Information Session on Comprehensive Review of Race and Ethnicity Conscious Programs

November 10, 2003
Overview

- The Legal Environment
- Virginia Tech’s Internal Review
- Feedback on Our Review
- Moving Forward
Supreme Court Rulings:

- U.C. Board of Regents v. Bakke (1978)

The principles of the *Bakke* decision were clarified and confirmed in this year’s Michigan rulings.
Legal Terms

- The use of race and ethnicity by states is subject to “strict scrutiny”

- There must be a “compelling interest” for the state to use race or ethnicity.

- If there is a compelling interest, the use of race and ethnicity must be “narrowly-tailored.”
How does the law apply to Virginia Tech?

Compelling State Interest –

- The Supreme Court recognizes the educational benefit of a diverse student body can be a compelling state interest.

- Remediation of the present effects of past discrimination is no longer accepted as a rationale for Virginia.
How does the law apply to Virginia Tech?

- Narrow Tailoring – Four Tests
  - Individualized Consideration
  - Consideration of Alternatives
  - Limited Impact on Third Parties
  - Limited in Time

- Compliance with Virginia Law – Must consider all federally recognized minority groups the same way.
Two Principles to Guide the Use of Race and Ethnicity in University Programs

- The activities and benefits of the university should be open to all. There should be no activities where a student feels they “need not apply” because of their race or ethnicity.

- A diverse student body is important to the educational environment at Virginia Tech. However, the narrowly-tailored use of race or ethnicity in selections should be limited to those activities most critical to creating a diverse campus environment.
The Internal Review Process
The Internal Review Process

- The university’s performed its internal review at the request of a special committee of the Board of Visitors.
- The Board formed this committee at its April 6, 2003 meeting to review recommendations for achieving diversity in accordance with state and federal laws.
Collection of Information

- Distributed a campus-wide request for information in April 2003.
- All 408 departments in the administrative structure responded.
- 364 departments reported no race or ethnicity conscious activities.
- 44 departments reported one or more activities with a race or ethnicity conscious aspect.
- The review identified a total of 71 activities with race or ethnicity conscious aspects.
Review of Information

- Reviewed the detailed descriptions of identified programs.
- Focused on the use of race or ethnicity as a selection criterion in the program.
Review of Information

Criteria considered acceptable:
- Demonstrably open to all eligible participants regardless of race or ethnicity
- Cooperative agreements with HBCUs or other institutions
- Low-income, first generation criteria

Criteria considered unacceptable:
- Open only to racial or ethnic minority applicants (set asides)
- Separate selection processes based on race/ethnic status (two track)
Review of Information

- Sorted Activities into Three Categories:
  1. Most appeared to be acceptable.
  2. Some were modified or discontinued.
  3. Five major areas required additional legal guidance and review.

- All information received from departments along with our administrative summary, was forwarded to the Office of the Attorney General on May 28, 2003.
Five Major Areas Required Additional Review

- Undergraduate Admissions
- Privately Funded Financial Aid Programs
- Multicultural Academic Opportunities Program
- Selected Federally Sponsored Activity
- McNair Scholars Program – Sponsored by Federal Department of Education
Recommendations in Five Areas:

**Undergraduate Admissions**

- Expand recruitment efforts.

- Implement strategies to improve the number of minority applicants who accept our offer of admission.

- Continue to use race/ethnicity as one of many factors in a whole file, subjective review of applicants.
Recommendations in Five Areas

Privately Funded Financial Aid Programs

- The use of race/ethnicity in decisions is suspended pending clarification.

- We are awaiting guidance from U.S. Department of Education, Office of Civil Rights.

- In cooperation with donors, the university will modify agreements or selection processes as necessary to comply with legal requirements.
Recommendations in Five Areas

**Multicultural Academic Opportunities Program**

- Students from all racial and ethnic groups are and will continue to be eligible for participation.
- Applicants are evaluated as individuals in a whole file, subjective review.
- The use of race/ethnicity as one factor in considering overall under-representation in planned field of study must be reviewed.
Recommendations in Five Areas

Federally Sponsored Programs and McNair Scholars

- The university will continue to comply with the requirements of participation in federally sponsored programs that seek to promote diversity.

- We will not impose limitations beyond those required by the federal grant.

- We anticipate that federal sponsoring agencies may modify their requirements in response to recent legal changes.
Feedback on Our Review
Outcomes of Review by the Office of the Attorney General

- Undergraduate admissions process is narrowly-tailored.
- Private Scholarships should be modified in cooperation with donors.
- The university will continue to comply with requirements of federally sponsored activities.
- Questioned aspects of MAOP and other programs where under-representation is used as a rationale.
- Programs must be demonstrably open and unrestricted by race or ethnicity.
Responding to the June letter from the Center for Equal Opportunity.

OCR staff recently met with university officials to discuss their review process.

The university’s internal review process and actions have addressed most of the issues.
Three Goals of the University in Moving Forward –

1. To understand and comply with the law –
   • The Equal Opportunity Office
   • All Departments and Managers

2. To monitor and report our progress in achieving a diverse educational environment –
   • Multicultural Affairs
   • Admissions Offices
   • Office of the Provost

3. To identify and recommend the best practices for improving and maintaining the diversity of our student body.
   • Commission for Equal Opportunity and Diversity
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