

## Appendix D: Responses to Freedom of Information Act Requests

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The following was sent to “selective public colleges” in 20 states. The accompanying press release, “NAS Affiliates Seek Admissions Data in Twenty States” ([http://www.nas.org/print/pressreleases/hqnas/releas\\_23mar04.htm](http://www.nas.org/print/pressreleases/hqnas/releas_23mar04.htm)), notes:

PRINCETON, NJ -- 23 March 2004 -- The National Association of Scholars announced today that twenty of its affiliates, invoking public disclosure laws, are formally seeking access to admissions documents at selective public universities in their states.

### NAS Letter To University Presidents

Dear President [X]:

Pursuant to the freedom of information and/or public record disclosure laws of [name of state], and as state citizens, we request all documents at [name of university] regarding the following:

Any statements or discussions of university policies, practices, or procedures, formal or informal, relating to the use of racial and ethnic considerations in admissions to or eligibility for any undergraduate, graduate, or professional school program, activity, or benefit. Such information should include but is not limited to:

- A. Groups for which membership is considered a plus factor or a minus factor and, in addition, how membership in a group is determined for individual students;
- B. How group membership is considered, including the weight given to such consideration and whether targets, goals, or quotas are used;
- C. Why group membership is considered (including the determination of the critical-mass level and relationship to the particular institution’s educational mission with respect to the diversity rationale);
- D. What consideration has been given to neutral alternatives as a means for achieving the same goals for which group membership is considered;
- E. How frequently the need to consider group membership is reassessed and how that reassessment is conducted;
- F. Factors other than race, color, ethnicity, or national origin that are considered or collected in the admissions process (unless your school has a policy of not considering race or ethnicity). If those factors include grades or class rank in high school, scores on standardized tests (including the ACT and SAT), legacy status, sex, state residency, or other quantifiable criteria, then we further request all admissions data for applicants regarding these factors, along with the applicants’ race, color, ethnicity, and national origin and the admissions decision made by the school regarding that applicant, with the name of individual students and other personally identifiable information redacted (so as to comply with, for instance, the Buckley Amendment, the Family Educational Rights and Privacy Act of 1974, 20

U.S.C. 1232g) but with appropriate links, in computer-readable form, so that it is possible to determine through statistical analysis the weight being given to race, color, ethnicity, and national origin relative to other factors; and

- G. Any analysis -- and the underlying data used for such an analysis -- bearing on whether there is a correlation (i) between membership in a group favored on account of race, color, ethnicity, or national origin and the likelihood of enrollment in a remediation program, relative to membership in other groups; (ii) between such membership and graduation rates, relative to membership in other groups; and (iii) between such membership and the likelihood of defaulting on education loans, relative to membership in other groups.

Thank you very much for your attention to this request.

Sincerely,

*The National Association of Scholars is America's foremost higher education reform group. Located in Princeton, it has forty-six state affiliates and more than four thousand professors, graduate students, administrators, and trustees as members.*

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## **Factors to Consider in Presidents' Responses to the NAS Information Requests: AAAS-NACME Recommendations**

College officials receiving the information requested above should pose the following questions before crafting a response:

- ▶ What would be a reasonable response?
- ▶ What do state Freedom of Information Act (FOIA) laws require?
- ▶ Can the expenditure of resources associated with compliance to the request be passed to the requester?
- ▶ Can costs be recovered by the college, especially if preparing the information in the form requested is an undue burden?
- ▶ Does the college's provision of information violate

student confidentiality (e.g., small cell size) or yield distortions of the admissions result, especially when holistic review (considering non-quantitative factors such as the student essay) has been employed?

- ▶ If your state higher education institution is under court-ordered desegregation, e.g., Alabama and Louisiana among the 20 listed here, why respond at all to the request? The questions posed are moot.

### **I. General Factors to Consider**

- A. Most state FOIA laws do not compel respondents to create responsive information for the benefit of the inquiring party.
- B. Most state FOIA laws allow respondents to consider any undue burden that might result from responding to the inquirer's request.
- C. Most state FOIA laws allow respondents to charge respondents reasonable fees for obtaining responses to an inquirer's questions.

### **II. Specific Factors to Consider**

- A. When reporting "groups," include student athletes, band members, legacy enrollees, donor children, in addition to race, ethnicity, gender, age, disability status, geography, and any other characteristics relevant to configuring a diverse class, program, or activity of the college.
- B. Since specific, numerical targets, goals, and quotas for students are illegal, they would not be reported. If weight is reported for any factor considered, then all weights must be reported.
- C. "Critical mass" relative to the campus unit or program remains undefined by the Supreme Court's decision in *Grutter*. Moreover, this inquiry seeks an explanation as to "why," but as noted in the general factors to consider above, FOIA laws do not compel respondents to create responsive information for the benefit of the inquiring party.
- D. "Neutral alternatives" need only be considered; implementation is not required. Also, research has uncovered that many of these so-called alternatives are not race-neutral. See this Guidebook for the design principles dealing with Target Population and Character of the Program.

- E. Given the need for government reporting and NCAA accountability, “reassessment” is likely to be a continuous process.
- F. Is the college the appropriate unit or, instead, the individual components, e.g., the law school? This is the crux of “critical mass” considerations. The request also assumes that criteria other than holistic review are being employed to yield the numbers reported. The use of nonquantitative factors will always appear to favor certain aggregates. Providing the data requested risks distortion of the decisionmaking process used by the relevant unit (and supported by the Court). It is unclear what to do with students who claim mixed-ethnic background or refuse to report. Finally, to put this in “computer-readable form” imposes an undue reporting burden, yields cell sizes that would identify individuals, and assumes that all factors can indeed be reflected by quantitative means.
- G. It is illegal to “favor” a group, so assuming compliance with the law, there is no need to respond to these questions.

