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The Department of Education Opens an Investigation After University Acknowledges Embedded Racism

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Earlier this month, Princeton's President sent a [letter](#) to the Princeton community to outline the University's next steps to "address systemic racism at Princeton and beyond." President Eisgruber showed his support for anti-racism and justice for the recent police killings of Black individuals, writing that "[t]his outrageous and awful violence has revealed yet again, and with searing intensity, the long, painful, and ongoing existence of anti-Black racism in America." Eisgruber added that "[r]acial justice demands the attention of this University" and we must find ways "to bear against racism, and against all of the discrimination that damages the lives of people of color." The letter announces Princeton initiatives to increase race-based diversity, including expanding diversity in the faculty pipeline and creating new credit- or degree-granting programs to extend Princeton's teaching to a new range of students from communities disproportionately affected by systemic racism and related forms of disadvantage. Eisgruber concluded by recognizing that "[i]t will not be easy, but the benefits will be tremendous" and that he, and Princeton, "look forward to . . . fight[ing] the systemic racism that has far too long damaged the lives of Black, Indigenous, and people of color, both at this University and in the United States more broadly." In the wake of the national reckoning with racism, many other leaders at higher education institutions issued statements acknowledging racism and structural inequalities.

While Princeton's statement may have seemed unexceptional in light of the national conversation around racial justice, the Department of Education expressed concern regarding Eisgruber's letter, and, on September 16, 2020, sent Princeton its own [letter](#) suggesting that Princeton's statements went beyond a mere acknowledgement of racism and that Eisgruber's words qualified as "admitted racism," potentially indicating years of misrepresentations regarding institutional compliance with nondiscrimination laws.

The Department's letter may signal an important new front and bellwether in the Department's attack on institutional diversity efforts, in line with a recent Department of Justice [letter of findings](#) against Yale related to race-conscious admissions and President Trump's recent statement that "[m]any young Americans have been fed lies about America being a wicked nation plagued by racism" in the context of announcing a new, more "patriotic" elementary curriculum. The letter is also in line with President Trump's latest Executive Order on "Combating Race and Sex Stereotyping," issued on September 22, 2020. In the [Executive Order](#), President Trump writes that there is a "false belief that America is an irredeemably racist and sexist country" and this "ideology" is "threaten[ing] to infect core institutions of our country." The Order goes on to prohibit federal contractors and grantees from engaging in certain forms of diversity training, including implicit bias training and those that "assign[] fault, blame, or bias to a race or sex . . . because of their race or sex."

Consistent with the Trump Administration's attention to revising diversity trainings and its views on structural racism, the Department notified Princeton that it is opening an investigation due to the University's statement that "Princeton's educational program is and for decades has been racist." The Department viewed Princeton's announcement that "[r]acism and the damage it does to people of color persist at Princeton . . ." and "[r]acist assumptions . . . remain embedded in structures of the University itself" as evidence that the University's past nondiscrimination and equal opportunity assurances under Title VI from at least 2013 "may have been false." Further, the Department expressed concern that Princeton's nondiscrimination and equal opportunity claims to its community "may have been false, misleading and actional substantial misrepresentations[.]"

Title VI, which prohibits recipients of federal funding from discriminating on the ground of race, color, or national origin, also requires higher education institutions to provide assurances to the Department that it is complying with the law and not engaging in discriminatory acts. Similarly, institutions must publish annual nondiscrimination statements. See e.g., 34 C.F.R. § 100.4. The Department's investigation will reportedly examine whether Princeton's "admitted racism" now shows that the University "knew, or should have known" that its past assurances to the Department and statements to the community regarding its compliance with nondiscrimination laws were "false at the time they were made." The Department warned Princeton that it could try to recover federal funds and it felt compelled to respond due to the "serious, even shocking nature of Princeton's admissions."

As part of its inquiry, the Department requested that Princeton produce nine sweeping categories of documentation and records relating to “Princeton’s ‘systemic’ and/or ‘embedded’ racism” and names of individuals who had sustained “damage” as a result of Princeton’s actions. The Department also indicated its intention to interview President Eisgruber under oath and required the University to answer written questions related to the University’s “admissions.”

The broader message of this letter from the Department is clear: an acknowledgement of systemic and structural racism on campus may have regulatory consequences. Unfortunately, this salvo by the Education Department adds another layer of complexity to an already extraordinary challenging set of issues for institutions, which must continue to weigh regulatory risk against mission-based imperatives as they respond to the demands of their communities.

Saul Ewing Arnstein & Lehr attorneys regularly advise colleges and universities on legal and compliance issues, including the Title VI and Department of Education investigations. If you have any questions regarding any issue related to Title VI or administrative enforcement actions, please contact the authors or the attorney at the Firm with whom you are regularly in contact.

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