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STATE OF INDIANA



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TODD ROKITA

ATTORNEY GENERAL

May 28, 2025

Lori S. White
Office of the President
DePauw University
313 S. Locust St.
Greencastle, IN 46135

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

Dear President White:

I write concerning DePauw 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 DePauw 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.

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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.

Students for Fair Admissions marked a watershed moment in the advancement of civil rights in this country by making perfectly clear that no form of racial discrimination can be licensed in our higher education system. Yet it seems DePauw University may have met that moment and the Court's decision with evasion, circumvention, and obstruction, rather than a good faith desire to respect the civil rights of students and faculty.

Even before the Supreme Court rendered its decision in *Students for Fair Admissions*, DePauw's leadership made clear that the University disagreed with the Court's expected holding that race-based decision making has no place in college admissions and were concerned that the decision would disrupt DePauw's efforts to allocate spots in DePauw's incoming classes based on race. Just a little over a month before the Court issued its decision, DePauw's president, Lori White, added her signature to a statement from liberal arts university presidents that expressed

“strong[] disagree[ment]” with the proposition that “that race-conscious admissions practices are unfair and violate the Constitution.”¹ The statement went on to note that the universities “striv[e] for racial and ethnic diversity” in their student bodies by taking into consideration student applicants’ “lived experiences and backgrounds,” and that those efforts would be hampered by a Supreme Court decision holding that “the consideration of race or ethnicity in recruitment, admission, scholarships, affinity groups, housing and other programming” is unlawful. The following month, the Court held exactly that.

DePauw’s leadership evidently continues to resist the full legal implications of *Students for Fair Admissions* and still seeks to advance the University’s diversity goals through race-conscious practices. On February 14, 2025, the U.S. Department of Education issued a Dear Colleague letter to universities explaining that “[u]nder any banner, discrimination on the basis of race, color, or national origin is, has been, and will continue to be illegal.”² The letter directed universities that receive federal funds to desist from diversity, equity, and inclusion efforts that involve “race-based decision-making.” In response to the letter, Dionne Jackson, DePauw’s Vice President for Institutional Equity, said the University would make no changes to its practices “because there is not yet a law requiring them to do so” and that the letter is only “a form of guidance, not regulation.”³

To be clear, though the Dear Colleague letter may only be guidance, the principles it articulates are the law of the land. Racial dissemination in any guise is unlawful. The DEI label does not transmute illegal discrimination into an acceptable practice.

Other materials DePauw has published reinforce the supposition that the University may be pursuing its diversity ends through discriminatory means. For example, in its 2027 Strategic Plan, DePauw University outlined its “institutional equity” goal of becoming “a more fully inclusive university, ensuring that all aspects of the student, employee and alumni experience are fully aligned with our core values of diversity, equity and inclusion...”⁴ One of the major objectives of this goal is to “institute systems, policies, and practices that strengthen DePauw’s ability to recruit, retain, and support a diverse community...” and to “centralize and elevate an institutional-level strategic focus on diversity, equity, and inclusion...”

Past initiatives at DePauw suggest that the vague goal of creating a more “diverse community” at the University is understood by DePauw’s leadership in racial terms. Shortly after

¹ Jacquelyn S. Fetrow, et. al., *Liberal Arts Colleges to Keep Prioritizing Diversity*, Inside Higher Education (May 11, 2023), available at <https://www.insidehighered.com/opinion/views/2023/05/11/liberal-arts-colleges-keep-prioritizing-diversity>.

² U.S. Department of Education, Dear Colleague Letter from Acting Assistant Secretary for Civil Rights Craig Trainor (Feb. 14, 2025).

³ Hazel Nguyen, *DePauw’s DEI efforts remain steady after Department of Education letter instructing U.S. schools to end DEI*, The DePauw (Feb. 21, 2025), available at <https://thedepauw.com/depauw-received-department-of-education-letter-instructing-u-s-schools-to-cease-dei-efforts/>.

⁴ DePauw University, *DePauw Bold & Gold 2027 Five-Year Strategic Plan: Strategic Plan Goals*, <https://www.depauw.edu/about/president/strategicplan/goals/> (last visited 5/14/2025)

becoming the University's president, Lori White reportedly said that "one of her first priorities as president was to . . . make meaningful strides toward racial diversity and inclusion."⁵ To that end, President White formed with other colleges the Liberal Arts Colleges Racial Equity Leadership Alliance. This consortium of colleges was launched in collaboration with the Center for the Study of Race and Equity in Education at the University of Southern California, which reportedly provided "resources and tools, such as equity-related rubrics, case studies, videos, slide decks and conversational scripts," and "strategies and practical approaches" concerning "racial equity" to DePauw employees.⁶ Separately, President White has indicated that DePauw makes "significant investments to prioritize student diversity," including by providing "programming and services directed at students from historically excluded groups."⁷

The letter President White signed shortly before *Students for Fair Admissions* was decided states that "restricting race-conscious admissions practices . . . would be tragic." That sentiment is repugnant to the laws of this state. 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 DePauw 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:

- (1) Produce all documents and communications concerning any changes the University made to its hiring or admissions processes in anticipation of or following the Supreme Court's decision in *Students for Fair Admissions*.
- (2) Produce all documents and communications concerning whether and how race and diversity are considered, either directly or indirectly, in faculty hiring and student admissions decisions.

⁵ Greta Anderson, *Strength in Numbers*, Inside Higher Education (Nov. 11, 2020), available at <https://www.insidehighered.com/news/2020/11/12/liberal-arts-college-presidents-create-diversity-and-inclusion-alliance>.

⁶ DePauw University, *DePauw president leads racial equity efforts at liberal arts institutions* (Nov. 11, 2020), available at <https://www.depauw.edu/stories/details/depauw-president-leads-racial-equity-efforts-at-liberal-arts-institutions/>.

⁷ Jacquelyn S. Fetrow, et. al., *Liberal Arts Colleges to Keep Prioritizing Diversity*, Inside Higher Education (May 11, 2023), available at <https://www.insidehighered.com/opinion/views/2023/05/11/liberal-arts-colleges-keep-prioritizing-diversity>.

- (3) Produce all guidance provided to faculty and admissions staff concerning the University's diversity and inclusion goals.
- (4) Produce all drafts of and other materials the University relied upon in preparing the sections of the 2027 Strategic Plan concerning diversity and inclusion.
- (5) Produce all documents and communications concerning the resources and tools provided or made available to University employees by the Center for the Study of Race and Equity in Education at the University of Southern California or in connection with the work of the Liberal Arts Colleges Racial Equity Leadership Alliance.
- (6) Describe in detail and produce all documents concerning investments made by the University to provide programming and services for the benefit specifically of "students from historically excluded groups."
- (7) How does the University determine what constitutes a diverse community for purposes of implementing the 2027 Strategic Plan and how does the University track the racial diversity of students that it admits?
- (8) Describe in detail the data on which the University relies to track its success in advancing its institutional equity goals.
- (9) What specific actions is the University taking to enhance the diversity of its faculty?
- (10) What actions is the University taking to recruit more diverse 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,



Todd Rokita

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