



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 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.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 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

¹ 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.”²

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.³

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 State⁴ and Federal Government to support a specific number of students with specific eligibility criteria.”⁵

*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

² See <https://mountsinai.app.box.com/s/9mssfcz7mrl1aov4edl1t3cdbt770ovj> [https://archive.ph/T7F2a] (accessed on Aug. 4, 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 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.

⁵ See <https://mountsinai.app.box.com/s/9mssfcz7mrl1aov4edl1t3cdbt770ovj> [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, 2023.⁶

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."⁷

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.⁸

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."⁹ 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.

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

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

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

⁹ *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.¹⁰

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.¹¹

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

¹⁰ 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).

¹¹ *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 *47-48,¹² 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 funds¹³ 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

¹² 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).

¹³ *Id.*

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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,



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-And-

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