



June 8, 2022

Dr. Pamela Jansma, Dean
College of Liberal Arts and Sciences
University of Colorado
Pamela.Jansma@ucdenver.edu

Dr. Constancio Nakuma, Provost
University of Colorado, Denver
constancio.nakuma@ucdenver.edu

Dr. Michelle Marks, Chancellor
University of Colorado, Denver
chancellor@ucdenver.edu

Sent via email

Dear Dean Jansma, Provost Nakuma, and Chancellor Marks:

I am an attorney at the Foundation Against Intolerance & Racism (FAIR), a nonpartisan organization dedicated to advancing civil rights and liberties rooted in our common humanity. We have nearly 100 chapters and tens of thousands of members nationwide, including in Colorado. Our website, fairforall.org, can give you a fuller sense of our identity and activities.

We write in response to several incident reports regarding the University of Colorado submitted to FAIR through our transparency website, fairtransparency.org. The reports set forth concerning allegations from individuals identifying themselves as University students and/or employees. The reports all surround the University's equity efforts.

One report includes the contents of a notice pertaining to the University's 2030 Strategic Plan implementing various diversity, equity, and inclusion efforts, and also links to the University's [webpage](#) discussing the same. In relevant part, the following priorities are included in the University's strategic plan:

- To create programming that educates the community about privilege, power, and inequality;
- Have departments and units revise merit and RTP documents to include evaluative criteria related to individual efforts to contribute to inclusive culture;
- Incorporate equity and inclusion criteria into staff and faculty annual performance goals;
- Expect each department and unit to develop and publicly post a diversity, equity, and inclusion statement;

- Redefining success through a lens of justice, equity, diversity, and inclusion to unlock the potential for everyone to succeed.

A second report details the process by which the University adopted a land acknowledgement that purportedly included accusations of genocide. According to that report, the University pressured an employee to include a land acknowledgement in their class syllabus, in direct contravention of the employee's sincerely-held beliefs. When the employee raised concerns, they were reportedly "ostracized and attacked" for expressing a dissenting opinion.

Another [report](#) alleges the University is sponsoring events that are segregated by skin color, constraining the universe of allowable viewpoints, and screening applicants based on ideology:

These last couple of years have been so hard on everyone and so many of our students are in truly dire straits. Spending a lot of money on a DEI brand refresh is the last thing we should be doing if the goal is to support them. Justice doesn't need to be branded. It needs to be practiced. Our bosses and supervisors regularly promote and encourage us to adopt the official campus DEI ideology. For example, CU Denver organizes and advertises events and "safe spaces" on campus segregated by race and gender identity/sexual orientation, openly embraces popular antiracist scholarship without offering opposing viewpoints, and screens job applicants for their adherence to the official DEI ideology.

The report also describes the negative consequences of the University's efforts:

I personally know of serious issues in four separate departments at UCD where a lot of people suffered and got hurt, and about which the administration has done nothing because they involved conduct and contexts that contradict the official narrative. It all just kind of gets ignored and downplayed, which is really scary and feels abusive. A lot of people on campus are afraid to speak up. I hear from students that they fear being called out by professors or other students for stating the "wrong" opinion. It used to be mostly conservative leaning students I heard this from, but not anymore. So many of our students are desperate to graduate, many of them are in debt, and they can't take the risk of making professors angry and getting bad grades. The social consequences for students of being marginalized are also really high. I hear from many faculty and staff that they're also afraid to speak.

Perhaps the most concerning report was submitted by a student, describing their personal experience in the wake of the University's recent push to become an "equitable" institution. The report states:

People mistake me for white sometimes, but I'm actually a person of color. My campus is supposed to be an inclusive place with a focus on DEI, but I've been told by several of my professors here that my experiences don't matter because I look "too white" to have gone through any form of racism in my life. This isn't true. When others or I have spoken to our other professors on this issue, it's clear that this is the guidance coming from above and that there isn't room for "nuance" in these discussions. In other words, I don't exist

because of how I look. It's been going on for a few years and it hurts. I keep getting sick over it. I dread going to campus and can't wait to be done.

To summarize the information provided to FAIR: The University is emphasizing a particular ideological viewpoint and concomitant intolerance of dissenting viewpoints. It has held events where individuals are physically segregated based on skin color. A chilling effect has resulted on campus, leaving some employees and students feeling they cannot express their beliefs without fear of retribution.

We have significant concerns if that information is accurate. As an advocate for pro-human antiracism, FAIR respects educators who undertake efforts to create positive change and greater fairness. There can be no question of past and present injustices committed in this nation. However, institutional policies and practices that attempt to remedy prejudice should not themselves further prejudice or intolerance. It is unconstitutional for a public institution to segregate individuals by skin color, even if the purpose is benign. *Johnson v. California*, 543 U.S. 499, 506 (2005). . *Shelley v. Kraemer*, 334 U.S. 1, 22 (1948); *Shaw v. Hunt*, 517 U.S. 899, 908 (1996).

Additionally, as a government actor and educational institution, a university must ensure its policies adhere to the First Amendment. “When the government targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 830 (1995). Forcing teachers to adopt a land acknowledgement and making clear that only certain viewpoints are allowed are inconsistent with the value of free speech. They are also inconsistent with the purpose of a university, which has a special responsibility to encourage free thought and expression:

To regard teachers—in our entire educational system, from the primary grades to the university—as the priests of our democracy is therefore not to indulge in hyperbole. It is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens, who, in turn, make possible an enlightened and effective public opinion.

Wieman v. Updegraf, 344 U.S. 183, 196 (1952) (Frankfurter, J., concurring).

We urge the University to reconsider the way in which it is implementing its equity initiatives. The policies and practices of a public university should promote positive aspirations and a unified community where all are welcome, discrimination based on immutable traits is prohibited, and divergent viewpoints are not merely tolerated, but respected.

We would like to give the University an opportunity to respond. Please let us know within the next five business days if you intend to do so.

Very truly yours,

A handwritten signature in black ink, appearing to read "LA O'Neill". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Leigh Ann O'Neill

Staff Attorney

Foundation Against Intolerance & Racism

cc: Marjorie Levine-Clark, Associate Dean for Diversity, Outreach and Initiatives,
Marjorie.Levine-Clark@ucdenver.edu