



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE GENERAL COUNSEL

January 13, 2021

Honorable Gail Heriot
Honorable Stephen Gilchrist
Honorable Peter Kirsanow
Honorable J. Christian Adams
United States Commission on Civil Rights
1331 Pennsylvania Avenue, NW
Washington, D.C. 20452

Re: Your Letter of October 21, 2020 Regarding Northwestern University Law School's Racism.

Dear Commissioners Heriot, Gilchrist, Kirsanow, and Adams:

Thank you for your letter of October 22, 2020 to Secretary of Education Betsy DeVos. *See* Exhibit 1. She has shared your letter with me, and I am pleased to respond on her behalf.

As you suggest, Northwestern University and its Pritzker School of Law must comply with Title VI of the Civil Rights Act of 1964. Title VI provides “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d.

Over decades, Northwestern University and its law school have repeatedly assured the U.S. Department of Education of their compliance with the law. Similar representations have been made to consumers. Consequently, the Department is troubled by public [accounts](#) of alleged admissions by law school Dean James Speta and apparently other high ranking Northwestern officials that they are racists and/or “white supremacists.” These admissions, if true and accurate, reasonably suggest Northwestern may have discriminated against at least some students and staff on ground of race or color, such that filing a complaint with the Department’s Office for Civil Rights might be appropriate.

Additionally, the law school seemingly admits to systemically “devaluing” persons because of their race, color, or national origin. *See* Kim Yuracko, Dean, Northwestern University Pritzker School of Law, “[Northwestern Law’s Commitment to Anti-Racism](#)” (June 12, 2020). Responding to this (presumably) newly discovered condition, the law school promised “anti-racism” hiring, pedagogy, training, and undefined other actions, apparently including speech and research restrictions, to foster “an anti-racist environment.” The law school did not define “anti-racism,” a phrase lacking any fixed or readily discernable legal meaning. Of course, “anti-racism” motivation, however, worthy, does not relieve Northwestern from its nondiscrimination obligations with respect to, *inter alia*, admissions, teaching, hiring, financial aid, scholarships, workplace climate, and other similar matters. *See, e.g.,*

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[Letter](#) from Peter Kirsanow, Commissioner, U.S. Civil Rights Comm'n, to Jenny A. Durkan, Mayor of Seattle, Washington, regarding "Internalized Racial Superiority for White People," (Aug. 31, 2020); [Letter](#) from Eric Dreiband, Assistant Attorney General, U.S. Department of Justice, Civil Rights Division, to Peter S. Homes, Seattle City Attorney, regarding "Recent Race & Social Justice Initiative Training Sessions Conducted by the City of Seattle for City Employees" (August 26, 2020). Again, the admission that the law school systematically devalues students and employees on ground of race or color, if true and accurate, reasonably suggests Northwestern may have discriminated against at least some students and staff, such that filing a complaint with the Department's Office for Civil Rights might be appropriate.

To be clear, and as the Department recently acknowledged in response to arguments from another institution, Title VI directly reaches only instances of intentional discrimination. *See Alexander v. Sandoval*, 532 U.S. 275, 280 (2001); *Alexander v. Choate*, 469 U.S. 287, 293 (1985); *Schmitt v. Kaiser Found. Health Plan of Wash.*, 965 F.3d 945, 953-54 (9th Cir. 2020); *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 133 (3d Cir. 2017); *see also* Fed. Comm. on School Safety, [Final Report](#) at 72 (Dec. 18, 2018) (Title VI disparate impact "rests on a provision whose validity cannot be squared with the Supreme Court's holdings"). Thus, to the extent the Department's regulations at 34 C.F.R. Part 100 purport to reach, or are extended to advance, disparate impact and related theories, they are *ultra vires* and cannot be applied against Northwestern. Also, Northwestern must always avoid substantial misrepresentations to consumers in the market for education certificates or degrees, including nondiscrimination and free speech representations. *See* 20 U.S.C. § 1094(c)(3)(B); 34 CFR 668.71(c); Standard Form 424B; Exec. Order 13864, *Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities*, 84 Fed. Reg. 11,401 (Mar. 21, 2019); U.S. Dep't of Educ., Office of Postsecondary Educ., Final Rule, *Direct Grant Programs, State-Administered Formula Grant Programs, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 59,196 (Sept. 23, 2020); U.S. Dep't of Educ., Office of Postsecondary Educ., Notice of Proposed Rulemaking, *Direct Grant Programs, State-Administered Formula Grant Programs, Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 Fed. Reg. 3190, 3213 n.137 (Jan. 17, 2020).

The above-cited statements by Northwestern's officials lay a foundation for concern that the university's "anti-racism" measures also may become infected with "racism" and "devaluing" of students based on race, color, or national origin. Similarly, it is not clear how the law school or the university intend to police speech and academic freedom to ensure both are subordinated to "fostering an anti-racist environment," however that may be defined, in a lawful manner. *See* Yuracko, *supra*. This, too, may be a reason for concern. Rest assured, however, the Department's [Office for Civil Rights](#) stands ready to accept complaints from students or others alleging Northwestern has violated Title VI. Similarly, students and faculty may direct complaints or concerns about alleged violations of Northwestern's [Academic Freedom/Freedom of Speech Policy](#) to the Department's free speech hotline at freespeech@ed.gov.

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Thank you again for contacting the U.S. Department of Education.

Sincerely yours,

**Reed
Rubinstein**

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Rubinstein
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Reed D. Rubinstein
Principal Deputy General Counsel delegated the
Authority and Duties of the General Counsel

Cc: Kimberly M. Richey
Acting Assistant Secretary, Office for Civil Rights
U.S. Department of Education

ARCHIVED AND NOT FOR RELIANCE.

This document was issued without the review required under the Department's Rulemaking and Guidance Procedures, 85 Fed. Reg. 62597 (Oct. 5, 2020)

EXHIBIT 1



UNITED STATES COMMISSION ON CIVIL RIGHTS

1331 PENNSYLVANIA AVENUE , NW, WASHINGTON, DC 20425

www.usccr.gov

October 21, 2020

The Honorable Betsy DeVos
Secretary
United States Department of Education
400 Maryland Avenue SW
Washington, D.C. 20202

Dear Ms. Secretary:

We write as four members of the eight-member U.S. Commission on Civil Rights, and not on behalf of the Commission as a whole. We write to express our concern regarding the admitted racism of several employees at the Northwestern University Pritzker School of Law.

During a recent online town-hall meeting, several employees publicly admitted that they are racists, and one even admitted to acting as a “gatekeeper of white supremacy.”¹ Included in this number of admitted racists was James B. Speta, the law school’s Interim Dean and the Elizabeth Froehling Horner Professor of Law.² The Pritzker School of Law participates in Title IV federal financial-aid programs, and thus must abide by Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, which provides that “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

Based on these facts, we ask that you consider conducting an investigation into the Pritzker School of Law’s potentially discriminatory practices—similar to your investigation into Princeton University’s potentially discriminatory practices³—and that you take any additional action that you deem appropriate.

Thank you for your attention to this important matter.

Most respectfully,

¹ Carly Ortiz-Lytle, *Northwestern University's interim dean admits to being a 'racist' during digital town hall*, WASH. EXAMINER, Sep. 1, 2020, <https://www.washingtonexaminer.com/news/northwestern-universitys-interim-dean-admits-to-being-a-racist-during-digital-town-hall>.

² FACULTY PROFILE: JAMES B. SPETA, <https://www.law.northwestern.edu/faculty/profiles/JamesSpeta/> (last visited Oct. 19, 2020).

³ Letter from Robert King, Assistant Secretary, Dep’t of Educ., to Christopher L. Eisgruber, President, Princeton University (Sept. 16, 2020) (available at <https://www.princeton.edu/sites/default/files/documents/2020/09/Princeton-Letter-9-16-20-Signed.pdf>).



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Handwritten signature of Gail Heriot in black ink.

Gail Heriot
Commissioner

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Stephen Gilchrist
Commissioner

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Peter Kirsanow
Commissioner

Handwritten signature of J. Christian Adams in black ink.

J. Christian Adams
Commissioner

Cc: Robert King
Assistant Secretary, Office of Postsecondary Education
U.S. Department of Education

John B. Daukas
Principal Deputy Assistant Attorney General, Civil Rights Division
U.S. Department of Justice

Kimberly M. Richey
Acting Assistant Secretary, Office for Civil Rights
U.S. Department of Education

Reed D. Rubinstein
Principal Deputy General Counsel
U.S. Department of Education