



# Dear Colleague Letter and Q&A Offer Guidance on Admissions Practices Following U.S. Supreme Court's Holding in Harvard/UNC Cases

August 16, 2023

In its June 29, 2023 decision in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College* and *Students for Fair Admissions, Inc. v. University of North Carolina, et al.* (“Harvard/UNC”),<sup>[i]</sup> the U.S. Supreme Court upended years of judicial precedent and the admissions practices of many colleges and universities in holding that Harvard and UNC’s admissions programs, under which an individual applicant’s race was often a “determinative tip,” lacked “sufficiently focused and measurable objectives to warrant the use of race, used race as a negative, involved racial stereotyping, and lacked meaningful endpoints, and, therefore, violated the Equal Protection Clause.” The Court went on to state, however, that “nothing prohibits universities from considering an applicant’s discussion of how race affected the applicant’s life,” provided that such consideration is “concretely tied” to a character trait or unique ability that would contribute to the college or university.

On August 14, 2023, the U.S. Department of Education’s Office for Civil Rights and the U.S. Department of Justice’s Civil Rights Division (together, the “Departments”) jointly released a “Dear Colleague Letter” (the “Letter”) and a Q&A resource meant to “help colleges and universities as they work to lawfully pursue efforts to achieve a student body that is diverse across a range of factors, including race and ethnicity” in light of the recent decision in *Harvard/UNC*.

The Letter offers broad suggestions to institutions of higher education to promote the inclusion of a diverse body of students. In keeping with the holding in *Harvard/UNC*, the Letter encourages institutions “to review their policies to ensure they identify and reward those attributes that they most value, such as hard work, achievement, intellectual curiosity, potential, and determination. . . [S]chools can consider the ways that a student’s background, including experiences linked to their race, have shaped their lives and the unique contributions they can make to campus.”

The Q&A resource offers more targeted guidance on how colleges and universities might respond to the Court’s decision. It provides direct answers to the questions “In what ways can institutions of higher education consider an individual student’s race in admissions?” and “Can institutions of higher education continue to take other steps to achieve a student body that is diverse across a range of factors, including race and ethnicity? If so, how?” Citing language from the Court’s decision that permits schools to consider how race has impacted an applicant’s life and what they bring to an institution, the Departments’ Q&A resource also offers hypotheticals and examples

on what institutions of higher education may lawfully do to recruit, admit, and retain diverse students. In addition to considering essays or recommendations that describe how race has impacted a student's life during the admissions process, the Q&As suggest that institutions can take a proactive approach to recruiting to ensure that they receive applications from a broad spectrum of students. For example, schools may partner with particular schools or organizations to increase students' academic exposure, participate in direct outreach and recruitment efforts to school districts that serve predominantly students of color or limited financial means, or target school districts or schools that are underrepresented in the institution's applicant pool by focusing on geographic location or other non-race based characteristics, such as schools that have high dropout rates or a high percentage of students receiving free or reduced-price lunch.

Further, the Q&A concludes that nothing in the *Harvard/UNC* decision prohibits an institution from carefully evaluating their policies and admissions procedures to determine whether those policies and procedures reflect institutional values and commitment to diversity and equal opportunity. The Letter suggests that institutions of higher education "proactively" identify such "barriers" that "amplify inequality, disadvantage, or bias." In that regard, the Letter and the Q&A encourage institutions to examine preferences that unfairly advantage privileged students, such as legacy status or donor affiliation, and reduce opportunities for others. The Q&A resource further suggests that institutions review their admissions procedures, such as application fees and standardized test requirements, to ensure that they do not act as a barrier to entry to otherwise qualified students.

The Q&A resource also offers guidance on the collection and use of demographic data, such as race/ethnicity, age, sex, gender identity, citizenship, Tribal affiliation, disability, geographic background, language proficiency, socioeconomic status, family background and parental education level, and military background. While institutions may continue to collect and utilize such information, the Departments explicitly warn that institutions must ensure that racial demographics do not influence admissions decisions and should "consider [taking] steps that would prevent admissions officers . . . from using the data to make admissions decisions based on individual applicants' self-identified race or ethnicity."

All institutions of higher education should review the Letter and Q&A resource and evaluate their admissions programs and processes to ensure compliance with the Court's decision, as well as adherence to their institutional mission and values. If you have questions about the impact of the decisions and/or the Departments' guidance on your institution's admissions practices, please contact Dina Vespia ([dvespia@cullenllp.com](mailto:dvespia@cullenllp.com)), Kevin McDonough ([kmcdonough@cullenllp.com](mailto:kmcdonough@cullenllp.com)), Deirdre Mitacek ([dmitacek@cullenllp.com](mailto:dmitacek@cullenllp.com)), or Ciara Villalona ([cvillalona@cullenllp.com](mailto:cvillalona@cullenllp.com)).

This advisory provides a brief overview of the most significant changes in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

## Footnotes

[i] *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2175 (2023).

## Practices

- Higher Education

## Attorneys

- Dina L. Vespia
- Kevin P. McDonough
- Deirdre M. Mitacek