



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 New York University's Grossman School of Medicine 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 New York University's Grossman School of Medicine ("Grossman") – a private institution that receives federal funds from the U.S. Department of Education – for creating, supporting, and promoting a program, entitled the

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

Science and Technology Entry Program (“NYU-STEP”), that engages in invidious discrimination on the basis of race, color and national origin against students in grades 7 through 12. The NYU-STEP impermissibly gives admission preference to middle school and high school students who identify as “Black or African American, Hispanic or Latino, or Alaska Native or American Indian.”²

Grossman’s creation, ongoing sponsorship and active promotion of the NYU-STEP 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

OCR should investigate the blatantly discriminatory NYU-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 Grossman website, the NYU-STEP “exists to address racial inequities,” and is a “precollege science, technology, engineering, math (STEM) and health science program funded by a grant from the New York State Education Department⁴... aimed at promoting and providing access, opportunity, and representation to historically underrepresented groups, as well as economically disadvantaged youth living in the New York City metropolitan area.”⁵

² See <https://tinyurl.com/fbmwwdkj> [<https://archive.ph/TbUQM>] (accessed on Aug. 3, 2023).

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

⁴ 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 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 NYU-STEP is state-funded is legally irrelevant, since no statute or regulation requires Grossman to create, promote, sponsor or host such programs or to seek STEP funds from the state.

⁵ See <https://tinyurl.com/3m9wh8ap> [<https://archive.ph/IXeid>] (accessed Aug. 18, 2023).

Science & Technology Entry Program

The Science and Technology Entry Program (STEP) is a precollege science, technology, engineering, math (STEM) and health science program funded by a grant from the [New York State Education Department](#).⁶ STEP is aimed at promoting and providing access, opportunity, and representation to historically underrepresented groups, as well as economically disadvantaged youth living in the New York City metropolitan area. NYU Grossman School of Medicine is proud to be a participant in this program.

Students in the NYU-STEP participate in a virtual curriculum consisting of “enrichment classes, financial aid workshops, health professions training, social justice education, and mentorship” spanning both fall and spring semesters, in addition to a six-week summer program. Applications are accepted and reviewed on a rolling basis between February 1st and June 1st.⁶

How to Apply

Our application cycle is open from February 1 through June 1.

Applicants must complete and submit items that include an online application and economic documentation if you are applying for economic disadvantage eligibility. All materials are [submitted online via the application](#).⁷ Incomplete applications are not considered. Applicants are encouraged to apply early, as applications are reviewed on a rolling basis.

The application for the NYU-STEP is posted on the Grossman website. It states that the NYU-STEP is “an interdisciplinary pre-college STEM enrichment program designed to teach middle school and high school scholars about career paths related to medicine and the biomedical sciences” that also “seeks to cultivate diversity in the STEM fields of science, technology, engineering, and math, by increasing the numbers of racially underrepresented and economically disadvantaged students who apply for college and medical school.”⁷

The eligibility guidelines contained on the application provide that all applicants must either “[s]elf-identify as Alaska Native, American Indian, Black or African American, or Latino/Hispanic, or demonstrate economic disadvantage.”⁸

⁶ See <https://tinyurl.com/fbmwwdkj> [<https://archive.ph/TbUQM>] (accessed Aug. 3, 2023).

⁷ See <https://tinyurl.com/yc4dhecz> (accessed Aug. 18, 2023).

⁸ *Id.*

Eligibility Criteria

Applicants for the Science and Technology Entry Program should have an expressed interest in the future study of STEM and/or the licensed health professions. Applicants should also be ready to engage in interdisciplinary learning and holistic personal development.

STEP applicants must meet the following criteria:

- Currently enrolled in 7th through 12th grade
- A resident of New York State
- Self-identify as Alaska Native, American Indian, Black or African American, or Latino/Hispanic, or demonstrate economic disadvantage. Please [click here](#) for information regarding guidelines for economically disadvantaged households.

The program defines “Black or African American” as “a person having origins in any of the Black racial groups of Africa,” “Hispanic or Latino” as “a person having origins from Spain, the Spanish-speaking countries of Central or South America, or the Dominican Republic,” and “Alaska Native or American Indian” as “a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.”⁹

As noted, the application criteria make clear that students who do not fall into these racial or ethnic categories – i.e., “students who identify as White or Asian” – must demonstrate “economic disadvantage” under the New York State STEP income criteria in order to be eligible.¹⁰

Economically Disadvantaged Eligibility Requirements

The following economically disadvantaged eligibility criteria apply only for students who identify as White or Asian:

The discrimination is apparent: if applicants are Black or African American, Hispanic or Latino, or Alaska Native or American Indian, they are automatically eligible for the program. Applicants who do not fall into one of those racial and ethnic categories – those who are White or Asian – are automatically excluded from consideration unless they can show that they can meet the guidelines for being “economically disadvantaged.” The “racially underrepresented” students¹¹ are not required to prove any economic need whatsoever.

⁹ See <https://tinyurl.com/fbmwwdkj> [<https://archive.ph/TbUQM>] (accessed Aug. 18, 2023).

¹⁰ See https://nyumc.qualtrics.com/jfe/form/SV_6nBXMHywhVQheRM [<https://tinyurl.com/yc4dhecz>] (accessed Aug. 1, 2023).

¹¹ See <https://tinyurl.com/yc4dhecz> (accessed Aug. 18, 2023).

The NYU-STEP Violates the Law

It violates Title VI of the Civil Rights Act of 1964 for a recipient of federal money, such as Grossman, to discriminate on the basis of race, color or national origin.¹²

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 Grossman receives federal funds, it is subject to Title VI.¹³

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 Grossman’s reasons for creating, sponsoring and promoting the NYU-STEP, it violated Title VI by doing so.

Moreover, Grossman’s stated purpose for the NYU-STEP – to achieve racial balance by “address[ing] racial inequities” and “increasing the numbers of racially underrepresented and

¹² 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 Grossman. 42 U.S.C. § 2000a(a). Similarly, the STEP defies the civil rights protections of the New York State Human Rights Law, *see* N.Y. Exec. L. § 296, as well as Grossman’s own non-discrimination policy. *See* <https://nyulangone.org/policies-disclaimers/nondiscrimination-policy> [<https://archive.ph/wip/YamPp>] (accessed on Aug. 16, 2023).

¹³ *See* <https://tinyurl.com/5aymdrrf> [<https://tinyurl.com/y5bfcz6f>] (accessed on Aug. 16, 2023).

economically disadvantaged students who apply for college and medical school”¹⁴ – 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 NYU-STEP are “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *47-48,¹⁵ 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. Grossman is a recipient of federal funds¹⁶ 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 Grossman’s role in creating, sponsoring, supporting and promoting the NYU-STEP – and to discern whether Grossman is engaging in such discrimination in its other activities – and to impose whatever remedial relief 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

¹⁴ See <https://tinyurl.com/3m9wh8ap> [<https://archive.ph/lXeid>] (accessed Aug. 18, 2023); <https://tinyurl.com/yc4dhecz> (accessed Aug. 18, 2023).

¹⁵ 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).

¹⁶ *Id.*

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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 Grossman's NYU-STEP based on racially discriminatory criteria, and that it ensure that all ongoing and future programming through Grossman comports with the applicable civil rights laws.

Sincerely,



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-And-

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