

MEMORANDUM

FROM: Ames School District Lawyer
TO: Ames High School Principal
SUBJECT: Diversity and Discrimination in Admissions Decisions

BACKGROUND

Ames High School's "Ambassadors to the World" trip provides twenty students the opportunity to travel to Havana, Cuba. In selecting students, Ames charged an extra \$400 for fifteen of the spots to allow five students to attend for free. For those five spots, only students who fulfilled certain criteria—such as students of color, members of the LGBTQ community, and students with disabilities—were considered.¹

One student who was selected for a subsidized spot moved unexpectedly, and Ames is scheduled to choose a replacement. Chandler Terry Smith does not fulfill the minority criteria for the missing spot, but cannot afford to pay for one of the non-subsidized spots. She applied for a subsidized spot and was denied.¹

The U.S. Supreme Court has heard several cases pertaining to admissions processes that take minority factors into account. In *Regents of the University of California v. Bakke*, the court ruled that racial quotas in college admissions processes are unconstitutional.² In *Grutter v. Bollinger*, the court found that "classifications are constitutional only if they are narrowly tailored to further compelling governmental interests."³ Finally, in *Fisher v. University of Texas at Austin* (2013), the court clarified that any racial classification must meet strict scrutiny.⁴

Because Ames is a public high school, and therefore receives government funds, these cases provide important precedent for Chandler's situation.

ARGUMENTS FOR CHANDLER

1. The five targeted spots are a "minority quota" and, given *Regents*, are impermissible.² Although *Regents* dealt with race-specific quotas,² the underlying idea extends to factors such as disabilities, gender identity and sexual orientation. Because students are being denied positions solely because of factors, such as race, that are beyond their control, this policy is untenable.
2. By funding spots for minorities while charging for others, Ames distributes money based on race and other factors. While race-based admissions systems can be permissible if they further compelling government interests, distribution of cost based on these factors is an undue violation of civil rights laws such as Title VI.⁵ Thus, even if the admissions policy is acceptable, the program's distribution of money is not because Ames charges differently for the trip based on factors such as race and sexual orientation.
3. Ames could have increased diversity without setting aside specific, uncharged slots. If Ames had favored applicants from diverse backgrounds without setting aside specific spots, then charged students based on financial need, an equally diverse selection could have been made. Because the benefits of diversity are achievable in other ways, Ames' policy was not narrowly tailored and therefore is impermissible.³
4. Ames' policy gives the minority status of students unequal weight, with discretion to disregard other qualifications such as grades and community service. Thus, the policy does not "ensure that each applicant is evaluated as an individual" but instead "makes an applicant's race

or ethnicity the defining feature of his or her application” (from *Grutter*).³ This policy increases diversity, but only by reducing students to characteristics such as ethnicity; as Justice Thomas wrote in *Adarand Constructors, Inc. v. Peña*, “such classifications ultimately have a destructive impact on the individual and our society.”⁶

ARGUMENTS AGAINST CHANDLER

1. This program doesn’t specify racial qualifications for the subsidized position, but only prioritizes those from underrepresented groups. Since Ames isn’t just considering race or ethnicity, its policy “encompasses a far broader array of qualifications and characteristics, of which racial or ethnic origin is but a single, though important, element” (from *Regents*).² It is therefore a legitimate and useful way to increase diversity in the “Ambassadors” program.
2. The distribution of money under the selection policy is a legitimate way to encourage and allow students of diverse backgrounds to join the ambassadors program. In *Fisher*, the decision to accept Abigail Fisher had financial repercussions for both Fisher and the University, but a race-based admissions system was still declared permissible.⁷ There is no reason to consider Ames’ policy differently because it involves finances.
3. Any other plan would not have succeeded in promoting diversity to the extent that this plan did, so Ames’ policy was necessary to prioritize those from diverse backgrounds. By fully subsidizing five spots, Ames ensured that at least five spots would be filled by students from diverse backgrounds. Without this policy, there would be no such guarantee.
4. Prioritizing opportunities for students of diverse backgrounds is important to right societal inequalities and to stop the perpetuation of discrimination. The criteria for the subsidized

spots are characteristics that have been historically oppressed. As philosopher Judith Thomson writes, “though few [white male applicants] have done any wrong to blacks and women,” they “profited from the wrongs the community did.”⁸ More generally, giving advantages to those from underprivileged groups increases their chance of success, which in turn lessens future oppression. Giving an advantage to students with the selected criteria will lead to equality in the long run by combatting historical disadvantages.

OPTIONS AND RECOMMENDATION

Ames has several options. One is to continue with its previous policy of selecting students for the subsidized spots only if they meet the given criteria. However, given the decisions in *Regents*, *Grutter* and *Fisher*, this policy comes dangerously close to establishing a “minority quota” and making students’ physical features the defining characteristics of their applications. This policy is therefore discouraged.

Another option is to examine students’ merits without regard to their minority status. In such a case, Chandler would likely be selected, given her high grades and community service involvement. However, increasing diversity in this trip should not be disregarded completely. Without any action to help historically discriminated groups, it is difficult for true equity to be accomplished.

Therefore, to increase diversity without making it the sole focus of the admissions process, Ames should consider Chandler for the open position, but allow her race and other factors to be considered. If there are similarly qualified candidates who also fulfill the diversity

criteria, Chandler may not be selected. However, Ames should err on Chandler's side, given the legal indefensibility of Ames' previous policy.

WORKS CITED

1. "Diversity Disagreement?" (Attachment A).
2. Regents of the University of California v. Bakke. 438 U.S. 265 (1978).
3. Grutter v. Bollinger. 539 U.S. 306 (2003).
4. Fisher v. University of Texas at Austin. 570 U.S. __ (2013).
5. Civil Rights Act of 1964, Title VI. 42 U.S.C. §2000d et seq.
6. Adarand Constructors, Inc. v. Peña. 515 U.S. 200 (1995).
7. Fisher v. University of Texas at Austin. 579 U.S. __ (2016).
8. Thomson, Judith Jarvis. "Preferential Hiring." Reprinted in *Rights, Restitution and Risk: Essays in Moral Theory*. Harvard University Press, 1986.