



Michael T. Brown
Telephone: (510) 987-0711
Fax: (510) 763-0309
Email: Michael.Brown@ucop.edu

*Chair of the Assembly and the Academic Council
Faculty Representative to the Board of Regents
University of California
1111 Franklin Street, 12th Floor
Oakland, California 94607-5200*

August 14, 2008

JUDY K. SAKAKI
VICE PRESIDENT, STUDENT AFFAIRS

Re: Results American Indian Tribal Affiliation as a Factor in Undergraduate Admissions

Dear Judy,

I am responding to your July 2007 letter to then Academic Council Chair John Oakley, which inquired whether membership in a federally recognized American Indian tribe should be considered a “plus factor” in admissions. Council subsequently referred this matter to the Board of Admission and Relations with Schools (BOARS), which concluded that consideration of tribal membership in the review of applicants for undergraduate admission to UC is consistent with the non-exhaustive list of factors contained in Selection Criterion 13 of the [Guidelines for Implementation of University Policy on Undergraduate Admissions](#) (e.g., considered as a “plus factor” in either undergraduate or graduate/professional school admissions). At its July 23, 2008 meeting Council affirmed this position, thereby agreeing with BOARS’ justification, which follows.

Fundamentally, BOARS agreed that tribal membership is consistent with Selection Criterion 13, which takes into consideration “the applicant's life experiences and special circumstances.” BOARS also confirmed with the Office of General Counsel that this position is consistent with the University’s obligation under Proposition 209 not to take race or ethnicity into account in admissions, as the U.S. Supreme Court has upheld membership in a federally recognized tribe as a political classification, rather than a racial or ethnic classification, based on the tribes’ status as dependent sovereign nations. Furthermore, BOARS noted that despite a stable “a-g” course completion rate among American Indians over the last decade, data indicates that there has been a significant decline in the UC enrollment of American Indian graduates of California public high schools, both in real numbers and in enrollment rates compared to other groups. Finally, there is already some precedent for the use of tribal-membership status as a factor in UC admissions, as the UCLA School of Law has employed membership in a federally recognized tribe as a “limited plus factor” in admissions.

It should also be noted that BOARS already endorsed a resolution in support of considering a student’s membership in a federally recognized American Indian tribe in UC undergraduate admissions, and a statement on Selection Criterion 13, which is enclosed. This endorsement

represents a clarification of, rather than a change to, UC admission policy. Please do not hesitate to contact me if you have any questions regarding Council's comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael". The signature is fluid and cursive, with a large initial "M" and a trailing flourish.

Michael T. Brown, Chair
Academic Council

Copy: Academic Council
Martha Winnacker, Executive Director

Encl. 2



BOARD OF ADMISSIONS AND RELATIONS WITH SCHOOLS (BOARS)

Mark M. Rashid, Chair
mmrashid@ucdavis.edu

Assembly of the Academic Senate

1111 Franklin Street, 12th Floor
Oakland, CA 94607-5200
Phone: (510) 987-9466
Fax: (510) 763-0309

July 8, 2008

**MICHAEL T. BROWN, CHAIR
ACADEMIC COUNCIL**

Re: American Indian Tribal Affiliation as a Factor in Undergraduate Admissions

Dear Michael,

In July 2007, Vice President Judy Sakaki wrote to Senate Chair Oakley on behalf of James Sandoval, chair of the Council of Vice Chancellors of Student Affairs (CVCSA), asking the Senate to consider whether membership in a federally recognized American Indian tribe should be considered a “plus factor” in either undergraduate or graduate/professional school admissions. You referred the issue to BOARS, which after extensive review has determined that consideration of tribal membership in the review of applicants for undergraduate admission to UC is consistent with the non-exhaustive list of factors contained in Selection Criterion 13 of the [*Guidelines for Implementation of University Policy on Undergraduate Admissions*](#). We also believe that implementing such a practice on the campuses is consistent with the University’s obligation under Proposition 209 not to take race or ethnicity into account in admissions.

At several meetings this year, BOARS reviewed data on UC admission and enrollment rates for American Indian students in California. The data indicate that over the last decade and across the UC system, there has been a significant decline in the UC enrollment of American Indian graduates of California public high schools, both in real numbers and in enrollment rates compared to other groups. In their paper, *Tribal Membership and State Law Affirmative Action Bans: Can Membership in a Federally Recognized American Indian Tribe be a Plus Factor in Admissions at Public Universities in California and Washington?*, UC Davis Law Professor Cruz Reynoso and administrator William Kidder report that the UC freshmen college-going rate for American Indian high school graduates in California dropped by nearly two-thirds between 1995 and 2005. This trend is evident despite a stable “a-g” course completion rate among American Indians over the last decade. In fact, fewer in-state American Indian freshmen enrolled at UC in fall 2007 than in 1989 (172 versus 215) even though UC’s freshman class grew by 64% over that span.

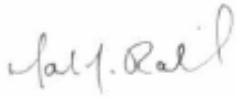
BOARS has concluded that implementing a “plus factor” in UC admissions for American Indian students who are members of federally recognized tribes is consistent with both the letter and the intent of UC’s *Comprehensive Review Guidelines* – specifically, Guideline 13, which mentions “the applicant’s life experiences and special circumstances.”

BOARS confirmed with the Office of General Counsel that there is a solid legal basis for distinguishing between the racial/ethnic classifications covered by Proposition 209, and a student's status as a member of a federally recognized American Indian tribe. A number of federal and California state cases, dating back to the 1974 U.S. Supreme Court case *Morton v. Mancari*, recognize membership in a federally recognized tribe as a political classification, rather than a racial or ethnic classification. This distinction arises from the special legal relationship between the United States and American Indian tribes that recognizes their status as dependent sovereign nations.

Campuses may thus conclude that promoting access to higher education for tribal members not only supports UC's mission as a public land-grant institution, but is also appropriate and permissible within Proposition 209. We note that consideration of this factor harmonizes with current existing admissions policy and therefore represents a clarification of, rather than a change to, UC admission policy. It is also important to note that there is already some precedent for the use of tribal-membership status as a factor in UC admissions. BOARS confirmed that for several years, the UCLA School of Law has employed membership in a federally recognized tribe as a "limited plus factor" in admissions.

In February, BOARS unanimously endorsed a resolution in support of considering a student's membership in a federally recognized American Indian tribe in UC undergraduate admissions, and a statement on Selection Criterion 13, which both follow this memo. We invite Academic Council to share these statements with the campuses to help guide their Comprehensive Review activities. We would also like to extend a special thanks to Special Assistant Bill Kidder for his hard work and guidance on this issue.

Sincerely,



Mark M. Rashid, Chair
BOARS

cc: BOARS
Martha Winnacker, Senate Executive Director

BOARD OF ADMISSIONS AND RELATIONS WITH SCHOOLS

Position Statement on Admissions Selection Criterion 13 and Membership in a Federally Recognized American Indian Tribe

February 8, 2008

Motion: The Board of Admissions and Relations with Schools (BOARS) affirms that it is consistent with Selection Criterion #13 to include an applicant's membership in a federally recognized American Indian tribe as one of many considerations in undergraduate admissions.

Statement on Selection Criterion #13 and Tribal Membership:

Selection Criterion #13 of the *Guidelines for Implementation of University Policy on Undergraduate Admissions* states that life experiences and special circumstances “may include, but are not limited to, disabilities, low family income, first generation to attend college, need to work, disadvantaged social or educational environment, difficult personal and family situations or circumstances, refugee status or veteran status.” BOARS affirms that consideration of an applicant's membership in a federally recognized American Indian tribe is consistent with the intent behind the non-exhaustive list of factors in Selection Criterion #13. Moreover, such consideration is in harmony with the guiding principles BOARS has established for comprehensive review, specifically #4 (“Campus policies should reflect continued commitment to the goal of enrolling classes that exhibit academic excellence as well as diversity of talents and abilities, personal experience, and backgrounds.”) and #5 (“Faculty on individual campuses should be given flexibility to create admission policies and practices that, while consistent with Universitywide criteria and policies, are also sensitive to local campus values and academic priorities.”)