



October 31, 2025

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Senator L. Louise Lucas 18th District
President Pro Tempore and Chair,
Senate Finance and Appropriations
Committee Post Office Box 700
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Dear Senators Surovell and Lucas:

Thank you for your letter concerning the University of Virginia's October 22 standstill agreement (the Agreement) with the U.S. Department of Justice. Your letter provides a detailed analysis of the potential grounds on which the University might have sued the United States to oppose any withdrawal of federal funding based on unreasonable conditions. It does not, however, consider whether initiating a legal confrontation with the federal government would have been necessary or appropriate, particularly before we had exhausted other less costly and risky options.

As fiduciaries of the University of Virginia and servants of the commonwealth, we were bound to consider the costs and benefits to UVA of different paths forward. The course we chose suspends 5 civil rights compliance investigations into UVA, preserves our institutional autonomy, and preserves academic freedom at our institution, without agreeing to any terms that are substantially different than our own internal guidance and policies. If DOJ ultimately disagrees with our understanding and implementation of the law, their remedy is to cancel the Agreement and pursue remedies in court—at which point we could make all of the arguments proposed in your letter. It is essentially a cease fire agreement, and a far better option than leaping straight into a legal battle that might be unnecessary.

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You correctly note that Harvard chose to sue. Their situation was very different from ours. The government had already terminated many of their research grants. Their suit was an attempt to restore those grants. To date, the United States has not imposed any sanctions on UVA. That would surely change were we to adopt a confrontational position before exhausting other options. We would then face the loss of research grants that would result in disruption of vital research and possibly layoffs of faculty and staff. As they have with Harvard, the government could threaten our students' financial aid and the visas that some need to remain in the United States. Although Harvard has had some success in litigation, it suffered a \$112.6M operating loss last year after an 8.4% drop in federal support.¹ And of course Harvard has many advantages that we do not.

I hope you will agree that any path to resolving these investigations without running those risks is worth pursuing. Accordingly, we chose to sign an agreement that obligates us to follow federal guidance on civil rights law. Your letter notes that their guidance sets certain boundaries that may not be clearly settled in the law. But there is no rule that universities cannot agree to follow federal guidance that might be susceptible to challenge in court.² This University and others have done so countless times—including, for example, when the Obama administration's "Dear Colleague" letters mandated particular procedures in sexual assault investigations under Title IX.

The important question, therefore, is whether following the DOJ guidance imposes substantial burdens on UVA. The answer is clearly no.

In the late summer of 2023, shortly after *Students for Fair Admissions* was decided, UVA adopted guidance about compliance with that decision in the context of admissions, scholarships, and recruiting. In the spring of 2025, UVA adopted additional guidance on compliance with civil rights laws in a variety of other contexts. Both documents were adopted prior to when I assumed the position of Interim President, and I am attaching them to this letter. In nearly all respects, they are consistent with DOJ's July 29 guidance.

Under the UVA admissions guidance, we may consider the unique talents and attributes of individual applicants even when they are demonstrated in ways linked to the applicant's race—as clearly permitted by Chief Justice Roberts's opinion for the Court in *Students for Fair Admissions*.³ We also may use facially neutral factors such as low-income or first-generation status as admissions criteria because we value them in their own right, not for the purpose of

¹ <https://www.highereddive.com/news/harvard-university-operating-loss-trump-pressure-campaign/803164/>

² Your letter references a variety of legal rules, such as Spending Clause constraints and the unconstitutional conditions doctrine, which constrain the federal government's ability to impose arbitrary conditions on recipients of federal funds. I'm sure you understand that those doctrines constrain the government, not the University. We are not violating the constitution or the law by failing to sue the United States.

³ Our guidance states that racial information disclosed in an essay "will only be considered if it is connected to the candidate's experiences as an individual and thus to the candidate's ability to contribute to the University, and not on the basis of race or ethnicity alone," and that the focus must always be on "the unique skills, talents, and perspectives of individual candidates, and the ways in which those unique attributes will help each candidate contribute to the University."

increasing racial diversity.⁴ The UVA guidance also commits us to cease using race as a criterion for employment. These policies are consistent with the DOJ's July 29, 2025 guidance.⁵ We did not revise them after receiving the DOJ guidance or after signing the Agreement.

We agree with you that there is ongoing debate over whether facially neutral criteria might be used intentionally to pursue racial diversity. There also is debate over whether there might still be room for explicit consideration of race in employment decisions after *Students for Fair Admissions*. But the University has decided not to do either of those things. If you believe that the University should have refused to enter into the Agreement and instead sued the United States in order to preserve the theoretical possibility of doing things *that we have decided not to do*, I cannot agree.

The one material issue on which DOJ's guidance diverges from our own is that DOJ's guidance would require segregation of bathrooms and athletic competition by biological sex. We have agreed to follow their guidance only "to the extent consistent with relevant judicial decisions." As DOJ knows, we are bound on those issues by two decisions of the Fourth Circuit Court of Appeals that adopt an understanding of Title IX that is opposite from DOJ's view. One of those cases (*B.P.J. v. West Virginia Board of Education*) is currently on review in the Supreme Court. Those issues will be settled in court, not by this Agreement.

Your letter suggests that the Agreement also commits the University "to complete 'planned reforms prohibiting DEI at the university,'" and argues that such a promise is vague and overreaching. That language appears nowhere in the Agreement.

Of course, we understand that DOJ's interpretation of their guidance (and ours) might prove to be different from our interpretation at some point. If so, DOJ's remedy is to cancel the Agreement and to "pursue enforcement actions, monetary fines, or grant or funding terminations as appropriate." The key word is *pursue*. If DOJ cancels the Agreement they would have to pursue sanctions under ordinary legal process—just as they could before the Agreement was signed. And the University can end this Agreement by the simple expedient of refusing to change

⁴ Our guidance explains that "[b]ecause we are, in the words of our mission statement, committed to the 'development of the full potential of talented students from all walks of life,' and because the 2030 Plan calls upon us to strengthen the socioeconomic diversity and mobility of our student body, admission officers may have access to indicators of socioeconomic status—for example, whether a candidate qualifies for a waiver of the application fee, is a first-generation college student, received or is receiving need-based aid at another college or university, or attends a school or lives in a neighborhood with a high degree of socioeconomic disadvantage."

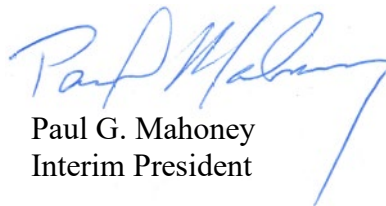
⁵ DOJ's guidance does not "prohibit[] universities from considering an applicant's discussion of how race has shaped their perspective or experiences," as you suggest. It cautions against using essay prompts about "overcoming obstacles" and the like "in a manner that advantages those who discuss experiences intrinsically tied to protected characteristics" and "as a proxy for advantaging that protected characteristic in providing benefits." DOJ is using the word "proxy" there in its legal sense, referring to a consideration adopted "because of, not merely in spite of" a correlation with race. The guidance is very clear about that elsewhere, explaining for example that an admissions process that considers factors like socioeconomic or first generation status will violate the law "if designed or applied *with the intention* of advantaging or disadvantaging individuals based on protected characteristics." We understand DOJ's guidance to prohibit universities from prioritizing resilience displayed by overcoming race-linked obstacles *over* resilience demonstrated by overcoming other sorts of obstacles, and from prioritizing a criteria like resilience "because of, not merely in spite of," the fact that it might have a racially disparate impact. We do neither of those things, and we do not understand DOJ's guidance to forbid the sort of context-sensitive consideration of individual applicants that *Students for Fair Admissions* clearly permits.

a policy that DOJ believes must be changed. Either way, we will litigate only if and when DOJ's interpretation of the agreement or the law diverges from our own, as expressed in our institution's policies and practices.

I do not share your concern that, by agreeing simply to affirm that we are not violating the law every quarter, the University has somehow surrendered itself to onerous federal interference (particularly in light of the far more detailed and impactful agreements other institutions have reached to resolve similar claims). I also disagree with your statement that the University has agreed to do anything inconsistent with its obligation under Virginia Code § 2.2-602(B) to maintain a comprehensive diversity, equity, and inclusion strategic plan. The University will continue to comply with that obligation. We do not understand the statute to require racial preferences in hiring or promotion decisions that would be inconsistent with DOJ's guidance, and with our own.

I sincerely appreciate your concern for the University's welfare. This has been a challenging period for our institution. I would be happy to meet with you to discuss any of the issues raised in your letter or this reply.

Sincerely,



Paul G. Mahoney
Interim President