



The Shifting Landscape: Navigating the Supreme Court's Decision on Race in College Admission

Access and Diversity Collaborative

July 12, 2023

Presenters



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Digital Resource contains information on and links to:

- Webinars and Events
- Key Resources for Higher Education
- Court Cases and Analyses

Web Hub for Race in Admission

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U.S. Supreme Court Ruling on Race in Admissions Prepare Now for the 2023 Ruling

The U.S. Supreme Court case on the use of race in admissions is unfolding. Get the information, key resources, materials, and event details you need from the Access and Diversity Collaborative to make strategic decisions and prepare for the Court's decision.

- Start Here: Get Briefed**
Need to become up to speed on the case and its implications for your campus? Prepare for the 2023 decision right now following the ADC's Key Action Guide for Every Institution. [Learn more.](#)
- Join Us: Webinars and Events**
Learn with your peers. Get up-to-the-minute information on the ruling at our webinars and upcoming events. [Browse events and recorded sessions.](#)
- Take Action: Key Resources**
Prepare your campus by using the materials and publications to examine and review your admissions policies. [Explore resources.](#)
- Go Deeper: Court Cases and Analyses**
Need deeper analysis? Review our issue and case briefs related to access and diversity. [See key cases.](#)

<https://collegeboard.org/race-in-admissions>

College Advising, Access, and Diversity: Examining the Supreme Court Decision on Race and College Admissions

Presenter:



Dr. Crystal Newby
Senior Director,
Strategic Admission, Access, and
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Meet Dr. Crystal Newby

Dr. Crystal E. Newby has over 18 years of experience in higher education and currently serves as Senior Director, Strategic Admission, Access, and Diversity Initiatives at College Board. In this role, she oversees the Access and Diversity Collaborative which is a member-led coalition of institutions and organizations who champion access and diversity in education with a focus on race in college admission.

She has worked in college admission offices at the University of Scranton, Montclair State University, and Bloomsburg University. Her educational credentials include a BA in Communication and MS in Human Resources Administration from the University of Scranton, where she currently serves as a trustee. She also holds an EdD in Entrepreneurial Leadership in Education from Johns Hopkins University.

Today's Agenda

The Court's Ruling

Definitions

Policy and Practice Implications

Strategies and Action Steps



A Moment for Leadership

Now is the time for leadership, not retrenchment.

In the face of new challenges, we have opportunities. Seize them.



Not Legal Advice

Preliminary Analysis...More to Come

The Court's opinion is complex and our analysis is preliminary, still subject to further refinement.

Nothing in this presentation should be construed as legal advice, which is highly fact- and context-specific. We elevate key points of interpretation and practice as general guidance to consider as you consult with your counsel.

Preliminary Analysis on Which Presentation is Based



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Policy | Strategy | Law | Advocacy

**Preliminary Guidance Regarding the U.S. Supreme Court's Decision in
SFFA v. Harvard and SFFA v. UNC
July 6, 2023**

This preliminary working draft has been developed to provide initial guidance regarding the Supreme Court's SFFA opinions. We offer this draft, directional guidance to support understanding and leadership within the higher education community in light of immediate enrollment issues with which institutional leaders are grappling. Given the complexity of the decision and the issues implicated, this draft will be reviewed and supplemented in the coming weeks.¹

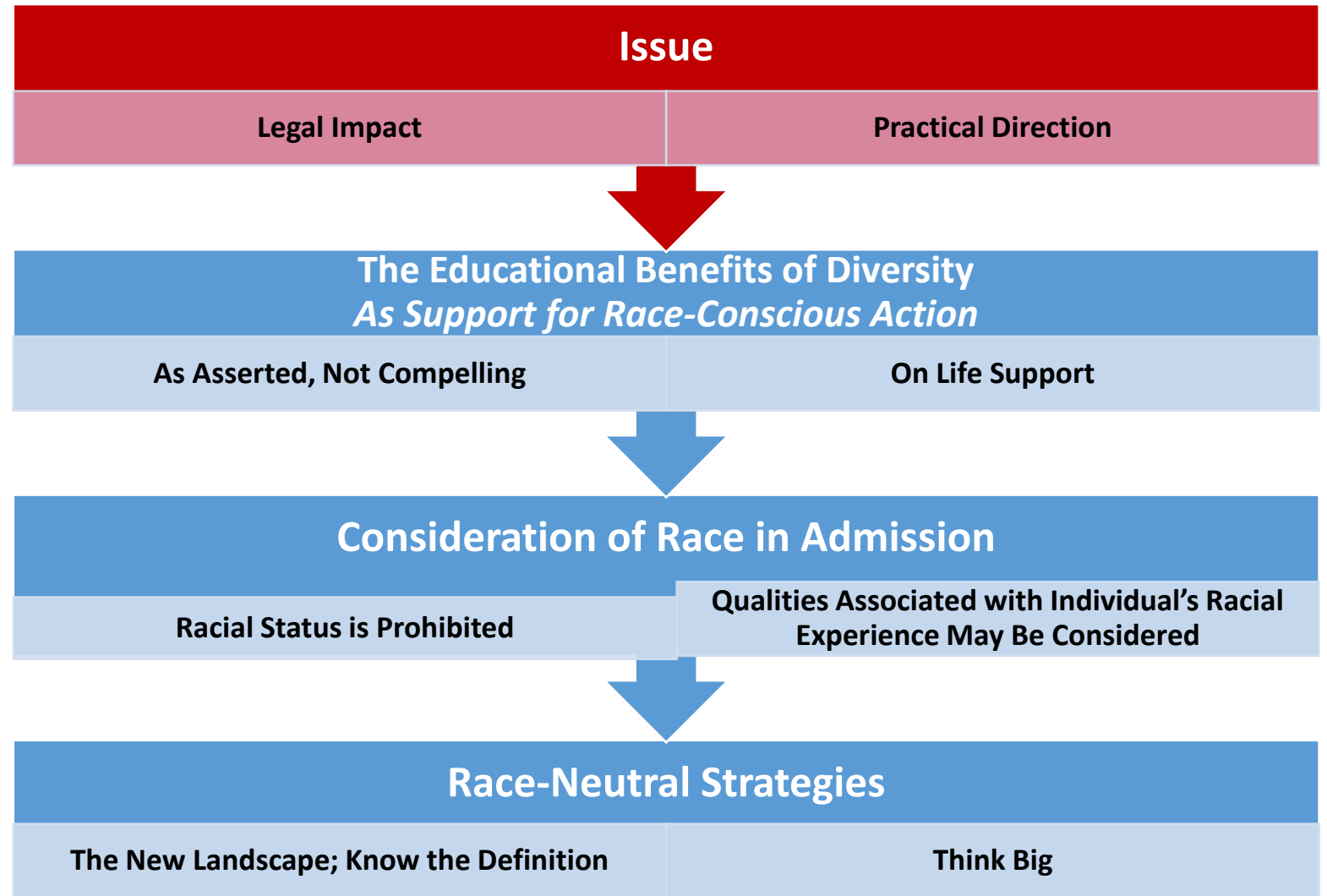
<https://educationcounsel.com/?publication=educationcounsel-preliminary-guidance-regarding-the-u-s-supreme-courts-decision-in-sffa-v-harvard-and-sffa-v-unc>

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The Court's Ruling

The Top Takeaways



The Court Ruling

Compelling Interest

- The educational benefits of diversity (previously recognized) are no longer compelling to justify race-conscious action.
- Too “amorphous” & “elusive.” | Not “sufficiently measurable” or “coherent.”
- Note: “worthy” and “commendable”

Negative Effect/Stereotypes

- The “classification” of race was “used as a negative” and impermissibly “stereotyped” applicants based on race.
- Led to 11% decrease in number of Asian American students admitted.
- College admissions are “zero-sum.” | Admission involved “preferences on the basis of race alone”

End Point in Time

- Admissions programs “lacked a logical end point.”
- Tight percentage bands by race, from year to year implicated “[o]utright racial balancing.”
- Process of periodic review isn’t sufficient for satisfying durational requirement; need specific end point to the consideration of racial status

The Court Ruling

Institutional Mission

- “Universities may define their mission as they see fit” within broad legal parameters.
- Significant deference is afforded to higher education institutions on this issue.

Qualities from Student Racial Experience

- “[N]othing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life...”
- The “touchstone of an individual’s identity [must be with respect to] challenges bested, skills built, or lessons learned” —not the color of their skin.

Compelling Interest to Justify Race-Conscious Action: Our Take

Prohibited Interests in SFFA

Robust exchange of ideas
Improving teaching and learning
Fostering innovation and problem solving
Preparing engaged citizens and leaders
Breaking down stereotypes

Accepted Interests in Grutter & Fisher II

Robust exchange of ideas
Improving teaching and learning
Fostering innovation and problem solving
Preparing engaged citizens and leaders
Breaking down stereotypes

An End Point for the Consideration of Race: Our Take

SFFA

A fatal flaw of race-conscious policies is the absence of a definitive end point for the consideration of race, notwithstanding the process of periodic review and evaluation

Grutter and Fisher II

To comport with federal nondiscrimination law, race-conscious policies need not have a definitive end date so long as process of periodic review and evaluation is present

What the Court Did Not Expressly Address

Scholarships
and Financial
Aid

Outreach and
Recruitment

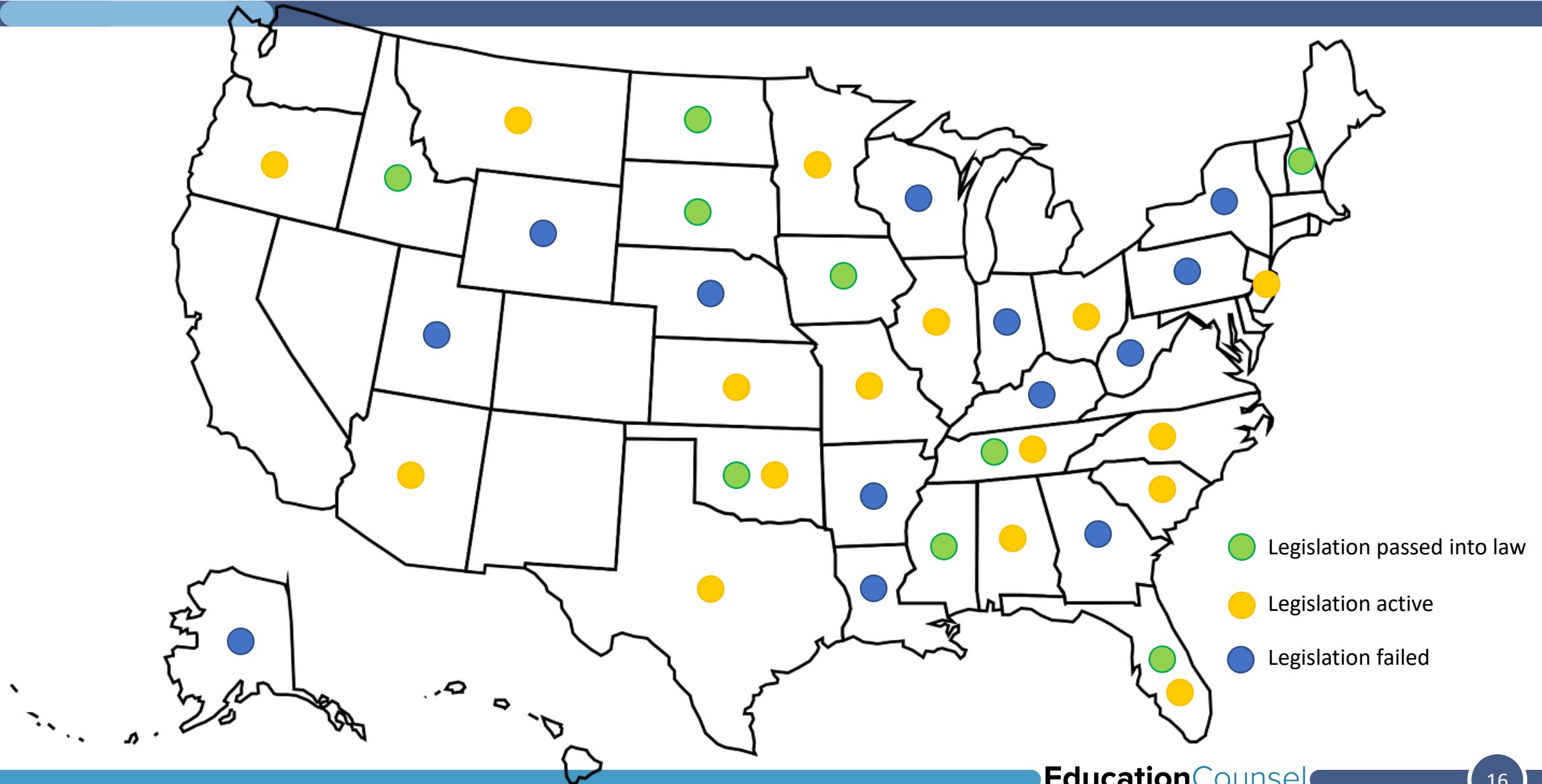
Pipeline and
Pathways
Programs

Data
Collection

Employment

Race-Neutral
Strategies

“Political Strict Scrutiny”: Anti-DEI Bills Have Been Introduced In 35 States





Reflections

Definitions

Back to Basics: Definitions

Race-conscious

Express-Intent-Effect-
Individual Benefit

E.g., Fisher II Majority:
Texas Top 10% Plan

Race-neutral

Intent-Effect
(Often) Broad-based/Inclusive

E.g., General Recruitment &
Outreach

Back to Basics: Race-Neutral and Multiple Motives

A focus on legally “race-neutral” policies and practices will be central in future planning and design. Remember, intent must be authentic tied to mission-aligned non-racial interests, even where the interest in advancing race-related goals is present.

Preliminary Spectrum:

Neutral
Articulation and
Purpose

Neutral Articulation &
Purpose—with Awareness of
Racial Benefits

Mixed Motive—with
Secondary Racial Purpose
Affecting Policy Design or
Impact

Neutral
Articulation As
(Inauthentic)
Proxy for Race-
Related Purpose

How Definitions May Translate

Race-conscious

Involves consideration of applicant's racial status

Race-neutral

Involves consideration of an individual's qualities associated with experience relating to race

Other qualities and characteristics like first generation, low income/wealth, etc.

Policy and Practice Implications

The Race Continuum: The Relevance of Race In Applications



Identity Dependent

“Check the Box”

Racial Status

Race-Neutral, Experience-Related Qualities

Quality associated with
experience of race in a
person’s own life journey
relevant to mission

Race-Neutral Qualities: Subject, Expertise, or Action

Issues of race or equity as subject of
actions of commitment or knowledge
relevant to mission

Key Qualities Associated with Experience

Expertise or Record

- Formal expertise in race issues/inequities
- Record of elevating others' understanding, creating welcoming climate for all

Commitment

Commitment to ameliorate racial injustice

Knowledge

- Deep knowledge of issues of race in society, community, or education; or from other meaningful engagement with communities

Implications: Admissions

Holistic Review

- **No consideration of racial status**
- **Consideration of mission-aligned skills, knowledge, and character qualities associated with actual student experience of race**

Essay Questions

- **An important avenue to elicit mission-aligned information about skills, knowledge and character qualities**

Monitoring Class Composition

- **Assure complete segregation between information on rolling admissions trends by race and decision-makers involved in holistic review**
- **(Nothing prohibits collection of disaggregated data for research, evaluation, etc. purposes.)**

Shaping the Class

- **Not specifically addressed, but problematic to ‘shape’ class with categorical focus on applicant’s racial status**
- **Consider new models, including identity-neutral DEI factors derived from holistic review analysis**

Implications: Financial Aid and Scholarships

Big Picture

- Financial aid and scholarship decisions will be informed and shaped by principles in Court's opinion
- Arguable distinction: scholarships do not operate as "zero-sum game"
- But, even there, challenge on racial status-based awards remain: what compelling interest?

Key Strategy

- Consider full array of neutral factors and/or adaptation of the "experience associated with race" model for aid awards
- Focus: skills, knowledge, character qualities associated with race

Design Option

- For privately endowed scholarships and institutional aid: Pooling and Matching

Implications: Outreach and Recruitment

Big Picture

- The Court's decision did not address or change what is permissible in terms of recruitment: "Inclusive" programs should remain strategic focus

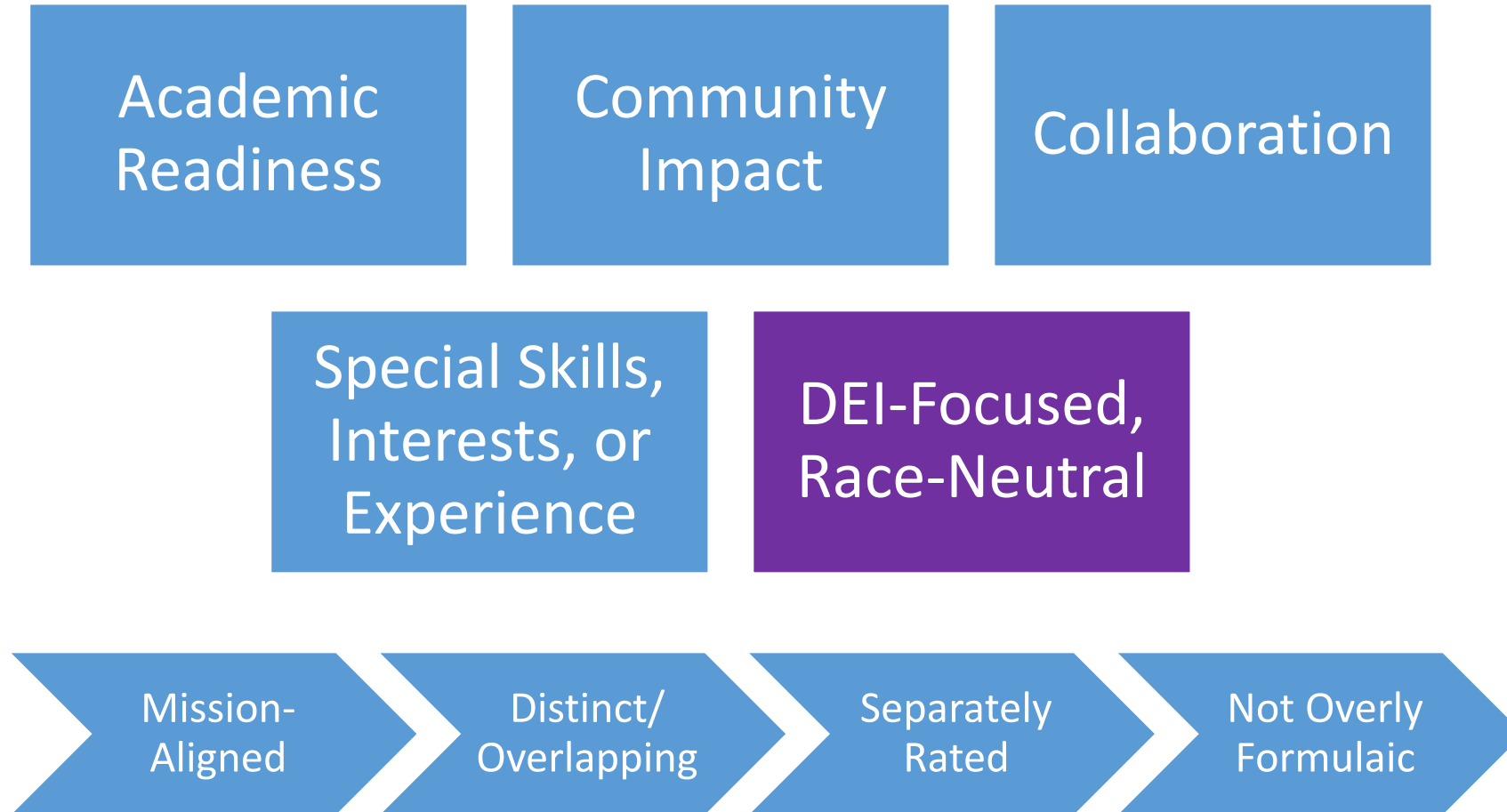
General Direction

- The subset of recruitment programs that confer a tangible/material benefits on students may be subject to strict scrutiny
- Where selectivity is relevant, consider neutral factors, including qualities associated with experience

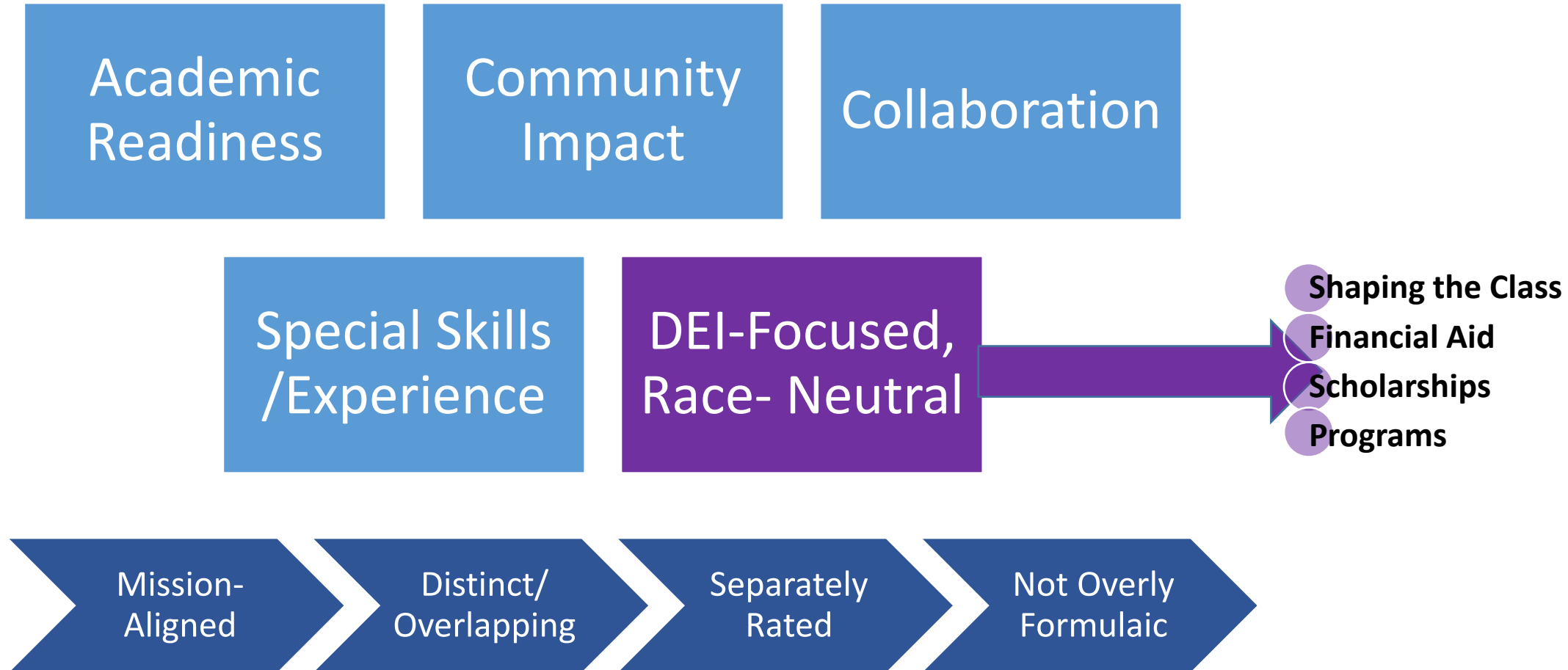
Design Options

- Consider clustering similarly focused/designed programs under one "umbrella" with themed components, and with self-selection

An Admission Model: A Focus on Distinct Qualities



An Admission Model: A Focus on Distinct Qualities



Pooling and Matching

One strategy for mitigating legal risk involves pooling of funds. Not tested in court, but actual decision-making is 100% race-blind. Still honors donor wishes that may involve race.

Pooling means the placement of each individual donor gift in the same general scholarship pool with all other comparable aid. After making awards to students on purely neutral bases, the institution matches individual students with fungible dollars – and strives to do so in a way that aligns with the preferences of the original donor.

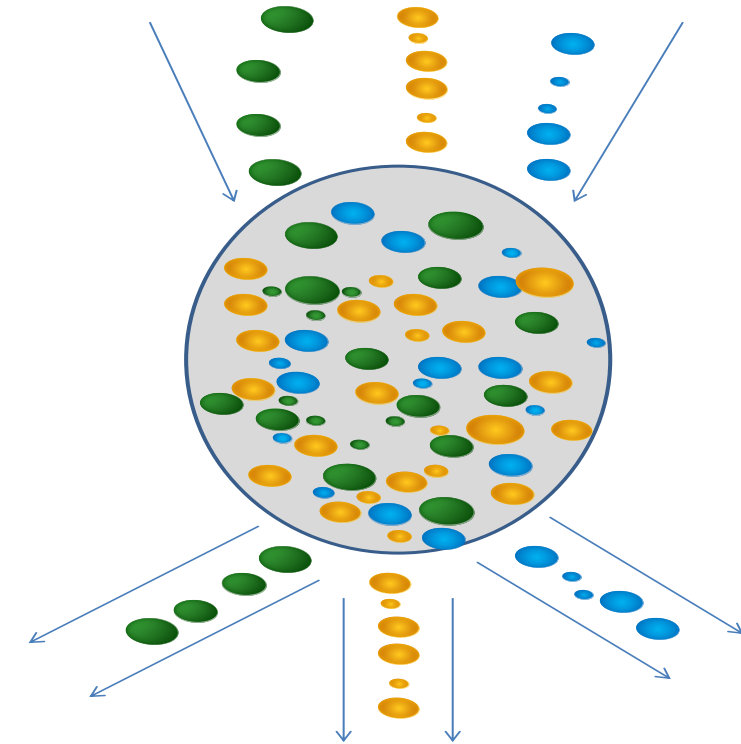
Individual donor gifts



Pool of all donated funds



Individual student awards



Strategies and Action Steps

A Comprehensive Enrollment Policy Evaluation



Pathways

- Outreach
- Recruitment
- Pipeline Programs



Barriers

- E.g.,
- Legacy
 - Early Decision
 - Test Use
 - Transfer Policies



Admission

- Holistic Review
- Articulation of Desired Qualities
- Legally Neutral, DEI Focused Qualities



“Race-Neutral” Strategies

- Authentic
- Breadth of Enrollment Policy/Practice
- Secondary +DEI Effects

Mission-Focused, Aligned and Integrated

Key Strategies and Action Steps

Policy Decisions

- Make changes re: compliance/legal risk *and* impact

Engagement

- Engage early with key stakeholders on directional shifts and expected impact

Research & Data

- Ground decisions in institutional experience and general research (key data, trends, projections)

Documentation

- Assure policy clarity regarding any DEI element of policy and practice, with focus on clear distinction between status and experience-related qualities

Training

- Develop training materials (guides, tools, power points) that align with/track policy articulation

Communications

- Assure that key stakeholders know of policy decisions and directions; and all public discussion of policy/practice (including web site) reflects alignment.



Reflections



Questions & Discussion