



**THE EQUAL PROTECTION PROJECT**  
**A Project of the Legal Insurrection Foundation**  
**18 MAPLE AVE. #280**  
**BARRINGTON, RI 02806**  
[www.EqualProtect.org](http://www.EqualProtect.org)

August 19, 2023

**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.<sup>1</sup>

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

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<sup>1</sup> 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.”<sup>2</sup>

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.<sup>3</sup>

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 application<sup>4</sup> – which is the most recent version of the application available online – and the AMC website,<sup>5</sup> 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.”<sup>6</sup>

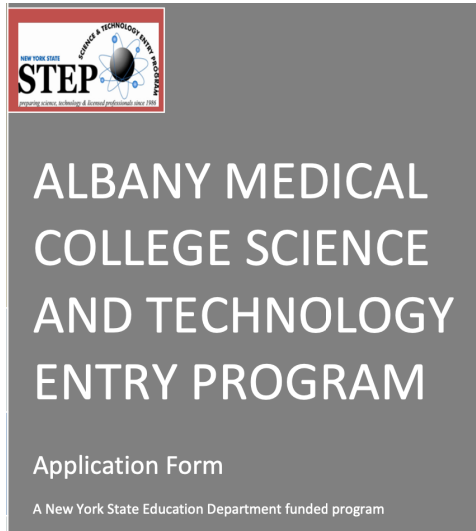
<sup>2</sup> See <https://www.amc.edu/Academic/STEP/> [https://archive.ph/wip/cm3dy] (accessed on Aug. 1, 2023).

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

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

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

<sup>6</sup> 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.”<sup>7</sup>

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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.

<sup>7</sup> *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.”<sup>8</sup>

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.”<sup>9</sup> 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.<sup>10</sup> That portion of the application is reproduced below:

Ethnicity<sup>1</sup>: (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

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

<sup>9</sup> 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).

<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup>

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.

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<sup>11</sup> 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).

<sup>12</sup> *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”<sup>13</sup> – 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,<sup>14</sup> 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 funds<sup>15</sup> 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

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

<sup>14</sup> 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).

<sup>15</sup> *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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The Equal Protection Project

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-And-

William A. Jacobson, Esq.

*President*

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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 Columbia University's Vagelos College of Physicians & Surgeons 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.<sup>1</sup>

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 Columbia University's Vagelos College of Physicians & Surgeons ("Vagelos") – a private institution that receives federal funds from the U.S. Department of Education – for creating, supporting, and promoting a program, entitled the

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



State Pre-College Enrichment Program (“S-PREP”), that engages in invidious discrimination on the basis of race, color and national origin against students in grades 7 through 12. The S-PREP impermissibly gives admission preference to middle school and high school students who identify as “Black/African American, Hispanic/Latino, Alaskan Native or American Indian.”<sup>2</sup>

Vagelos’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.<sup>3</sup>

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 S-PREP 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.

### **Vagelos’s “State Pre-College Enrichment Program”**

According to the Vagelos website, the S-PREP is a “New York State Education Department - Science & Technology Entry Program”<sup>4</sup> that offers “7th - 12th grade students” the opportunity to participate in “enrichment courses geared towards preparing students for success

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<sup>2</sup> See <https://tinyurl.com/bdz64syb> [<https://archive.ph/8HHLp>] (accessed on Aug. 18, 2023).

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

<sup>4</sup> 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 S-PREP is state-funded is legally irrelevant, since no statute or regulation requires Vagelos to create, promote, sponsor or host such programs or to seek STEP funds from the state.

in math and science,” with the stated purpose of increasing “the number of historically underrepresented and economically disadvantaged students prepared to enter college and improve their participation rate in mathematics, science, technology, health-related fields, and the licensed professions.”<sup>5</sup>

The State Pre-College Enrichment Program (S-PREP) is a free high school and college preparatory program designed for 7th - 12th grade students who are interested in pursuing a career in medicine or related STEM fields. The purpose of the program is to increase the number of historically underrepresented and economically disadvantaged students prepared to enter college and improve their participation rate in mathematics, science, technology, health-related fields, and the licensed professions. S-PREP also known as Columbia STEP is offered by the Office of Diversity and Multicultural Affairs and is a New York State Education Department- Science & Technology Entry Program (STEP).

Students in the S-PREP can participate in two sessions: a summer session during July with programming from 10 a.m. to 3 p.m., Monday through Friday, and an academic-year session from October through May with programming from 9 a.m. to 3 p.m. on Saturdays.<sup>6</sup> S-PREP applications for the 2023-2024 school year are being accepted through September 15, 2023.<sup>7</sup>

The application for the S-PREP is posted on the Vagelos website, and provides that the S-PREP is a program “academic enrichment program designed for students who are interested in pursuing a career in medicine or related STEM fields” who “self-identify as either Black/African American, Hispanic/Latino, Alaskan Native or American Indian[.]”<sup>8</sup>

The eligibility guidelines contained on the application provide that the “long-range objective of the program is to increase the number of historically underrepresented and/or economically disadvantaged students prepared to enter college and improve their participation rate in mathematics, science, technology, health-related fields, and the licensed professions.”<sup>9</sup> The program defines “Black or African American” as “[a] person having origins in any of the Black racial groups of Africa,” “Hispanic/Latino” as “people whose origins are from Spain, the Spanish-speaking countries of Central or South America, or the Dominican Republic,” and

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<sup>5</sup> See <https://tinyurl.com/ykha35j4> [https://archive.ph/FWojY] (accessed Aug. 3, 2023).

<sup>6</sup> *Id.*

<sup>7</sup> See [https://cumc.columbia.edu/qualtrics.com/jfe/form/SV\\_1CdNXy4faUtnhga](https://cumc.columbia.edu/qualtrics.com/jfe/form/SV_1CdNXy4faUtnhga) [https://tinyurl.com/3ujnv9vn] (accessed Aug. 3, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

American Indian and Alaska Native” 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.”<sup>10</sup>

**Eligibility Criteria**

Applicants must:

- be New York State Residents
  - The applicant must have been a resident of the State of New York 12 months prior to application.
- Enrolled in Grade 7 – 12
- Self-identify as
  - either Black/African American, Hispanic/Latino, Alaskan Native or American Indian
  - OR meet the economic eligibility guidelines outlined by the state ([2020-2024 STEP Income Eligibility Guidelines](#))

The long-range objective of the program is to increase the number of historically underrepresented and/or economically disadvantaged students prepared to enter college and improve their participation rate in mathematics, science, technology, health-related fields, and the licensed professions.

The S-PREP’s “eligibility requirements and selection criteria” make clear that students who do not fall into these racial or ethnic categories must demonstrate that they are “economically disadvantaged” in order to be eligible.<sup>11</sup>

The discrimination is apparent: if applicants are Black, 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 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 application for the S-PREP requires applicants to identify their race and ethnicity.<sup>12</sup> That portion of the application is reproduced below:

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<sup>10</sup> See <https://tinyurl.com/bdz64syb> [<https://archive.is/RHHZy>] (accessed on Aug. 18. 2023).

<sup>11</sup> *Id.*

<sup>12</sup> See [https://cumc.columbia.edu/qualtrics.com/jfe/form/SV\\_1CdNXy4faUtnhga](https://cumc.columbia.edu/qualtrics.com/jfe/form/SV_1CdNXy4faUtnhga) (accessed on Aug. 18, 2023).

Please select which race/ethnicity you self-identify as (if you would like to specify use the box next to it)

Black or African American*	<input type="text"/>
Hispanic/Latino*	<input type="text"/>
American Indian or Alaska Native*	<input type="text"/>
Other (specify)**	<input type="text"/>

\* **Student Eligibility:** STEP serves secondary school students all over New York State.

Students must be:

- Enrolled in Grades 7-12
- Economically disadvantaged, or African American, Hispanic/Latino, Alaskan Native or American Indian; and will benefit from academic enrichment.
  - Black or African American. A person having origins in any of the Black racial groups of Africa.
  - American Indian and Alaska Native. 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.
  - Hispanics or Latinos are those people whose origins are from Spain, the Spanish-speaking countries of Central or South America, or the Dominican Republic. People who identify their origin as Spanish, Hispanic, or Latino may be of any race.

Note: For the purpose of STEP, a student is economically disadvantaged if he or she meets the income eligibility criteria. ([Income Eligibility Guidelines](#)) The eligibility standards set forth apply only at the time of admission as a first-time student to a STEP program.

### **The S-PREP Violates the Law**

It violates Title VI of the Civil Rights Act of 1964 for a recipient of federal money, such as Vagelos, to discriminate on the basis of race, color or national origin.<sup>13</sup>

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<sup>13</sup> 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 Vagelos. 42 U.S.C. § 2000a(a). Similarly, the S-PREP defies the civil rights protections of the New York State Human Rights Law, *see* N.Y. Exec. L. § 296, as well as Vagelos’s own non-discrimination policy. *See* <https://eoaa.columbia.edu/content/eoaa-policies-and-procedures-1> [https://archive.ph/wip/CHEI0] (accessed on Aug. 16, 2023).

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 Vagelos receives federal funds, it is subject to Title VI.<sup>14</sup>

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 Vagelos’s reasons for creating, sponsoring and promoting the S-PREP, it violated Title VI by doing so.

Moreover, Vagelos’s stated purpose for the S-PREP – achieving racial balance by “increas[ing] the number of historically underrepresented and/or 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”<sup>15</sup> – 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 S-PREP are “imprecise,” “plainly overbroad,” “arbitrary,” “undefined”

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<sup>14</sup> *See* <https://tinyurl.com/26kshybt> [<https://tinyurl.com/yc4z6sj5>] (accessed on Aug. 16, 2023).

<sup>15</sup> *See* [https://cumc.co1.qualtrics.com/jfe/form/SV\\_1CdNXy4faUtnhga](https://cumc.co1.qualtrics.com/jfe/form/SV_1CdNXy4faUtnhga) [<https://tinyurl.com/3ujnv9vn>] (accessed Aug. 3, 2023).

and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at \*47-48,<sup>16</sup> 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. Vagelos is a recipient of federal funds<sup>17</sup> 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 Vagelos’s role in creating, sponsoring, supporting and promoting the S-PREP – and to discern whether Vagelos 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 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 Vagelos’s S-PREP based on racially discriminatory criteria, and that it ensure that all ongoing and future programming through Vagelos comports with the applicable civil rights laws.

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<sup>16</sup> 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).

<sup>17</sup> *Id.*

U.S. Dept. of Education, Office for Civil Rights  
Administrative Complaint Against Vagelos College of Physicians & Surgeons  
August 19, 2023  
Page 8 of 8

Sincerely,



Ameer Benno, Esq.  
The Equal Protection Project  
[Ameer@legalinsurrection.com](mailto:Ameer@legalinsurrection.com)

-And-

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**THE EQUAL PROTECTION PROJECT**  
**A Project of the Legal Insurrection Foundation**  
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August 19, 2023

**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 Albert Einstein College 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.<sup>1</sup>

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 Albert Einstein College of Medicine ("Einstein") – a private institution that receives federal funds from the U.S. Department of Education – for creating, supporting, and promoting a program, entitled The Einstein Enrichment Program (the "EEP"), that engages in invidious discrimination on the basis of race, color and

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



national origin against students in grades 7 through 12. The EEP impermissibly gives admission preference to middle school and high school students who identify as “Black or African-America[n],” “American Indian,” “Alaskan Native,” and “Hispanic/ Latino.”<sup>2</sup>

Einstein’s creation, ongoing sponsorship and active promotion of a program that explicitly gives admissions preference based on race and skin color violates federal and state civil rights laws, including Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations.<sup>3</sup>

OCR should investigate the blatantly discriminatory EEP program 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 Einstein Enrichment Program**

According to the Einstein website, the EEP is a “New York state–funded<sup>4</sup> Science & Technology Entry Program, (S.T.E.P), that offers grade 7-12 students opportunities to excel in the sciences and exposure to careers in medicine” and that specifically seeks “to enable minority and/or economically disadvantaged secondary school students, who are academically high functioning and strongly motivated, to enroll in college and pursue careers in the licensed professions of science, medicine and health.”<sup>5</sup>

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<sup>2</sup> See <https://eep.apply.einsteinmed.edu/> [<https://archive.ph/wip/UpRLL>] (accessed on Aug. 3, 2023).

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

<sup>4</sup> 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 EEP is state-funded is legally irrelevant, since no statute or regulation requires Einstein to create, promote, sponsor or host such programs or to seek STEP funds from the state.

<sup>5</sup> See <https://eep.apply.einsteinmed.edu/> [<https://archive.ph/wip/UpRLL>] (accessed on Aug. 3, 2023).

## The Einstein Enrichment Program, (EEP)

The Einstein Enrichment Program is a New York state-funded Science & Technology Entry Program, (S.T.E.P), that offers grade 7-12 students opportunities to excel in the sciences and exposure to careers in medicine. The 30-week curriculum includes hands-on

Students in the EEP participate in a 30-week curriculum at Einstein during the school year – “approximately fifteen weeks each fall and spring semester” consisting of “hands-on learning such as ambulance-bay visits, suturing, seminars, test-prep classes and more.” Students in 7th and 8th grade can attend an optional four-week summer program, while high school students have the option to attend their own four-week summer program.

The discrimination is apparent: if applicants are Black, African American, American Indian, Alaskan Native or Hispanic, they are automatically eligible for the program. Applicants who do not fall into one of those racial and ethnic categories are automatically excluded from consideration unless they can show that they meet the “income eligibility guidelines.” The “historically underrepresented minorities” are not required to prove any economic need whatsoever.

### Einstein Enrichment Program (EEP)



The mission of EEP is to enable minority and/or economically disadvantaged secondary school students, who are academically high functioning and strongly motivated, to enroll in college and pursue careers in the licensed professions of science, medicine and health.

Students are generally accepted into EEP during ninth or tenth grade, and are expected to continue until graduation from high school. The program began in 1986 on a small scale, gradually expanded in the next few years, and now enrolls an average of 35 students during the academic year, and 20 during the summer. There are usually even numbers of young women and men. Approximately 95% remain in the program through twelfth grade. Every student has gone on to a four-year college/university directly after graduation. The schools represented are Bronx public high schools, parochial schools, and college preparatory schools.

For acceptance into EEP, applicants must meet the following criteria: be in ninth or tenth grade; have United States citizenship or legal immigration status; have been a New York State resident for the previous whole year; live in and attend school in the Bronx; have a grade point average of above 85%, with well-balanced grades in all courses; have a good attendance and school history; have an interest in pursuing a field in medicine, health and/or science; be a member of a minority group that is defined by the state as having been “historically under-represented” in the licensed professions--these groups are African- or Caribbean-American, Hispanic/Latino, Native American Indian/Alaskan Native, or someone whose family’s socioeconomic status meets the state’s definition of “economically disadvantaged” based on income and family size.

## **The Einstein Enrichment Program Violates the Law**

It violates Title VI of the Civil Rights Act of 1964 for a recipient of federal money, such as Einstein, to discriminate on the basis of race, color or national origin.<sup>6</sup>

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<sup>6</sup> 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 Einstein. 42

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 Einstein receives federal funds, it is subject to Title VI.<sup>7</sup>

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 Einstein’s reasons for creating, sponsoring and promoting the EEP, it violated Title VI by doing so.

Moreover, insofar as the purpose of the EEP is to achieve racial balance by increasing the number of historically underrepresented students in the medical profession, such an objective has been “repeatedly condemned as illegitimate” and “patently” unlawful by the Supreme Court. *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 EEP are “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and

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U.S.C. § 2000a(a). Similarly, the EEP defies the civil rights protections of the New York State Human Rights Law, *see* N.Y. Exec. L. § 296, as well as Einstein’s own non-discrimination policy. *See* <https://www.einsteinmed.edu/download/?token=FV4I5iCbAos9QCRfWDDeOIH2e7NUOqYN3LWcrtBkKeg> [<https://tinyurl.com/3r2jtens>] (accessed on Aug. 16, 2023).

<sup>7</sup> *See* [https://tags.hhs.gov/Detail/RecipDetail?arg\\_EntityId=heZ5S98jN7PzJ0bFzy3KPA%3D%3D](https://tags.hhs.gov/Detail/RecipDetail?arg_EntityId=heZ5S98jN7PzJ0bFzy3KPA%3D%3D) [<https://archive.ph/wip/Yr7Ce>] (accessed on Aug. 6, 2023).

“opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at \*47-48,<sup>8</sup> 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. Einstein is a recipient of federal funds<sup>9</sup> 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 Einstein’s role in creating, sponsoring, supporting and promoting the EEP – and to discern whether Einstein 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 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 Einstein’s EEP based on racially discriminatory criteria, and that it ensure that all ongoing and future programming through Einstein comports with the applicable civil rights laws.

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<sup>8</sup> 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).

<sup>9</sup> *Id.*

U.S. Dept. of Education, Office for Civil Rights  
Administrative Complaint Against Albert Einstein College of Medicine  
August 19, 2023  
Page 6 of 6

Sincerely,



Ameer Benno, Esq.

The Equal Protection Project

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-And-

William A. Jacobson, Esq.

*President*

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August 19, 2023

**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 Icahn School of Medicine at Mount Sinai  
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.<sup>1</sup>

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 Icahn School of Medicine at Mount Sinai ("Icahn") – a private institution that receives federal funds from the U.S. Department of Education – for creating, supporting, and promoting a program, entitled Center for Excellence in Youth Education 2023 High School Summer Program ("CEYE") that engages in invidious

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

discrimination on the basis of race, color and national origin against students in grades 7 through 12. The CEYE impermissibly gives admission preference to middle school and high school students who identify as “African American, Hispanic/Latino, Alaskan Native or American Indian.”<sup>2</sup>

Icahn’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.<sup>3</sup>

OCR should investigate the blatantly discriminatory CEYE 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 Center for Excellence in Youth Education High School Summer Program**

According to a website that lists the CEYE’s application instructions for its 2022 program, Icahn is “contracted by the State<sup>4</sup> and Federal Government to support a specific number of students with specific eligibility criteria.”<sup>5</sup>

*As a point of context, each year we are contracted by the State and Federal Government to support a specific number of students with specific eligibility criteria, which includes being an Underrepresented Minority (defined as African American, Hispanic/Latino, Alaskan Native or American Indian) and / or economically disadvantaged (as defined on **page 3**)*

This year, students in the CEYE participate in one of the three offered programs (Introduction to Bioinformatics; Medical and Scientific Exploration; or Internship Placement

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<sup>2</sup> See <https://mountsinai.app.box.com/s/9mssfz7mrl1aov4edl1t3cdbt770ovj> [https://archive.ph/T7F2a] (accessed on Aug. 4, 2023).

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

<sup>4</sup> 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 CEYE is state-funded is legally irrelevant, since no statute or regulation requires Icahn to create, promote, sponsor or host such programs or to seek STEP funds from the state.

<sup>5</sup> See <https://mountsinai.app.box.com/s/9mssfz7mrl1aov4edl1t3cdbt770ovj> [https://archive.ph/T7F2a] (accessed on Aug. 4, 2023).

Program) from June 29, 2023 through August 11, 2023. Applications for the CEYE were accepted through March 22, 2023.<sup>6</sup>

A description of the CEYE is posted on Icahn's CEYE LinkedIn page, which states that the CEYE is a program that "works with a cross section of public schools, colleges, and other youth organizations throughout NYC to implement academic year and summer courses and internships that prepare underrepresented and disadvantaged middle, high school, and college-level students for STEM careers."<sup>7</sup>

The eligibility guidelines set forth in last year's CEYE application instructions provide that applicants must "[i]dentify as [an] Under Represented Minority" – which is defined as an "African American, Hispanic/Latino, Alaskan Native or American Indian" – or as an "economically disadvantaged" student.<sup>8</sup>

**Eligibility Requirements**

- Must attend a NYC public or charter high school.
- Identify as Under Represented Minority (*URM*) (African American, Hispanic/Latino, Alaskan Native or American Indian) **OR** meet state-determined economic criteria. Please see **page 3** of this document to determine your economic eligibility criteria.
- Any additional requirements as stated in each individual course description; found on the [webpage](#).

The guidelines further provide that the "economically disadvantaged" category "is ONLY required for students who do NOT identify as African American, Hispanic/Latino, Alaskan Native or American Indian."<sup>9</sup> Thus, students who do not fall within the qualifying racial/ethnic categories must demonstrate that they meet New York State's STEP income eligibility criteria in order to be eligible.

**3. Economic Eligibility**

*This is ONLY required for students who do NOT identify as African American, Hispanic/Latino, Alaskan Native or American Indian.*

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<sup>6</sup> See <https://icahn.mssm.edu/about/diversity/ceye/programs/summer> [<https://archive.ph/4zvBs>] (accessed Aug. 4, 2023).

<sup>7</sup> See <https://www.linkedin.com/showcase/center-for-excellence-in-youth-education/> [<https://archive.ph/wip/fdz7h>] (accessed Aug. 4, 2023).

<sup>8</sup> See <https://mountsinai.app.box.com/s/9mssfzc7mrl1aov4edl1t3cdbt770ovj> [<https://archive.ph/T7F2a>] (accessed on Aug. 4, 2023).

<sup>9</sup> *Id.* While the CEYE application instructions also state that, "[s]ubject to funding and availability, CEYE may consider applicants who are neither underrepresented minorities nor economically disadvantaged, Icahn asserts that those "limited slots are extremely competitive and are outside of our primary target population." *Id.*



The discrimination is apparent: if applicants are African American, Hispanic/Latino, Alaskan Native or American Indian, they are automatically eligible for the program. Applicants who do not fall into one of those racial and ethnic categories are automatically excluded from consideration unless 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 CEYE Violates the Law**

It violates Title VI of the Civil Rights Act of 1964 for a recipient of federal money, such as Icahn, to discriminate on the basis of race, color or national origin.<sup>10</sup>

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 Icahn receives federal funds, it is subject to Title VI.<sup>11</sup>

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

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<sup>10</sup> 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 Icahn. 42 U.S.C. § 2000a(a). Similarly, the CEYE defies the civil rights protections of the New York State Human Rights Law, *see* N.Y. Exec. L. § 296, as well as Icahn’s own non-discrimination policy. *See* <https://icahn.mssm.edu/files/ISMMS/Assets/Education/Resources/Harassment%20Policy.pdf> [<https://tinyurl.com/5n7rns3z>] (accessed on Aug. 16, 2023).

<sup>11</sup> *See* <https://fdpclearinghouse.org/file/get?id=2577> [<https://tinyurl.com/5b2xx9fe>] (accessed on Aug. 16, 2023).

any other reason or motive the recipient might assert.” *Id.* at \*170 (cleaned up). Thus, regardless of Icahn’s reasons for creating, sponsoring and promoting the CEYE, it violated Title VI by doing so.

Moreover, insofar as the purpose of the CEYE is to achieve racial balance by increasing the number of historically underrepresented students in the medical profession, such an objective has been “repeatedly condemned as illegitimate” and “patently” unlawful by the Supreme Court. *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 CEYE are “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at \*47-48,<sup>12</sup> 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. Icahn is a recipient of federal funds<sup>13</sup> 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 Icahn’s role in creating, sponsoring, supporting and promoting the CEYE – and to discern whether Icahn 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

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<sup>12</sup> 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).

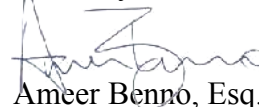
<sup>13</sup> *Id.*

U.S. Dept. of Education, Office for Civil Rights  
Administrative Complaint Against Icahn School of Medicine at Mount Sinai  
August 19, 2023  
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finances, 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 Icahn’s CEYE based on racially discriminatory criteria, and that it ensure that all ongoing and future programming through Icahn comports with the applicable civil rights laws.

Sincerely,



Ameer Benno, Esq.

The Equal Protection Project

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-And-

William A. Jacobson, Esq.

*President*

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**THE EQUAL PROTECTION PROJECT**  
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August 19, 2023

**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.<sup>1</sup>

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

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<sup>1</sup> 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.”<sup>2</sup>

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.<sup>3</sup>

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 Department<sup>4</sup>... 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.”<sup>5</sup>

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

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

<sup>4</sup> 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.

<sup>5</sup> 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](#).<sup>6</sup> 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.<sup>6</sup>

### 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](#).<sup>7</sup> 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.”<sup>7</sup>

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.”<sup>8</sup>

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

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

<sup>8</sup> *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.”<sup>9</sup>

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.<sup>10</sup>

## **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” students<sup>11</sup> are not required to prove any economic need whatsoever.

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

<sup>10</sup> See [https://nyumc.qualtrics.com/jfe/form/SV\\_6nBXMHywhVQheRM](https://nyumc.qualtrics.com/jfe/form/SV_6nBXMHywhVQheRM) [<https://tinyurl.com/yc4dhecz>] (accessed Aug. 1, 2023).

<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup>

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

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<sup>12</sup> 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).

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



economically disadvantaged students who apply for college and medical school”<sup>14</sup> – 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,<sup>15</sup> 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 funds<sup>16</sup> 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

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

<sup>15</sup> 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).

<sup>16</sup> *Id.*

U.S. Dept. of Education, Office for Civil Rights  
Administrative Complaint Against New York University's Grossman School of Medicine  
August 19, 2023  
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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,



Ameer Benno, Esq.  
The Equal Protection Project  
[Ameer@legalinsurrection.com](mailto:Ameer@legalinsurrection.com)

-And-

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*President*  
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**BARRINGTON, RI 02806**  
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August 19, 2023

**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 The University Of Rochester School Of  
Medicine & Dentistry 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.<sup>1</sup>

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 the University of Rochester School of Medicine & Dentistry ("Rochester") – a private institution that receives federal funds from the U.S. Department of Education – for creating, supporting, and promoting a program, entitled the

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

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

Rochester’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.<sup>3</sup>

OCR should investigate the blatantly discriminatory SMD-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 Rochester website, the SMD-STEP is a “New York State funded<sup>4</sup> program for high school students who are economically disadvantaged or from underrepresented backgrounds” that is “designed to stimulate participants’ interest in career development opportunities in medicine and the health care professions.”<sup>5</sup>

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<sup>2</sup> See <https://tinyurl.com/2kzamxx6> [https://archive.ph/uqOGC] (accessed on Aug. 18, 2023).

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

<sup>4</sup> 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 SMD-STEP is state-funded is legally irrelevant, since no statute or regulation requires Rochester to create, promote, sponsor or host such programs or to seek STEP funds from the state.

<sup>5</sup> See <https://tinyurl.com/2kzamxx6> [https://archive.ph/uqOGC] (accessed on Aug. 18, 2023).

STEP is a New York State funded program for high school students who are economically disadvantaged or from underrepresented backgrounds. The program is designed to stimulate participants' interest in career development opportunities in medicine and the health care professions. STEP students have the opportunity to work directly with physicians, technical staff, certified teachers, medical, and graduate students. Students are exposed to a variety of academic and professional skill development opportunities to enhance their problem solving, critical thinking and test taking skills with an emphasis on active or "hands-on" learning.

Students in the SMD-STEP participate in a summer program in which they are “exposed to a variety of academic and professional skill development to enhance problem solving, critical thinking and test taking skills through ‘hands-on’ learning.”<sup>6</sup> Applications for the program were accepted through April 7, 2023.<sup>7</sup>

The SMD-STEP application is posted on the Rochester website and mirrors the website’s description of the program, stating that the SMD-STEP is a “New York State funded program for high school students who are economically disadvantaged or from underrepresented backgrounds,” and that it is “designed to stimulate participants’ interest in career development opportunities in medicine and the health care professions.”<sup>8</sup>

The eligibility guidelines contained on the application page provide that “[a]pplicants **must** be members of an Underrepresented Group,” which include “African American/Black,” “Hispanic/Latinx,” “American Indian,” or “Alaskan Native,” or else be “economically disadvantaged” (emphasis added).<sup>9</sup>

Applicants must be members of an Underrepresented Group (see groups below):

- African American/Black
- Hispanic/Latinx
- American Indian
- Alaskan Native

OR

- Applicants must be economically disadvantaged ([Economic Criteria](#))

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<sup>6</sup> See <https://redcap.urmc.rochester.edu/redcap/surveys/?s=FL37WAYH8JCALAPM> [https://archive.ph/wip/1nIDg] (accessed August 2, 2023).

<sup>7</sup> See <https://tinyurl.com/2kzamxx6> [https://archive.ph/uqOGC] (accessed on Aug. 18, 2023).

<sup>8</sup> See <https://redcap.urmc.rochester.edu/redcap/surveys/?s=FL37WAYH8JCALAPM> [https://archive.ph/wip/1nIDg] (accessed Aug. 2, 2023).

<sup>9</sup> *Id.*

To that end, the application for the SMD-STEP requires each applicant to those programs to identify their race and ethnicity.<sup>10</sup> That portion of the application is reproduced below:

**6) Ethnicity**  
\* must provide value

African-American  
 Native-American/Alaska Native  
 Hispanic/Latinx  
 Other

reset

African-American includes students from Africa and the Caribbean

**7) If other, please specify.**

Please refer to the Appendix Guidelines for Student Eligibility to determine if you are economically disadvantaged. If you do not provide documentation as required by New York State, your application will not be accepted.

The discrimination is apparent: if applicants are African American/Black, Hispanic/Latinx, American Indian, or Alaskan Native, they are automatically eligible for the program. Applicants who do not fall into one of those racial and ethnic categories are automatically excluded from consideration unless 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 SMD-STEP Violates the Law**

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

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

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<sup>10</sup> *Id.*

<sup>11</sup> 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 Rochester. 42 U.S.C. § 2000(a)(a). Similarly, the SMD-STEP defies the civil rights protections of the New York State Human Rights Law, *see* N.Y. Exec. L. § 296, as well as the non-discrimination policy of Rochester’s parent institution, University of Rochester. *See* <https://tinyurl.com/ykz9udff> [<https://archive.ph/bKnTF>] (accessed on Aug. 16, 2023).

to universities receiving federal financial assistance). As Rochester receives federal funds, it is subject to Title VI.<sup>12</sup>

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

Moreover, insofar as the purpose of the SMD-STEP is to achieve racial balance by increasing the number of historically underrepresented students in the medical profession, such an objective has been “repeatedly condemned as illegitimate” and “patently” unlawful by the Supreme Court. *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,<sup>13</sup> 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. Rochester is a recipient of federal funds<sup>14</sup> and therefore is liable for violating Title VI.

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<sup>12</sup> See <https://tinyurl.com/r2y9jyeh> [<https://tinyurl.com/3kjyn5ef>] (accessed on Aug. 16, 2023).

<sup>13</sup> 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).

<sup>14</sup> *Id.*

### **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 Rochester’s role in creating, sponsoring, supporting and promoting the SMD-STEP – and to discern whether Rochester 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 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 Rochester’s SMD-STEP based on racially discriminatory criteria, and that it ensure that all ongoing and future programming through Rochester comports with the applicable civil rights laws.

Sincerely,



Ameer Benno, Esq.

The Equal Protection Project

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-And-

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