

Effective and legally sustainable student Diversity, Equity, and Inclusion (DEI) policies must be viewed through a dual—aims/means lens—and in multiple layers. This top-line guidance is to inform good policy design that may involve individual race and gender-consciousness.

INSTITUTIONAL STUDENT DEI AIMS	MEANS TO ACHIEVE AIMS
<p>Must have significant enough aims to justify an exception to federal laws’ prohibition against Race/Ethnicity, Sex/Gender (RES) based discrimination... if <u>individuals’</u> RES identities are considered in conferring educational benefits or opportunities:</p> <ul style="list-style-type: none"> • Compelling aims (for race/ethnicity); • Important aims (for sex/gender) and not based on stereotyping interest, capability, role. <p><i>When such stereotyping is absent, the law does recognize biological/ physiological differences in the sexes that in limited circumstances may be considered as relevant to an individual’s qualifications.</i></p>	<p>Must pursue RES-neutral means/design... unless considering <u>individuals’</u> RES in conferring benefits/opportunities is legally justified as “necessary”:</p> <ul style="list-style-type: none"> • Necessity to consider RES may be shown if neutral policies <ul style="list-style-type: none"> ○ Barrier removal/targeted outreach/ neutral criteria—are seriously reviewed and used but are inadequate to produce needed compositional diversity as the setting for the desired student experience (demonstrated by abstaining from RES consideration or modeling outcomes or other evidence of what happens if RES is and is not considered); and ○ Existing diversity is engaged to try to enhance educational experiences and outcomes, but is inadequate to create the needed setting for the desired experiences and outcomes.
<p>Aims must be driven by educational mission:</p> <ul style="list-style-type: none"> • Articulate/document aims for specific, measurable beneficial educational experiences/outcomes for all students associated with broadly defined student body diversity. • Compositional diversity is not the aim (adequacy of RES composition relates only to its function as the setting for student 	<p>System for continuous evidence-based evaluation and documentation of “necessity” data:</p> <ul style="list-style-type: none"> • Evidence is key to justifying RES-conscious action. • Focus on identifying and using neutral policies, and on evidence of their adequacy (or not) alone to advance aims.

experiences). Consider student feedback on experience in the context of existing compositional diversity.

- Mirroring at the IHE or in a Dept. the representation of a RES in the general population or remedying general societal inequity is not the aim.

But educational programming to prepare all students to serve the needs of a diverse and equitable society—and seeking students of any RES-identity who have knowledge of RES issues with ability to elevate others’ understanding and/or DEI service commitment— are legally permitted, likely to be characterized as neutral while advancing DEI interests, and should not be subject to exacting federal nondiscrimination law standards (although the Supreme Court has not specifically ruled on the knowledge/commitment criteria).

These qualities can be important to advance mission.

- Focus on lesser consideration of RES, combined with use of neutral strategies, and on evidence of their adequacy together.
- Focus on evidence of effectiveness of RES-conscious strategies, without overburdening others (flexible, non-mechanical, consideration of RES).
 - Quotas/race exclusivity are not allowed in admissions; in other programs, everyone should be able to compete.
 - Very strong evidence may justify need for RES-exclusivity in a very small percent of non-admission programs, where like benefits are still available for others/all. That comes with heightened legal risk in the current challenging legal landscape.
- Focus on evaluating changed circumstances affecting specific aims and/or means, and on making adjustments, as warranted.

A “STAIRCASE APPROACH” – STUDENTS

Policies attentive to legal standards that require evidence of need to consider race/ethnicity, sex/gender

Conditions for Race/Ethnicity, Sex/Gender (RES)-Conscious Student Policies—Requires a Universally Beneficial Educational Aim

- Articulate mission-critical aims to advance educational diversity, broadly defined
- Aims are specific diversity-associated, beneficial **experiences** and **outcomes** for **all** students
- Existing compositional diversity is inadequate as a setting for desired student experiences—student feedback is key to making this determination
- Workable RES-neutral means/stairs 1-3 are used, but inadequate, to create a diverse setting for desired student experiences—evidencing need for RES-conscious means (abstain from RES and track effect or model without abstaining)
- RES alone is not determinative, but if flexibly considered, can be important for some applicants in holistic review
- Conduct periodic review of aims/means, make needed adjustments
- Considering societal demographics to set and support education program goals is important and legally sustainable; but mirroring RES in society is not justification for considering RES of individuals in conferring opportunities and benefits

