

Key Compliance Measures after *Fisher v. University of Texas*

1. Collect and review all relevant statements and policies:

- mission statements
- diversity-related policies
- admissions policies
- outreach, recruitment, financial aid, and retention programs
- public speeches, statements, marketing materials
- admissions and enrollment data

2. Assess your institution's legal exposure

- Does your institution have a reasoned, principled explanation why the educational benefits of student diversity are essential to its educational mission?
- Can your institution prove that it cannot achieve sufficient diversity without the consideration of race in admissions (i.e., there are no workable, race-neutral alternatives)?
- Is the consideration of race in your admissions program narrowly tailored and subject to periodic review?

3. Reassess the need for diversity in light of your institutional mission:

- How do the educational benefits of diversity advance your institution's mission and core values?
- Beyond race, what qualifications and characteristics does your view of diversity include?
- How will you know when the goal of diversity has been achieved?

4. Develop a record on the review and implementation of race-neutral alternatives for promoting diversity:

- What race-neutral alternatives has your institution tried or is trying now?
- What alternatives has your institution considered but not implemented? Why?
- How have you evaluated the effectiveness of each alternative? How thorough is your documentation?
- What other evidence has your institution considered?

5. Review your policies to ensure that they are narrowly tailored:

- Do your policies provide for the individualized review of each qualified applicant?
- Is race treated as a defining factor, or as one among many qualifications and contributions that contribute to a diverse student body?
- Do your policies avoid quotas, automatic point systems, and numerical targets?
- Are your policies subject to periodic review and eventual termination? How will you know when the consideration of race in admissions is no longer necessary to achieve the educational benefits of diversity?



Knowing the Business of Education

The unique mission of educational institutions involves not just the interaction between teachers and learners, but also the operation of these institutions in the broader community. It is managing workforces that combine Ph.D.s, administrators, and service-related staff. It is sustaining and expanding buildings and real estate holdings. It is managing and growing endowments to insure the education of future generations. It is protecting the intellectual property created by scholars and scientists and facilitating appropriate commercialization of their work. And, it is influencing policy makers whose decisions affect education.

Foley Hoag is deeply rooted in our New England community, as are many of the numerous educational institutions we are proud to serve. We understand the needs of educational institutions not only because of our decades of experience, but because our lawyers themselves are actively devoted to driving these institutions forward, as members of Boards of Trustees, as adjunct faculty, and as alumni leaders.

Our experience ranges from serving as general counsel to private elementary and secondary schools to representing national research institutes in complex patent matters. Foley Hoag lawyers are experienced in the business of running educational institutions and delivering both value and quality within strict budget constraints.

We help educational institutions with the following:

- Government policy, compliance, and investigations
- Intellectual property
- Labor and employment
- Real estate and development
- Construction and infrastructure
- Data privacy and security
- Non-profit governance
- Business and commercial disputes
- Civil litigation

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