



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

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

Re: Civil Rights Complaint Against 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.¹

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

We bring this civil rights complaint against 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

¹ 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.”²

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.³

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

OCR should investigate the blatantly discriminatory 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”⁴ that offers “7th - 12th grade students” the opportunity to participate in “enrichment courses geared towards preparing students for success

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

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

⁴ New York State Education Law § 6454 authorizes the New York State Legislature to appropriate funds for grants to post-secondary institutions for programs that will aid secondary school students “who are either economically disadvantaged or minorities historically underrepresented in the scientific, technical, health, and health-related professions.” N.Y. Educ. L. § 6454(1)(b). Adjunct to this, a New York State Department of Education regulation defines “minorities historically underrepresented” as those who are “black, Hispanic, American Indian or Alaskan Native.” 8 N.Y.C.R.R. § 145-6.5(a). The fact that the 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.”⁵

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.⁶ S-PREP applications for the 2023-2024 school year are being accepted through September 15, 2023.⁷

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[.]”⁸

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.”⁹ 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

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

⁶ *Id.*

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

⁸ *Id.*

⁹ *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.”¹⁰

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.¹¹

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.¹² That portion of the application is reproduced below:

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

¹¹ *Id.*

¹² See 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.¹³

¹³ 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.¹⁴

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”¹⁵ – 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”

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

¹⁵ *See* 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 *47-48,¹⁶ 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 funds¹⁷ 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.

¹⁶ 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).

¹⁷ *Id.*

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Sincerely,



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