



Diversity and the Law: 2021

Neutral Strategies - Students¹

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¹ This Diversity and the Law: 2021 resource is funded by the Alfred P. Sloan Foundation (Grant No. G-2019-11443). It does not constitute legal advice, providing only general directional law-attentive guidance. Consult your own lawyer for institution-, fact- and jurisdiction- specific legal advice. With permission, portions of this resource are adaptations of or expand provisions of the College Board's *The Playbook: Understanding the Role of Race-Neutral Strategies in Advancing Higher Education Diversity Goals, 2d Edition*. Coleman, A. L., Keith, J. L., Webb, E. L. <https://professionals.collegeboard.org/pdf/playbook-understanding-race-neutral-strategies.pdf>. (2019). The authors thank Candice Nelson formerly of EducationCounsel and Melinda Grier for their many contributions to identifying practices in the field. The authors gratefully acknowledge the editorial contributions of Rachel Pereira of EducationCounsel and the input of the Project's Advisory Council.

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Introduction

This resource addresses court-labeled race- and gender-“neutral alternatives” to considering individuals’ race and gender when conferring benefits and opportunities. The term “neutral” is a misnomer. Unless and until we can eliminate the added burdens of racism and sexism in society, people of all races, ethnicities,² and genders are not on equal footing to compete for opportunities, making equality or neutrality under the law impossible.³ However, prevailing Supreme Court precedent and state law bans adopt a faulty neutrality formulation; and institutions of higher education (IHEs) must wisely navigate it to advance their diversity- and equity-related educational missions in ways that are both effective and legally sustainable.

These strategies fall into two major categories:

- (1) those that do not consider the race or gender of any individual and aim to advance authentic institutional priorities other than increasing race or gender compositional diversity—but also involve an awareness that the strategies may contribute to increasing compositional diversity and intend that effect as an ancillary matter;⁴ and
- (2) those that have an inclusive effect even though they target individuals of certain races or gender; do not confer material benefits or opportunities based on an individual’s race or gender; and do not involve a winnowing or selection process—but, rather, serve to expand availability of the

² Race and ethnicity are distinct identities. However, federal non-discrimination law treats them in the same manner, and we use “race” to encompass both throughout this guide for brevity.

³See, e.g., **Research Charts**, <https://www.aaas.org/programs/diversity-and-law>; U.S. Department of Education Office of Civil Rights. (June 9, 2021). *Education in a Pandemic: The Disparate Impacts of COVID-19 on America’s Students*. <https://www2.ed.gov/about/offices/list/ocr/docs/20210608-impacts-of-covid19.pdf>; National Academies. (June 2021). *National Academies Reports on Diversity, Equity, Inclusion and Racism In STEM Education and Workforce*. [file:///C:/Users/JLK/Downloads/summit%20paper%20june%202021%20\(2\).pdf](file:///C:/Users/JLK/Downloads/summit%20paper%20june%202021%20(2).pdf); Malcom-Piqueux, L. (2020). *Transformation in the U.S. Higher Education System: Implications for Racial Equity*. National Academies. [file:///C:/Users/JLK/Downloads/malcompiqueux%20symposium%20paper%20\(5\).pdf](file:///C:/Users/JLK/Downloads/malcompiqueux%20symposium%20paper%20(5).pdf); National Academies. (2018). *Assessing and Responding to the Growth of Computer Science in Undergraduate Enrollments, Consensus Study Report*. <https://www.nap.edu/download/24926>; National Academies. (2021). *Investigating the Potential Impact of COVID-19 on the Careers of Women in Academic Science, Engineering, and Medicine*. <https://www.nationalacademies.org/our-work/investigating-the-potential-impact-of-covid-19-on-the-careers-of-women-in-academic-science-engineering-and-medicine>; National Science Foundation. (2021). *Women, Minorities, and People with Disabilities in Science and Engineering*, at <https://nces.nsf.gov/pubs/nsf21321/report/executive-summary> (all data are pre-COVID-19 pandemic, but indicate high barriers even before the pandemic for “Blacks or African American, Hispanics or Latinos and American Indians or Alaska Natives,” as well as to a significant but lesser extent to women, in science and engineering education and the workforce); Riegle-Crumb, C., King, B., Irizarry, Y. (April 2019). *Does STEM Stand Out? Examining Racial/Ethnic Gaps in Persistence Across Postsecondary Fields*, *Educational Researcher*, Vol. 48 No. 3, pp. 133-144.

⁴The Supreme Court refers to race neutral strategies as “alternatives” to race-conscious strategies as a means to advance legitimate institutional objectives, apart from increasing racial compositional diversity, and which will also work “about as well” as race-conscious strategies to enhance such compositional diversity in order to provide compelling beneficial educational experiences for all students that are associated with a broadly diverse student body. See *Fisher v. Univ. of Texas*, 136 S.Ct. 2198, 2208 (2016) (“*Fisher II*”) (quoting *Fisher v. Univ. of Texas*, 570 U.S. 297 (2013) (“*Fisher I*”).

same consequential information or opportunities for all, including, e.g., by expanding the applicant pool.

These strategies may be useful to IHEs seeking to advance educational diversity aims, as well as societal equity interests.

The strategies addressed do not comprise an exhaustive list. They include strategies in use in the field and some promising ideas. Recognizing the broad variety of public and private IHEs in the U.S. in mission, size, location, students, and societal interests served, resources, and other distinguishing characteristics, a strategy that works well for one IHE will not necessarily work at all for another. However, the strategies presented here cover a panoramic landscape of options, some of which an IHE may find worthwhile to evaluate for suitability in science, technology, mathematics and medical (STEMM) fields and beyond in its own context.

Corresponding with STEPs 3 and 4 of the **5-Step Design Guide—Students**, the neutral strategies included in this resource are organized in four categories, each with a distinctive objective that contributes to overarching mission-driven educational diversity interests:

- A. Neutral Design Fundamentals.....3**
 - 1. **Structural Barrier Removal.....3**
 - 2. **Inclusive Outreach and Recruitment.....16**
 - 3. **Neutral Community Building and Mentoring.....20**
 - 4. **Pooling.....24**
 - 5. **Aggregation.....26**
 - 6. **Subject Matter Focus, Not Participation Criteria.....28**

- B. Neutral Selection Criteria.....31**
 - 1. **Universal Key Design Elements.....32**
 - 2. **Socio-economic and Other Resource Challenges.....33**
 - 3. **First Generation.....36**
 - 4. **Geographical Diversity.....36**
 - 5. **Expertise/Knowledge Criterion.....38**
 - 6. **Commitment Criterion.....38**

- C. Neutral System Strategies.....39**
 - 1. **Universal Key Design Elements.....39**
 - 2. **Percent Plans.....40**
 - 3. **Education Collaboration Agreements.....41**
 - 4. **Graduation Accommodations.....43**
 - 5. **Cohort Programs.....45**

- D. Special Consideration.....45**
 - 1. **Macro Race- and Gender-Attentive Strategies.....46**

The distinctive objective of each category of strategies is explored. Then, for each strategy, the focus is on:

- ✓ Key Design Elements: *common design elements for effectiveness and legal sustainability*
- ✓ Implementation Examples: *strategies from the field and ideas of promise*

A. Neutral Design Fundamentals

Distinctive Objective: Some of these designs with neutral effect function as fundamental components of an IHE’s broad, overarching diversity and equity system design (addressed in Part C), with the objective of maximizing the impact of many components of the system (e.g., other enrollment, student-life, and academic program-related diversity strategies). Others may have the objective and effect of transforming a limited number of stand-alone race- or gender-conscious programs (e.g., aid, mentoring, experiential learning) into a single program with authentic neutral effect through “pooling” or “aggregation” of such identity-conscious and neutral programs that share a common core objective. This strategy may enhance legal sustainability without adversely affecting the race- or gender-conscious objective of the previously stand-alone components. Some of these strategies focus on subject matter, rather than selection/participation criteria.

1. Structural Barrier Removal

Important Rationale. While not the only neutral design fundamental, one design fundamental warrants emphasis and a more detailed introduction of its importance. It is systemic and structural barrier removal, which an IHE may decide to include in its quiver of neutral strategies. Barrier removal may maximize the impact of all diversity and equity efforts. If systemic and structural barriers remain to constantly work against advances, then, once a programmatic intervention is no longer active, the barriers can be expected to exert pressure to diminish programmatic gains. Neutral programmatic interventions are important for advancing diversity and equity. And, with robust use of neutral strategies and the required evidence of need (based in large part on evidence of the inadequacy of neutral strategies alone), limited race-conscious policies are also critical and legally sustainable to advance educational diversity interests. The American Association for the Advancement of Science’s STEM Equity Achievement (SEA) Change program supports IHEs and their STEM disciplines to self-identify and remove structural barriers. See <https://seachange.aaas.org/> and the **Brief Legal Overview, Key Definitions, and Big Picture Fundamentals & Staircase Diagram-Students**, and for more in-depth guidance, **5-Step Design Guide-Faculty**, <https://www.aaas.org/programs/diversity-and-law>.

In identifying the need for barrier removal, it is wise for IHEs to be explicit about the context. Committing to barrier removal is not evidence of a need to remedy a deviation from existing legal standards; it is recognizing that those standards are insufficient and committing to better advancing the fundamental aims that legal standards are intended to serve. By adhering to norms in many areas of American society that reflect systemic racism, sexism, and the two together as they impact individuals targeted for both—but have been accepted as benign (or at least neutral)—educational institutions, healthcare institutions, religious organizations, government, financial institutions and others are, in fact, preserving longstanding barriers to equity and inclusion. While people of all races and genders may face enormous challenges to realizing their promise and achieving their aspirations, it is impossible to achieve equality under the law when some people are burdened by racism, sexism and their intersection in society and others are not,

as they address life’s challenges.⁵ It is within this context that IHEs seek to remove normative exclusionary barriers. The fact that an IHE chooses to step away from these systemic exclusionary principles and practices that exist across American society is to be applauded. To do so, an IHE considers the unique ways in which it can remove normative barriers to diversity, equity, and inclusion (DEI). That commitment does not mean that the IHE poses normative barriers that are distinguishable from the long-accepted norms of American society as whole.

Key Design Elements—For effectiveness and legal sustainability:

- a. ***Conduct a data-rich self-evaluation process through which the IHE and its STEM and other discipline-based departments (or clusters of related departments) identify the most significant and actionable barriers to advancing their educational mission-related diversity and equity goals.*** The focus is on systems, policies, processes, practices and criteria that affect whether conduct, climate, and culture are welcoming; whether access to opportunities and related communications are available and effective for all talent; whether pedagogy and curricular and co-curricular programs support the success of all students. SEA Change, <https://seachange.aas.org>, provides one approach to this undertaking.
- b. ***Listen to voices of willing members of groups that face barriers.*** The focus is on applying the experience and suggestions of those whom barriers target, while assuring that the targets are not made responsible for the hard work of eliminating barriers. Those in the dominant norm must take responsibility; targets’ voices must be heard, and they may actively participate if they so desire.
- c. ***Employ a decision-making process that prioritizes and invests in barrier removal initiatives that evidence indicates will have the most meaningful and sustainable impact.*** The focus is on evaluating the severity of each barrier and the connection of its removal to the effectiveness of potentially high-impact programmatic interventions.
- d. ***Maintain a clear and ongoing focus on conduct expectations for members of the IHE’s community that support climate and culture that value inclusion of all talent to advance excellence and integrity.*** Legal requirements are understood and satisfied, but the focus is on identifying and eliminating conduct that poses barriers to inclusive climate and culture for a diversity of individuals and

⁵See, *supra*, note 3. “Imagine a race with two groups of runners of equal ability. Individuals differ in their running ability, but the average speed of the two groups is identical. Imagine that a handicapper gives each individual in one of the groups a heavy weight to carry. Some of those with weights would still run faster than some of those without weights, but on average, the handicapped group would fall farther and farther behind the group without the handicap. Now suppose that someone waves a magic wand and all of the weights vanish. Equal opportunity has been created. If the two groups are equal in their running ability, the gap between those who never carried weights and those who used to carry weights will cease to expand, but those who suffered the earlier discrimination will never catch up. If the economic baton can be handed on from generation to generation, the current effects of past discrimination can linger forever.” While one group is no longer carrying a weight that the other never has, the groups are not starting from the same place. Thurow, L. C. (1980). *THE ZERO-SUM SOCIETY*, pp. 188-189. Basic Books, New York, N.Y.

identifying and encouraging conduct that advances inclusion on an ongoing basis. Labels (e.g., “sexual and racial harassment”) that may have different meaning to people in different power positions are made universally understandable with specificity—providing example “do’s and don’ts.” Resource support and recognition are provided to those who show initiative in implementing efforts that advance this goal.

- e. ***Demonstrate that institutional leadership understands the importance of, and communicates effectively about, the universal benefits, mission-necessity, and moral imperative of diversity, equity, and inclusion.*** Leadership demonstrates authenticity by holding itself and others accountable for barrier removal and providing support systems and resources for action steps. DEI is mainstreamed and made the “job” of everyone. Leadership at all levels of the IHE, including the governing board, internalizes this commitment and carries the mantle forward. Reporting norms (to the governing board, to senior administration, in enrollment outreach and other public materials) reflect concepts of merit and excellence that include advancing diversity and equity—the IHE measures and reports on all that it highly values (not only quantitative inputs).

Implementation Examples—barrier removal strategies from the field and ideas of promise in support of student diversity and equity:

- a. ***Engage a multi-office, broadly diverse team*** centrally, and local teams within clusters of related disciplines, to guide or undertake data-gathering and evaluation of barriers and how to most effectively remove them. Leverage the team members’ access to existing data, as well as knowledge of existing activities IHE-wide through which data gaps may be filled efficiently. See the **Model Charter for a Multi-Office DEI Team**, <https://www.aaas.org/programs/diversity-and-law>. Engage a broad diversity of voices on the teams and in outreach efforts.
 - ***Create and engage the IHE and departmental level leaders and communities in exploring the importance of diversity, equity, and inclusion to the excellence of the educational program and the IHE’s and field’s contributions.***
 - Create a network of faculty and other leaders at all levels, including students and individuals of all races and genders, to coordinate, facilitate, support and track progress of and adjust diversity/equity-enhancing efforts. Models from the field may include:
 - **Establishing a prominent role in the diversity/equity infrastructure for the President or Chancellor of the IHE, as well as a governing board commitment;**
 - **Creating a central diversity/equity council of senior leaders, including faculty** to set overarching goals, track progress, identify priorities, assure necessary resources, and collaborate with local DEI committees to develop and disseminate tools, templates and

guidance, and identify and disseminate effective, broadly useful models—with sensitivity to differences in needs of clusters of disciplines;

- **Creating local diversity/equity committees of faculty, staff and students** for local action corresponding with and adapted for each major unit, and collaborating with the central council, and aligned with institutional DEI aims;
- **Creating a central chief diversity/equity officer (coordinating and/or sitting on the diversity/equity council) and diversity/equity officers locally** (possibly with faculty appointments or credentials, coordinating and/or sitting on the local diversity/equity committees). This structure may be modeled on central and local development officers or other common institutional structures for execution of priorities across a decentralized academic community;
- **Creating a central advisory council** of faculty and staff, including student life professionals, academic advising, and enrollment professionals, as well as some students, from across the IHE to support the central council and the local committees, acting as a sounding board for ideas and problem-solving;
- Develop and update IHE- and college- (or other academic unit) level diversity plans, with broad stakeholder engagement and specific educational goals tied to aligned institutional and discipline-specific missions;
- Hold campus conversations and create advisory working groups to elevate understanding and commitment. Engage faculty experts and knowledgeable students whose experience is critical to lead conversations and engage in problem-solving with administrators;
 - **Invite student and faculty stakeholders to collaboratively problem-solve.** Share the legal and other practical design parameters for DEI efforts and engage on solutions to advance shared aims;
- Develop common definitions of diversity and equity. See the **Key Definitions** at <https://www.aaas.org/programs/diversity-and-law>;
- ***Use data analytics and develop dashboard metrics to identify barriers to achieving, retaining, and supporting success of a broadly diverse student body—and identify solutions.***
 - Publicize barriers and progress to remove them on a website;
 - Focus on differences by field;
 - Report on trends;

- Report on student learning outcomes;
- Report on successful DEI programs to share exemplary models;
- Evaluate adjustments and actions that would advance goals;

b. *Eliminate unnecessary criteria-based barriers.* Re-consider whether the criteria and associated definitions of merit in admissions, other enrollment and academic and student life programs reflect all qualities/capabilities/indicators of potential to contribute (qualities) that the IHE or discipline values to advance positive student outcomes and mission success. Focus on identifying and reflecting a comprehensive bundle of valued qualities and shedding criteria that may be longstanding, but which the IHE's experience and data demonstrate are unnecessary or lack sufficient benefit when weighed against barriers they pose to inclusion of all talent.

- ***Collect and report on data that reflect the full range of valued qualities to elevate all stakeholders' and the public's understanding of decision-making criteria.*** Gather and evaluate evidence of qualities that in fact correlate to student success at the IHE and beyond.
 - Focus on defining positive outcomes for students at an IHE and in clusters of related STEM or other disciplines and determining both the IHE and departmental conditions, faculty pedagogy, and student qualities in the context of student opportunities (or lack of opportunities) that correlate to those outcomes;
 - **Student success may be measured** by, e.g., retention at the IHE, interest and persistence in a major, satisfaction of program requirements, graduation, and opportunities upon graduation;
 - Eliminate criteria that are unnecessary and exclusionary, or that could be supplemented or made broader or more flexible without losing their value. Are there indicators of desired qualities and life context factors that would better reveal some students' ability and promise as predictors of student success? How do the environmental context and pedagogy (positive and effective, or not) drive outcomes?
 - Communicate broadly and clearly about all environmental conditions, pedagogical approaches, and student qualities that the institution values in its decision-making, and why;
- ***Eliminate preferences that pose diversity and equity barriers without sufficient countervailing benefits.***
 - Evaluate the effect of and need for legacy, employee-child status, and other relationship-based preferences in enrollment and other programs that do not reflect an "earned" place in the class or program. Are they

overwhelmingly satisfied by white and male students (or in some disciplines, such as nursing, female students) with higher socio-economic backgrounds?

- **Determine whether the potential universal benefits of each criterion to all students at the IHE or in discipline are borne out by data on actual impact at the IHE** (e.g., donations that make facilities and programs possible, ability to hire and retain the best faculty, and character of the academic community);
 - **Consider experience of similar peer IHEs** that have eliminated some or all of these criteria, while recognizing the uniqueness of each IHE;
 - **Consider and weigh the adverse impacts of the criteria on students** (e.g., first generation students, students from low socio-economic backgrounds, students of color, etc.) who are not well-represented at the IHE or in the discipline, are statistically significantly less likely to be able to satisfy these criteria, and whose inclusion at the IHE is important for the quality of the IHE's and discipline's diversity-associated missions and goals for all students;
 - **Determine whether there are less obvious ways in which the enrollment process as a whole diminishes any such adverse impacts** (e.g., the weight given these criteria in relation to others) to determine the net positive or negative effect of the combination of criteria;
 - **Evaluate whether the balance of benefits and detriments overall advances the IHE's and discipline's aligned educational missions**, including diversity- and equity-associated mission, or requires an adjustment;
 - **Explore how to respond to any indicated need for an adjustment**, considering whether less weight on, or elimination of, these preferences is warranted (or not), and what other steps (additional criteria) may contribute to a solution;
- ***Consider promise, not just accomplishment thus far—Consider a diversity of relevant kinds of accomplishments in context.*** Authentically consider and weigh context—both abundance and lack of opportunity (based on individual experience, not stereotypes or assumptions)—failure to do so when evaluating accomplishments and promise is unfair. It adversely affects all students from low-income backgrounds. It affects students of color—not uniquely, but disproportionately—considering the effects of systemic racism and associated racial wealth and opportunity gaps in the United States.
 - Recognize that some students of promise have less opportunity and guidance and face heightened barriers to fully realize their potential but have made the most of the limited opportunities they've had or have navigated barriers successfully. Such students may be more "qualified"

than a student who has not maximized abundant opportunities. Ensure that the norms of evaluation include understanding context and fairly weighing the relative accomplishments of these students;

- Employ remedial writing experts to assess promise to develop college-level writing skills in a reasonably short time period for those applicants who did not have the opportunity to develop these skills at under-resourced schools, but who satisfy other admission criteria;
 - Similar accommodations are made for international students and students who take “gap” courses on-line to pursue a change in academic focus—Why not provide a similar opportunity for other students of promise?
 - Provide a summer bridge program, academic year mentoring program, or first year credit course to support these students’ development of the needed skills;
- Also recognize that some students have less opportunity to demonstrate traditional/dominant norm definitions of accomplishments. Cultivate openness to recognizing different, but no less relevant, accomplishments. Consider how to enable students to reveal their promise in an application process through evidence of talent that aligns with a student’s background and opportunities;
 - **A national science medal for a student from a privileged background and a solar-powered chili roaster for migrant farmworkers designed by the child of a migrant worker** may demonstrate equivalent problem-solving engineering talent;⁶
 - **Consider application questions and prompts for essays and problem sets that provide equitable opportunities to demonstrate promise.** For example, use visual prompts for an essay to reveal architectural talent. Provide several situational options (with broad diversity sensitivity) for an open-ended (not single answer) engineering problem, designed to provide students a choice that resonates with them and to avoid the need to know dominant norm terminology, to reveal problem-solving approach and potential. Use these in lieu of, or as an alternative to, potentially exclusionary prerequisites (such as portfolios or other submissions) that disadvantage those students of promise who do not have the financial means, school resources, or

⁶ See *Amici Curiae* Brief of Massachusetts Institute of Technology, Leland Stanford Jr. University, E. I. DuPont De Nemours and Company, International Business Machines Corp., National Action Council for Minorities in Engineering, the National Academy of Sciences and the National Academy of Engineering, in *Grutter v. Bollinger*, 539 U.S. 306 (2003) (upholding University of Michigan Law School’s holistic assessment of each candidate for admission, taking race among other factors into account), and *Gratz v. Bollinger*, 539 U.S. 244 (2003) (striking down as unconstitutional University of Michigan’s automatic award of 20 points to minorities in the admissions evaluation process).

family experience and guidance to produce a portfolio or compete in a math or science competition;

- **Evaluate the IHE's and discipline's use of standardized tests.**
 - Evaluate multi-year, disaggregated data (by race, ethnicity, gender, socio-economic background, different ableness) on the correlation of student success at the IHE with standardized test scores, high school grade point average and class rank, difficulty of courses offered and taken in high school, and other valued qualities and factors to determine their individual and collective predictive value regarding student success. Use these institution-specific data, as well as extant research,⁷ to inform whether or in what manner each component, and all of them together, should be considered in decision-making about admission to the IHE and STEM or other majors or programs;
 - Consider the IHE- and discipline- specific class diversity (including the admission funnel) and student success outcomes in the classes entering in the fall of 2018, 2019 2020, and 2021, as additional data points, made possible by the pandemic of 2020-21 and any temporary change in predictive tools, including the standardized test policy;⁸
 - If standardized tests contribute meaningfully to predicting some students' success at an IHE, assure that the test design—and the IHE's own student success data—on score differentials that do and do not have predictive value (overall and for disaggregated populations considering a combination of relevant factors), are understood and applied. Avoid giving consequential weight to score differentials that are not validated for meaningful differences in predictive value;
 - **Evaluate whether there are statistically significant disparities in the predictive value of tests** (overall or in certain score ranges) in relation to the IHE's and its disciplines' own students of different races, genders, socio-economic backgrounds, and ableness;
 - **Using a multivariable regression analysis, consider a combination of factors** (e.g., parental education attainment, socio-economic background, resource level of schools, ableness, race and gender) to differentially weigh each individual's test scores based on the relevant full bundle of factors that the analysis demonstrates are relevant to that person at the IHE, but avoid doing so on the basis of race or gender alone;

⁷ See **Research Charts**, Chart 1, <https://www.aaas.org/programs/diversity-and-law>.

⁸ See Freeman, M., Magouirk, P., Kajikawa, T. (September 8, 2021). *Applying to college in a test-optional admissions landscape: trends from Common App data*. https://s3.us-west-2.amazonaws.com/ca.research.publish/Research+briefs+2020/20210908_Paper4_TestOptional.pdf

paper brochure (to accommodate different levels of internet access), with clear information about how to apply for admission and financial aid (the processes), aid that is available, and—considering likely aid—debt expectations in relation to total costs;

- Alternatively, or in addition, consider allowing students with demonstrated need at or below a designated level to continue applying to other IHEs and to rescind their early decision commitments to accept another admission offer when the aid package is more favorable;

d. ***Eliminate other process impediments.*** Evaluate whether any processes or practices in enrollment, registrar, bursar, mentoring, or other offices create unnecessary barriers to students of promise who are not well-represented at the IHE, relating to their ability to apply to, persist in, or graduate from, the IHE and particular STEM or other disciplines. Engage faculty, relevant staff, and students representing a broad range of backgrounds, experiences, and perspectives to identify these barriers.

- ***Make adjustments to eliminate barriers.***
- ***To maintain neutrality, do not create separate processes or material advantages for students based on race or gender.***
- ***Consider process improvements across the board.***
- ***Evaluate and adjust general and targeted communications of consequential information to ensure effectiveness for all audiences.*** Include a range of languages and delivery methods.
- ***Any differential processes that may be needed for financial or operational feasibility or effectiveness may be tied to neutral criteria (e.g., socio-economic background, first generation students, etc.—see B below).***

e. ***Explore ways to eliminate or diminish barriers created by student employment obligations or the structure and kinds of student employment.*** Reach a more nuanced understanding of unintended negative impacts of work obligations on the academic progress of students from lower socio-economic backgrounds. Consider how employment obligations intersect with key points of academic performance to provide flexibility; provide job opportunities that allow for studies on-the-job or enhance academic learning. Employment obligations affect all students from low- socio-economic backgrounds. They affect students of color—not uniquely, but disproportionately—considering systemic racism and the associated racial wealth gap in the United States.

- ***Consider impacts arising from aid packaging and those arising from personal/family obligations.***

f. ***Focus on creating a climate of inclusion, supported by multi-faceted resources.*** Provide welcoming, inclusive and effective student transition, integration,

mentoring and support regarding academic, social, financial management and life skills—and create segments focused on STEMM and other fields where people of color, women, people identifying as LGBTQ+, and individuals who are members of certain other groups are not well represented.

- ***Create transition and mentoring programs that communicate to all students a welcoming and inclusive message.*** There may be mentoring and support programs that are targeted for students from under-resourced schools, low socio-economic backgrounds, first generation and immigrant students, students for whom English is a second language, and others who face challenges to the pursuit of a college education or STEMM degree. However, virtually all students need support of one kind or another in the transition—support isn't a function of deficiency.
 - The objective is to make a variety of support accessible—while also making students who face increased barriers understand that they are not alone in needing help;
 - **Dispel any false narratives that some students are unqualified and that's why they need support to succeed**—that students from low-socio-economic backgrounds, first generation students, students of color, women, LGBTQ+ individuals, or others who face challenges to pursuit of college or STEMM degrees are less qualified for admission, and only they need support to succeed;
 - Focus on the IHE's responsibility to effectively teach all of its students and the fact that all students will grow in different ways in college;
 - Avoid taking a “deficit” view of students; focus on the deficits in the education program (overall and in disciplines) and seek to eliminate them;
 - All students go through a transition when entering college—each individual has their own challenges. Communicate that it is a strength to ask for help;
 - In STEMM and other highly challenging fields, all students find the material hard and may struggle at times. Make that clear;
- g. ***Focus on eliminating implicit bias, inequity, and discouragement and on providing inclusive pedagogy and opening more opportunities.*** Assess whether some practices that appear to be aimed at “helping students succeed,” are really devaluing their promise and impeding their success. Focus on ways to make STEMM and certain other fields less intimidating and more compelling. Focus on effective pedagogy for all students that eliminates the deficits in the educational program which adversely affect students who are not in the dominant population at the institution.
 - ***Offer pass/fail introductory STEMM and certain other courses to encourage students who might not otherwise explore these subjects, and students who***

might benefit from transition opportunities, to try them. Focus on hands-on research experiences; the contributions and applications of the fields; and guest speakers of high accomplishment who are from groups that are not well-represented in the fields (women, LGBTQ+ individuals, people of color, people from low socio-economic backgrounds, people with different ableness) to excite students about the possibilities.

- ***Create an undergraduate research program that provides an opportunity for all interested undergraduates to conduct STEMM research with faculty.*** Include more upper-class students in the field from a broad diversity of backgrounds as teaching assistants or mentors. Consider how to remove practical barriers to participation (e.g., limited access to information, lack of confidence to express interest to faculty, outside work and family obligations).
- ***Determine whether students from some identity groups statistically are more likely than students from other groups to be encouraged to change majors (leave STEMM fields) at the first sign of struggle,*** rather than being counseled on the challenges many students face early on in STEMM fields, encouraging them and offering support to persist.
 - Address the root cause of any disparities—Is there a push to improve graduation rates (in part related to rankings or to access funding tied to graduation rates)? Is implicit bias at work? Act to elevate unintended consequences (e.g., of funding conditions) and to eliminate these barriers;
- ***Develop and implement an inclusive pedagogy program.*** Help faculty and staff learn how to effectively engage students of a broad diversity of identities, experiences, and learning styles to create an inclusive learning environment.
 - Invite faculty proposals for design of faculty professional development programs and provide central funding to successful proposals. Encourage a range of effective inclusive teaching approaches and delivery methods to suit a variety of fields, class sizes, student needs, and faculty preferences;
 - Develop programs with input from a broadly diverse group of knowledgeable academics, professionals in effective teaching, and a diversity of students. Diversity brings awareness of different needs and perspectives. Leverage expertise of the faculty, when available. Share successful models;
 - Leverage new faculty to implement professional development and inclusive pedagogical approaches;
 - **Consider this expertise as a plus in faculty recruitment, hiring, promotion and tenure;**

- Establish metrics for positive outcomes, evaluate effects, and make adjustments as needed;
 - **Determine whether students of all identities, many learning styles, and a diversity of backgrounds are able to thrive.** If not, there is a deficit in the program;
 - **Establish annual and long-term goals for GPAs, retention, persistence in major, and graduation rates** for first generation students, students from low income backgrounds, students of color, and (in STEMM fields) women and LGBTQ+ individuals to be comparable to those of students of identities in the dominant population at the IHE and students from families with histories of college attendance. Present these goals accurately as a reflection of the quality of the IHE’s academic program and pedagogy—not of any “student deficit;”
 - **Determine whether all students have opportunities to engage with a broad diversity of peers and faculty,** enhancing everyone’s educational experiences;
- Establish general education requirements around learning outcomes, including self- and cultural awareness. Charge colleges/departments to develop curricula designed for students in each discipline;
 - **Consider required programs on a variety of facilitated “difficult conversation” topics,** addressing issues of societal identity and inequity, including race and gender;
 - **Highlight achievements and celebrate cultures of a diversity of individuals;**
 - **Measure achievement of learning outcomes to modify curricula as needed;**
- ***Hire additional faculty and staff in programs selected for priority attention to create more opportunities for students in high-demand majors.*** Increase the number of students who may be admitted to programs with highly competitive admissions. Resist imposing conditions to entering or persisting in a major largely as a strategy to contain program size, unnecessarily foreclosing student opportunities for success.
- This implicates financial capacity limits, but prioritizing fundraising or allocating discretionary funds to a limited number of these targeted investments may be possible;

h. *Develop a systematic connection of admission professionals and faculty to share knowledge about incoming students—both to provide better understanding of their life journeys to better serve their needs and to engage diversity (on many*

dimensions) to enrich all students' experience. When departments have a greater awareness of their students, they can more thoughtfully assemble class, laboratory and seminar sections and other programs to offer the same benefits to all involved students, while also assuring a broadly diverse setting across the board to enhance the educational experience.

- i. ***Focus on other research-backed strategies to create a climate and culture of welcomeness where all students can thrive.*** See the Student Experience Project resources at <https://studentexperienceproject.org/resources/#1602165479208-d1ac8ff2-1573> and <https://www.perts.net/orientation/ascend>

2. Inclusive Outreach and Recruitment

Important Rationale. Inclusive outreach builds a broadly diverse and qualified applicant pool, without providing material benefits to individuals of some race or gender groups and not others. It is distinct from winnowing and decision-making.

Key Design Elements—For effectiveness and legal sustainability:

- a. ***Build a broadly diverse, well-qualified pool of applicants*** by specifically targeting individuals from racial, gender and income groups that are not well represented in the applicant pool or class in a particular discipline and/or at the IHE.
- b. ***Assure that targeted inclusive outreach is but one component of a robust general program of outreach***, which aims to reach any interested and potentially qualified student, and is generally effective at doing so.
- c. ***Assure that resources invested in targeted inclusive outreach are not disproportionate to resources invested in general outreach*** and do not result in inadequate (or disproportionately less or different consequential) information being provided to the general population of students with an interest and potential qualifications.
 - ***Targeted inclusive outreach communicates the same underlying consequential information***; however, the method, frequency and approaches are tailored to be most effective in reaching individuals in the group targeted.
- d. ***Targeted Inclusive outreach does not provide benefits to individuals based on their racial or gender identity*** that individuals of other races or genders do not receive. It is audience-sensitive communication.
- e. ***Where possible, it is helpful to demonstrate the inclusive nature of and need for targeted outreach by collecting disaggregated data*** (by race, gender and socio-economic experience, etc.) to determine effectiveness of general and targeted outreach and any need to adjust communications to ensure their effectiveness for all potentially qualified students. (See also building an evidentiary foundation in A.3 and footnotes 9-11 below.)

- f. **Document that outreach efforts aimed at building a diverse, inclusive qualified pool are authentically separate and distinct from the winnowing and selection processes** and do not, in any way, affect selection criteria.
- g. **Outreach and recruitment, including enrichment programs and programs providing substantial support in the application process, that are not available to all students, may be considered inclusive and may not be subject to exacting legal standards if participation is determined by the high school a student attends or their residential zip code (i.e., those that are under-resourced and aren't well represented in the applicant pool)—but not a student's race or gender.** A credible position can be taken, but the Supreme Court and federal appeals courts have not decided the issue. See Macro race-attentiveness in D below.
- h. **Outreach to enhance yield, after decisions and offers are made, may be able to target individuals based on race, gender, and other identities and still be considered neutral/inclusive because it is the offer that confers a benefit on an individual, not the outreach that merely builds a relationship to encourage acceptance of the offer.** The Supreme Court has not ruled on this question. Arguably, such a program is beneficial to the IHE and the entire student body, not the individual students being encouraged to accept an offer.
- **To the extent there is any argument that the outreach benefits the targeted students, the design is strongest if there is a well-marketed program to encourage all admitted students to accept their offers,** including periodic communications in some medium and availability of a contact to answer questions. It is also helpful to have data demonstrating that this broad outreach is generally effective, but not with certain groups for which the individual targeted outreach effort is designed.

Implementation Examples—Inclusive outreach and recruitment examples from the field and ideas of promise to advance student diversity and equity:

- a. **In addition to general outreach, visit high schools and tailor communications to all students from high schools whose majority student populations (race, gender or exclusive gender) are not well-represented at the IHE or in the discipline and who otherwise might not be encouraged to apply or receive information about application requirements.** Tailor communications to effectively provide information about admission requirements, financial aid, community-building and mentoring opportunities for admitted students at the IHE, and student support services to school counselors, students, and their families.
- **Examples, depending on the IHE, may include tribal high schools, high schools with a majority of students who are student of color or from low-income backgrounds, and all-girls high schools (particularly to recruit for STEM fields) or all-boys high schools (particularly to recruit for nursing or other programs in which boys are not well represented).**

- ***Be explicit if the IHE authentically values the experience that individuals of all races gain at these schools, including the experience of being in the majority or minority culture status at the high school that is the opposite of their status in other societal settings.***

b. *Similarly, recruit graduate students at HBCUs, HSI's, TCUs, AAPISIs and be explicit about authentically valuing the experience of students of all races at these IHEs.* Send representatives who will explain programs and assistance available for graduate students. Assure that resources are proportionately allocated to these efforts and recruitment efforts at other colleges and universities. Design for a balance.

- ***Establish expectations or requirements for robust outreach,*** not limited to the same “feeder” schools, while maintaining those relationships as well. Include outreach to high schools and undergraduate programs that do not have a record of sending any or many students to the IHE. Also include undergraduate programs and colleagues that have a record of preparing many students of color and women for graduate programs in the field.

c. *Focus on pathways to broaden recruitment.*

- ***Create middle through high school enrichment programs for students at schools whose majority student populations are not well-represented at the IHE or in the discipline, or that are poorly resourced, or that don't frequently send students to the IHE (targeted schools). Track the participants in those programs, focusing on them for outreach in college admission efforts.*** Eligibility to participate depends on being a student at particular schools (not an individual student's race or gender) and there may be other eligibility requirements.

- To be neutral, students of all races and genders from these schools must be authentically valued for the particular experiences they have in those settings (including being a member of a majority or minority culture status in these schools that is the opposite of their culture status in other societal settings);

- ***Contribute to the impact of these programs by:***

- Including a combination of hands-on research and academic enrichment experiences, e.g., mentoring by current college/STEMM department students, exposure to inspirational leaders, advice on pathways to and prerequisites for college and STEMM majors, reassurance that STEMM is hard for everyone but is also exciting;
- Pairing academic enrichment with information and hands-on STEMM career experiences. Develop partnerships among professionals in STEMM fields and provide information about, and concrete experience in, STEMM careers for students at poorly-resourced middle and high schools. Develop

and implement community projects that involve STEMM experts and provide these high school students hands-on experience of STEMM career contributions;

- Extending enrichment programs over a period of years, creating student cohorts, and keeping groups small;
- Offering information about summer and other enrichment programs that introduce students to college and STEMM fields specifically to guidance counselors and, if possible, to students and their families. Assess and address financial and other practical barriers to participation;
- Tracking the participants in these programs and recruiting them (not based on race or gender, but based on their having participated in the programs);
- ***Coordinate and increase communications with middle and high school advisors, students, and families from targeted schools*** to clarify and elevate their understanding of pathways and prerequisites for progressing to college and pursuing STEMM majors.
 - Enlist the input of teachers and guidance counselors to determine the information to communicate to potential and successful applicants and the most effective ways to do so;
 - Include accessible information on various ways to make college affordable from IHEs, federal and state sources, and philanthropic programs;
 - Include accessible information on the application and financial aid processes;
 - Enlist accepted student and family feedback on information gaps and how to communicate most effectively;
 - Be proactive at the institutional and discipline levels in encouraging acceptances of offers of admission by students of color, first generation students, students from low socio-economic backgrounds, and (in STEMM fields) women and LGBTQ+ individuals;
 - **See A.2.h regarding targeted race and gender outreach within the context of general outreach after admission offers are made** to encourage acceptance of an offer;
- ***Target outreach and recruitment*** to siblings and friends of admitted first-generation students and students from low socio-economic backgrounds. Engage the IHE's students from these backgrounds in outreach and recruitment efforts. Track these students for college recruitment.

- **Private IHEs may find that entering voluntary collaboration agreements—and public IHEs may find that entering articulation agreements—with secondary institutions and other post-secondary institutions (e.g., community colleges) to ease pathways can help advance this objective.** (See A.3, “Neutral Community Building and Mentoring Programs” below.)
- **Public IHEs with the capacity and a compatible open admission policy (i.e., those that offer admission to any student who completes prerequisite courses with a passing grade) may send unsolicited letters of admission to all graduating high school seniors in the normal catchment area who meet admissions requirements.**

3. Neutral Community Building and Mentoring

Important Rationale. Inclusive community-building and mentoring assure support for recruitment, retention, and success of a broadly diverse student body. They meet the needs of all students—whether by not considering individuals’ race or gender in selecting participants or otherwise demonstrating that no group is disadvantaged.

Key Design Elements—For effectiveness and legal sustainability:

- Race and gender of individuals generally is not considered in selecting participants (but see A.3.d). These programs target students, irrespective of their race or gender, who are in the first generation of their families to attend college or come from low socio-economic backgrounds, attended under-resourced schools, speak English as a second language, or have immigrant backgrounds, have deep knowledge of issues of race and gender in society and a desire to elevate others knowledge, and/or have a commitment to disrupting social systems of racism or sexism.*** Programs with these areas of focus advance authentic educational and diversity interests of the IHE, apart from racial or gender compositional diversity (see Neutral Selection Criteria in B below). However, these programs may also contribute to some aspects of racial and gender compositional diversity. They support the recruitment, retention/persistence, and graduation of students facing a range of challenges to the pursuit of a college education and STEMM degrees, including students of color, women, and LGBTQ+ individuals due to systemic racism, sexism, and associated wealth, education and opportunity gaps in the U.S.
- Frame these mentoring and academic support programs for these students as part of the IHE’s celebration of their high accomplishments in the face of challenges—services provided as an honor earned.*** Authentically cultivate a sense of pride based on acknowledgement of the extra high ability and motivation that students of such background demonstrate by successfully navigating challenges. Communicate to the broader community that these programs honor high accomplishment.
- Coordinate mentoring and academic support programs with development of welcoming transition and inclusive pedagogy programs.*** (See A.1.f and g above)

- d. ***Programs that do consider race and gender contextually and individually (but are not exclusive to these identities) may arguably be justified as inclusive in effect if: there are very strong data demonstrating a disparate need of individuals in such groups (e.g., multi-variable regression analyses of the IHE's student body); the number of such programs is extremely small in comparison with the totality of programs available to any student in need without such considerations; needs of all students are met; and clearly neutral strategies are used but inadequate alone.*** It is wise to use aggregation (see A.5 below) to structure a single program, with focus groups, rather than a stand-alone race or gender conscious program, if possible.
- ***Targeted programs should not receive a disproportionate allocation of resources or have the effect of depriving other students of needed services.***
 - ***There is heightened risk in today's legal landscape that any consideration of race or gender for participation will not be considered neutral. However, a strong evidence base of need and absence of burden on others will be helpful in satisfying exacting legal standards if they were to apply.***
 - This approach is unlikely to be viable for public IHEs in states with bans on racial or gender “preferences” (as of 2021, Arizona, California, Florida, Idaho, Michigan, Nebraska, New Hampshire, Oklahoma, Washington). See **State Law Bans Guide**, <https://www.aaas.org/programs/diversity-and-law>;
 - It is important to engage an IHE's counsel to advise on such programs in any event;

Implementation Examples—Mentoring and community building examples from the field and ideas of promise to advance student diversity and equity:

- a. ***Create cohorts of faculty and staff mentors and advocates for community-building and mentoring programs. While including any otherwise qualified faculty and staff who wish to be mentors and advocates, include ample faculty and staff from the same background as students being targeted*** for community-building and mentoring (e.g., first generation, low socio-economic background, race, and gender).
- ***Include pictures, personal stories/backgrounds, as well as professional backgrounds of the mentors/advocates in well-publicized program information and a program directory.***
 - Encourage faculty and staff from targeted backgrounds to publicize their backgrounds. E.g., first generation t-shirts and mugs;
 - Encourage all faculty and staff to publicize their interests—hobbies and commitments, as well as academic focus;

- ***Offer community-building and mentoring opportunities to all interested students who may feel a need. Particularly encourage targeted students to avail themselves of the opportunity.*** Communicate to them the availability of mentors and advocates who have life experiences in common.
 - Common backgrounds may engender expedited and elevated understanding, trust, anticipation of issues, and practical solutions;
 - ***Design the programs to call for mentors/advocates to engage regularly with academic support programs, advisors, and others*** to facilitate early identification of challenges and effective support for student participants. Recognize and tangibly reward the important contributions to the IHE’s mission and quality of its programs made by those who serve in mentoring roles (e.g., in performance reviews, awards, and resources).
- b. ***Undertake campus-wide events celebrating the accomplishment of first generation and immigrant individuals, persons of color, women, and LGBTQ+ individuals among trustees, faculty, students, staff and other members of the campus and broader community. Provide a discipline focus as well (e.g., STEMM fields).***
- c. ***Develop and implement race- and gender- targeted community building and mentoring programs that have an inclusive—not an exclusive or preferential—effect. Demonstrate with documented evidence—don’t assume—that students in groups that are within the dominant-norm at the IHE have consequential information, sense of community and belonging, and access to mentoring and other support that students in other identity groups lack or have to a substantially lesser degree.*** Explore potential disparities and collect data that demonstrate and document those that are confirmed. With strong data in support of the inclusive effect of programs that fill gaps—and don’t create preferences—it may be possible (whether as a neutral program or a legally supportable race- or gender- conscious program) to consider race and gender holistically (along with socio-economic and other identity information regarding groups whose needs are not being met) when determining participants for such programs. Providing these opportunities for students in need of all races and genders is important.
- ***Build an evidentiary foundation/data to justify enrichment and community building and mentoring programs*** targeting populations that are not receiving consequential benefits that those in the dominant culture at the IHE are receiving:
 - Focus data collection efforts on gathering and disaggregating data that may demonstrate disparities (by race, gender, socio-economic background, different ableness) in these areas that facilitate success in educational programs and advancement:

- **access to support services** (e.g., mentoring, funding) **and enrichment experiences** (research experience, study abroad, other);
 - **access to consequential information** (e.g., on pathways and prerequisites for STEM or other undergraduate programs, graduate school, and careers, on how to get academic help when needed, and that pursuing help is a strength and “normal” in difficult STEM and other fields);
 - **experience of welcome/belonging/full participation as an individual** at the IHE and in the STEM or other discipline;
- Collect data through:
- **Surveys, focus-group interviews, town halls** re: disparities in effectiveness of outreach and information dissemination,¹⁰ as well as in awareness of consequential information, mentoring and support services for success (see **Customizable DEI Statements and Survey Questions**, <https://www.aaas.org/programs/diversity-and-law>);¹¹
 - **Multi- variable regression analyses**¹² re: the need for community building and mentoring programs focused on particular groups to provide equitable educational opportunities, not preferences;

¹⁰ Explore and document whether—don’t assume that—robust general outreach (e.g., advertisements, specific outreach to faculty in the field, etc.) to recruit students into the discipline, to provide them research and other opportunities, or to serve as their mentors, occurs substantially less often or is substantially less effective with women, people of color, LGBTQ+ individuals, those who have experienced a low socio-economic background, those who are first in their families to attend college, those of certain religions, etc., as compared with students in the dominant population at the institution.

¹¹ Explore and document whether—don’t assume that—women, LGBTQ+ individuals, people of color, those who have experienced a low socio-economic background, those who are first in their families to attend college, those of certain religions, etc. are isolated and not well- integrated in the institution’s campus community, substantially less knowledgeable about the logistics and practical requirements for academic achievement and advancement, and substantially less likely to have access to influential faculty mentors, research opportunities, resources, and funding, etc., as compared with students in the dominant population at the IHE.

¹² Assess—don’t assume—whether, all other variables being equal (e.g., parental level of education, family pursuit of STEM or other degrees or careers, childhood socio- economic experience, parent(s) in the household, high school resource level, availability of Advance Placement courses in high school, and grade point average, standardized test scores, level of educational attainment, etc.), women, LGBTQ+ individuals, and people of color, as compared with students in the dominant population at the IHE, statistically in the aggregate (not on an individual basis): (i) are significantly more likely to experience isolation; (ii) are significantly more likely to experience academic performance difficulties (academic probation, below a certain grade point average) in undergraduate, masters, and/or doctoral programs in related clusters of STEM or other fields; (iii) are significantly less academically prepared when they matriculate at each level of post-secondary education; (iv) perceive academic or financial barriers that discourage them from entering particular STEM disciplines or continuing in a program once begun; (v) are significantly less likely to graduate, pursue a further degree, or be selected for a post-doctoral appointment; (vi) are substantially less likely to be offered research experiences or to

- Do not limit assessment to individuals in racial, ethnic or gender groups, but include other groups that are likely to be experiencing disparities (those from low socio-economic backgrounds, those with different ableness, those of certain religions) as compared with students in the dominant culture at the IHE;
- Frequently update data to demonstrate that programs are available to all who need access and support or who lack community;

4. Pooling

Important Rationale. For neutral effect, pooling leverages fungibility of a small amount of resources with race or gender-related award criteria that share a common purpose with a much larger amount of resources that do not have such identity-based award criteria. They provide enhanced opportunities and benefits for people of all races and genders.

Key Design Elements—For effectiveness and sustainability of diversity-enhancing financial aid/scholarship/other resourcing programs:

- a. ***Put aside race and gender merit criteria for a moment. Then identify fungible resources (e.g., aid dollars) dedicated to the same core purpose (e.g., financial need, merit apart from race or gender, or a combination). If a substantial majority of such resources are not subject to race or gender award criteria, combine all of the resources into a single resources/funding pool.***
 - ***Race and gender of individuals are not considered at all in making decisions*** regarding who receives aid or other resources and all related details (e.g., type and amount of award—grant, loan, work-study, etc.).
 - ***Only after that race- and gender-blind decision-making is final, are the fungible aid funds/other resources matched to the already neutrally selected individuals.*** At that point, the race and gender conditioned funds are allocated to the already selected students who also satisfy those conditions.
 - Then the predominant aid dollars/resources (those without race or gender conditions) are allocated to those selected students who do not satisfy the additional conditions and any remaining students who do satisfy the additional conditions, but did not receive race or gender conditioned aid/resources because those funds were exhausted;
 - The effect is inclusive because the number of students who otherwise would be competing for the funds/resources that are free of race or

be hired as a teaching or research assistant, or otherwise attain measures of accomplishment in related clusters of STEM fields. Run this analysis controlling for socio-economic and first-generation background and any other variables that may be experiencing disparities, as well.

gender conditions is reduced, thereby expanding the funds/resources without such conditions that are available to all students;

- ***Well-designed and executed pooling strategies should be considered neutral, even though they may increase racial and gender diversity.*** However, the U.S. Supreme Court and federal appeals courts have not ruled on this strategy.
- No student receives or is excluded from receiving a benefit or opportunity because of race or gender; pooling merely expands the funds or other fungible resources available for similarly qualified students;
- All commitments determined on neutral bases must be funded, however;
- Rigorous design and execution are required; consultation with the IHE's lawyers and experts on financial modeling for the design is warranted;

Implementation Examples—Support actions for effective pooling strategies that may transform stand-alone race- and gender- conscious or exclusive aid or other funding/resources into neutral, inclusive funding/resources:

- a. ***Inventory aid (or other fungible resources) at the institutional and discipline level*** to help identify neutral aid and aid with race and gender conditions that have similar fundamental aims (financial need, merit, etc.) and can be pooled.
- b. ***Equip the development office, deans and other fundraisers with neutral options that have promise to increase racial or gender diversity along with other important institutional aims*** (see Neutral Selection Criteria in B. below) to support the development of a pool of predominantly neutral aid and limited aid with race and gender conditions that together enhance diversity while expanding aid available to all students.
- c. ***Expert, data-backed financial planning, and a contingency fund are key supports for good pooled aid and other funding/resources decision-making.***
 - ***Decisions on who receives funding/resources and how much and what type, must be made without considering any individual's race or gender***, and these commitments must be funded in any event.
 - ***Considering disaggregated historical program data and disaggregated data on the overall make-up of the current applicant pool to be funded from the pool***, combined with data on the funds with and without race and gender conditions that comprise the pool, should inform the total funding commitments that can be made to minimize the likelihood that commitments will exceed available pooled funds, once funds are allocated to recipients.
 - It is critical, however, in financial planning, that the race and gender data on the current applicant pool be de-identified from individual applicants for aid so that those individual decisions are not race or gender conscious.

The purpose of the data is to assure full funding of the pool, not to make individual aid decisions;

- ***A small contingency fund may be needed to fund occasional exceedances*** (i.e., if there are not enough students of color and women aid recipients to use all available race and gender conditioned aid funds and there are too many other aid recipients for the aid funds available in the pool).

5. Aggregation

Important Rationale. Similar to pooling, for neutral effect, aggregation leverages fungibility of a small number of program opportunities and resources that include race- or gender-related participation criteria and share a common purpose with a large number of program opportunities and resources that do not include such identity-related participation criteria. They provide enhanced opportunities and benefits for people of all races and genders.

Key Design Elements—for effectiveness and legal sustainability:

- a. ***Expand the pooling strategy for aid and financial support to experiential learning and other enrichment programs.*** Avoid, to the extent possible, stand-alone individually race- or gender-conscious programs. Do so in a manner that does not compromise the beneficial impact of those programs in content or on compositional diversity.
- b. ***Combine stand-alone programs that have similar core areas of focus and objectives—a predominant proportion being neutral and a limited proportion being individually race- or gender-conscious or exclusive—into a single program that is, in effect, inclusive and neutral.*** Without considering whether a program imposes race- or gender-conscious or exclusive criteria for participation and receipt of associated benefits (limitations), identify and combine all programs that have a similar aim (e.g., research experiences, mentoring or community-building programs for undergraduates in a particular STEM field with associated financial support).
- c. ***To maintain neutrality, participants’ or applicants’ race and gender are not considered to determine participation in the new, aggregate program.*** The program’s purpose advances authentic institutional education aims apart from increasing race- or gender-compositional diversity.
 - ***However, the program is clear that it offers opportunities for focus on issues of race and gender*** and on areas of particular interest to individuals in certain racial or gender groups.
- d. ***Only after finally selecting all students who will participate in the combined program and finally determining the kind and amount of benefits they will receive on neutral bases (e.g., research experiences and stipends, equipment, mentoring support, community-building activities), satisfy those commitments*** by applying the small proportion of seats and associated benefits that have race

and gender limitations to already neutrally selected students who also satisfy the limitations and applying the seats/benefits without limitations to the rest of the already selected students (including any remaining students who qualified for but didn't receive the seats and benefits with limitations).

- e. ***While the Supreme Court has not ruled on this strategy, well-designed and implemented programs should be determined to have an inclusive, neutral effect*** because they expand the participation and associated benefits available to all students. More seats/benefits without limitations are available to students who do not satisfy the limitations when some students who do satisfy the limitations no longer need to receive seats/benefits without limitations. All selected students receive the same fungible opportunities and benefits or, at least, receive any differential opportunities and benefits determined without consideration of any individual's race or gender.
- ***No student receives or is excluded from receiving a benefit or opportunity because of race or gender***; aggregation merely expands the seats and other fungible benefits that are available for similarly qualified students.
 - ***All commitments determined on neutral bases must be fulfilled, however.***
 - ***Rigorous design and implementation are critical to neutrality.***
 - ***Consultation with the IHE's lawyers on the design is warranted.***

Implementation Examples—support actions for successful aggregation strategies that may transform stand-alone race- and gender-conscious or exclusive experiential learning programs into neutral programs:

- a. ***An inventory and financial planning on key programs that can be successfully aggregated, as well as equipping those who raise funding are important*** (see A.4 above on pooling).
- b. ***After the participants in an experiential learning or enrichment/research program are selected without considering any individual's race or gender, research funding and a title associated with a funding source is given to the selected students of color, women*** (or men in fields where they are not well-represented such as nursing), ***and LGBTQ+ students*** to denote that the funding of their positions/research experience is from a particular source (e.g., an associated National Science Foundation grant, which may impose race- or gender-conditions).
- ***The title merely acknowledges the funding source***, and if advertised, may encourage applications from students who might not otherwise be inclined to apply.
- c. ***The substantive program benefits (e.g., mentors, time in the research lab, meetings with senior researchers, funding) are the same for all participants, or***

any differences are determined without considering any individual's race or gender.

6. Subject Matter Focus, Not Participation Criteria

Important Rationale. To advance diversity, equity and inclusion, this design fundamental focuses on explicit race and gender subject matter (not individual identity), as well as self-selection of participants with interest in the subjects. Societal inequity may result in disproportionate participation by some identity groups; but all attendees advance DEI interests.

Key Design Elements—For effectiveness and legal sustainability:

- a. ***Programs are focused on race and gender diversity-equity-inclusion related subjects of importance to the IHE's or discipline's mission*** that are explicitly on issues of race or gender and are of particular interest to students of color, women, and LGBTQ+ individuals.
- b. ***Federal non-discrimination laws do not regulate subject matter alone (i.e., when participation or benefits criteria do not consider individuals' race or gender).***
- c. ***There are no race- or gender-based restrictions on who may attend or participate in the programs.*** However, there is likely to be substantial participation by individuals of the races and genders that the subject matter targets due to individual prerogative and experience in society, not an IHE's action.
- d. ***The programs contribute to the IHE's aims by elevating understanding of race and gender related issues by all students who participate, regardless of participants' race or gender.***
- e. ***Based on self-selection in the context of societal inequity, a high proportion of participants may be students of color, women, or LGBTQ+ individuals.***
 - ***Others who participate are likely to be authentically interested and contribute to elevating understanding and advancing integration*** across the IHE or discipline, which can strengthen the impact.

Implementation Examples—Strategies whose subject matter focus addresses important institutional interests that advance diversity, equity, and inclusion:

- a. ***Create race or gender subject matter-defined experiential learning program—or a focus group for issues of race or gender within an experiential learning program that has an overall subject matter focus pertinent to a STEM discipline.*** Such a program or focus group can help build community for and address issues of importance to students of color, women and people who

identify as LGBTQ+, while also building relationships with others who are authentically committed to equity and inclusion and can advance those interests at the IHE.

- ***The program or focus group on issues related to race or gender may be of particular interest to many students of color, women or LGBTQ+ students, but the race or gender of individual students is not considered when determining who may participate or receive associated benefits.*** While any interested student may participate, self-selection may result in substantial participation by students of color, women, or LGBTQ+ students.
 - Broadly communicate information about the focus groups and their specific aims, both generally and to targeted groups to encourage interest and broad participation;
 - To the extent that some focus group participants are not members of the targeted groups but are interested in the areas of focus, these participants may advance better understanding of issues of race and gender and a more welcoming climate for students of color, women and LGBTQ+ students in the larger campus or discipline community;

b. *Create symposia and courses focused on diversity-equity-inclusion subjects of importance to the IHE's and discipline's educational and service mission.* For example, highlight accomplishments of people of color, women, or LGBTQ+ people in a STEM field or address the history, persistence and issues of racism and sexism in society. The race and gender of individuals are not considered in determining who may register.

- ***Engage those who have helped others scale race- and gender-based barriers in the field or who have experience in identifying and resolving intra- or inter-racial and gender misunderstandings or conflicts*** (i.e., an experience, not a racial or gender status criterion).
- ***Engage those whose scholarship focuses on accomplishments of individuals of color, women, or LGBTQ+ individuals in the field*** (i.e., a knowledge-based, not race- or gender- status-based criterion).
- ***Engage scholars on issues of race and gender in society*** (i.e., a knowledge-based, not race- or gender- status-based criterion). They lead the symposia and teach the courses.
- ***Advertise the symposia and courses broadly and encourage participation by all who are interested.***
- ***It may be critical to the positive impact of such symposia and courses that people of all races and genders attend to elevate understanding of issues and enhance a commitment to eliminating barriers and advancing inclusion.***

Consider whether a symposium or course of this nature should be required for all students in their first or second year as an undergraduate.

c. ***Use residential college assignments and programming to engage students in diversity- and equity-associated educational experiences.***

- ***This can be done by residential life professionals in collaboration with admissions professionals familiar with the backgrounds, experiences, and qualities of entering students.***
- ***Consider initiating a program in which students identify housing clusters and associated co-curricular programming focused on subjects of interest to them. Among a wide range of issues, issues include identity and other interests for students of color, women, LGBTQ+ students, and students with different ableness.*** Students are given the opportunity to volunteer to work with residence life staff to create and develop content for cocurricular programming within residence hall clusters.
 - Students and residence life staff partner to advertise the clusters and associated programming;
 - Students may reflect their preferences in requesting assignment to clusters, and assignments are made based on student requests;
 - **While not everyone can receive a first choice due to capacity, residence life creates duplicate clusters to try to address areas of high demand.** Capacity relates to facility limits and keeping participant size suitable for in-depth discussions of nuanced and sometimes difficult subjects;
 - Assignments are made without consideration of any individual student's racial or gender identity status or ableness;
 - When any cluster is over-subscribed, residence life follows a singular resolution process. The first step is to create duplicate clusters. In the rare event that this does not suffice—
 - **Residence life makes assignments giving some preference to the students who contributed to the development of the cluster, as well as to students whose first choice was the cluster.** As space permits, students whose second choice was the cluster, and so on, are also included;
 - **Alternatively, to address capacity limits—or additionally as part of the assignment process—if student life staffing capacity permits, residence life requests a short essay from each student about how each student would contribute to the experience of all students in the cluster, and how each student would benefit, considering the programming focus and the student's life experience, self-identity,**

passions and aspirations. The essays are evaluated by a small committee of student life staff and a few student organizers. Student life makes assignments considering the essay responses. Race and gender status per se is not a consideration; but an individual's own experience associated with identity may be a consideration;

- d. ***Create other community-building programs around race-, ethnicity-, gender-, or different ableness- related subjects of interest.*** Identity status is not considered in determining who can participate. However, self-selection may result in a substantial proportion of participants of particular identities—as well as others with an authentic interest who may further the impact of the programs by advancing inclusion at the IHE or in the field.
- ***Create a student center to support undocumented students where students regardless of status can learn about laws and programs that affect undocumented students*** and engage in activities designed to respond to the challenges faced by undocumented students and their families.
 - ***Create student centers to build community for other students who are experiencing isolation at the IHE on other bases (e.g., race, gender, religion),*** where any interested student can engage in activities that elevate understanding and support full participation.

B. Neutral Selection Criteria

Distinctive Objective: These strategies reflect selection criteria that may be considered in a holistic review of many other criteria for recruitment and pathways programs that confer significant benefits and opportunities, admission to an IHE or a major course of study within it, financial aid awards, and academic or co-curricular opportunities (experiential learning, research experiences, internships, leadership roles, mentoring and community-building programs), without application of exacting legal standards. If authentic and properly implemented, it should be possible in many cases to use these criteria as exclusive participation or recipient requirements, without triggering such legal standards.

The substantial focus of neutral strategies is to advance one or more of these primary aims: (1) important institutional objectives related to the institution's or a discipline's educational mission—other than increasing the racial or gender compositional diversity of the student body; (2) an understanding of the totality of applicants' life experiences, personal qualities, weight of accomplishments, and aspirations and how they could benefit from the program; and/or (3) revealing an applicant's promise to contribute to the richness and quality of the academic program. While they do not substitute for considering the fullness of race- or gender- related contributions that an individual may make, they also often do contribute to an increase in some aspects of compositional diversity—racial/gender and other. That is because societal inequities in resources and opportunities that may define neutral criteria, burden people of color, women, and LGBTQ+ individuals disproportionately; and ameliorating such inequities may be

disproportionately but not uniquely or universally of interest to people of those identities. If the other institutional interest is authentic and substantial, the positive effect on, and ancillary awareness and intent to enhance, aspects of compositional diversity should not destroy neutrality.

Any IHE that wants to consider race or gender of individuals at all when conferring educational opportunities and benefits must use workable neutral strategies and demonstrate that such strategies are not adequate alone to create the diverse setting where beneficial educational experiences for all students (the diversity-related aim) may occur.¹³ Where neutral strategies are not alone sufficient for that purpose, they still must be pursued to reduce the extent to which an IHE considers the race or gender of individuals in conferring benefits and opportunities.

1. Universal Key Design Elements

For effectiveness and legal sustainability of all neutral selection criteria, the following design elements apply and will not be repeated in the descriptions of the neutral criteria:

- a. ***The criteria substantially serve important interests of an IHE—apart from increasing race- or gender-compositional diversity.*** These are “race-neutral alternatives” (to considering individuals’ race or gender) that can advance some aspects of racial or gender compositional diversity to create the needed setting where the full breadth of universally beneficial educational diversity (that includes but is not defined by race and gender) can occur. Consequently, there is awareness and some ancillary intent that these criteria may also enhance compositional diversity.
- b. ***Race and gender of an individual are not criteria in decision-making for the conferral of benefits or opportunities.***
- c. ***The process/practices do not include separate tracks, standards or other aspects based on individuals’ race or gender.***
- d. ***The neutral institutional interest to be served is authentic; and it is clearly and consistently documented and communicated.***
- e. ***Evaluations of neutral criteria are conducted on an on-going basis in a regular and documented process, with follow-up occurring, as needed, based on findings.*** The areas of evaluation include:

¹³Workable means not requiring a change in competitiveness, excellence, or character of the IHE—and satisfying the need for greater compositional diversity “about as well as [as race consciousness] at tolerable administrative expense.” *Fisher v. University of Texas*, 136 S.Ct. 2198, 2208 (2016) (“Fisher II”) (quoting *Fisher v. University of Texas*, 570 U.S. 297, 312 (2013)). While the Supreme Court has not ruled on the issue, we think there is a credible position that modelling may be employed to evidence sufficiency (or insufficiency), where modeling demonstrates the effects of newly considered and employed neutral strategies (using representative data to assess the likelihood of effects) and actual effects of longer-standing neutral strategies are tracked.

- **Availability and use of neutral criteria that are administratively and financially feasible** (even though requiring an IHE to prioritize effort and incur significant expense of investment in them).
- **That neutral criteria are not feasible if they require compromise of excellence, competitiveness, or character of the IHE’s educational program.** While not yet defined by the Supreme Court, if the administrative or financial burden would necessarily result in such compromise, the criteria are likely not feasible.
- **Effectiveness of the neutral criteria to serve their intended institutional goals.**
- **Effectiveness of neutral criteria to also contribute to compositional diversity for the purpose of creating a sufficiently broad diversity setting where beneficial educational experiences for all students can occur.**
- **That needed adjustments in design or implementation are made to address findings and changes in internal and external circumstances.**

2. Socio-economic and Other Resource Challenges

Important Rationale. These criteria focus on the experience and promise (not race or gender identity) of individuals who have had limited resources and opportunities. Societal inequities may result in disproportionate representation of some groups among those satisfying the criteria.

Additional Key Design Elements—For effectiveness and legal sustainability:

- a. **Combining a number of indicators of low socio-economic background and other related challenges is often most accurate and effective.** Socio-economic background is defined by several factors involving complex challenges and effects. It is not defined by income alone. Consider residential or school district located in Census Bureau-designated areas of concentrated poverty; total wealth; income; parental education background and other indicators of social capital.
- b. **Emphasize the high qualifications of the students selected under this criterion.** Their accomplishments are particularly great because they have had to address challenges many others have not faced—which should be a source of earned pride in themselves and evidence of their ability to succeed.
- c. **Complement this criterion with tailored mentoring and community building programs; financial, transition, social support; and academic and financial skills development programs** to help students make a smooth transition and ultimately succeed and realize their potential. (See A.1 above—Barrier Removal and A.3—Neutral Community Building and Mentoring.)

- **Understand recruitment of these students will require an elevated effort** and assure adequate staffing in relation to the population and schools targeted.
- **Prioritize, to the extent possible, financial aid programs that cover the full cost of tuition and fees, as well as living expenses.** Affordability is not a function only of tuition and fees. Create a threshold and, potentially a sliding scale, to provide limited available support to qualified students most in need.
- **Federal law (for federal funding) and state law (for state funding) must explicitly provide for financial support to students, irrespective of their immigration status,** in order for IHEs to provide publicly funded financial aid to students who are not U.S. citizens, green card holders (permanent residents), “resident aliens” who are applying for permanent resident status or U.S. citizenship, or within certain other limited immigration status categories.¹⁴
 - Private institutions likely may look to the private source of aid funds for students who don’t qualify for public aid funding.
 - All funds that flow through public institutions are likely considered state funds.

Implementation Examples—neutral selection criteria relating to socio-economic background and similar challenges¹⁵ from the field and ideas of promise:

¹⁴ The Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (PROWRA), incorporated into the Immigration and Nationality Act, Title 8 of the U.S. Code and the Illegal Immigration Reform and Immigration Responsibility Act of 1996, together prohibit federal, state and local governments from providing to “aliens” public assistance/benefits of many kinds (federal and state retirement benefits, welfare, health, disability and food benefits, public housing, unemployment benefits)—specifically including post-secondary education benefits (e.g., financial benefits such as scholarships, waivers of out-of-state tuition and the like)—unless an exception applies. The exceptions include:

(1) for “aliens” who fall under specific categories set out in PROWRA, such as permanent residents, asylees, refugees, among some others (but not including DACA students who have no official immigration status and are not lawfully present in the U.S., but rather are the subject of an enforcement discretion policy) or

(2) if there were a federal statute that specifically exempts particular otherwise covered “aliens” and federal funds from PROWRA’s prohibition; or

(3) if a specific state or local law enacted after August 22, 2016 affirmatively provides eligibility to receive state or local funds for specified “aliens” who are not lawfully present in the U.S. (or, at least all students regardless of their immigration status). 8 U.S.C. 1611 (federal benefits prohibitions and opt outs), 1621 (state and local benefits prohibitions and opt outs), 1623, 1641 (the specific and general benefits covered).

In administrations of both parties, the federal government has applied the prohibitions imposed by PROWRA, resulting in denial of Medicaid coverage, CHIP healthcare benefits, the Affordable Care Act benefits, federal housing assistance, and federal student loans to DACA students.

¹⁵ The College Board has created a web-accessed tool, the Landscape, that provides IHEs with a framework of criteria and school and residential data that can help IHEs to assess educational access and challenges in the context of individual students’ life experiences. The College Board populates some of the data and assembles data from an IHE, enabling the IHE to consider that context in assessing student accomplishments and promise, and to expand access. See, <https://pages.collegeboard.org/landscape>

- a. ***Experience of a low socio-economic background.***
- ***Measure socio-economic status in a meaningful way, using commonly accepted standards***—total wealth, not just income, and concentration of poverty in residential zip codes and school districts as determined by the U.S. Census Bureau.
 - ***Experience of financial insecurity and/or hunger is a complementary criterion.***
 - ***See Part A.1 on barrier removal, A.2 on outreach and recruitment, A.3 on community building and mentoring programs, and A.4 and 5 on pooling and aggregation.*** Socio-economic status and the related neutral criteria in B. 2 below may be used as neutral criteria in these efforts, if the IHE’s interest is authentic.
- b. ***Experience of attending under-resourced schools.***
- ***As another indication of a low socio-economic background***—although it may correlate to some individuals’ social class and not economic resources.
 - In some cases, a family of higher means lives in a poorly resourced residential and school district where there is a greater sense of belonging to a racial, ethnic or immigrant community, or is forced or encouraged to do so due to racial segregation and racial hostility in some predominantly white neighborhoods;
- c. ***Substantial family and earning responsibilities as a child, and similar experience.***
- ***These are additional indications of a low socio-economic background and important context for considering a student’s accomplishments and qualities.***
- d. ***Ability to enhance all students’ understanding of socio-economic and related societal issues.***
- ***It may or may not be an indication of personal experience of a low socio-economic background.*** This is a knowledge criterion, which may come from family/personal experience or individual interest and book-learning or service activity.
- e. ***English as a second language and immigrant background.***
- ***This is a distinct background, presenting its own strengths and challenges.***
 - ***It may, but will not always, correlate with low socio-economic background.***

- *See Part A.1 on barrier removal, A.2 on outreach and recruitment, A.3 on community building and mentoring programs, and A.4 and 5 on pooling and aggregation.* English as a second language may be used as a neutral criterion in these efforts if the IHE’s interest in this criterion is authentic.

3. First Generation

Important Rationale. This criterion focuses on the experience and promise of individuals who are the first generation of their families to attend college (not race or gender identity). Societal inequities may result in disproportionate representation of some identity groups in those satisfying the criterion.

Additional Key Design Elements—for effectiveness and legal sustainability:

- a. **First generation in a family to attend or graduate from college.** First generation in relation to a family—not first individual in a family—to attend or graduate from college is key if all siblings (not just the first sibling) are intended to be covered.
 - *Refer to Part B.2 above, which may overlap with first generation.*

Implementation Examples—strategies from the field and ideas of promise in support of first-generation student diversity and equity

- a. *See Parts A.1 on barrier removal, A.2 on outreach and recruitment, A.3 on community building and mentoring programs, and A.4 and 5 on pooling and aggregation.* First generation status may be used as a neutral criterion in these efforts.

4. Geographical Diversity

Important Rationale. This criterion focuses on the varied experiences of individuals (not race or gender identity) in a range of schooling and residential locales. Some (not all) aspects of geographical diversity may result in disproportionate representation of some racial groups.

Additional Key Design Elements—for effectiveness and legal sustainability:

- a. **Domestic regions/states/urban-rural-low-income zip codes not well represented at the IHE.**
 - *Being a resident or attending school in the region, state or zip code is the consideration—not any individual’s race.*
 - *These criteria may overlap with low socio-economic and first-generation criteria and their design elements.* (See B.2 and 3 above.)

- *The authentic interest is in providing access to the IHE's and departments' educational programs to students in the targeted geographical areas whose access otherwise would be limited or non-existent.*
 - *The authentic interest is in enriching the academic environment by including individuals with the different experience of living in urban, rural, or regional settings, particularly those not otherwise well-represented at the IHE or in particular departments.*
- b. *Zip codes and urban or rural areas not well represented at the IHE whose populations are comprised predominantly of people of color.*
- *Being a resident or attending school in the zip code is the consideration—not any individual's race.*
 - It is the experience of a person of color being in the dominant culture and the experience of a white person being in a minoritized group that are valued—because this experience is different than would otherwise occur in society;
 - Arguably, if experience of people of all races is authentically equally valued, this is not a race-conscious consideration, but rather a pure locale-associated experience criterion. However, this point has not been reviewed or determined by the Supreme Court or a federal appellate court;
 - See C. (Special Considerations) below regarding macro race-attentive policies and whether exacting legal standards will apply;
 - *This criterion may overlap with low socio-economic and first-generation criteria and their design elements.* (See Parts B.2 and 3 above.)
- c. *International areas that are not well-represented at the IHE.*
- *Having resided or attended school in the target area and having the experience of that culture and perspective are the considerations—not any individual's race, citizenship, or national origin.*
 - *Having resided or attended school in targeted international locales that have high concentrations of people of color, but where people of color are in the dominant culture and white people are minoritized, may be an authentic interest for the IHE.*
 - It is the experience of a person of color being in the dominant culture and the experience of a white person being in a minoritized group that are valued because this experience is different than would otherwise occur in society;

- *Arguably, if experience of people of all races is authentically equally valued, this is not a race-conscious consideration, but rather a pure locale-associated experience criterion.* However, this point has not been reviewed or determined by the Supreme Court or a federal appellate court.

5. Expertise/Knowledge Criterion on issues of racial and gender in society, with a passion and ability to elevate others' understanding (with 6., below)

Important Rationale. This criterion focuses on an individual's expertise, knowledge or experience related to race and gender, however acquired (not on race or gender identity). Societal inequities may result in disproportionate representation of some identity groups in those satisfying the criterion.

6. Commitment Criterion to ameliorate racial or gender inequities in society and/or serve communities targeted by such inequities (with 5., above)

Important Rationale. This criterion focuses on an individuals' commitment to ameliorating racial and gender inequity and advancing social justice (not individuals' race or gender identity). Societal inequities may result in disproportionate representation of some identity groups in those satisfying the criterion.

Additional Key Design Elements (for 5 & 6)—For effectiveness and legal sustainability:

- a. **Recognize that 5 and 6 are distinct criteria and give due attention to all aspects of each criterion.** Not everyone with knowledge of inequity and passion to share that knowledge is committed to ameliorating inequity in college or beyond. Not everyone with knowledge has passion and/or ability to share it.
- b. **Do not assume these criteria are satisfied by all people of color, women, and LGBTQ+ people, or that they are not satisfied by others.** That would perpetuate stereotypes and is likely to be at odds with federal non-discrimination law. Expertise and knowledge may be gained from personal experience, book learning, or service. Commitment may be demonstrated through a record of action.
- c. **Elicit information from the application to determine whether either or both of these criteria are satisfied.** This information is specific to an individual. It is not based on assumptions and stereotypes associated with racial- or gender- identity status.
 - **Consequently, specific information must be elicited from each applicant to determine whether either criterion is satisfied.** See **Example Application Questions—Faculty and Students**, <https://www.aaas.org/programs/diversity-and-law> for a menu of example application questions that address these criteria.)

- d. **Reflect the authenticity of the importance of these knowledge and commitment based criteria to the quality of the educational program by documenting and communicating publicly about the connection, incorporating them in definitions of high merit and in qualifications for student leadership positions, and the like.** Engage stakeholders in exploring and embracing the importance of these qualities.
- **The focus is on enhancing the IHE’s or program’s climate, elevating the understanding of issues of race and gender, not an individual’s identity status,** to advance the IHE’s educational program and service mission and students’ experience living in an increasingly diverse environment and global society.

Implementation Examples—Strategies from the field and ideas of promise in support of advancing educational diversity interests by recruiting and empowering students with the knowledge and passion to elevate understanding of issues of race and gender in society, as well as students with the demonstrated commitment to ameliorate related inequities:

- a. **In addition to considering these criteria (as two distinct criteria) in admission, aid and program selection and participation, create distinct awards to recognize exemplary contributions** to the elevation of understanding of issues of race and gender at the IHE and in society—and exemplary contributions to ameliorating related inequities—at the IHE or beyond.

C. Neutral System Strategies

Distinctive Objective: These strategies reflect a broader **system** design. Similar to barrier removal, they may be part of a complement of other diversity-associated enrollment efforts, or they may enhance the impact of other efforts. Many barrier removal efforts, if undertaken with system-wide reach are also barrier removal strategies. We will not repeat them here, but rather focus on additional system-wide initiatives and approaches to the leadership of an IHE’s diversity effort. As is the case with neutral selection criteria, the substantial and authentic aim of neutral systems strategies is to advance important institutional aims related to their education programs, apart from increasing racial and gender compositional diversity. They do not consider an individual’s race or gender in determining who receives (or does not receive) an opportunity or benefit. However, as with neutral selection criteria, these strategies also are an alternative to race or gender consciousness and may contribute to compositional racial and gender diversity, as a welcome and intended ancillary benefit.

1. Universal Key Design Elements

For effectiveness and legal sustainability of neutral system strategies, these design elements are common and are not repeated with each example:

- a. **The criteria and design for these policies have IHE- or discipline- wide application and substantially serve their important interests—apart from increasing race- or gender-compositional diversity.** As a “race-neutral

alternative” to considering individuals’ race or gender that can advance racial or gender aspects of broad diversity, however, there is awareness and some ancillary intent that these criteria may also enhance such diversity. These policies focus on systems—broadly impactful policies and practices.

- b. ***Race and gender of an individual are not criteria in decision-making for the conferral of benefits or opportunities.***
- c. ***The neutral institutional or discipline interest to be served is authentic; and it is clearly and consistently documented and communicated.***
- d. ***Evaluations of neutral system strategies are conducted on an on-going basis in a regular and documented process, with follow-up occurring, as needed, based on findings.*** The areas of evaluation include:
 - ***Availability and use of neutral system strategies that are administratively and financially feasible (while requiring an IHE to prioritize effort and incur significant investment in them), but do not require change or compromise of excellence standards, competitiveness, character or likely stability of the IHE’s educational program and financial condition.***
 - ***Effectiveness of the neutral system strategies to serve their intended institutional goals.***
 - ***Effectiveness of neutral system strategies to contribute to compositional diversity for the purpose of creating a sufficiently diverse setting where beneficial educational experiences for all students can occur.***
 - ***Needed adjustments in design or implementation to address findings and changed internal and external conditions.***

2. Percent Plans

Important Rationale. This system’s purpose is serving an entire state (or region) by assessing qualification and allocating opportunities in the context of each high school—and without considering individuals’ race or gender. Where some schools are heavily populated by particular racial groups, contributions to racial diversity will also result.

Additional Key Design Elements and Implementation Example—For effectiveness and legal sustainability:

- a. **Automatically admit all high school students from a stated, broad recruitment area who have a class rank, grade point average and/or standardized test score above a threshold.** (See considerations regarding standardized test scores in Implementation Examples, A.1.b)
 - ***This may be viewed as a neutral strategy if there is an authentic purpose other than increasing racial and gender compositional diversity, such as,***

e.g., for a flagship public institution to serve all geographical areas of a state as part of its mission.

- ***IHEs may use a Percent Plan model that combines targeted geographical diversity (targeted zip codes that are not well-represented at the IHE—e.g., urban, and rural, low-income) with academic performance measures.*** (See Part B.4)
 - Focusing the geographical reach of a Percent Plan on particular zip codes may be more “workable” for some (not all) selective IHEs than either strategy alone;
 - **The combination of academic performance and limited geographical areas may reduce, to some extent, concerns about excellence and capacity** that make these strategies unworkable alone;
 - **However, even the combination does not provide IHEs with the ability to consider more than class rank, grades and standardized test scores when determining academic excellence and merit/qualification for admission**—and so much more is usually relevant to many selective IHEs’ definitions of merit/qualifications and is within their discretion .

3. Education Collaboration Agreements

Important Rationale. This system engages voluntary collaboration among educational institutions serving a diversity of communities to ease information access and open pathways for all students. Individuals’ race and gender are not considered in conferring opportunities, but barriers that disproportionately affect some identity groups are lessened.

Additional Key Design Elements—For effectiveness and legal sustainability:

- a. ***Institutions at different points on the pathway to and through college and graduate or professional school enter voluntary collaboration agreements*** to facilitate student access and transition.
- b. ***Middle and high schools whose students lack opportunity to navigate pathways effectively are the focus.*** Race and gender are not considered, but information gaps and barriers facing students overall and of various demographics are identified and eliminated.
 - ***Communications are effective, providing accessible information to all students who have the potential to benefit and their families.***
- c. ***IHEs coordinate to provide education and career counseling, academic and social transition support, and focused student life programs*** (including facilitation of pathways, academic support, and education-career pathways counseling, etc.).

- *Coordination with high schools is included for entry into the college pathways.*
- d. *Faculty are fully engaged in planning and execution and are supportive.*
- e. *Autonomy of standards and decision-making for participating institutions are preserved,* but are understood and coordinated among them, and are addressed in the program design and communications.
- f. *Accreditation requirements are addressed in planning and implementation.*

Implementation Examples—Strategies from the field and ideas of promise to facilitate pathways to and through higher education:

- a. **Voluntary agreements among one or more high schools and IHEs—or among different educational levels of IHEs—or between undergraduate and graduate and professional programs at the same IHE—are entered to facilitate pathways to and through various levels of post-secondary education.**
 - *Some combination of community colleges and 4-year undergraduate, masters and/or doctoral degree granting IHEs enter agreements that provide:*
 - dual enrollment in high school and an IHE to enable students to earn college credit in high school;
 - college credit for certain AP courses, with any required threshold score earned on the test determined in reference to IHE-specific data on correlation to student success;
 - automatic or preferred admission, with transfer of credit, to a higher educational-level IHE for students who take specified courses at a community college or other first level IHE and achieve at least a threshold grade in the courses or in a subject placement examination given by the higher educational-level IHE (sometimes called 2+2 programs), with attention paid to the predictive value of the examination and its effect on different populations;
 - automatic transfer of credit to all IHEs signing the agreement for on-line courses given by any of those IHEs with at least a threshold grade earned;
 - *Joint or dual degree programs among peer IHEs—or between an undergraduate and professional or graduate degree program (e.g., medical, business or law school) at the same IHE or at peer IHEs—provide for a student to do work at both institutions or in both programs and to earn degrees from both in the same time (for a joint degree of the same kind) or in shortened time (for combined undergraduate and professional or graduate degrees).*

- The student typically must apply and be admitted to both IHEs or both programs at the same IHE;
 - Often the available joint degree is limited to one or more particular degree programs. The participating IHEs provide different experiences for students that enrich their educational opportunities;
 - E.g., a four-year liberal arts college and a research university may enter an agreement to provide more advanced research opportunities, equipment, or coursework to students due to differences in the institutions’ scope of courses and research as well as in their facilities;
 - The IHEs’ or IHE’s relevant departments coordinate curricula, instructor credential requirements and teaching responsibilities, and credit and degree requirements;
 - Each IHE maintains its academic standards and discretion, but the programs and standards are compatible and clearly communicated, and faculty at both IHEs are aligned;
 - Each IHE independently grants its degree(s)—or a single degree is granted by both IHEs—based on agreed upon prerequisites;
- b. ***Flexible delivery methods and schedule may be included (on-line, in-person, combinations) to accommodate student needs (e.g., to work, care for family, etc.).***
- c. ***Student life and community-building programs, and opportunities to engage with a diversity of peers, are designed for all delivery models.***

4. Graduation Accommodations

Important Rationale. This system reduces barriers to graduation that disproportionately affect some races without considering individuals’ race or gender or diminishing opportunities or benefits for anyone.

Additional Key Design Elements and Implementation Examples—for effectiveness and legal sustainability:

- a. ***IHEs design non-academic prerequisites to granting a degree to avoid disproportionately adverse impacts on students from low-socio-economic backgrounds or facing heightened challenges to pursuit of a college education.*** A significant number of students complete degree requirements, or come close, without earning their degrees, after investing time and money in a college education. Many of these students are from low socio-economic backgrounds, are first generation or students of color, or otherwise face inequities or

substantial challenges¹⁶ IHEs can advance equity by determining when denial of a degree has a disproportionately adverse impact on student of color, from low socio-economic backgrounds or other groups or is no longer warranted. Financial feasibility may be a consideration, though, depending on the IHE and accommodations.

- ***Students who have earned full academic credit for a degree may not graduate under longstanding policy due to:***
 - Unpaid parking, technology, laboratory, library, athletic/recreation, dining fees;
 - Unpaid tuition;
 - Misconduct and resulting discipline;
- ***Consider policy exceptions/adjustments—automatic in some cases and well-communicated and accessible waiver processes in other cases—to avoid a forever-denial of an earned or nearly earned degree, providing, e.g.:***
 - Maximum time limits for withholding or rescinding earned degrees as a disciplinary measure in cases where academic requirements have been fully met and restorative justice action is taken (i.e., the misconduct does not affect academic performance and the student has made restitution and taken other restorative action to address the harm);¹⁷
 - Maximum time limits for withholding or rescinding degrees as a disciplinary measure where academic requirements have **not** been fully met and restorative action is taken (i.e., the misconduct involved cheating, plagiarism, or other academic performance issues), after which missing academic requirements can be fulfilled and a withheld or rescinded degree will be granted;
 - Deferral of unpaid fees, with a payment plan tied to income and a time limit (to avoid a forever obligation) for students qualifying under financial burden standards;
 - Deferral of unpaid fees with a payment plan tied to income with a time limit (to avoid a forever obligation), or waiver of all or part of fees, for students who enter public service for a period of time (possibly on a sliding scale), including public service aimed at ameliorating societal inequities, and have qualified income below a threshold (although this should **not** be the sole option for relief to receive a degree or it will be coercive to

¹⁶ See Research Charts, <https://www.aaas.org/programs/diversity-and-law>.

¹⁷ See Dr. David Karp's website at University of San Diego Centre of Restorative Justice [here](#)

students who are targeted by such inequities and should not be required to bearing the burden of ameliorating them);

- As generous a window as possible in which a nearly earned degree can be completed, a further window in which at least some credits remain effective, and availability of aid if possible, with flexibility in methods of delivery (on-line and in-person at times when working people can participate) and a robust outreach program with effective communications that reminds former students of this opportunity and provides accessible information on logistics and cost/aid;

5. Cohort Programs

Important Rationale. This system reduces barriers that may disproportionately affect some racial or gender groups, by creating a community of support that enhances confidence and success. Some race or gender groups may be disproportionately represented in its authentically neutral participation criteria, though individuals' race and gender are not considered in selecting participants.

Additional Key Design Elements and Implementation Examples—For effectiveness and legal sustainability:

- a. ***College or career preparatory, mentoring or scholarship programs that are created to bring together students facing similar challenges to pursuit of a higher education or STEMM degree.***
 - ***Often with scholarships.***
 - ***Often sustaining the group throughout their enrollment at an IHE, with faculty, more senior students, and others to help build community for and mentor cohort members on academic, social, life and financial skills, as well as career paths.***
- b. ***Cohort programs may combine with neutral barrier removal programs (see A.1), neutral community building programs (see A.3) and neutral criteria (see B) to determine participation criteria.***

D. Special Considerations

Distinctive Objective: Federal law limits the aims that are substantial enough to justify an IHE's consideration of an individual's race or gender when conferring opportunities and benefits. These aims are: the universally beneficial educational experiences associated with a diverse student body or the rarely attempted or successful aim of remedying an IHE's own discrimination with present effects. Even then, such identity-consciousness must be demonstrated to be necessary to achieve the aims—importantly, based on evidence that race- and gender-neutral strategies are inadequate alone to create the needed diverse setting where such beneficial experiences may

occur. See **Brief Legal Overview** at <https://www.aaas.org/programs/diversity-and-law>. The strategies addressed in this section may contribute significantly to an IHE’s diversity and equity aims but do not fit neatly into the category of race and gender neutral or conscious. Often, they may be designed to be clearly neutral and when that is possible, that is a wise course because it avoids legal ambiguity.

1. Macro Race- and Gender-Attentive Strategies

Key Design Elements—For effectiveness and sustainability:

- a. ***Strategies that do not fit cleanly into the category of race- and gender-neutral or conscious are referred to here as “macro race-attentive”¹⁸—these are strategies that:***
 - ***Have a driving aim to increase racial or gender compositional diversity in the student body but they do not seek to advance another important institutional objective*** (distinguishing them from neutral strategies).
 - ***Have an ultimate compelling purpose of creating a sufficiently diverse setting to provide beneficial educational experiences for all students*** (same as neutral strategies).
 - ***Do not consider the race or gender of any individual in deciding who receives or does not receive an opportunity or benefit*** (same as neutral strategies).
 - ***Apply criteria that individuals of any race or gender may satisfy*** (same as neutral strategies).
- b. ***While the Supreme Court has remarked in Fisher II that a percent plan strategy whose driving aim was to increase racial compositional diversity would not result in a “more neutral” admission program, the Court has not definitively characterized such a strategy (or other macro-attentive strategies) or ruled, one way or the other, whether exacting legal standards apply.*** Arguably exacting standards should not apply, where these strategies avoid identity-status stereotyping, do not use criteria that define or value individuals by their identity status (i.e., they use criteria that people of all races and genders may satisfy), and advance an ultimate compelling educational goal to provide beneficial educational diversity for all students. And if they do apply, these strategies should more easily satisfy the standards, than would a race- or gender-conscious strategy.
- c. ***Distinguishing Macro-Attentive from Neutral.***

¹⁸ “Macro-attentive” is our term, not the Supreme Court’s. It reflects policies with macro-level racial and gender awareness and aims, without consideration of individuals’ identity status, and for a purpose that is substantial and has been recognized by courts as justifying race- and gender-consciousness when evidence demonstrates the need.

- *Whether a strategy is neutral or macro race- or gender-attentive depends on whether there is an authentic and substantial aim other than increasing race or gender compositional diversity, in addition to the ancillary benefit of increasing such compositional diversity.*
- *However, IHEs should consider whether a clearly neutral design would be authentic and workable, avoiding the uncertainty of macro race attentive strategies; that is always the lowest risk for high reward, if available.*

Implementation Examples—Macro-attentive strategies from the field that often may be authentically designed to be neutral.

- Percent plans developed in a state with segregated residential and school districts.*
 - Targeting opportunities to students from zip codes known to have high concentrations of people of color.*
 - Partnerships with HBCUs and HSIs that target their students for opportunities.*
 - Example a may be neutral if, e.g., the authentic aim is for a flagship institution to serve its entire state. Examples b and c may be neutral if the IHE authentically values and seeks students of all races who have particular valuable experiences from living and learning in these settings that contribute to the broad diversity of the student body beyond individual racial status.*
- *Among experience that may be valued by an IHE is an individual's membership in the majority or minority culture of a high school or residential district, where that status is different for the individual in other societal settings (e.g., a student of color in an almost all white high school or a white student in a predominantly Asian, black and Latinx high school).*