



EXECUTIVE OFFICE OF EDUCATION, DEPARTMENT OF HIGHER EDUCATION, DEPARTMENT OF ELEMENTARY AND  
SECONDARY EDUCATION, AND OFFICE OF THE ATTORNEY GENERAL

Overview and Frequently Asked Questions Regarding the Supreme Court’s Decisions in  
*Students for Fair Admissions, Inc. v. Harvard College* and  
*Students for Fair Admissions, Inc. v. University of North Carolina*

\*This guide provides information on the Supreme Court’s June 29, 2023 decision.  
This guide does not constitute legal advice.

The Office of the Attorney General (AGO), Executive Office of Education (EOE), Department of Higher Education (DHE), and Department of Elementary and Secondary Education (DESE) are issuing this Joint Guidance to support the Commonwealth’s institutions of higher education and K-12 schools furthering their work to promote access to educational opportunity in the wake of the Supreme Court’s decisions in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. the University of North Carolina*. This Joint Guidance focuses primarily on admissions and access in higher education, while also including steps K-12 schools can take to set their students up for success.

### OVERVIEW OF THE DECISION

On June 29, 2023, the Supreme Court issued its decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. the University of North Carolina* (“SFFA”), holding that the race-conscious admissions systems utilized at Harvard and the University of North Carolina (“UNC”) violated Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the Fourteenth Amendment, respectively.<sup>1</sup>

The Court asserted three bases for its determination that Harvard’s and UNC’s admissions programs violated the Equal Protection Clause and therefore also Title VI in relying on individual students’ race as a factor in the admissions process. First, the programs were not operated in a way that could be “subjected to meaningful judicial review” under the applicable strict constitutional scrutiny, because their stated goals were “not sufficiently coherent” to be measurable,<sup>2</sup> and the programs did not “articulate a meaningful connection between the means they employ and the goals they pursue” due to the use of “imprecise” and “opaque” racial categories.<sup>3</sup> Second, the programs used race in a “negative” manner that “operate[d] as a stereotype.”<sup>4</sup> And third, the programs lacked a “logical end point.”<sup>5</sup> Accordingly Harvard and UNC’s programs violated the Equal Protection Clause and Title VI.

<sup>1</sup> *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023).

<sup>2</sup> *Id.* at 214

<sup>3</sup> *Id.* at 215-16.

<sup>4</sup> *Id.* at 218.

<sup>5</sup> *Id.* at 221.



In its decision the Court also recognized the “tradition of giving a degree of deference to a university’s academic decisions” and noted that “[u]niversities may define their mission as they see fit” within constitutional limits.<sup>6</sup> Similarly, at the end of the decision, the Court stated that schools could continue to consider “an applicant’s discussion of how race affected his or her life” so long as that consideration was specific to that student’s “unique ability to contribute to the university. In other words, students must be treated based on their experiences as individuals—not on the basis of race.”<sup>7</sup>

Importantly, *SFFA* involved a challenge to higher education admissions processes that used race as a “plus” factor in specific ways. The case has no direct application to programs outside of higher education admissions or to admissions policies that do not use race as a factor for admissions in the same way.

### FREQUENTLY ASKED QUESTIONS

Institutions of higher education and K-12 schools can and should adopt numerous approaches as they work to advance their respective missions, break down barriers, and increase access for historically underrepresented students. The following answers to Frequently Asked Questions are intended to provide guidance on steps that can be taken, consistent with *SFFA*, to improve postsecondary access and success.

#### INSTITUTIONAL MISSION

##### **Can institutions of higher education still include diversity as part of their missions?**

Nothing in the Court’s opinion challenges institutions’ ability to work to achieve diversity and equity, so long as the particular race-conscious admissions practices that the Court found problematic are not the tools through which they seek to achieve those goals.

As indicated by the U.S. Departments of Justice and Education in their [August 14, 2023 guidance](#), institutions of higher education may continue to articulate missions and goals related to student body diversity and may use all legally permissible methods to achieve that diversity some of which are described below.

#### ADMISSIONS

##### **How can institutions of higher education consider race in admissions?**

The Supreme Court in *SFFA* limited the ability of institutions of higher education to consider an applicant’s race in and of itself as a factor in deciding whether to admit the applicant.

However, the Court made clear that “nothing in [its] opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through

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<sup>6</sup> *Id.* at 217.

<sup>7</sup> *Id.* at 230-31.



discrimination, inspiration, or otherwise.”<sup>8</sup> As such, an institution may choose to advance its educational goals by using a holistic review in admissions considering factors such as cultural competencies, income level, first generation to attend college, neighborhood or community circumstances, disadvantages overcome, and the impact of an applicant’s particular experiences on their academic achievement and on the perspectives they would bring to the school environment. Institutions may use admissions criteria that look beyond traditional measures such as grades to more holistic ones that allow for consideration of applicants’ life experiences more generally, including their experiences linked to their race and how those experiences shaped their lives and the unique contributions they can make to campus.

As stated in the Supreme Court’s decision, institutions remain free to consider any quality or characteristic of a student that bears on the institution’s admissions decision, provided that any benefit is tied to “*that student’s*” characteristics, and that the student is “treated based on his or her experiences as an individual,” and “not on the basis of race.”<sup>9</sup>

### **What changes should institutions of higher education make to their admissions practices?**

As indicated by the U.S. Departments of Justice and Education in their [August 14, 2023 guidance](#), those institutions of higher education that consider race in the manner that the Court addressed in the *SFFA* decision will need to re-evaluate their current practices to ensure compliance with the law. For instance, using an individual student’s race as itself a “plus” or a “tip” in holistic admissions decisions was directly addressed by the Court, and any such practice must be re-evaluated.

Institutions may also choose to audit their existing admissions processes, practices, and criteria to identify potential barriers to access for historically underrepresented students and use the Court’s decision as an opportunity to retool operations in ways that better align with their institutional mission. More specifically, institutions can reconsider and recalibrate criteria that have generally created barriers for certain student groups, such as application fees, early admissions plans, legacy preferences, testing requirements, athletic preferences, curricular requirements, and grade thresholds.

### **What kind of data can institutions of higher education collect?**

As indicated by the U.S. Departments of Justice and Education in their [August 14, 2023 guidance](#), institutions of higher education may continue to collect data based on race and ethnicity, and other aspects of identity. The Supreme Court in its *SFFA* decision addressed the use of individual students’ race as a plus factor in admissions decisions—not collection of data on race for broader informational, research, and evaluation purposes. Accordingly, while such data collection may continue, under the Court’s decision, institutions may not provide an advantage to an individual applicant solely and

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<sup>8</sup> *Id.* at 230.

<sup>9</sup> *Id.* at 230-31.



specifically on the basis of the data collected about their race, including, e.g., based on how their race compares to the race of other students admitted thus far during a rolling admissions process.

## **RECRUITMENT PRACTICES AND PROGRAMS**

### **How can institutions of higher education target outreach of potential applicants?**

As part of a comprehensive approach to conducting outreach to potential applicants, institutions of higher education can make special efforts to reach particular groups. As indicated by the U.S. Departments of Justice and Education in their [August 14, 2023 guidance](#), institutions do not have to ignore race when identifying prospective students for outreach and recruitment programs, provided such programs do not give targeted groups of students preference on the basis of racial status in and of itself and that all students have the same opportunity to apply and compete for admission.

For instance, campuses may work with community organizations serving particular groups to share information about the application process and attract applications from that population. Similarly, as long as programs are open to all participants, regardless of their race, institutions may offer outreach, informational, and other programs that may, because of their content, be of particular interest to members of a particular racial group. For example, partnering with affinity groups associated with community-based organizations is one culturally sustaining approach often undertaken by institutions that seek to diversify their student bodies.

Additionally, institutions of higher education may continue to target outreach to potential applicants based on a wide range of characteristics, such as academic interests, geographic residency, financial means and socioeconomic status, family background, and parental education level.

Institutions of higher education may also engage in expanded outreach by increasing the number and types of high schools, organizations, and regions admissions officers visit during the recruiting season.

### **How can institutions of higher education support potential transfer students?**

Institutions of higher education may continue to make every effort to recruit and support transfer students, including learners from the Massachusetts community colleges. To that end, institutions should deepen relationships with the full range of associate-degree awarding institutions in the Commonwealth and create meaningful experiences for transfer students. Institutions should continue to work to implement all elements of state policy and programs like [MassTransfer](#) and/or consider joining the [Massachusetts Transfer Guarantee](#). Colleges and universities can evaluate whether they have developed clearly articulated, well-publicized pathways from two-year institutions to four-year institutions for transfer students, like the DHE-developed [Associate to Baccalaureate \(A2B\) Mapped Pathways](#).



Overall, transfer policies and practices should be examined to consider ways in which they might become more student-centered and broaden access. Institutions may consider providing additional financial resources and coordinating wraparound supports for transfer students. For example, programs that allow dual admission to both a community college and a university promote collaboration across institutions, with learners gaining greater access to services such as academic advising, career counseling, and cocurricular and social opportunities to better facilitate the transition between institutions and create a greater sense of belonging.

### **How can institutions of higher education build relationships with middle and high schools?**

Institutions of higher education may engage in many policy and practice reforms to develop robust relationships with middle schools and high schools across the Commonwealth with particular emphasis on those schools with historically low college-going rates.

Practices may include:

- Partnering with particular schools and/or community-based organizations to offer mentoring or other programming throughout the school year to enhance students' academic exposure;
- Hosting or sponsoring local, state, and federally funded college access programming;
- Hosting Admissions Days at regional high schools, inviting seniors and partnering with admissions counselors and financial aid advisors to complete admissions applications;
- Reaching out to area high schools and designating a high school staff person to recruit students from inside the high school as a "high school liaison," who meets with students individually, in small groups, and in large settings and assists students in filling out applications, visiting the institution of higher education, and looking at career options;
- Offering tours on campus for local high school students that include information sessions where students can complete applications on the spot; and
- Hosting "academic preview days" for local high school students focused on individual programs, where students are invited to visit campus for the day including campus tours, lunch with staff and faculty, and a current student panel focused on the particular program.

### **Does this decision impact programs in K-12 schools aimed at ensuring that college and career programs are inclusive of all students, and that schools provide a safe and supportive environment?**

The *SFFA* decision has no direct application to these K-12 programs. Administrators, teachers, counselors, and staff at K-12 schools should be confident that they may continue to carry out the vitally important work of preparing *all* students in the Commonwealth for life after graduation and ensuring a safe and supportive school environment.



### **How can K-12 schools continue to prepare all students for college or careers?**

It is imperative that the Commonwealth's K-12 schools maintain and strengthen efforts to prepare all students for college or a career – including students from historically underrepresented backgrounds, who are disproportionately students of color. Schools must continue to provide all students with access to the course work, instruction, enrichment opportunities, counseling, and other preparatory programs necessary to prepare them for college or careers. In some circumstances, this may mean taking targeted action so that students from underserved communities, including communities of color, are aware of, have access to, and participate in these courses and programs. Schools should be confident that these vital programs and practices remain lawful.

Schools should consider dedicating particular attention to the following types of programs and services:

- [My Career and Academic Plan](#) (MyCap), a student-centered holistic, multi-year planning tool designed to provide middle and high school students with ongoing opportunities to plan for their academic, personal/social and career success in high school and beyond;
- Making available online college and career planning resources, that can help students and their families successfully navigate the college application and selection process, empowering them to envision the future that they deserve;
- Comprehensive counseling and coursework that prepares students for post-secondary education;
- Providing students a rigorous high school course of study such as [MassCore](#) which aligns with college admissions standards;
- Offering [Early College](#), which gives students the opportunity to take college courses and earn credits at no cost before they graduate high school;
- [Innovation Career Pathways](#) program which provides workforce learning options to high school students, including learning opportunities in Advanced Manufacturing, Information Technology, Environmental and Life Sciences, Health Care and Social Assistance, Business and Finance, and Clean Energy; and
- Expanding access to Advanced Placement (AP), dual enrollment, and other advanced course work during high school; specifically for the expansion of AP courses taking advantage of DESE's commitment to provide AP exam fee subsidies for all low-income public school students.

### **How can K-12 schools promote a safe and supportive school environment?**

Schools should continue to take affirmative steps to create and maintain a positive school climate where all students feel safe, supported, respected, and ready to learn. School leaders should review their current practices to ensure that their district is complying with all applicable anti-discrimination, anti-bullying, and civil rights laws and developing and implementing programs and



policies that incorporate best practices and meet the needs of their local community. Schools' responsibilities under these laws include the following:

- Review curriculum to ensure that it promotes tolerance and does not perpetuate discriminatory or demeaning stereotypes;
- Provide students at all grade levels with needed skills, knowledge, and strategies through evidence-based bullying prevention curriculum;
- Develop and implement plans to support and protect students who are vulnerable to becoming targets of bullying or harassment because of their race, color, religion, national origin, sex, gender identity, sexual orientation, or disability, among other identifying characteristics;
- Prohibit students from engaging in bullying or harassment and prescribe disciplinary measures that may be imposed for violations;
- Implement comprehensive policies and procedures for reporting, investigating, and responding to bullying and harassment; and
- Train administrators, teachers, and school staff to successfully implement anti-bullying and anti-harassment policies and procedures, including by providing teachers with sufficient professional development opportunities to ensure that they can carry out the educational requirements above.

The AGO's [2020 Guidance to Schools on Hate and Bias Incidents](#) includes best practices to help administrators, teachers, and school staff meet their obligations to prevent and address bias, hate, and prejudice in K-12 schools. Additional information and resources for creating and sustaining safe and supportive learning environments are available on [DESE's Office of Student and Family Support](#) webpages.

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If you have further questions, please contact our offices using this email address:  
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