



**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  
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Sincerely,



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