



CONFIDENTIAL INVESTIGATION REPORT – ATTORNEY CLIENT

PRIVILEGED

TO: University of Idaho (C. Scott Green, University of Idaho President)
FROM: Hawley Troxell
DATE: December 27, 2022
RE: Follow-Up Investigation of UI Diversity and Inclusion Initiatives

I. INVESTIGATION SUMMARY

This law firm (Hawley Troxell) was engaged by University of Idaho (UI) to conduct an independent, follow-up investigation of certain allegations regarding UI’s diversity and inclusion initiatives. This investigation was conducted as a follow-up to a previous investigation conducted by Hawley Troxell regarding UI’s diversity and inclusion initiatives in 2021 (hereinafter the “2021 Investigation”). Specifically, this report addresses certain allegations contained in an article published by the Idaho Freedom Foundation in April 2022, titled “States Must Go Beyond Affirmative Action Bans To Stop Discriminatory Diversity, Equity, and Inclusion On College Campuses” (hereinafter the “IFF Article”).

While many of the allegations contained in the IFF Article were already investigated and addressed as part of the 2021 Investigation, the University requested that we investigate the following issues:

1. Whether the salaries of UI’s Chief Diversity Officer and Executive Director of Tribal Relations, Director of the Black and African American Culture Center, and Director of Diversity, Inclusion and Outreach, College of Engineering, are paid by

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- state appropriations and are below the market rate and average rate at other R2 institutions.
2. The origins of the Black and African American Cultural Center (BAACC) at UI and whether recruiting students is a primary job responsibility of the Director of the BAACC.
 3. With regard to the UI College of Law sponsoring Boise Pride in September 2022 at a \$1,500 support level, whether the funding was from state-appropriated funds, and whether UI had knowledge of the specific events of the weekend, including a youth drag show.
 4. Whether any emergency money from the Bruce and Kathy Pitman Emergency fund was awarded to a student who used the money for an abortion.
 5. Whether all international students at UI undergo rigorous screening and have valid documentation to study in the U.S.
 6. Whether the DEI efforts at UI are proportionate to its size when compared to DEI efforts at Boise State University, Idaho State University, and Lewis State College as it relates to their size.
 7. Whether national accreditation allows UI eligibility for federal dollars, including financial aid and grants and allows for the transfer of credits to other institutions and portability of degrees across state lines.

As UI requested, we conducted an independent investigation into each of these issues.

Our instructions from UI were to investigate each of these points and determine whether or not they could be validated. We were given authority to communicate directly with UI staff, including administrators. UI cooperated fully with the investigation and provided us with all information requested.

II. INVESTIGATION PROTOCOL

As part of our investigation, we reached out to and requested interviews with eight (8) UI employees, including many administrators. We then interviewed each of these individuals as it relates to the issues identified above. At the beginning of each interview, each employee was informed that we had been retained by UI to conduct an independent investigation; that we were not legal counsel for the employee and could not offer legal advice; that we were conducting an

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investigation and that a report would be compiled and presented to UI; and that the employee should be as forthcoming as possible regarding information they might have.

In addition to these interviews, we also reviewed a substantial number of documents and independent sources of information as part of our investigation. After conducting a thorough and independent investigation, we were able to make the following conclusions.

III. FINDINGS

A. The salaries of UI's Chief Diversity Officer and Executive Director of Tribal Relations, Director of the Black and African American Culture Center, and Director of Diversity, Inclusion and Outreach for the College of Engineering are not funded with state appropriations and are below market rate.

Based upon our interviews with multiple UI administrators as well as a detailed review of salary information for these three individuals, we have determined that the salaries of Yolanda Bisbee, Chief Diversity Officer and Executive Director of Tribal Relations, Mario Pile, Director of the Black and African American Culture Center, and Kathryn Schiffelbein, Director of Diversity, Inclusion and Outreach for the UI College of Engineering are not paid by state appropriations. Rather, the salaries for these employees or the portions of salaries relating to DEI are sourced from other funds, such as private endowments or student funds. There was no evidence indicating that the salaries of these employees, or the portions of salaries related to DEI initiatives, are funded by any state appropriations.

Additionally, our investigation revealed that the salaries for these three employees are below the market rate. For example, the market rate for a Chief Diversity Officer and Executive Director of Tribal Relations is \$184,244, while UI pays this position \$149,032. The market rate for a Director of Diversity, Inclusion and Outreach for the College of Engineering is \$85,050.92,

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while UI pays this position \$79,481.60. The market rate for the Director of the Black and African American Culture Center is \$79,342, while UI pays this position \$65,811.20. Thus, these three salaries are well below the market rate. Further, these salaries are all well below the average salaries at other R2 institutions, which are as follows: Chief Diversity Officer - \$203,011; Director of Diversity, Inclusion, and Outreach - \$94,742; Head – Minority – Multicultural Student Affairs - \$78,018. Again, UI pays each of these positions below these average rates.

B. The Black and African American Cultural Center was established in 1971. The responsibilities of its Director include, among other things, the recruiting of students.

Based upon our investigation, we were able to conclude and substantiate that the Black and African American Cultural Center (BAACC) was established over 50 years ago, in 1971. The BAAC has only recently been relocated to UI's Student Union Building, where it took over a space that was previously vacant. The BAAC serves students of all ethnicities and is not limited to use by African American students. Furthermore, our investigation concluded that the BAAC is not funded by any state appropriated funds.

We also determined that the Director of the BAAC has many job responsibilities in addition to the operation of the BAAC's physical space. For example, one of the BAAC Director's primary responsibilities is the recruiting of high school students to UI. As part of this, the Director is tasked with traveling across the state and speaking to high school juniors and seniors in Idaho about the benefits of post-secondary education and encouraging these students to go to college. The Director does not limit his recruitment to African American students and instead focuses on high school students generally.

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C. UI's sponsorship of the Boise Pride in September 2022 was done without state appropriated funds and without knowledge of the specific events of the weekend.

In our investigation, we found that UI sponsored the Boise Pride in September 2022, at the \$1,500 support level. After reviewing the evidence, we conclude that this sponsorship did not come from any state appropriated funds. Rather, the funds for this sponsorship came from funds forfeited by potential students who had applied but withdrawn from the College of Law.

Further, our investigation concluded that the College of Law was not aware of the weekend activities for Boise Pride, as the College only intended to participate in the Boise Pride parade in support of its LGBTQ+ students. The College of Law was not aware of the weekend activities, such as the youth drag show, when it became a sponsor and instead only found out about those events when the other sponsors did as well.

D. No emergency money from the Bruce and Kathy Pitman Emergency Fund was awarded to a student who used the money for an abortion.

Based upon our investigation, we conclude that no money was provided by UI to a student for the purpose of obtaining an abortion. Rather, this issue stems from an article that was written by a high school student after the *Dobbs* decision overruling *Roe v. Wade*. In the article, the student stated that students could potentially use emergency funds provided by UI to obtain an abortion. The evidence we reviewed indicates that this was a mischaracterization. The Bruce and Kathy Pitman Emergency Fund provides financial assistance to University of Idaho students who are experiencing emergency situations that impede academic progress and for those who cannot reasonably resolve their financial situation through other sources.

Based upon our investigation, we conclude that no money was awarded to a student for an abortion, and that a student would not be able to use such funding to obtain an abortion. This

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money is reserved for emergencies or financial need, which the University lists as things such as: homelessness, domestic violence, theft, job loss, medical care, food/groceries, and **child care**. (emphasis added). While the emergency money is not tracked after it is given to a student, there is an application process for the emergency funds that involves a comprehensive review by UI to determine whether or not to award the funds. There was no evidence indicating that any funds have been distributed to a student for an abortion nor any evidence suggesting UI would do so if requested.

E. All UI international students undergo rigorous screening and must have valid documentation to study in the U.S.

UI participates in the United States Student Exchange Visitor Program (SEVP) administered by the U.S. Immigration and Customs Enforcement (ICE). To participate in this program, institutions must apply for and receive their SEVP certification, which allows institutions, such as UI, to issue Forms I-20, "Certificate of Eligibility for Nonimmigrant Student Status," to prospective international students after admitting them for a program to study. Prospective international students may then use the Form I-20 to apply for a visa to enter the United States.

The SEVP process is complicated and involves several steps along with a significant amount of screening. In order to receive its SEVP certification, UI makes a legally binding promise to comply with all applicable federal laws, regulations, and Department of Homeland Security requirements. This promise includes ensuring international students possess and maintain valid documentation to study in the U.S. UI then must consistently report to the SEVP to maintain its certification.

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With regard to admitting international students, there are two components. First, the prospective international student must meet the academic requirements for the program they wish to study. In addition to these academic requirements, the student must meet the requirements for a Form I-20. Once the student receives the Form I-20 from the school, the student then must apply for a visa to enter the United States to study. Students undergo additional rigorous screening and background verification by the United States Immigrations and Customs Enforcement and State Department as part of this process. The student is only permitted to enter the United States and participate in the SEVP if they are issued a valid F-1 or M-1 visa by the U.S. Department of State.

If a student is issued the visa to participation in the SEVP, the student then must maintain their status as a student and comply with all requirements which of the SEVP, which include:

- Reporting to the Designated School Official immediately upon entering the United States;
- Attending all classes and maintain normal academic process;
- Maintaining a full course of study each term;
- Keeping all documentation up to date.

Thus, based upon our review of the evidence provided, along with federal law, regulations, and requirements, we conclude that international students must undergo rigorous screening and have valid documentation to study at UI.

F. The Diversity Equity and Inclusion efforts at UI are proportionate to its size when compared to DEI efforts at other universities such as Boise State University, Idaho State University, and Lewis-Clark State College as it relates to their size.

Upon our review of DEI efforts, we concluded that the DEI efforts at UI are proportionate to its size when compared to other institutions in Idaho. Institutions that are larger and smaller than UI, such as Boise State University and Lewis-Clark State College, each have

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diversity, equity and inclusion initiatives. Indeed, both of these institutions have commissions on diversity that report to institutions' presidents, mission statements committed to institutional diversity, equity and inclusion, and departmental initiatives dedicated to diversity and inclusion.

From an enrollment perspective, UI is most similar to ISU. ISU, like UI, has a Director of the Office of Equity and Inclusion. ISU also has an Equity and Inclusion Commission that serves as an advisory and recommending body to the Office of the President. In addition, ISU also has a STEM Diversity and Outreach office that "aims to increase the participation of students in Research who are underrepresented in Science, Technology, Engineering, and Math (STEM). This is similar to UI's commitment to Women in Engineering. Thus, based upon our review of the evidence presented, we conclude that UI's DEI efforts are proportionate to its size when compared to other Idaho institutions.

G. National accreditation allows the university eligibility for federal dollars, including financial aid and grants, and allows for the transfer of credits to other institutions and portability of degrees across state lines.

UI is accredited by the Northwest Commission on Colleges and Universities (NWCCU), which is the accrediting body recognized by the United States Department of Education and Council on Higher Education to accredit colleges and universities across the northwest. Through our investigation, we conclude that this accreditation is vital to UI's eligibility to receive federal dollars, including financial aid and federal grant monies. Title IV funding refers to federal financial aid funds. Federal regulatory requirements mandate that a university be accredited by a body that is recognized by the Department of Education to participate in financial aid programs. Institutions applying for Title IV participation must demonstrate accreditation as part of the application process. Failure to do so would result in the application for Title IV participation

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being denied, and would make UI ineligible to receive Title IV funding, including financial aid and federal grant monies.

In addition to impacting UI's ability to participate in Title IV funding, UI's accreditation also allows for the transferability of credits to other institutions and across state lines. In fact, most universities require that credits completed at another institution come from an accredited institution. For example, the University of Florida requires that transfer credits come from an institution of higher education accredited by one of the following:

- Western Association of Schools and Colleges, Accrediting Commission for Community and Junior Colleges (ACCJC)
- New England Commission of Higher Education (NECHE)
- Higher Learning Commission (HLC)
- Middle States Commission on Higher Education (MSCHE)
- **Northwest Commission on Colleges and Universities (NWCCU)**
- Southern Association of Colleges and Schools Commission on Colleges (SACSCOC)
- WASC Senior College and University Commission

Many students rely on the transferability of these credits to complete their education at other institutions. Without its accreditation, UI students would not be able to transfer these credits to other institutions to complete their education. Additionally, most post-graduate programs require credits or degrees to come from an accredited institution. For example, most law schools, such as BYU Law, University of Utah Law, and University of Washington Law require that applicants have a bachelor's degree from an accredited college or university. Similarly, the WWAMI program (the University of Washington School of Medicine's multi-state medical education program) requires that applicants complete any and all pre-med course requirements from institutions that are accredited by a regional accrediting organization, such as the NWCCU. Thus, without an accreditation, UI students would not be able to participate in this program.

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In conclusion, UI's national accreditation directly impacts its eligibility for federal dollars, including financial aid and grants, and allows for the transfer of credits to other institutions and portability of degrees across state lines.

IV. CONCLUSION

After conducting our investigation, we were able to conclude the following:

1. The salaries of UI's Chief Diversity Officer and Executive Director of Tribal Relations, Director of the Black and African American Culture Center, and Director of Diversity, Inclusion and Outreach for the College of Engineering are not funded with state appropriations and are below market rate.
2. The Black and African American Cultural Center was established in 1971. The chief responsibilities of its Director include, among other things, the recruiting of students, without regard to race.
3. UI's sponsorship of the Boise Pride in September 2022 was done without state appropriated funds and without knowledge of the specific events of the weekend.
4. No emergency money from the Bruce and Kathy Pitman Emergency Fund was knowingly awarded to a student who used the money for an abortion, and funds would not be awarded for such a purpose.
5. All UI international students undergo rigorous screening and must have valid documentation, including a visa, to study in the U.S.
6. The Diversity Equity and Inclusion efforts at UI are proportionate to its size when compared to DEI efforts at other universities such as Boise State University, Idaho State University, and Lewis-Clark State College as it relates to their size.
7. National accreditation is required in order for the university to be eligible to receive federal dollars, including financial aid and grants, and allows for the transfer of credits to other institutions and portability of degrees across state lines.

These findings were consistent with the 2021 investigation, in which we concluded that UI's diversity and inclusion initiatives do not rise to any level of impropriety.

END REPORT