

Congress of the United States
Washington, DC 20515

August 18, 2017

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

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

Dear Attorney General Sessions and Secretary DeVos:

We write to request information about how the Department of Justice (DOJ) and Department of Education (ED) intend to approach cases and matters involving systemic civil rights abuses and racial diversity in college and university admissions.

Recently, an internal hiring posting from DOJ citing “investigations and possible litigation related to intentional race-based discrimination in college and university admissions” caused public concerns as to whether DOJ and ED are launching a new effort to reexamine the values of racial diversity on campus. This is the latest effort by this Administration to step away from enforcing the protections provided under the Civil Rights Act and instead promote policies that undermine civil rights protections and your Departments’ Civil Rights Offices.

The Supreme Court has made it clear that racial diversity is a compelling state interest and that it is in our national interest that talented students from a variety of backgrounds get a close look and a fair chance at overcoming obstacles to higher education. Despite this, on August 1, 2017, the *New York Times* reported that DOJ’s Civil Rights Division is preparing to redirect resources into investigating and/or pursuing legal action against American colleges and universities over admissions policies that seek to provide students with racially diverse and inclusive learning environments.¹ Following the publication of that report, and substantial public interest, a DOJ spokeswoman said, “The posting sought volunteers to investigate one administrative complaint filed by a coalition of 64 Asian-American associations in May 2015 that the prior Administration left unresolved.”²

¹ Justice Dept. to Take On Affirmative Action in College Admissions, *New York Times*, Aug. 1, 2017, available at <https://www.nytimes.com/2017/08/01/us/politics/trump-affirmative-action-universities.html>.

² DOJ: Affirmative action case a limited one, *Politico*, Aug. 2, 2017, available at <http://www.politico.com/story/2017/08/02/affirmative-action-department-justice-241272>.

In November 2014, Students for Fair Admissions filed a lawsuit against Harvard University seeking declaratory judgment for the use of racially and ethnically discriminatory policies in administering undergraduate admissions in violation of Title VI of the Civil Rights Act of 1964.³ In May 2015, a coalition of groups also filed complaints with ED's Office for Civil Rights and the DOJ's Civil Rights Division.⁴ ED's Office for Civil Rights dismissed the complaint on June 3, 2015 noting that the office "can dismiss a complaint when the same allegation, against the same party, seeking the same relief is pending in a court proceeding."⁵ The complaint remains pending before the Civil Rights Division at DOJ.

We have serious outstanding concerns about the Trump Administration's intention regarding policies to promote racial diversity in university admissions and the scope of work your agencies may be undertaking on this issue. First, there is a discrepancy about the scope of the project. DOJ's internal job posting asks for applications to assist with "investigations," yet the statement from DOJ describes a single "investigation." Merely acknowledging one investigation, however, does not rule out the possibility of a more expansive probe now or in the future. Nor does it explain why it would be taking up an investigation into this 2015 complaint at this time.

Moreover, instead of being run out of the DOJ's Educational Opportunities Section, which "is responsible for enforcing Title IV of the Civil Rights Act of 1964,"⁶ it appears that these efforts to reexamine admissions practices will be managed by Administration political appointees. The *Washington Post* reported that "the move came after career staffers who specialize in education issues refused to work on the project out of concerns it was contrary to the office's long-running approach to civil rights in education opportunities. As a result, political leadership within the department decided to run the effort themselves."⁷ Such a move suggests this is a political maneuver designed to circumvent DOJ operating procedures and career attorneys, and that DOJ may be considering launching an attack on racial diversity and inclusion in higher education.

³ Complaint, *SFVA v. Harvard* (D. Mass. 2014) (No. 1:14-cv-14176-ADB) available at http://pdfserver.amlaw.com/nlj/harvard_complaint_2014.pdf.

⁴ Complaint Against Harvard University and the President and Fellows of Harvard College for Discriminating Against Asian-American Applicants in the College Admissions Process, Submitted to Office for Civil Rights U.S. Department of Education & Civil Rights Divisions U.S. Department of Justice, by Coalition of Asian-American Associations, May 15, 2015, available at <http://www.chronicle.com/items/biz/pdf/Final%20Aisan%20Complaint%20Harvard%20Document%2020150515.pdf>.

⁵ Why the Education Dept. dismissed a discrimination complaint against Harvard, *PBS*, July 8, 2015, available at <http://www.pbs.org/newshour/rundown/education-department-dismisses-discrimination-complaint-harvard/>

⁶ Educational Opportunities Section, Department of Justice Website, available at <https://www.justice.gov/crt/educational-opportunities-section>

⁷ Justice Department plans new project to sue universities over affirmative action policies, *Washington Post*, Aug. 1, 2017, available at https://www.washingtonpost.com/world/national-security/justice-department-plans-new-project-to-sue-universities-over-affirmative-action-policies/2017/08/01/6295eba4-772b-11e7-8f39-eeb7d3a2d304_story.html?utm_term=.6870500e736b

We also have a number of questions about ED's role in setting Administration policy toward college admissions practices given the importance of racial diversity in higher education and its importance to our nation's global economy. It is unclear to what extent, if any, ED has been involved in decisions about the Harvard University case or any broader effort to set Trump Administration policy regarding the importance of racial diversity on campus. Both Departments have worked together on issues of the use of race in admissions programs in the past.⁸ They have issued joint guidance explaining how educational institutions can lawfully pursue voluntary policies to achieve diversity or avoid racial isolation within the framework of Title IV.⁹ This guidance was based on Supreme Court precedent and described various ways schools could lawfully meet the goal of achieving a diverse student body.¹⁰ Any effort to limit universities' ability to take students' backgrounds, including their race, into account during the admissions process is an abrupt and extremely troubling shift in policy for both Departments.

This action is especially suspect given this Administration's lack of attention to civil rights issues in our education system thus far. For example, neither DOJ nor ED have publically addressed the spate of racially charged incidents on college campuses nor the rise in white supremacist recruiting efforts and incidents on college campuses which the Anti-Defamation League (ADL) describes as unprecedented.¹¹ Such incidents include the stabbing of an African American student commissioned as a second lieutenant in the U.S. Army by a fan of white supremacist websites, or bananas hanging from nooses labeled "Harambe bait." Additionally, the Southern Poverty Law Center (SPLC) has tracked approximately 250 incidents on more than 150 campuses of distribution of white supremacist flyers since spring of 2016, with nearly 200 of these incidents occurred after the November election.¹²

In order to understand how the Trump Administration plans to address these issues, we request a response to the following by September 1, 2017.

1. A description of any new policy currently under consideration at your agencies related to racial diversity in admissions on college and university campuses.
2. All internal job postings related to education, discrimination, or racial diversity from any division within the DOJ since January 2017.

⁸ See e.g. Questions and Answers About Fisher v. University of Texas at Austin, available at <https://www.justice.gov/sites/default/files/crt/legacy/2013/09/30/fisherfaq.pdf>.

⁹ Guidance on the Voluntary Use of Race to Achieve Diversity in Postsecondary Education, available at <https://www.justice.gov/sites/default/files/crt/legacy/2011/12/02/guidancepost.pdf>.

¹⁰ *Id.*

¹¹ ADL: White Supremacists Making Unprecedented Effort on U.S. College Campuses to Spread Their Message, Recruit, Mar. 6, 2017, available at <https://www.adl.org/news/press-releases/adl-white-supremacists-making-unprecedented-effort-on-us-college-campuses-to>.

¹² SPLC White Nationalist Campus Flyering, available at <https://www.splcenter.org/file/14827>.

3. A description of any directive given to DOJ employees about how to respond to complaints or cases related to university admissions since January 2017.
4. A description of any directive given to DOJ employees about how to respond to complaints or cases related to racial diversity in education.
5. The current number of individuals employed by the Educational Opportunities Section at DOJ.
6. Any communication between DOJ and any outside group about the Harvard University case or the topic of university admissions.
7. Any communication between ED and any outside group about the Harvard University case or the topic of university admissions.
8. A copy of any written agreement or arrangement to provide data from the Civil Rights Data Collection. If no written agreement exists, a description of that agreement.
9. A description of how ED and DOJ are coordinating to set policy related to higher education issues and all communication between ED and DOJ about college and university admissions policies.

Thank you for your cooperation with this matter.



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