U.S. Department of Justice
Civil Rights Division

U.S. Department of Education
Office for Civil Rights

Questions and Answers About Fisher v. University of Texas at Austin

On June 24, 2013, the Supreme Court issued its decision in Fisher v. University of Texas at Austin. The Court followed long-standing precedent recognizing that colleges and universities have a compelling interest in ensuring student body diversity, and can take account of an individual applicant's race as one of several factors in their admissions program as long as the program is narrowly tailored to achieve that compelling interest. The Court ruled, however, that the court below had not properly applied the well-established strict scrutiny standard in reviewing the use of an individual's race in the admissions program at the University of Texas at Austin (the University). In particular, the Supreme Court held that the court below had incorrectly deferred to the judgment of the University in assessing whether the University's admissions program was narrowly tailored to attain a diverse student body. As a result, the case was "remanded" or returned to the Fifth Circuit Court of Appeals for further proceedings.

The "Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education" and the related "Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools," issued in 2011 by the U.S. Department of Education and the U.S. Department of Justice, remain in effect. These documents can continue to provide valuable guidance to higher education institutions, school districts, and K-12 schools seeking to achieve a diverse student body. The Departments strongly support efforts to promote diversity in higher education and K-12 schools, and will continue to be a resource for educational institutions that seek assistance in pursuing diversity in a lawful manner.

Colleges and universities may wish to review the Fisher decision to understand the way in which courts will evaluate diversity programs. The following questions and answers provide additional information on that decision.

1. **Can institutions of higher education continue to take steps to achieve a diverse student body?**

   A: Yes. The Supreme Court's ruling recognized that colleges and universities have a compelling interest in the educational benefits of a diverse student body, and can lawfully pursue that interest in their admissions programs. As the Supreme Court observed in Fisher and Grutter v. Bollinger, a racially and ethnically diverse student body promotes cross-racial understanding and classroom dialogue, reduces racial isolation, and helps to break down stereotypes.

2. **Did the Supreme Court invalidate the use of race as a factor in higher education admissions or change the standard of scrutiny that courts must apply when evaluating such admissions programs?**

   A. No. An individual student's race can be considered as one of several factors in higher education admissions as long as the admissions program meets the well-established "strict scrutiny" standard; specifically, the college or university must demonstrate that considering the race of individual applicants in its admissions program is narrowly tailored to meet the compelling interest in diversity, including that available, workable race-neutral alternatives do not suffice. The Supreme Court also clarified that courts reviewing admission policies must be satisfied that consideration of an individual student's race in a college or university's admission policy is needed to achieve diversity. The Court's opinion does not address a college or university's ability to promote diversity through other efforts that do not consider an individual's race in admissions, such as engaging in targeted outreach and recruitment or partnering with high schools through pipeline programs to promote student body diversity.

3. **Did the Supreme Court change what colleges and universities must do to narrowly tailor their admissions programs to meet the compelling interest in diversity?**

   A: No. The Court did not change the requirements articulated in Grutter v. Bollinger. Colleges and universities must demonstrate that the means chosen to achieve diversity are narrowly tailored. The Court reiterated that, among other things, prior to taking into account an individual student's race in the admissions process, colleges and universities must determine that available, race-neutral alternatives do not suffice to achieve the benefits of diversity. And, a court reviewing an admissions program under legal challenge must – without deference to the college or university – be satisfied that the means chosen by the college or university are narrowly tailored to meet its diversity goal.

4. **Did the Supreme Court strike down the University of Texas' admissions program?**

   A: No. The Court's decision neither upheld nor rejected the constitutionality of the University's admissions program. Instead, the Court remanded the case to the Fifth Circuit to correctly evaluate the University's admissions program under the well-established "strict scrutiny" standard, which requires the lower court to make the determination that the University's program is narrowly tailored to achieve the compelling interest in diversity. In doing so, the lower court can take account of the University's experience and expertise, but it may not defer to the University's decision.

5. **Can colleges and universities continue to rely on the U.S. Department of Education and U.S. Department of Justice's Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education ("Postsecondary Guidance")?**

   A: Yes. Like the Court's opinion in Fisher, the Departments' Postsecondary Guidance follows the legal standards previously articulated in Grutter v. Bollinger, Gratz v. Bollinger, and Regents of Univ. of Cal. v. Bakke (opinion of Powell, J.). Because those standards remain in place, the Departments will continue to rely on the Postsecondary Guidance in investigating and resolving complaints of discrimination against institutions of higher education. The Postsecondary Guidance is available at http://www.ed.gov/ocr/docs/guidance-pse-201111.html.

6. **Can school districts continue to rely on the U.S. Department of Education and U.S. Department of Justice's Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools ("K-12 Guidance")?**

   A: Yes. The K-12 Guidance draws from the Supreme Court's decisions in Grutter and in Parents Involved in Community Schools v. Seattle School District, where a majority of Justices concluded that school districts have flexibility in determining how voluntarily to achieve diversity or avoid racial isolation in their schools. Fisher did not disturb the legal standards set forth in Grutter and Parents Involved. Because those standards remain in place, the Departments will continue to rely on the K-12 Guidance in investigating and resolving complaints of discrimination against K-12 schools. The K-12 Guidance is available at http://www.ed.gov/ocr/docs/guidance-ese-201111.html.

7. **Are the U.S. Department of Education and U.S. Department of Justice available to answer additional questions and to provide further assistance on the Postsecondary and K-12 Guidance documents?**

   A: Yes. We welcome questions about the application of these guidance documents to school districts, colleges, and universities and are available to provide technical assistance. To submit questions or receive technical assistance, please contact the U.S. Department of Education Office for Civil Rights at (800) 421-3481 or ocr@ed.gov. To contact the U.S. Department of Justice for assistance, please contact the Educational Opportunities Section at (877) 292-3804 or education@usdoj.gov.