neutral—but does not allocate significant resources based on race/ethnicity, and is inclusive (not exclusive) in effect, it is neutral (e.g., targeted outreach for pool)
- Facially neutral strategies with race-based aims are not neutral—but “macro-race-consciousness” *may* not trigger strictest legal standards/requirements (e.g., percentage plans applied to segregated school districts, use of zip codes, partnering with HBCUs)

Race-Neutral Investments and Design: Inventory and Research

Neutral strategies are low risk-high reward if effective

- Using neutral strategies predominantly across enrollment management is critical for good resource use, and legal sustainability of limited race-conscious strategies
- If “workable” neutral strategies are sufficient to achieve adequate diversity (measured by student experience, not just numbers), race-conscious strategies are unlikely to be legally sustainable
- If race-conscious strategies are not effective, they are unlikely to be legally sustainable—If lesser use of race is adequate, greater use of race is unlikely to be legally sustainable
- Building an evidence base of need to consider race and periodically reviewing goals and need—with changes made if warranted—are critical

DISCUSSION BY THE EXPERTS

Enrollment Management Leaders

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OPEN DISCUSSION

**What are your experiences
and questions?**

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Access and Diversity Collaborative, <https://professionals.collegeboard.org/higher-ed/access-and-diversity-collaborative>