



THE EQUAL PROTECTION PROJECT
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BY EMAIL (OCR.NewYork@ed.gov)

U. S. Department of Education
Office for Civil Rights - New York Office
32 Old Slip, 26th Floor
New York, NY 10005-2500

Re: Civil Rights Complaint Against Albany Medical College Concerning Program Giving Explicit Racial Preferences In Admissions

To Whom It May Concern:

This is a federal civil rights complaint pursuant to the U.S. Department of Education's Office for Civil Rights ("OCR") discrimination complaint resolution procedures.¹

We write on behalf of the Equal Protection Project of the Legal Insurrection Foundation, a non-profit that, among other things, seeks to ensure equal protection under the law and non-discrimination by the government, and that opposes racial discrimination in any form.

We bring this civil rights complaint against Albany Medical College ("AMC") – a private institution that receives federal funds from the U.S. Department of Education – for creating, supporting, and promoting a program, entitled the Science and Technology Entry Program (the "AMC-STEP"), that engages in invidious discrimination on the basis of race, color

¹ See 42 U.S.C. § 2000d-1; 34 C.F.R. §§ 100.7, 100.8, and 100.9.

and national origin against students in grades 7 through 12. The AMC-STEP impermissibly gives admission preference to middle school and high school students who identify as “African American, Hispanic/Latino, Alaskan Native or American Indian.”²

AMC’s creation, ongoing sponsorship and active promotion of a program that explicitly gives admissions preference based on race and skin color violates Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations.³

The unlawfulness of such racial preferences in admissions was confirmed recently by the United States Supreme Court in *Students for Fair Admissions Inc. v. President & Fellows of Harv. Coll.*, 2023 U.S. LEXIS 2791 (2023). There, the Court declared that “[e]liminating racial discrimination means eliminating all of it The guarantee of equal protection cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal.” *Id.* at 34 (cleaned up). “Distinctions between citizens solely because of their ancestry [and race] are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Id.* at 35 (citation omitted).

OCR should investigate the blatantly discriminatory AMC-STEP and the circumstances under which it was created, promoted, and approved, take all appropriate action to end such discriminatory practices and impose remedial relief. This includes, if necessary, imposing fines, initiating administrative proceedings to suspend, terminate, or refuse to grant or continue federal financial assistance, and referring the case to the Department of Justice for judicial proceedings to enforce the rights of the United States.

The Science and Technology Entry Program

According to the 2022 AMC-STEP application⁴ – which is the most recent version of the application available online – and the AMC website,⁵ the AMC-STEP is a “New York State-funded program” for “highly motivated 7-12th graders who are historically underrepresented in the sciences or from economically disadvantaged backgrounds.”⁶

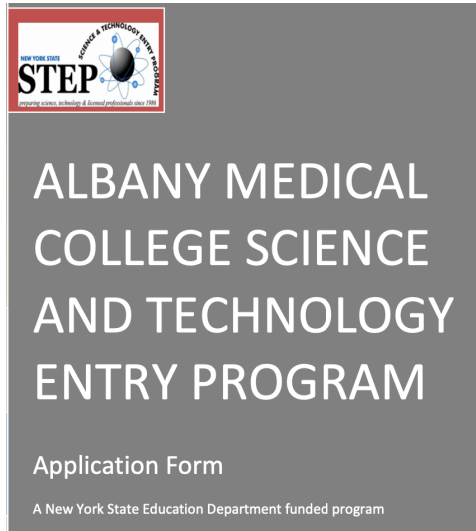
² See <https://www.amc.edu/Academic/STEP/> [https://archive.ph/wip/cm3dy] (accessed on Aug. 1, 2023).

³ 42 U.S.C. § 2000d et seq.; 28 C.F.R. Part 100.

⁴ See <https://www.amc.edu/academic/STEP/upload/New-AMC-STEP-application-2022.pdf> [https://archive.ph/zRwFk] (accessed Aug. 19, 2023).

⁵ See <https://www.amc.edu/Academic/STEP/> [https://archive.ph/wip/cm3dy] (accessed on Aug. 1, 2023).

⁶ New York State Education Law § 6454 authorizes the New York State Legislature to appropriate funds for grants to post-secondary institutions for programs that will aid secondary school students “who are either economically disadvantaged or minorities historically underrepresented in the scientific, technical, health, and health-related professions.” N.Y. Educ. L. § 6454(1)(b). Adjunct to this, a New York State



Science and Technology Entry Program



The Science and Technology Entry Program (STEP) enrolls highly motivated 7-12th graders who are historically underrepresented in the sciences or from economically disadvantaged backgrounds. STEP provides academic enrichment, mentoring, and opportunities for service learning.

We also offer programming for parents of STEP participants, informing them about STEM (Science, Technology, Engineering and Mathematics) fields and equipping them for advocacy for their children.

Documents

[Recruiting Flyer \(PDF\)](#)
[AMC STEP Application](#)

Students in the AMC-STEP participate in a curriculum during the academic school year, from September through May on Wednesdays from 4:30 p.m. to 6:30 p.m. and Saturdays from 10 a.m. to 12 p.m. consisting of “academic enrichment, mentoring, and opportunities for service learning.”⁷

Department of Education regulation defines “minorities historically underrepresented” as those who are “black, Hispanic, American Indian or Alaskan Native.” 8 N.Y.C.R.R. § 145-6.5(a). The fact that the AMC-STEP is state-funded is legally irrelevant, since no statute or regulation requires AMC to create, promote, sponsor or host such programs or to seek STEP funds from the state.

⁷ *Id.*

An online AMC-STEP informational flier states that the purpose of the AMC-STEP is “to increase the number of historically underrepresented and economically disadvantaged students [*sic*] prepare to enter college, and improve their participation rate in mathematics, science, technology, health-related fields, and the licensed professions.”⁸

And, the eligibility guidelines provided in the “Who Should Apply” section on the AMC website limit the applicant pool to “minority students” students and those who are “African American, Hispanic/Latino, Alaskan Native or American Indian.”⁹ Students who do not fall into these racial or ethnic categories must show that they are “economically disadvantaged” in order to be considered.

Who Should Apply

- Highly motivated 7-11th grade minority students
- African American, Hispanic/Latino, Alaskan Native or American Indian
- Students not in the above categories, must be economically disadvantaged
- Students must currently be in good academic standing
- Interest in majors and career paths in health care, medicine, technology, or other sciences.

In the 2022 AMC-STEP application, each applicant is required to identify their race and ethnicity.¹⁰ That portion of the application is reproduced below:

Ethnicity¹: (Check One)

<input type="checkbox"/> African-American/African Descended*	<input type="checkbox"/> Hispanic/ Chicano/Latino (specify)
<input type="checkbox"/> American Indian/Alaska Native	<input type="checkbox"/> Other (please specify)**

*Includes students from Africa and the Caribbean.

If you checked “other”, please refer to **Appendix Guidelines for Student Eligibility to determine if you are economically disadvantaged. **If you are not an under-represented minority and do not provide financial documentation as required by New York State, your application will not be accepted.**

The discrimination is apparent: if applicants are African American, Hispanic/Latino, Alaskan Native or American Indian, they are automatically eligible for the program. Applicants of all other racial and ethnic categories are automatically excluded from consideration unless

⁸ See <https://www.amc.edu/academic/STEP/upload/STEP-Flyer-5.pdf> [https://archive.ph/Zn8J9] (accessed Aug. 1, 2023).

⁹ See <https://www.amc.edu/Academic/STEP/> [https://archive.ph/wip/cm3dy] (accessed on Aug. 1, 2023). Last year’s application for the AMC-STEP clarified that the “African-American” category includes “students from Africa and the Caribbean.” See <https://tinyurl.com/4wsnufdk> [https://tinyurl.com/bd9pz2c9] (accessed Aug. 19, 2023).

¹⁰ See <https://www.amc.edu/academic/STEP/upload/New-AMC-STEP-application-2022.pdf> [https://archive.ph/zRwFk] (accessed Aug. 19, 2023).

they can show that they meet the guidelines for being “economically disadvantaged.” The “historically underrepresented minorities” are not required to prove any economic need whatsoever.

The AMC-STEP Violates the Law

It violates Title VI of the Civil Rights Act of 1964 for a recipient of federal money, such as AMC, to discriminate on the basis of race, color or national origin.¹¹

Title VI prohibits intentional discrimination on the basis of race, color or national origin in any “program or activity” that receives federal financial assistance. *See* 42 U.S.C. § 2000d. The term “program or activity” means “all of the operations ... of a college, university, or other postsecondary institution, or a public system of higher education.” *See* 42 U.S.C. § 2000d-4a(2)(A); *Rowles v. Curators of the Univ. of Mo.*, 983 F.3d 345, 355 (8th Cir. 2020) (“Title VI prohibits discrimination on the basis of race in federally funded programs,” and thus applies to universities receiving federal financial assistance). As AMC receives federal funds, it is subject to Title VI.¹²

It does not matter if the recipient of federal funding discriminates in order to advance a benign “intention” or “motivation.” *Bostock v. Clayton Cty.*, 140 S. Ct. 1731, 1742 (2020) (“Intentionally burning down a neighbor’s house is arson, even if the perpetrator’s ultimate intention (or motivation) is only to improve the view.”); *accord Automobile Workers v. Johnson Controls, Inc.*, 499 U. S. 187, 199 (1991) (“the absence of a malevolent motive does not convert a facially discriminatory policy into a neutral policy with a discriminatory effect” or “alter [its] intentionally discriminatory character”). “Nor does it matter if the recipient discriminates against an individual member of a protected class with the idea that doing so might favor the interests of that class as a whole or otherwise promote equality at the group level.” *See Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *154 (Gorsuch, J., concurring).

Simply put, “Title VI prohibits a recipient of federal funds from intentionally treating any individual worse even in part because of his race, color, or national origin and without regard to any other reason or motive the recipient might assert.” *Id.* at *170 (cleaned up). Thus, regardless of AMC’s reasons for creating, sponsoring and promoting the AMC-STEP, it violated Title VI by doing so.

¹¹ Although OCR does not enforce Title II of the Civil Rights Act of 1964, that statute makes it unlawful to discriminate on the basis of race or color in a place of “public accommodation,” such as AMC. 42 U.S.C. § 2000a(a). Similarly, the AMC-STEP defies the civil rights protections of the New York State Human Rights Law, *see* N.Y. Exec. L. § 296, as well as AMC’s own non-discrimination policy. *See* <https://www.amc.edu/academic/undergraduate/Policies.cfm> [https://archive.ph/wip/n6J69] (accessed on Aug. 16, 2023).

¹² *See* <https://tinyurl.com/2p96ad66> [https://tinyurl.com/wkkzajsu] (accessed on Aug. 19, 2023).

Moreover, AMC’s stated purpose for the AMC-STEP – achieving racial balance by “increas[ing] the number of historically underrepresented and economically disadvantaged students prepar[ing] to enter college, and improv[ing] their participation rate in mathematics, science, technology, health-related fields, and the licensed professions”¹³ – is an objective that the Supreme Court has “repeatedly condemned as illegitimate” and “patently” unlawful. *Parents Involved in Cmty. Sch.*, 551 U.S. at 726, 730 (citizens must be treated as individuals, “not as simply components of a racial, religious, sexual or national class”).

Further, in *Students for Fair Admissions*, the Supreme Court declared that the same racial categories used by the AMC-STEP are “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *47-48,¹⁴ and declared that “it is far from evident ...how assigning students to these racial categories and making admissions decisions based on them furthers the educational benefits that the universities claim to pursue.” *Id.*

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. AMC is a recipient of federal funds¹⁵ and therefore is liable for violating Title VI.

The Complaint is Timely

This complaint is timely brought because it includes allegations of discrimination based on race and national origin that occurred within the last 180 days.

Request For Investigation and Enforcement

In *Richmond v. J. A. Croson Co.*, Justice Scalia aptly noted that “discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong and destructive of a democratic society.” 488 U.S. at 505 (citation omitted). This is true regardless of which race suffers – discrimination against white applicants is just as unlawful as discrimination against black or other non-white applicants.

The Office for Civil Rights has the power and obligation to investigate AMC’s role in creating, sponsoring, supporting and promoting the AMC-STEP – and to discern whether AMC is engaging in such discrimination in its other activities – and to impose whatever remedial relief

¹³ See <https://www.amc.edu/academic/STEP/upload/STEP-Flyer-5.pdf> [https://archive.ph/Zn8J9] (accessed Aug. 1, 2023).

¹⁴ In his concurrence, Justice Thomas criticizes these categories as being “artificial.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *134 (Thomas, J., concurring).

¹⁵ *Id.*

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is necessary to hold it accountable for that unlawful conduct. This includes, if necessary, imposing fines, initiating administrative proceedings to suspend or terminate federal financial assistance, and referring the case to the Department of Justice for judicial proceedings to enforce the rights of the United States under federal law. After all, “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” *Parents Involved in Cmty. Sch.*, 551 U.S. at 748.

Accordingly, we respectfully ask that the Department of Education’s Office for Civil Rights impose remedial relief as the law permits for the benefit of those who have been illegally excluded from the AMC-STEP based on racially discriminatory criteria, and that it ensure that all ongoing and future programming through AMC comports with the applicable civil rights laws.

Sincerely,



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-And-

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