

CENTER FOR INDIVIDUAL RIGHTS

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March 26, 2025

Via Electronic Mail: OCR@ed.gov

Craig Trainor, Esq.
Acting Assistant Secretary for Civil Rights
Office for Civil Rights
United States Department of Education
400 Maryland Ave., S.W.
Washington, DC 20202-1100

Re: University of Pittsburgh – 20 U.S.C. § 1094 Investigation

Dear Acting Assistant Secretary Trainor:

The Center for Individual Rights (“CIR”) represents Dr. Norman Wang, an associate professor at the University of Pittsburgh (“Pitt”) School of Medicine.

On October 7, 2020, the U.S. Department of Education (the “Department”) initiated an investigation of Pitt’s conduct concerning Dr. Wang by sending a notice of Investigation/Request for Records and Transcribed Interviews under 20 U.S.C. § 1094. A true and correct copy of the Department’s letter to Pitt is attached hereto as Exhibit A.

The reasons for the Department’s investigation were set forth in the initial paragraphs of the Department’s letter:

The U.S. Department of Education (“Department”) has become aware of facts suggesting the University of Pittsburgh (“Pitt”) improperly targeted Dr. Norman Wang, associate professor of medicine, with a campaign of denunciation and cancellation due to the publication of his peer-reviewed scientific article in the *Journal of the American Heart Association* advocating race-neutral admissions and hiring in cardiology. Specifically, it appears Pitt's senior officials removed Dr. Wang as Program Director of the Clinical Cardiac Electrophysiology Fellowship at the University of Pittsburgh Medical Center (“UPMC”) on July 31, 2020, disparaged his scholarship, and subjected him to public vilification solely because his academic paper concluded, *inter alia*, “Ultimately, all who aspire to a profession

in medicine and cardiology must be assessed as individuals on the basis of their personal merits, not their racial and ethnic identities.” Consequently, the Department is concerned Pitt’s many representations to students, faculty, and consumers in the market for education credentials regarding its support for academic freedom are false.

The facts further suggest Dr. Wang may have been disparately treated because of his race (Asian). That is, Pitt would not have acted against him for publishing an academic paper containing the same or similar arguments and empirical data if he were of a different race.

Finally, the Department is concerned by Pitt’s official statements denouncing Dr. Wang’s empirical case for race-neutral admission and hiring because Pitt’s statements necessarily suggest it supports and engages in overtly race-based admission and hiring. Race-based admission and hiring could constitute systemic discrimination based on race, color, or national origin in violation of Title VI of the Civil Rights Act of 1964, rendering false Pitt’s non-discrimination assurances in its Title IV program participation agreements. As a condition of its participation in the HEA, Title IV program, Pitt executed non-discrimination assurances requested by the Department, allowing Pitt to spend \$1.6 billion dollars in Title IV funds between fiscal year 2015 and fiscal year 2020. Accordingly, the Department is opening a civil investigation to determine whether Pitt has engaged or is engaging in actionable misrepresentations and/or violating its Title IV program participation agreement assurances.

Ex. A at pp. 1-2.

The last date for which we at CIR have any record of any activity in connection with the Department’s investigation of Pitt is December 29, 2020. On that date, Pitt’s counsel sent the Department a response to the Department’s prior correspondence. We do not know what became of the Department’s investigation after December 29, 2020.

In this regard, we submitted a Freedom of Information Act (“FOIA”) request to the Department on October 24, 2022, requesting a copy of all documents concerning the Department’s 20 U.S.C. § 1094 investigation of Pitt. A true and correct copy of our FOIA request is attached hereto as Exhibit B. We received a 20-day notification on November 23, 2022, and our FOIA request was assigned No. 23-00199-F. Our request is still listed as “In Process” with the Department’s FOIAexpress web portal today, over two years and four months after it was originally submitted.

Please be aware, moreover, that we have been actively litigating a civil action on behalf of Dr. Wang against Pitt and other, related parties since December 15, 2020. *Wang v. University of Pittsburgh, et al.*, W.D. Pa. Case No. 2:20-cv-01952-MJH. The underlying facts as to our case are essentially the same as those at issue in the Department’s investigation. We have conducted extensive discovery in the civil action, including taking the depositions of all of the witnesses identified in the Department’s letter (*see* Ex. A at p. 10), as well as others. The full deposition

transcripts have been filed with the Court and are publicly available on PACER. It is our belief that the discovery taken in the civil action has confirmed the validity of many of the concerns originally raised by the Department in its letter of October 7, 2020.

As matters stand, we, respectfully, have several questions and requests, as follows:

1. If the Department's investigation of Pitt is still open, but inactive, could it be reactivated?
2. If the Department's investigation of Pitt is closed, could the investigation be reopened?
3. Could the Department advise us, as counsel to Dr. Wang, as to the status of its investigation?
4. Could the Department provide us with a formal written response to our FOIA request, together with copies of the documents we requested therein?

Your attention to this matter would be greatly appreciated.

Respectfully submitted,

/s/ J. Robert Renner

J. Robert Renner

Center for Individual Rights

cc: Michael Rosman, Esq., Center for Individual Rights
Caleb Kruckenberg, Esq., Center for Individual Rights

Attachments

EXHIBIT A



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF POSTSECONDARY EDUCATION

October 7, 2020

Chancellor Patrick Gallagher
Office of the Chancellor
University of Pittsburgh
4200 Fifth Avenue
Pittsburgh, PA 15260

via electronic mail

Re: 20 U.S.C. § 1094 Investigation/Request for Records and Transcribed Interviews

Dear Chancellor Gallagher:

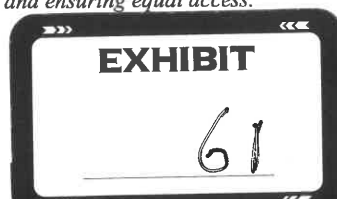
The U.S. Department of Education (“Department”) has become aware of facts suggesting the University of Pittsburgh (“Pitt”) improperly targeted Dr. Norman Wang, associate professor of medicine, with a campaign of denunciation and cancellation due to the publication of his peer-reviewed scientific article in the *Journal of the American Heart Association* advocating race-neutral admissions and hiring in cardiology. Specifically, it appears Pitt’s senior officials removed Dr. Wang as Program Director of the Clinical Cardiac Electrophysiology Fellowship at the University of Pittsburgh Medical Center (“UPMC”) on July 31, 2020, disparaged his scholarship, and subjected him to public vilification solely because his academic paper concluded, *inter alia*, “Ultimately, all who aspire to a profession in medicine and cardiology must be assessed as individuals on the basis of their personal merits, not their racial and ethnic identities.” Consequently, the Department is concerned Pitt’s many representations to students, faculty, and consumers in the market for education credentials regarding its support for academic freedom are false.

The facts further suggest Dr. Wang may have been disparately treated because of his race (Asian). That is, Pitt would not have acted against him for publishing an academic paper containing the same or similar arguments and empirical data if he were of a different race.

Finally, the Department is concerned by Pitt’s official statements denouncing Dr. Wang’s empirical case for race-neutral admission and hiring because Pitt’s statements necessarily suggest it supports and engages in overtly race-based admission and hiring. Race-based admission and hiring could constitute systemic discrimination based on race, color, or national origin in violation

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The Department of Education’s mission is to promote student achievement and preparation for global Competitiveness by fostering educational excellence and ensuring equal access.



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of Title VI of the Civil Rights Act of 1964, rendering false Pitt's non-discrimination assurances in its Title IV program participation agreements. As a condition of its participation in the HEA, Title IV program, Pitt executed non-discrimination assurances requested by the Department, allowing Pitt to spend \$1.6 billion dollars in Title IV funds between fiscal year 2015 and fiscal year 2020. Accordingly, the Department is opening a civil investigation to determine whether Pitt has engaged or is engaging in actionable misrepresentations and/or violating its Title IV program participation agreement assurances.

The facts appear to be that Dr. Wang is and has been at all relevant times a highly competent professor, scholar, and physician. He has published articles in respected journals including *The New England Journal of Medicine*, the *Journal of Arrhythmia*, the *Journal of the American Medical Association* and *Pacing and Clinical Electrophysiology*. As a clinician, his patient satisfaction rating is 4.8 out of 5. Patients call him "genuinely caring," "very respectful," and "outstanding in every way." See *About Norman C. Wang*, UPMC, <https://providers.upmc.com/provider/Norman+C.+Wang/1322029#provider-details-experience> (last visited Sept. 29, 2020). Dr. Wang's faculty biography reports he has provided care to the impoverished in Bolivia, Cambodia, and Vietnam. *Norman C. Wang, MD, MS*, University of Pittsburgh Department of Medicine, https://profiles.dom.pitt.edu/faculty_info.aspx/Wang5672 (last visited Sept. 29, 2020).

On March 24, 2020, the *Journal of the American Heart Association* published Dr. Wang's peer-reviewed paper, "Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America from 1969 to 2019", attached as Exhibit 1. Dr. Wang, *inter alia*, reviewed data suggesting programs designed to promote diversity, inclusion, and equity can lead to the selection of students unqualified for medical school or cardiovascular disease training programs and argued for race-neutral admissions and hiring practices as an alternative to the current model. He concluded:

As Fitzgerald envisioned, "We will have succeeded when we no longer think we require black doctors for black patients, chicano doctors for chicano patients, or gay doctors for gay patients, but rather good doctors for all patients." Evolution to strategies that are neutral to race and ethnicity is essential. Ultimately, all who aspire to a profession in medicine and cardiology must be assessed as individuals on the basis of their personal merits, not their racial and ethnic identities.

Norman C. Wang, *Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America From 1969 to 2019*, *Journal of the American Heart Association*, Mar. 24, 2020, at 15.

On or about July 28, 2020, advocates of race-based preferences in medical school admissions and clinical hiring, including but not limited to Pitt officials, began attacking Dr. Wang. See Crystal Phrend, *Anti-Affirmative Action Paper Blows Up on Twitter, Former fellowship director's arguments "should both enrage & activate all of us"*, *MedPage Today* (Aug. 4, 2020),

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<https://www.medpagetoday.com/publichealthpolicy/medicaleducation/87903>; see also Michael O’Riordan, *AHA, Editors, and Cardiologists Ask: How Did “Racist” Paper Make It to Print?*, (Aug. 5, 2020), <https://www.tctmd.com/news/aha-editors-and-cardiologists-ask-how-did-racist-paper-make-it-print>. Instead of adhering to Pitt’s published principles of free speech, academic freedom, and free inquiry, Pitt’s officials refused to defend Dr. Wang and, upon information and belief, denounced and terminated him.

Indeed, on July 31, 2020, Dr. Samir Saba, Pitt’s Chief of Cardiology, and Co-Director of the Heart and Vascular Institute at UPMC, fired Dr. Wang from his position as Program Director of the UPMC Clinical Cardiac Electrophysiology Fellowship. Dr. Saba said Dr. Wang’s paper did not align with the values of UPMC. At that time, Dr. Saba told Dr. Wang that other individuals alleged he made misquotes and misrepresentations in his paper, but Dr. Saba provided no further information.

On August 3, 2020, Pitt’s Assistant Professor of Medicine and Cardiology Fellowship Director Kathryn Berlacher, stated:

[Dr. Wang] was removed as [Electrophysiology Program Director] as soon as this was known. . . . I am [Program Director] of gen[eral] cardiology fellowship @PittCardiology - will say again: We stand united for diversity equity and inclusion. *And denounce this individual’s racist beliefs and paper.*

Kathryn Berlacher (@KBerlacher), Twitter (Aug. 3, 2020, 7:31 AM), <https://twitter.com/KBerlacher/status/1290248892580130816?s=20> (emphasis added).

On August 4, 2020, *MedPage Today* reported that Dr. Saba, speaking in his official capacity, said Dr. Wang’s “opinions are incompatible with the values of our training program. We are fully committed to racial justice in medical training and practice, and believe it is critical to attract, train, support, and promote diverse people in medicine and cardiology.” See Phrend, *supra*.

On August 6, 2020, acting in his official capacity as Senior Vice Chancellor for the Health Sciences at Pitt and Dean of the Pitt School of Medicine, Dr. Shekhar made the following announcement to the public on Twitter:

A peer-reviewed journal recently published an article, authored by a member of the University community, that expressed views against equity and inclusivity. These views do not reflect the values of [Pitt] . . . or our proud pursuit of disseminating knowledge for the public good.

[W]e remain absolutely committed to realizing a more inclusive and equitable environment for all.

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See Anantha Shekhar (@PittHealthSci), Twitter (Aug. 6, 2020, 10:53 AM), <https://twitter.com/PittHealthSci/status/1291386812447956992>.

On the same day, Dr. Shekhar, again acting in his official capacity as Senior Vice Chancellor for the Health Sciences at Pitt and Dean of the Pitt School of Medicine, made the same announcement, attached as Exhibit 2, to “Pitt School of Medicine community members.”

Also on August 6, 2020, the *Journal of the American Heart Association* retracted Dr. Wang’s paper, promising a detailed rebuttal and stating:

The author’s institution, the University of Pittsburgh Medical Center (UPMC), has notified the Editor-in-Chief that the article contains many misconceptions and misquotes and that together those inaccuracies, misstatements, and selective misreading of source materials strip the paper of its scientific validity The Editor-in-Chief deeply regrets publishing the article and offers his apologies.

Retraction to: Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States From 1969 to 2019, *Journal of the American Heart Association* (Aug. 6, 2020), <https://www.ahajournals.org/doi/10.1161/JAHA.119.014602>.

Upon information and belief, Dr. Shekhar encouraged the retraction of Dr. Wang’s paper. However, the Department is unaware of any evidence suggesting Pitt and/or UPMC have substantiated the accusation forming the supposed basis for the *Journal of the American Heart Association’s* action - that is, Dr. Wang’s paper contained misquotes, inaccuracies, misstatements, or selective misreading of source materials.

On August 7, 2020, Mark Gladwin, acting in his official capacity as Chair of the Department of Medicine at Pitt, sent an email to the faculty in the Division of Cardiology at Pitt, attached as Exhibit 3, asserting that in response to Dr. Wang’s paper, Pitt took “immediate action and removed [Dr. Wang] from [his] leadership position, as these perspectives do not reflect our values and threaten to undermine recruitment and retention of our most qualified trainees, and undermine the confidence and morale of our faculty.” He further stated, *inter alia*, that “[t]hese events highlight the importance of planned . . . unconscious bias training and other efforts to support a diverse and inclusive environment.”

Significantly, it appears Pitt has never initiated an investigation of research misconduct by Dr. Wang under its Research Integrity Policy. This policy defines research misconduct to include “falsification, . . . in proposing, performing, or reviewing research, or in reporting research results” and allows challenges to be brought by “a faculty member, student, staff member, research associate or fellow, or a person outside the University[.]” See *University of Pittsburgh Policy 11-01-01: Research Administration* (Nov. 1, 2017), <http://cfo.pitt.edu/policies/documents/policy11-01-01.web.pdf>, at 1, 3. It further provides:

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Should the conduct of research or the collection or reporting of research data and information be challenged on the ground of misconduct, whether by a faculty member, student, staff member, research associate or fellow, or a person outside the University, the framework for resolution of the grievance shall involve a process of peer and administrative review. The procedures described below are steps in an academic peer review and fact-finding process and are not intended or designed to represent rules of a judiciary. Principles of basic fairness and confidentiality shall be observed in these peer-review procedures. Responsible and honest discourse, the protection of academic freedom, and protection of individuals against unnecessary public dissemination of unproven allegations and protection of whistleblowers against retaliation are essential ingredients in the process.

...

Safeguards give the individual accused of misconduct the confidence that his or her rights are protected and that the mere filing of an allegation of research misconduct will not bring the research to a halt or be the basis for other disciplinary or adverse action absent other compelling reasons.

Id. at 1. The Department is unaware of any facts suggesting Dr. Wang was afforded these protections prior to Shekhar's and/or Pitt's alleged actions against him.

Pitt's representations to students, parents, and consumers in the market for education credentials regarding free inquiry and academic freedom include:

- Chapter II, Article II, Section 2.1 of the University of Pittsburgh Bylaws, under faculty policies and academic tenure, declares and represents that “[a]utonomy and freedom of inquiry are required for the University to carry out its mission.” *Appointment and Tenure: University of Pittsburgh Bylaws, Chapter II*, University of Pittsburgh Office of the Provost, https://www.provost.pitt.edu/faculty-handbook/ch2_appt_tenure (last visited Sept. 29, 2020).
- Chapter II, Article II, Section 2.1 of the University of Pittsburgh Bylaws, under faculty policies and academic tenure, further declares and represents that tenured employees “owe it to their colleagues unfailingly and unflinchingly to defend independence and freedom of mind in their field of competence. The tenured faculty should create and sustain an intellectual ambiance in which their non-tenured colleagues can think, investigate, speak, write, and teach secure in the knowledge that their intellectual vitality is both essential and welcome.” *Id.*
- Chapter II, Article II, Section 2.4 of the University of Pittsburgh Bylaws, under faculty policies and academic tenure, declares and represents that “[t]he University encourages the independence of the mind and the freedom to inquire.” *Id.*

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- Chapter II, Article II, Section 2.5(e) of the University of Pittsburgh Bylaws under faculty policies and academic tenure, declares and represents, that tenured faculty possess “rights . . . to academic freedom”, that “[i]t is equally a responsibility of the officers of the University administration and of the Board of Trustees to assure, to protect, and to defend academic freedom”, and that “[t]he tenured faculty and the officers and Board members should work together to that end.” *Id.*
- Pitt’s statement on Academic Integrity declares and represents that “[i]t is the direct responsibility of faculty to encourage free inquiry and expression and to provide an academic environment in their classrooms and in their contact with students that reflects a high standard of integrity and is conducive to learning.” *Academic Integrity*, University of Pittsburgh Office of the Provost, https://www.provost.pitt.edu/faculty-handbook/ch3_acad_int (last visited Sept. 29, 2020).
- Pitt’s *Memorandum to Members of the University Community from James V. Maher, Provost* declares and represents that: “[Pitt] has been and remains determined to resist any infringement of these principles [of academic freedom] from any source. A free society cannot tolerate the repression of new information, new ideas, and new ways of understanding, however unpopular or controversial they may seem. The purpose of academic freedom has always been to protect and preserve the pursuit of truth and its dissemination.” Memorandum from James V. Maher, Provost, to Members of the University Community (Feb. 4, 2020), <http://www.provost.pitt.edu/memo/02-04-2002.html>.
- Pitt’s *Memorandum to Members of the University Community from James V. Maher, Provost* further declares and represents that: “[P]olitical correctness, sexual harassment, ethnicity, and racial or gender stereotyping have led some within the academy to question the traditional interpretation of freedom of expression” but “academic neutrality does not imply passivity, but adherence to an institutional mission and set of values that encourage a balanced neutrality through free inquiry and honest discussion. *The protection of such free inquiry—as at the University of Pittsburgh—is essential in every discipline, but especially in those directly linked to social issues, where differences of opinion and policy are most likely to occur.*” *Id.* (emphasis added).
- Pitt’s *Memorandum to Members of the University Community from James V. Maher, Provost* further declares and represents that: “[R]ecent rulings in several cases suggest a narrowing interpretation of academic freedom in the courts. . . . [I]n legal terms, academic freedom is little more than the freedom of expression guaranteed by the First Amendment. *In contrast to this new direction, the University of Pittsburgh has continued to stand firmly for the traditional [broader] interpretation of academic freedom.*” *Id.* (emphasis added).

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- Pitt's *Memorandum to Members of the University Community from James V. Maher, Provost* lauds the American Association of University Professors' (AAUP) Statement of Principles on Academic Freedom which, *inter alia*, protects scholar "from suppression of new ideas by orthodoxy" and furthers "the impartial search for truth on the part of scholars and the enabling role of the university itself in fostering an atmosphere of open inquiry[.]" *Id.*
- Pitt's *Office of the Provost Statement on Academic Freedom* declares and represents: "[T]he academic freedom of all members of the University centers on the right of individual scholars to use their professional expertise to select and pursue lines of enquiry, to come to conclusions and to formulate scholarly opinions on the questions that they study, and to translate their knowledge and understanding into effective instruction appropriately grounded in principles and practices of disciplines and professions." *Statement on Academic Freedom*, University of Pittsburgh Office of the Provost (June 4, 2003), <https://www.provost.pitt.edu/statement-academic-freedom>.
- Pitt's *Office of the Provost Statement on Academic Freedom* further declares and represents: "It is the responsibility of the University to support individuals in the exercise of these rights within the bounds of available resources, the conflicting demands put on those resources, and the constraints of shared governance. . . . [A]cademic freedom is a prerogative of . . . the individual faculty members who make up the body of the university." *Id.*

Accordingly, the Department is opening an investigation to determine if Pitt has violated statutes and regulations prohibiting misrepresentations by institutions of higher education. *See* 34 CFR 668.71(c); U.S. Dep't of Educ., Notice of Proposed Rulemaking, 85 Fed. Reg. 3190, 3213 n.137 (Jan. 17, 2020) ("public and private institutions also may be held accountable . . . for any substantial misrepresentation under the Department's borrower defense to repayment regulations"); Standard Form 424B; Executive Order 13864, *Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities*, 84 Fed. Reg. 11401 (Mar. 21, 2019); Final Rule: *Direct Grant Programs, State-Administered Formula Grant Programs, Non Discrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance*, 85 FR 59916 (Sept. 23, 2020), <https://www.federalregister.gov/documents/2020/09/23/2020-20152/direct-grant-programs-state-administered-formula-grant-programs-non-discrimination-on-the-basis-of>. We note Pitt's free speech and free inquiry representations to students, faculty, and consumers in the market for education certificates were knowingly and intentionally made, *inter alia*, to induce students to pay tuition and fees in excess of \$34,409, exclusive of room and board.

Also, the statements made by Pitt's authorized officials denouncing Dr. Wang, his research, and his advocacy of race-neutrality suggest Pitt supports and uses a system of overtly race-based preferences in its admissions and hiring at Pitt and UPMC and in other parts of its education

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program. If so, Pitt may be committing systemic violations of Title VI of the Civil Rights Act of 1964 prohibiting discrimination based on race, color, and national origin. Systemic violations of Title VI would render false Pitt's non-discrimination promises and assurances.

The Secretary may impose certain monetary penalties and other measures if an institution engages in substantial misrepresentations about the nature of its educational programs and/or violates its program participation agreement. As you are also aware, the Department has investigative authority over such matters. Therefore, the Department requests Pitt provide the following records and make available the identified Pitt personnel for transcribed interviews under oath. See 20 U.S.C. § 1094(a)(17); 20 U.S.C. § 1097a; *U.S. v. Morton Salt Co.*, 338 U.S. 632, 642-63 (1950); *U.S. v. Powell*, 379 U.S. 48, 57 (1964); *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 216 (1946).

Please be advised the Department considers your answers to these requests to be matters within the jurisdiction of the executive branch of the Government of the United States for the purposes of 18 U.S.C. § 1001. Consequently, you should make every effort to answer our requests fully and completely. Also, your record retention obligations are set forth on Exhibit 4. Finally, please also note that Department regulations prevent recipients of Federal funds from retaliating against any individual "for the purpose of interfering with any right or privilege secured [by Title VI], . . . or because he has . . . assisted, or participated in any manner in an investigation, . . . under this part." 34 CFR 100.7(e).

I. Records Request

Please produce the following records within twenty-one (21) calendar days:

1. All records of, relating to, referring to, regarding, or concerning Dr. Norman Wang. This request includes, but is not limited to, all records (e.g. emails, texts, and/or social media posts) created, sent, or received by Pitt employees or officials Anantha Shekhar, Mark Gladwin, Samir Saba, and/or Kathryn Berlacher. The time frame for this request is from January 1, 2020 to the present.
2. All records of, relating to, referring to, regarding, or concerning Dr. Wang's peer-reviewed paper, "Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America from 1969 to 2019" published in the *Journal of the American Heart Association* on March 24, 2020. This request includes, but is not limited to, all records (e.g. emails, texts, and/or social media posts) created, sent, or received by Anantha Shekhar, Mark Gladwin, Samir Saba, and/or Kathryn Berlacher. The time frame for this request is from January 1, 2020 to the present.

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3. All records of, relating to, referring to, regarding, or concerning Pitt's academic freedom, freedom of inquiry, free speech, and research misconduct policies or procedures. The time frame for this request is January 1, 2015 to the present.
4. All records reviewed and relied upon by Pitt to inform the *Journal of the American Heart Association* of "misconceptions," "misquotes," "inaccuracies," "misstatements," and "selective misreading of source materials" that allegedly "strip" Dr. Wang's peer-reviewed paper, "Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America from 1969 to 2019" published on March 24, 2020, of "scientific validity." The time frame for this request is July 1, 2020 to the present.
5. All records Pitt reviewed and relied upon to make the non-discrimination assurances required under its Title IV program participation agreements. The time frame for this request is January 1, 2015 to the present.
6. All records of, relating to, referring to, regarding, or concerning Pitt's use of race (a) with respect to admission and hiring, and (b) Pitt medical school and UPMC admission, hiring, and employment decisions. These records should include, but not be limited to, records relating to the admission, hiring, promotion, and discipline of persons of Asian descent. The time frame for this request is January 1, 2015 to the present.

As used in this request:

- "Record" means all recorded information, regardless of form or characteristics, made or received, and including metadata, such as email and other electronic communication, word processing documents, social media (e.g. Facebook and Twitter) posts, PDF documents, animations (including PowerPoint™ and other similar programs), spreadsheets, databases, calendars, telephone logs, contact manager information, Internet usage files, network access information, writings, drawings, graphs, charts, photographs, sound recordings, images, financial statements, checks, wire transfers, accounts, ledgers, facsimiles, texts, voicemail files, data generated by calendaring, task management and personal information management (PIM) software (such as Microsoft Outlook), data created with the use of personal data assistants (PDAs), data created with the use of document management software, data created with the use of paper and electronic mail logging and routing software, and other data or data compilations, stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form. The term "recorded information" also includes all traditional forms of records, regardless of physical form or characteristics.
- "Pitt" means the University of Pittsburgh, its agents, employees, and contractors.
- "You" means Pitt, its agents, employees, and contractors.

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- “UMPC” means the University of Pittsburgh Medical Center, its agents, employees, and contractors.

Production should occur as follows.

- Searches for records in electronic form should include searches of all relevant mobile devices, hard drives, network drives, offline electronic folders, thumb drives, removable drives, records stored in the cloud, and archive files, including, but not limited to, backup tapes. Do not time stamp or modify the content, the create date, or the last date modified of any record and do not scrub any metadata. Electronic records should be produced in native format. For e-mails, please place responses in one .pst file per employee. For .pdf files, please provide searchable file format and not image file format.
- All email and social media searches should be conducted by your information technology department, or its equivalent, and not by the individuals whose records are being searched. Please provide the name and contact information of the individual(s) who conducted the search, as well as an explanation of how the search was conducted.
- To the extent practicable, please produce all records in a searchable electronic format and not hardcopies. Should you have any questions about the method or format of production, please contact the undersigned to coordinate.
- The only applicable privilege is attorney-client privilege. Please provide a log of all such records, describing in detail the contents of the record and the grounds for the claimed privilege.

II. Transcribed Interviews

Please make the following individuals available for transcribed interviews under oath within twenty-eight (28) calendar days:

1. Anantha Shekhar
2. Mark Gladwin
3. Samir Saba
4. Kathryn Berlacher
5. A duly authorized corporate designee to testify regarding (a) Pitt’s academic freedom and free inquiry policies and practices; (b) Pitt’s nondiscrimination assurances and Title

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VI compliance from January 1, 2015 to the present; and (c) Pitt's use of race, color, and national origin in admission, hiring, and employment decisions including, but not limited to, admission, hiring, and employment decisions regarding persons of Asian descent.

III. Written Questions

Please have an authorized representative of Pitt with knowledge of all relevant facts answer the following questions within twenty-one (21) calendar days:

1. Does Pitt believe the statement in Dr. Wang's peer-reviewed paper, "Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America from 1969 to 2019" published in the *Journal of the American Heart Association* on March 24, 2020, that "[e]volution to strategies that are neutral to race and ethnicity is essential" to be racist? If so, why?
2. Does Pitt believe the statement in Dr. Wang's peer-reviewed paper, "Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America from 1969 to 2019" published in the *Journal of the American Heart Association* on March 24, 2020, that "[u]ltimately, all who aspire to a profession in medicine and cardiology must be assessed as individuals on the basis of their personal merits, not their racial and ethnic identities" to be racist? If so, why?
3. Does Pitt believe race-neutral hiring and admissions practices are racist? If so, why?
4. Does Pitt believe Dr. Wang's peer-reviewed paper, "Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the United States of America from 1969 to 2019" published in the *Journal of the American Heart Association* on March 24, 2020, contains "misconceptions and misquotes" and/or "inaccuracies, misstatements, and selective misreading of source materials"? If so, please specify each such misconception, misquote, inaccuracy, misstatement, and/or selective misreading of source material and explain how these "strip" Dr. Wang's paper of "scientific validity."
5. On August 3, 2020, Pitt official Kathryn Berlacher said Pitt "denounce(s)" Dr. Wang's "racist beliefs and paper." Please (a) specify each such "racist belief" and (b) explain why Dr. Wang's paper is "racist."
6. Does Pitt believe Kathryn Berlacher's statement of August 3, 2020 to be defamatory under Pennsylvania law? If not, why not?
7. Does Pitt believe Dr. Wang's peer-reviewed paper, "Diversity, Inclusion, and Equity: Evolution of Race and Ethnicity Considerations for the Cardiology Workforce in the

Chancellor Patrick Gallagher
Office of the Chancellor, University of Pittsburgh
October 7, 2020
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United States of America from 1969 to 2019” published in the *Journal of the American Heart Association* on March 24, 2020, “expressed views against equity and inclusivity” as claimed in Shekhar’s statement of August 6, 2020? If so, please identify each such “view” and explain how and why it is “against equity and inclusivity.”

With regard to Pitt’s substantial misrepresentations to the Department, this investigation will be conducted by the Department’s Office of the General Counsel with support from the Office of Postsecondary Education. Your legal counsel will be contacted by Paul R. Moore, the Department’s Chief Investigative Counsel, to schedule the transcribed interviews, and by the Office of the General Counsel’s electronic discovery attorney, Kevin D. Slupe, to arrange for record transmission. Because Pitt’s apparent support for overtly race-based admissions and hiring practices also raises disturbing questions regarding its compliance with Federal civil rights law, the Office of Postsecondary Education is referring Pitt to the Civil Rights Division of the U.S. Department of Justice and to the Department’s Office for Civil Rights for additional investigation and appropriate action, if any, under Title VI and/or Title VII of the Civil Rights Act, 42 U.S.C. § 2000d *et seq.* and 42 U.S.C. § 2000e *et seq.*, respectively.

Thank you in advance for your cooperation.

Sincerely yours,

X

Robert L. King

Robert L. King
Assistant Secretary
Office of Postsecondary Education

Enclosures

Cc: John B. Daukas
Principal Deputy Assistant Attorney General
Civil Rights Division, U.S. Department of Justice

Kimberly R. Richey
Acting Assistant Secretary, Office for Civil Rights
U.S. Department of Education

Reed D. Rubinstein
Principal Deputy General Counsel delegated the

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Office of the Chancellor, University of Pittsburgh
October 7, 2020
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Authority and Duties of the General Counsel
U.S. Department of Education

Paul R. Moore, Chief Investigative Counsel
Office of the General Counsel
U.S. Department of Education

Kevin D. Slupe, Special Counsel
Office of the General Counsel
U.S. Department of Education

Sarah Child, Attorney-Advisor
Office of the General Counsel
U.S. Department of Education

EXHIBIT B

J. Robert Renner, Esq.
Center for Individual Rights
1100 Connecticut Avenue, N.W., Suite 625
Washington, D.C. 20036

October 24, 2022

U.S. Department of Education
Office of Management
Regulatory Information Management Services
400 Maryland Avenue, SW, LBJ 2W220
Washington, DC 20202-4536
ATTN: FOIA Public Liaison

Dear FOIA Public Liaison:

This is a request under the Freedom of Information Act.

I request that a copy of the following documents (or documents containing the following information) be provided to me (identify the documents or information as specifically as possible):

Any documents concerning the United States Department of Education's 20 U.S.C. § 1094 investigation initiated by letter from Assistant Secretary Robert L. King of the Department of Education's Office of Postsecondary Education to Chancellor Patrick Gallagher of the University of Pittsburgh dated October 7, 2020 (hereinafter the "University of Pittsburgh Investigation").

Including:

- **Any written communications between the Department of Education and the University of Pittsburgh concerning the University of Pittsburgh Investigation.**
- **Any documents produced to the Department of Education by the University of Pittsburgh in connection with the University of Pittsburgh Investigation.**
- **Any transcripts of any interviews conducted in connection with the University of Pittsburgh Investigation.**
- **Any written communications between the Department of Education and any other government agency in connection with the University of Pittsburgh Investigation.**
- **Any written communications between the Department of Education and any other person in connection with the University of Pittsburgh Investigation.**
- **Any documents reflecting the internal deliberations of the Department of Education in connection with the University of Pittsburgh Investigation.**

In order to help to determine my status to assess fees, you should know that I am (select one):

An individual seeking information for personal use.

Affiliated with an educational or noncommercial scientific institution, and this request is made for a scholarly purpose.

Affiliated with a private corporation and seeking information for use in the company's business.

A representative of the news media/press and this request is made as part of news gathering and not for commercial use.

Affiliated with a public interest group and this request is not for commercial use.

The maximum dollar amount I am willing to pay for this request is \$1,000. Please notify me if the fees will exceed \$25.00 or the maximum dollar amount I entered.

I request a waiver of all fees for this request. Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in my commercial interest.

Specific explanation for waiver of fees (required if a waiver is requested):

N/A

Additional comments:

N/A

Thank you for your consideration of this request.

Sincerely,



J. Robert Renner, Esq.
Center for Individual Rights
1100 Connecticut Avenue, N.W., Suite 625
Washington, D.C. 20036
Tel: (202) 833-8400, ext. 109
Fax: (202) 833-8410
Email: renner@cir-usa.org

Admitted in California and Texas.

Not admitted in D.C.; supervision by members of the D.C. Bar. D.C. Ct. App. R 49(c)(8).