



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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TEXAS

March 7, 2019

Mr. Roger Clegg  
General Counsel  
Center for Equal Opportunity  
7700 Leesburg Pike, Suite 231  
Falls Church, Virginia 22043

Re: Texas Tech University Health Sciences Center  
OCR Number: 06-05-2085

Dear Mr. Clegg:

This letter is to inform you that the U.S. Department of Education (Department), Office for Civil Rights (OCR), Dallas Office, has accepted an agreement to resolve the above-referenced complaint, filed against Texas Tech University Health Sciences Center (TTUHSC or Recipient), Lubbock, Texas. On July 22, 2005, OCR initiated an investigation to determine whether TTUHSC's decision to change its prior race-neutral criteria, by considering race and ethnicity as admissions factors in 2005, violated the strict scrutiny requirements of Title VI of the Civil Rights Act of 1964. Specifically, OCR sought to determine whether TTUHSC's use of race and ethnicity in admissions was impermissible because TTUHSC's prior more narrowly tailored race-neutral admissions system was a workable alternative in obtaining the educational benefits that flow from a diverse student body.

OCR enforces Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin by recipients of Federal financial assistance. As a recipient of Federal financial assistance from the Department, TTUHSC is subject to Title VI and its implementing regulations.

OCR conducted interviews with you and TTUHC staff and administrators. Additionally, OCR considered documentation and information provided by you and TTUHSC (e.g., admissions data from 2005-2017, enrollment demographics, TTUHSC internal memorandums, TTUHSC narrative responses, as well as admissions-related policies and procedures). Before OCR completed its investigation, TTUHSC expressed an interest in resolving the allegations pursuant to Section 302 of OCR's *Case Processing Manual* (CPM), and OCR determined it would be appropriate to resolve the case with an agreement. The basis for this determination is outlined below.

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.*

## Legal Standard

A use of race or national origin that violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution also violates Title VI.<sup>1</sup> Thus, in analyzing the lawfulness of the use of race or national origin, OCR considers not only Title VI and its implementing regulation, but also case law from the United States Supreme Court interpreting the Equal Protection Clause. This includes the Court's decisions in Grutter v. Bollinger (Grutter),<sup>2</sup> Gratz v. Bollinger (Gratz),<sup>3</sup> and Fisher v. University of Texas at Austin (Fisher I)<sup>4</sup> and Fisher v. University of Texas at Austin (Fisher II).<sup>5</sup>

Under the terms of these and other Supreme Court cases, strict scrutiny review is required to determine whether programs that consider the race of individual persons to award benefits violate the Equal Protection Clause. The Supreme Court has said there are two parts to strict scrutiny review: 1) an assessment of whether the use of race serves a compelling interest and, 2) an assessment of whether the use of race is narrowly tailored to meet that compelling interest. The Supreme Court has clarified that the academic judgment as to the educational benefits that exist from a diverse student body is entitled to some, but not complete, judicial deference. In order for a use of race to be narrowly tailored, in the context of postsecondary admissions, the Court has said there must be a serious, good faith review of workable race-neutral alternatives to achieve the sought-after student body diversity; there must also be flexible and individualized review of applicants; the use of race must not unduly burden applicants of any racial group; and the consideration of race must be subject to periodic review. In this regard, it is incumbent upon the institution to show that the approach utilized in promoting diversity is narrowly tailored to meet the compelling interest.

OCR's investigation in this case focused on whether the current use of race by any of the five schools within the TTUHSC met narrow tailoring requirements, rather than whether the TTUHSC sufficiently established a compelling interest when implementing any race-conscious admissions policies.

## Findings of Facts

TTUHSC is part of the Texas Tech University System (System). TTUHSC, which was established in 1969, comprises five separate schools (each with their own separate admissions requirements): the School of Allied Health (now known as the School of Health Professions), the Graduate School of Biomedical Sciences, the School of Nursing, the School of Pharmacy, and the School of Medicine. For the fall of 2017, TTUHSC had an overall enrollment of 4,676 students.<sup>6</sup>

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<sup>1</sup> See Alexander v. Sandoval, 532 U.S. 275, 280-81 (2001) (citing Regents of the University of California v. Bakke, 438 U.S. 265, 287 (1978) (opinion of Powell, J.)).

<sup>2</sup> 539 U.S. 306 (2003).

<sup>3</sup> 539 U.S. 244 (2003).

<sup>4</sup> 133 S.Ct. 2411 (2013).

<sup>5</sup> 136 S.Ct. 2198 (2016).

<sup>6</sup> See <http://www.txhighereddata.org/index.cfm?objectid=3B958FB0-1022-11E8-962D0050560100A9>.

In October 2003, the System Board of Regents (Board) issued a public statement regarding the U.S. Supreme Court ruling on the use of race and ethnicity in student admissions in Grutter v. Bollinger (Grutter).<sup>7</sup> In its statement, the Board acknowledged that the Court's decision allowed race and ethnicity to be considered in admissions decisions provided that the admissions policies are structured consistent with standards outlined by the Court. The Board announced that in light of the Grutter decision, the components of the System "will implement admissions policies for the entering class of Fall 2005 that add race and ethnicity to an admissions process that considers "an individualized and holistic" review of the applicants."

Notwithstanding the Board's statement that race and ethnicity would be added to the admissions policies of its component institutions beginning with the fall 2005 class, OCR found that each of the five TTUHSC schools made an independent determination regarding whether to include race and national origin as factors in its respective admissions policies. Three of the five schools--the School of Allied Health, the Graduate School of Biomedical Sciences, and the School of Nursing--reported to OCR that they have never considered race or national origin in their admissions practices. OCR reviewed applicable admissions policies from each of the schools and confirmed through interviews with members of the admissions committee from each of the three schools that race or national origin are not factors considered in the admissions policies or practices of each respective school.

#### *School of Pharmacy*

During OCR's investigation, the School of Pharmacy, from 2005 through 2008, considered race and national origin in its admissions decisions. In December 2008, the School of Pharmacy, however, revised its admissions policy to remove any reference to consideration of an applicant's race or national origin as a factor in the admissions process. The revised admissions policy went into effect in the fall of 2009.

OCR reviewed a copy of the School of Pharmacy's current admissions policy, which has been in effect since 2009. The policy provides that four different "diversity factors" can be considered by admissions staff when determining whether to grant an offer of admission to an applicant. The four "diversity factors" are the following:

- a. Is the applicant's official residency in an area classified by Texas as underserved with health professionals?
- b. Bilingual proficiency;
- c. Has the applicant distinguished themselves in extracurricular activities directed to health care or community service?
- d. Other special considerations as presented by the applicant.

In an interview with OCR, the Assistant Dean for Student Services of the School of Pharmacy confirmed that "other special considerations" is not to be interpreted to include a consideration of race of an applicant. The School of Pharmacy also provided OCR with a copy of a June 10, 2016 memo from the Chair of the Student Affairs Committee to all members of the Student Affairs Committee for the 2016-2017 school year which reminded each of the admissions

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<sup>7</sup> 539 U.S. 306 (2003).

committee members that “race and/or national origin are not factors that we consider at any stage of our admissions process.”

### *School of Medicine*

The TTUHSC School of Medicine (SOM) has considered race or national origin as one factor in its holistic admissions practices since 2005. Accordingly, the SOM is the only TTUHSC school that currently considers race or national origin as a factor in its admissions process.

In its response to OCR’s initial data request, TTUHSC asserted that it had established a compelling legal interest as described by the Supreme Court in Grutter. TTUHSC stated that its institutional goal to prepare health professions students for an increasingly diverse workforce and patient population requires a student body that is sufficiently diverse to serve the particular needs of the diverse populations TTUHSC’s health professions graduates will be called upon to serve. TTUHSC based its determination on extensive empirical evidence in the academic literature documenting the importance of cultural sensitivity, both racial and ethnic, in successfully treating and meeting the health needs of a diverse patient population.

OCR reviewed the SOM 2017-2018 catalog, Mission Statement, Vision Statement and Diversity Statement. In its Mission Statement, the TTUHSC SOM states:

Founded in 1969, the TTUHSC School of Medicine has continually worked to address the shortage of physicians in West Texas by providing quality, innovative educational opportunities to medical students and residents who serve as competent and compassionate medical professionals for the region and the state of Texas. The medical education program emphasizes the principles of primary care and provides sound inter-disciplinary and inter-professional training that integrates basic sciences knowledge, clinical skill, diversity, and a humanistic approach focusing on high standards and comprehensive evaluation. The school's medical practice, Texas Tech Physicians, strives to utilize state-of-the-art technology to effectively meet the growing needs of a diverse and largely rural patient population through strong partnerships with clinical affiliates. Principles of teamwork, humanistic care, and cost effectiveness are embedded into the practice of medicine. The research strategy of the school is to develop insights into the science of medicine, treatments, prevention, and cures, and enhanced methods for managing patient illness, with an emphasis on opportunities for medical student research. Centers of Excellence and Institutes work toward defined areas of excellence where contributions on a national level can be made.<sup>8</sup>

Likewise, the SOM’s Vision Statement provides: To be known for excellence in teaching, patient care, and scientific contributions that enhance the health care of communities in the region.<sup>9</sup> Finally, TTUHSC’s Diversity Statement states:

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<sup>8</sup> See <https://www.ttuhsc.edu/medicine/about.aspx>.

<sup>9</sup> See <http://www.ttuhsc.edu/medicine/about.aspx>.

The core foundational value of including the diverse cultures, lifestyles, personal beliefs and ideas of all those we serve – and serve alongside – provides a positive impact on the health of our regional, national, and global societies. As we pursue excellence in health care education, research, and patient care, we will be ever mindful of the strength that is gained through unity in diversity.<sup>10</sup>

The SOM noted that it is charged by the state legislature with improving health care in West Texas, which encompasses 108 counties, has several low income areas, and a racially diverse patient population. The SOM considers an applicant's race as one factor among many, such as: first generation college graduate, multilingual proficiency, community involvement, and responsibilities while attending school such as employment or assisting in the care of brother/sisters, as well as other life circumstances, during its review of applicants to try to ensure that the doctors who graduate are better able to meet the needs of their patients. The SOM also advised OCR that it wants to maintain the option of considering an applicant's race to comply with a requirement from its accrediting agency (Liaison Committee on Medical Education/LCME) to have a policy in place to achieve diversity among its students and faculty.

The SOM reports that a diverse student body enhances the learning environment, but that it does not have a set number or quota of students from underrepresented groups to be admitted. In its response to OCR's initial data request, the TTUHSC stated that in assessing progress toward the objective of achieving student body diversity at the SOM, student body diversity would be measured in relation to: (1) the make-up of the applicant pool; (2) the make-up of the areas served by the medical school; and (3) development of a "critical mass" of students from underrepresented groups.

In interviews with several members of the SOM's admissions committee, OCR confirmed that an applicant's race can be used as one of the factors the committee members consider. Committee members could not articulate, however, how or at which stage of the application process an applicant's race is considered or remember any specific instances when they considered an applicant's race during the admissions process.

In a letter to OCR, dated June 10, 2016, the TTUHSC further explained that the admissions policy and process and the composition of the SOM student body are reviewed on an annual basis to ensure the process is "yielding results." In an interview with OCR, the SOM Associate Dean of Admissions and Diversity (Associate Dean) explained that at the completion of the admissions cycle each year, the admissions committee and staff review both policy and process to determine whether or not there are areas of opportunity for improvement. This review includes the reassessment of the holistic review to determine whether it, along with the race-neutral measures used that year, had assisted the school in meeting its goal of enrolling a diverse student body. The Associate Dean acknowledged, however, that its review does not specifically consider the necessity for continued use of race-conscious admissions policies or whether race-neutral alternatives would be as effective in achieving similar levels of diversity. Indeed, the SOM further acknowledged that it does not maintain any documentation related to the review process, as minutes are only recorded when changes are made to either policy or process, and there have been no changes made to either regarding the use of race and/or national origin.

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<sup>10</sup> See <http://www.ttuhschool.edu/diversity/default.aspx>.



### **Analysis Supporting Section 302 Agreement**

The TTUHSC's School of Allied Health (now School of Health Professions), Graduate School of Biomedical Sciences, and School of Nursing never used an applicant's race as a factor in the admissions process. OCR also found that TTUHSC's School of Pharmacy, beginning in 2005, considered race or national origin in its admissions process, but then, since the fall of 2009, stopped considering an applicant's race/national origin as a factor in the admissions process. Because the four schools do not consider race or national origin as a factor in their admissions processes, OCR has no basis for further investigation of the respective admissions policies and practices of these four schools.

However, the TTUHSC SOM states that it does consider race and national origin in its admissions process. OCR has concern that this use may fail the narrow tailoring requirements that form the second prong of strict scrutiny review. Specifically, OCR's investigation found that the TTUHSC SOM may not subject its race-conscious admissions policy to appropriate periodic review. The TTUHSC SOM did not clearly document, and interviews did not reveal, that the SOM considered whether its use of race-neutral alternative measures were sufficient, standing alone, to obtain the educational benefits that flow from student body diversity. The SOM maintains that a review of admissions policies and processes is conducted at the completion of the admissions cycle each year, and SOM confirms that the purpose of the review is to determine whether there are areas of opportunity for improvement with respect to the holistic admissions process to determine whether it, along with the race-neutral measures used that year, had assisted the school in meeting its goal of obtaining the educational benefits that flow from a diverse student body; however, SOM produced no review of the continued necessity for race-conscious policies in response to OCR's requests. Further, the SOM could not articulate how/when race is used. Given the lack of documentation and the testimony to date, OCR could infer that TTUHSC has failed to assess who or how many are burdened by any use of race, or otherwise assess how well SOM has tailored its use of race. At this point, OCR has concern that the SOM's admissions process may not be narrowly tailored; if so, it would fail the second prong of strict scrutiny review and violate Title VI.

On February 26, 2019, TTUHSC submitted the enclosed Resolution Agreement (Agreement) to resolve the compliance issues identified in this investigation.

OCR will monitor the implementation of the Agreement by TTUHSC to determine whether the commitments made by TTUHSC have been implemented consistent with the terms of the Agreement. Although verification of the remedial actions taken by TTUHSC can be accomplished by a review of reports and other documentation provided by TTUHSC, in some instances, a future monitoring site visit may be required to verify actions taken by TTUHSC.

This concludes OCR's investigation of the complaint and should not be interpreted to address TTUHSC's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR

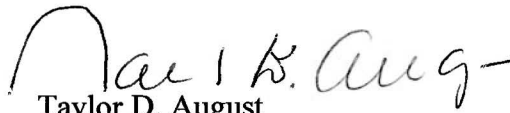
official and made available to the public. You may file a private suit in federal court whether or not OCR finds a violation.

Please be advised that TTUHSC may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and other related correspondence and records upon request. In the event we receive such a request, we will seek to protect, to the extent provided by law, personally identifiable information which, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions, please feel free to contact the attorney-investigator, Richard Cho, by telephone at (214) 661-9631 or by e-mail at: Richard.Cho@ed.gov. You may also contact team leader Adriane Martin by telephone at (214) 661-9678 or by e-mail at: Adriane.Martin@ed.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Taylor D. August". The signature is fluid and cursive, with a large initial "T" and "A".

Taylor D. August  
Regional Director  
Office for Civil Rights  
Dallas Office

Attachment