



TODD ROKITA
ATTORNEY GENERAL

POLICY MEMORANDUM

September 24, 2025

Policy No. OAG-01-2025

Subject: Ending unlawful discrimination in the legal representation of the State of Indiana.

1. **References.** *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303 (2025); Ind. Code § 4-6-5-3; Ind. Code § 22-9-1-10; Ind. Code § 4-13-2-14.3; Governor's Executive Order 25-14 (Jan. 14, 2025); President's Executive Order 14173 (Jan. 21, 2025).
2. **Purpose.** The purpose of this policy is to ensure the compliance with Indiana Code § 22-9-1-10 of Indiana state agencies and law firms that contract with the State by establishing clear guidelines concerning how the Office of the Attorney General ("OAG") will identify impermissible, discriminatory Diversity, Equity, and Inclusion (DEI) practices at law firms undertaking the representation of the State of Indiana.
3. **Background.**

Recent developments in civil rights law have provided greater clarity about whether and how certain race-conscious employment practices, such as affirmative action and other DEI measures, violate federal and state law. For example, in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, the Supreme Court of the United States struck down Harvard University's and the University of North Carolina's race-based admissions processes that gave preference to minority applicants, holding that such policies violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Title VI of the Civil Rights Act of 1964. 600 U.S. at 230–31. Although *Students for Fair Admissions* was not an employment case, much of its reasoning about what constitutes an impermissible discriminatory practice also applies, in OAG's view, to state and federal civil rights laws prohibiting racial discrimination in employment contexts. More recently, in *Ames v. Ohio Dep't of Youth Servs.*, the Supreme Court made clear that federal civil rights laws apply with equal force to protect all individuals of all races and do not vary in their application based on whether an individual is a member of a majority or minority race. 605 U.S. at 313.

These developments in civil rights jurisprudence have precipitated changes in the operations of Indiana executive branch agencies. On January 14, 2025, Governor Braun ordered all state executive branch agencies to adhere to *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.* and not to utilize state funds to support DEI efforts. E.O. 25-14, ¶ 1.a - d. Then, on July 1, 2025, OAG, in coordination with the Governor's Office and the Indiana Department of Administration, directed all state agencies to modify the standard

POLICY MEMORANDUM: Ending unlawful discrimination in the legal representation of the State of Indiana

nondiscrimination language they include pursuant to Ind. Code § 22-9-1-10 in all state contracts to make clear that Indiana's prohibition on state contractors engaging in race and sex-based discrimination extends to all race and sex-conscious practices, including so-called DEI initiatives.

In light of these recent changes to and clarifications of state procurement practices and policies, I am issuing this policy memorandum to explain how OAG will implement the requirements of Indiana Code § 22-9-1-10 in connection with OAG's review of agency requests for outside counsel under Indiana Code § 4-6-5-3.

4. **Authority.**

Under Indiana law, OAG is responsible for reviewing and, where appropriate, approving or disapproving most executive branch agency requests to retain outside counsel. The Indiana Code provides that: "No agency, except as provided in this chapter, shall have any right to name, appoint, employ, or hire any attorney or special or general counsel to represent it or perform any legal service in behalf of the agency and the state without the written consent of the attorney general." Ind. Code § 4-6-5-3. Separately, OAG is responsible for reviewing for form and legality all state agency contracts. *See* Ind. Code § 4-13-2-14.3. Pursuant to and in furtherance of these authorities, and in support of Governor Braun's E.O. 25-14, I issue the following policy.

5. **Policy.**

- a. **Except as otherwise provided in this policy, OAG will not engage outside counsel or approve agency requests for outside counsel employed by law firms that engage in discrimination on the basis of race or sex in their employment practices in violation Indiana or federal civil rights laws, including by operating any programs or engaging in any practices that promote discriminatory DEI.** Unlawful policies or practices include, but are not limited to, considering race or sex when making recruitment, hiring, disciplinary, promotion, or employment decisions; requiring employees to participate in trainings or educational programs that employ racial or sex stereotypes, depending on the circumstances under which the trainings or programs are conducted; providing special or unique benefits or resources, such as mentorship opportunities, to employees based on race; making decisions about how to staff matters based on race; and attempting to achieve racial or sex balancing within the law firm's workforce.
- b. In determining whether a law firm is engaged in impermissible race-conscious practices and is therefore ineligible to act as outside counsel for state agencies, OAG will regard participation in certain DEI and related activities as *prima facie* evidence that a firm cannot contract with the State consistent with Indiana Code § 22-9-1-10. These activities include but are not limited to:
 - i. **Mansfield Certification or any other similar certification or rule.** These types of programs prioritize consideration of an individual's race or sex in

POLICY MEMORANDUM: Ending unlawful discrimination in the legal representation of the State of Indiana

- employment decisions by requiring law firms' job applicant or candidate pools to consist of a certain percentage of women and minorities.
- ii. **Diversity preferences, targets, or set asides.** These types of policies, which may provide the basis on which law firms receive their certifications or scorecard grades/rankings, classify people (or the ownership of organizations) by race and sex and establish preferences for individuals with these characteristics to be hired and promoted or engaged or contracted.
 - iii. **Diversity fellowship and mentorship programs.** These programs also classify people by race or sex and provide employees with trainings or opportunities that are of limited or no availability to people of other races or another sex.
 - iv. **DEI officer, offices, and committees.** A law firm's maintenance of a DEI officer, office, or committee that is meant to promote the classification of individuals by race, ethnicity, or sex or establish priorities for individuals based on these characteristics, also indicates the existence of impermissible discriminatory practices.
- c. Where a law firm has engaged in the activities described in Section 5.b of this policy, the law firm will be given the opportunity to demonstrate to OAG by clear and convincing evidence that, despite engaging in activities described in Section 5.b, the firm would be in compliance with Indiana Code § 22-9-1-10 if the firm were retained by the State.
 - d. This policy does not apply to previously approved outside counsel requests; however, the policy will apply prospectively to all requests and to any request for amendment or renewal of a previously approved request.
 - e. Limited exceptions to Section 5.b of this policy may be granted by OAG on a case-by-case basis where the agency requesting outside counsel presents evidence to OAG that, in OAG's judgment, demonstrates the existence of exceptional circumstances in which failure to retain a particular law firm as outside counsel will cause the State of Indiana severe legal or economic harm and there is no reasonable alternative to the law firm that is the subject of the agency's request. An exception granted by OAG to Section 5.b does not constitute a finding that a law firm is compliant with Indiana Code § 22-9-1-10.
6. **Effective Date.** This policy is effective October 24, 2025.
7. **Point of Contact.** The point of contact for this policy memorandum is: Lori Torres, Chief Deputy Attorney General.



Todd Rokita
Attorney General of Indiana