

OFFICE OF THE ATTORNEY GENERAL
STATE OF INDIANA



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TODD ROKITA
ATTORNEY GENERAL

May 28, 2025

James Danko
Office of the President
Butler University
4600 Sunset Ave.
Indianapolis, IN 46208

Re: Butler University’s Compliance with Federal and State Civil Rights Laws and
Indiana Code § 23-17-24-1 *et seq.*

Dear President Danko:

I write concerning Butler University’s compliance with federal and state civil rights laws and the terms of the University’s nonprofit status under Indiana Code § 23-17-24-1 *et seq.* Publicly available materials suggest that various aspects of the University’s operations may be governed by policies that treat individuals—including students, prospective students, faculty, staff, and job applicants—differently based on the individuals’ race or ethnicity; employ race in a negative manner; or utilize racial stereotyping. Such policies, if maintained, would constitute an “abuse [of] the authority” conferred on the University by Indiana’s nonprofit laws and may also indicate that the University’s “assets are being misapplied or wasted.” Ind. Code § 23-17-24-1(a). Failure to correct such policies and bring them into compliance with state and federal law could result in legal action by my office pursuant to Indiana Code § 23-17-24. I ask that the University respond to the questions contained herein to assist my office in evaluating whether further action is warranted to ensure Butler University is acting consistent with the terms of its nonprofit status.

Nonprofit corporations organized in Indiana must be “organized for a public or charitable purpose.” Ind. Code § 23-17-2-23(1). State law provides that whether a corporation is organized for a public or charitable purpose is determined in much the same way the Internal Revenue Service determines whether an organization is operated for a charitable purpose or other purpose to benefit the public under 26 U.S.C. § 501 and therefore exempt from federal taxation. *See* Ind. Code § 23-17-2-23(1)(C) (defining “public benefit corporation” to include an organization “recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code”); Ind. Code § 6-3-2-2.8(1) (exempting from state income taxation “[a]ny organization described in Section 501(a) of the Internal Revenue Code”). In consequence, federal tax law concerning nonprofits is instructive on whether a nonprofit entity is organized for a public or charitable purpose under Indiana law.

To qualify as an organization operating for charitable purposes or the public benefit, an entity’s “purpose must not be so at odds with the common community conscience as to undermine any public benefit that might otherwise be conferred.” *Bob Jones Univ. v. United States*, 461 U.S. 574, 592 (1983). It is beyond question that “racial discrimination in education violates deeply and widely accepted views of elementary justice” in Indiana and the United States. *Id.* Moreover, a private school’s “legitimate educational function cannot be isolated from discriminatory practices” because “discriminatory treatment exerts a pervasive influence on the entire educational process.” *Norwood v. Harrison*, 413 U.S. 455, 469 (1973). Thus, it is well settled that educational institutions that “practice racial discrimination,” are not “institutions exercising ‘beneficial and stabilizing influences in community life.’” *Bob Jones University*, 461 U.S. at 595 (quoting *Walz v. Tax Comm'n*, 397 U.S. 664, 673 (1970)). Accordingly, a nonprofit university that engages in racial discrimination is not “organized for a public or charitable purpose” within the meaning of Indiana law, Ind. Code § 23-17-2-23(1), and any racial discrimination in which it engages represents an unlawful “abuse [of] authority,” Ind. Code § 23-17-24-1(a).

In *Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023), the Supreme Court held that racially discriminatory practices in higher education can rarely if ever be squared with federal civil rights laws, no matter what a university’s justification for the practices may be. For example, the Court rejected the notion that taking race into account in admissions permissibly serves the supposed interest in “producing new knowledge stemming from diverse outlooks.” *Id.* at 214. Universities also must “never use race as a stereotype or negative” in how they treat students, faculty, and staff. *Id.* at 213. Further, “universities may not simply establish through application essays or other means” a race-based admissions process that uses other factors as proxies for race. *Id.* at 230.

Thus, virtually all forms of racial discrimination—even those employed in service of the interests of diversity, equity, and inclusion—are unlawful. Likewise, discriminatory practices perpetuated “for whatever reasons,” and even with good intentions, still jeopardize and are inconsistent with a university’s nonprofit status. *Bob Jones University*, 461 U.S. at 595.

The decision in *Students for Fair Admissions* was the Supreme Court’s clearest pronouncement in decades that no form of racial discrimination can be licensed in our education system. However, publicly available materials on the University’s website suggest that the Court’s pronouncement may have fallen on deaf ears among Butler’s leadership and administrators.

Butler University has made clear that promoting “Diversity, Equity, and Inclusion” is one of its Strategic Priorities.¹ To measure its success in advancing this priority, Butler appears to track and focus on the race of its students and faculty. The University’s DEI-related goals include attracting, enrolling, supporting, and retaining students from “marginalized and underrepresented backgrounds.” The University also seeks to increase its hiring and retention of individuals from

¹ Butler University, *Strategic Direction - Priorities & Initiatives*, available at <https://www.butler.edu/about-butler/strategic-direction/initiatives-and-progress>.

underrepresented backgrounds for faculty and staff positions. To monitor its progress achieving these objectives, the University utilizes “DEI goals and key metrics.” Likewise, Butler employs “DEI-related” criteria when evaluating the performance of certain University employees. In a Spring 2023 progress report concerning its DEI priorities, the University noted that its Fall 2021 incoming class was “...the most diverse incoming class in [the University’s] history, with 21 percent self-identifying as students of color...”² FAQs posted on the University’s website suggest that Butler counts black, “latinx,” and asian individuals as among the underrepresented groups the University focuses on enrolling and hiring. To enhance its efforts to recruit, hire, and enroll underrepresented faculty, staff, and students, Butler has instituted various “DEI trainings” for its staff about how to “recruit, retain and cultivate faculty, staff and students from marginalized and underrepresented backgrounds and identities.”³

Beyond apparently calibrating its admissions and hiring processes to increase the number of minority students and faculty on its campus, Butler also seems to devote certain University resources for the specific use and benefit of “underrepresented” individuals—possibly to the exclusion of individuals whom Butler does not regard as underrepresented. For example, Butler operates a \$200,000 “DEI Innovation Fund” that, among other things, funds campus projects that improve “transition and integration for students, faculty, and staff from underrepresented backgrounds.”⁴ Butler has also created a dedicated DEI faculty-in-residence position “to provide greater support for first-year residential students from marginalized/underrepresented backgrounds and identities.” Similarly, the University provides funds to match support from “external partners” for efforts at the University that advance the University’s DEI goals.

In Indiana, a person’s race or the color of his skin is not a lawful basis on which to make hiring, promotion, admissions, or other student or employment-related decisions. Our State’s laws plainly demonstrate that Indiana “has a fundamental, overriding interest in eradicating racial discrimination in education.” *Bob Jones University*, 461 U.S. at 604; *see* Ind. Code § 22-9-1-2(a) (“It is the public policy of the state to provide all of its citizens equal opportunity for education . . . and to eliminate segregation or separation based solely on race.”). Actions by a university organized as a nonprofit that appear to contravene such deeply rooted state policy raise a host of questions about whether the university is serving a public or charitable purpose.

To assist my office in assessing Butler University’s compliance with civil rights laws and the terms of its nonprofit status, I ask that you please respond to the following questions and requests:

² Butler University, *Butler Beyond – Strategic Direction Progress Report* (2023), available at https://issuu.com/butleru/docs/strategy_progress_report_spring_23?fr=sOTk1ZjUyMjU0ODY

³ Butler University, *Diversity, Equity, & Inclusion FAQ*, available at <https://www.butler.edu/academics/center-for-faculty-excellence/dei-faq/>.

⁴ Butler University, *DEI Innovation Fund*, available at <https://www.butler.edu/diversity-equity-inclusion/dei-resources/dei-innovation-fund/>.

- (1) Produce all documents and communications concerning any changes the University made to its hiring, tenure, or admissions processes in anticipation of following the Supreme Court’s decision in *Students for Fair Admissions*.
- (2) Produce all documents and communications concerning whether and how race or individuals’ membership in an “underrepresented” or “marginalized” group is considered, either directly or indirectly, in faculty and staff hiring, tenure, and student admissions decisions.
- (3) Produce all guidance and trainings provided or made available to faculty and admissions staff concerning the University’s DEI goals.
- (4) Produce all drafts of and other materials the University relied upon in preparing the sections of its Strategic Direction and Strategic Priorities documents concerning diversity, equity, and inclusion.
- (5) Describe in detail and produce all documents and communications concerning the “DEI goals and key metrics” the University uses to monitor its progress achieving its DEI priorities.
- (6) Describe the ways in which DEI-related criteria are used in performance evaluations for University employees and faculty.
- (7) How does the University determine who counts as a member of a marginalized or underrepresented group for purposes of evaluating the University’s success pursuing its DEI goals and how does the University track the number of students from marginalized or underrepresented backgrounds that it admits?
- (8) What specific actions is the University taking to enhance the diversity of its faculty?
- (9) What actions is the University taking to recruit more marginalized and underrepresented students and faculty?
- (10) Describe in detail and produce all documents concerning how the University allocates funds and resources, including through the DEI Innovation Fund, for faculty positions, and as matching funding for external support, for DEI initiatives or other initiatives designed to recruit, attract, or support underrepresented and marginalized faculty and students.

Please provide this information to the Office of the Indiana Attorney General within 30 days, by June 27, 2025.

Thank you for your time and attention regarding this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Todd Rokita".

Todd Rokita

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