



THE EQUAL PROTECTION PROJECT
A Project of the Legal Insurrection Foundation
18 MAPLE AVE. #280
BARRINGTON, RI 02806
www.EqualProtect.org

April 17, 2024

BY EMAIL (OCR.Chicago@ed.gov)

U. S. Department of Education
Office for Civil Rights – Chicago Office
John C. Kluczynski Federal Building
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604

Re: Civil Rights Complaint Against Illinois Mathematics and Science Academy
Regarding Race-Based Summer Program

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

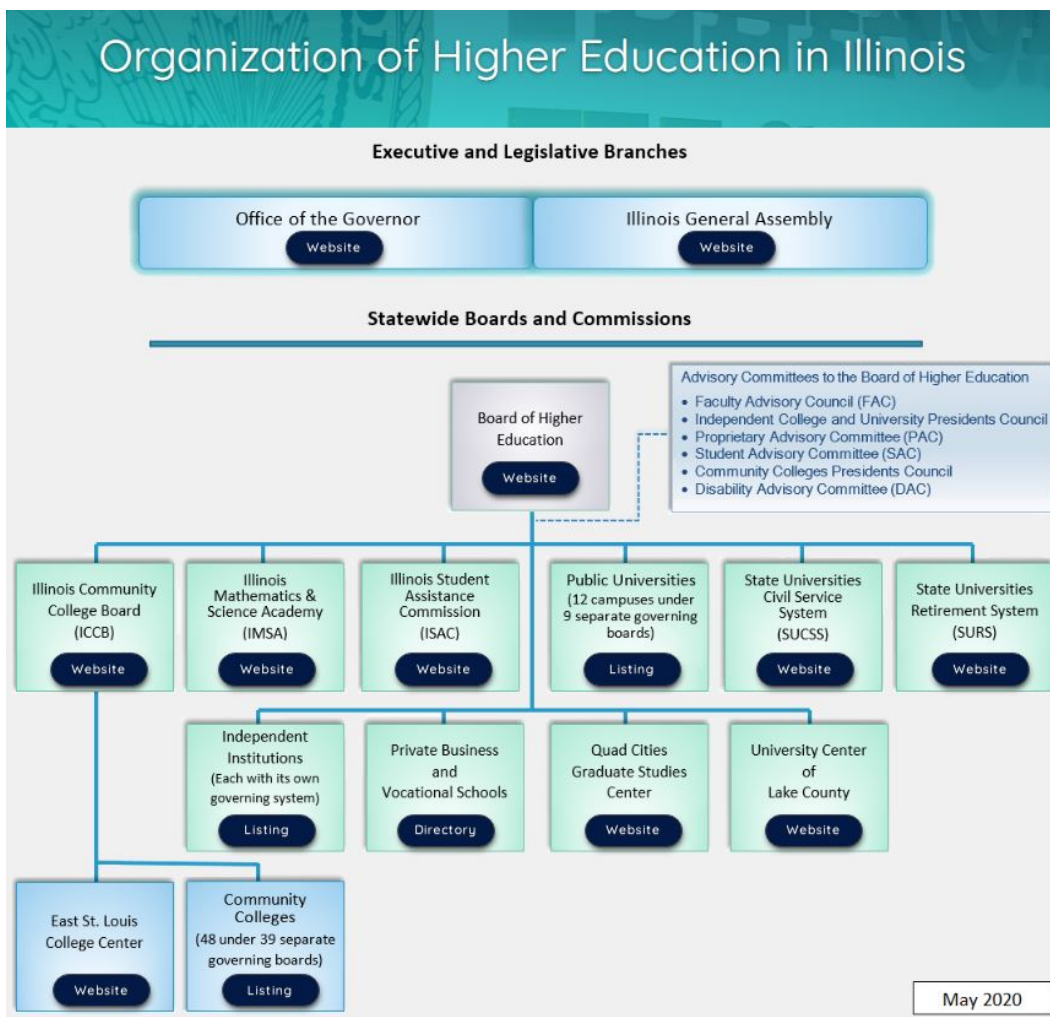
We write on behalf of the Equal Protection Project of the Legal Insurrection Foundation, a non-profit that, among other things, seeks to ensure equal protection under the law and non-discrimination by the government, and that opposes racial discrimination in any form.

We bring this civil rights complaint against the Illinois Mathematics and Science Academy for creating, supporting and promoting a summer immersion program – called the PROMISE-Summer Enrichment in Academics in Mathematics and Science program – for Illinois students between their 8th and 9th grade years that engages in invidious discrimination on the basis of race, color and national origin. As detailed and documented below, students who identify as black, African American or Latinx are universally eligible for the Summer 2024

PROMISE-SEAMS Program. Applicants who fall outside of those racial categories, however, are automatically *ineligible* for the program unless they can demonstrate that they meet the guidelines for being “rural” or of “low-socioeconomic status.”

The Illinois Mathematics and Science Academy

The Illinois Mathematics and Science Academy (“IMSA”) is an executive branch agency of the State of Illinois¹ that operates a residential public high school – which it describes on its website as “a teaching and learning laboratory” – in Aurora, Illinois for “academically talented students in the 10th through 12th grades.”²



¹ See <https://www.ibhe.org/HigherEdOrgChart.html> [https://archive.is/WeC2V] (accessed on Apr. 13, 2024).

² See <https://www.imsa.edu/discover-imsa/> [https://archive.is/cKXXi] (accessed on Apr. 13, 2024).

According to IMSA’s website, “IMSA is both a public residential Academy and a catalyst for the advancement of STEM teaching and learning statewide with the responsibility to stimulate further excellence for all Illinois schools in mathematics and science[.]”³ In furtherance of this objective, IMSA provides various “youth outreach,” “student enrichment” and “summer camp” programs.⁴

IMSA is both a public residential Academy and a catalyst for the advancement of STEM teaching and learning statewide with the responsibility to stimulate further excellence for all Illinois schools in mathematics and science through student [Educator Development](#) and [Youth Outreach](#) Programs. These programs provide [professional development training](#) and turnkey STEM curricula, [student enrichment](#), including [summer camps](#), and entrepreneurship and [makerspace education](#).

IMSA’s PROMISE Program

In furtherance of IMSA’s youth outreach, student enrichment and summer camp objectives – as well as its commitment to “equity”⁵ – IMSA created the Providing Opportunities for Math and Science Enrichment (“PROMISE”) Program.⁶

According to IMSA’s website, the PROMISE Program “is designed to support Black or African American students, Latinx students,” students from low-income households and students from rural Illinois counties, and aims to “address[] the unique challenges of culturally, linguistically, and economically diverse ... students who have an interest in STEM education by providing academic enrichment programming at low to no cost.”⁷

IMSA is committed to equity and excellence, including the active recruitment of students from all areas of Illinois. IMSA’s PROMISE Program addresses the unique challenges of culturally, linguistically, and economically diverse (CLED) students who have an interest in STEM education by providing academic enrichment programming at low to no cost. This grant-funded program is designed to support Black or African American students, Latinx students, students who qualify for the national free or reduced-price meal program, as well as students from rural Illinois counties.

³ *Id.*

⁴ *Id.*

⁵ See <https://www.imsa.edu/youth-outreach/promise-program/> [https://archive.is/bO1g8] (accessed on Apr. 15, 2024).

⁶ See <https://www.imsa.edu/youth-outreach/promise-program/frequently-asked-questions-promise-program/> [https://archive.is/3Ro7n] (accessed on Apr. 15, 2024).

⁷ See <https://www.imsa.edu/youth-outreach/promise-program/> [https://archive.is/bO1g8] (accessed on Apr. 15, 2024).

The PROMISE Program consists of three separate, grade-based experiences: (1) the “Leading Students 2 Success” program, for students enrolled in the 7th and 8th grade; (2) the “Summer Enrichment in Academics in Mathematics and Science” program, a 10-day summer residential program for students who successfully completed 8th grade; and (3) the “Early Involvement Program,” for students enrolled in the 9th grade.⁸

The PROMISE Program consists of three grade-based experiences:

1. Leading Students 2 Success (LS2S) is for students enrolled in the 7th and 8th grade. The program takes place in the Spring during the school year, typically February - April over the course of 8 sessions on Saturdays. Applications are typically available each Fall.
2. Summer Enrichment in Academics in Mathematics and Science (SEAMS) is for students who successfully completed 8th grade. The program takes place in the summer between 8th and 9th grade. Applications are typically available in March of each year. SEAMS is a residential program that requires students to stay on campus for the duration of 10 consecutive days.
3. Early Involvement Program (EIP) is for students enrolled in the 9th grade. The program takes place in the fall during the school year, typically September - December over the course of 10 sessions on Saturdays. Applications are typically available in August of each year.

The Summer 2024 PROMISE-Summer Enrichment in Mathematics and Science Program

The full name of IMSA’s PROMISE summer program is the Summer Enrichment in Mathematics and Science program, or “PROMISE-SEAMS program.”⁹ According to IMSA’s website, the PROMISE-SEAMS Program is an immersive academic week-long residential experience **for** Illinois students between their 8th and 9th grade years that takes place on IMSA’s campus in Aurora, Illinois.¹⁰

This year, the program runs from June 22-30, 2024. The application deadline is April 15, 2024, and admission decisions will be released by email on April 30, 2024.¹¹

⁸ See <https://www.imsa.edu/youth-outreach/promise-program/frequently-asked-questions-promise-program/> [https://archive.is/3Ro7n] (accessed on Apr. 15, 2024).

⁹ See <https://www.imsa.edu/youth-outreach/promise-program/summer-promise-program-seams-rising-9th-graders/> [https://archive.is/J9yeJ] (accessed on Apr. 13, 2024).

¹⁰ *Id.*

¹¹ *Id.*

– Application Timeline

Summer PROMISE Program:

March 15: Application Opens

April 15: Final date to submit application

April 30: Decisions are released via email

According to an informational webpage about the 2024 Summer PROMISE-SEAMS Program on IMSA’s website, applicants must be Illinois students who demonstrate high academic achievement. Further, they must be “culturally, linguistically, and economically diverse” (“CLED”) – meaning they must either “identif[y] as Black or African American and/or Latinx,” “reside[] in an official rural Illinois county,” or “qualif[y] for National School Lunch Program.”¹²

The application for the Summer 2024 PROMISE – SEAMS Program is now accepting applications.

Deadline: April 15, 2024

The PROMISE Summer Program also known as Summer Enrichment in Academics in Mathematics and Science (SEAMS) is designed for students between their 8th and 9th grade years. Illinois students currently enrolled in the 8th grade are eligible to apply. This immersive academic week long residential experience takes place on IMSA’s campus located in Aurora, IL. Explore additional details below!

– Eligibility

IMSA’s PROMISE Programs aim to address the challenges of culturally, linguistically, and economically diverse (CLED) students. PROMISE is a proven model of success for realizing the vision of a highly diverse and creative STEM workforce. Illinois students enrolled in the 7th-9th grade who demonstrate high academic achievement and meet one or more of the following criteria are eligible to apply:

- Student identifies as Black or African American and/or Latinx
- Student resides in an official rural Illinois county
- Student qualifies for National School Lunch Program

¹² *Id.* IMSA’s Equity and Excellence Policy Manual also defines “culturally, linguistically and economically diverse” as “[t]he historically underrepresented populations at IMSA (Black, Latinx, rural, low-socioeconomic status).” *See* <https://go.boarddocs.com/il/imsa/Board.nsf/goto?open&id=AXVRKP68F803> [https://archive.is/JZiX0] (accessed on Apr. 15, 2024).

And, as reproduced in the screen capture below, the application webpage itself for the PROMISE-SEAMS Program also states that the 2024 Summer PROMISE-SEAMS Program “is offered to academically talented students who are currently enrolled in the 8th grade ... are interested in mathematics and/or science and who identify in one of the CLED categories.”¹³

PROMISE Program Application (Summer 2024)

Program Overview:

IMSA's PROMISE Programs addresses the unique challenges of culturally, linguistically, and economically diverse (CLED) students who have interest in STEM education by providing academic enrichment programming at low to no cost. This grant-funded program is designed to support Black or African American students, Latinx students, students who qualify for the national free or reduced-price meal program, as well as students from rural Illinois counties.

Attending these sessions provides students with the opportunity to work with IMSA faculty, staff, and student mentors while exploring IMSA's unique learning laboratory. The program also works with interested participants to prepare them for the IMSA Admissions Process.

The **summer PROMISE Program** is offered to academically talented students who are currently enrolled in the 8th grade (entering 9th grade, fall 2024), are interested in mathematics and/or science and who identify in one of the CLED categories. Consideration for the PROMISE Program requires the completion of this application and the supplemental documents detailed.

While the general PROMISE Program FAQ webpage states that “[t]he application is open to all students,” it provides that “the priority is to serve students who meet one of the [CLED] markers.”¹⁴ Thus, even if all students could *apply* to the program, the Summer 2024 PROMISE-SEAMS Program's informational and application webpages referenced above make clear that only students who “identif[y] as Black or African American and/or Latinx,” “reside[] in an official rural Illinois county,” or “qualif[y] for National School Lunch Program” are eligible to *participate* in it.

An August 2023 guidance issued by OCR provides that “[i]n determining whether an opportunity to participate is open to all students, OCR may consider, for example, whether advertisements or other communications would lead a reasonable student, or a parent or guardian, to understand that all students are welcome to participate.”¹⁵ Here, any reasonable

¹³ See <https://tinyurl.com/2th6mhbj> [https://archive.is/K0cvB] (accessed on Apr. 14, 2024).

¹⁴ See <https://www.imsa.edu/youth-outreach/promise-program/frequently-asked-questions-promise-program/> [https://archive.is/3Ro7n] (accessed on Apr. 15, 2024).

¹⁵ See <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20230824.pdf> [https://archive.is/5wWb1] (accessed on Apr. 15, 2024) at 11.

person would understand that all students are *not* welcome to participate in the 2024 Summer PROMISE-SEAMS Program.

The Summer 2024 PROMISE-SEAMS Program Violates The Law

Title VI of the Civil Rights Act of 1964 (“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 department, agency, special purpose district, or other instrumentality of a State or of a local government” and each state government agency “to which the assistance is extended.” 42 U.S.C. § 2000d-4a(1)(A), (B). As IMSA receives federal funds,¹⁶ it is subject to Title VI.¹⁷

IMSA is funded largely by the State of Illinois, providing support for on-campus and statewide programs and services. IMSA also secures additional program support from local, state, and federal government grants, as well as private donations and grants through the IMSA Fund for Advancement of Education (IMSA Fund).

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.” *Students for Fair Admissions v. President & Fellows of Harvard College*, 2023 U.S. LEXIS 2791, at *154 (2023) (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

¹⁶ *See* https://www.imsa.edu/wp-content/uploads/2018/07/IMSA_PROMISEprogram_Brochure-final.pdf [<https://archive.is/zi9a3>] (accessed on Apr. 15, 2024).

¹⁷ Additionally, 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 IMSA. 42 U.S.C. § 2000a(a). Similarly, the Summer 2024 PROMISE-SEAMS Program race-based eligibility criteria defies the civil rights protections of Illinois’ Human Rights Act, which makes it unlawful for an educational institution to limit access to any educational program on the basis of race. 755 I.L.C.S. § 5/1-102(a), as well as IMSA’s own non-discrimination policy. *See* <https://tinyurl.com/2vm87p2b> [<https://archive.is/EXE6v>] (accessed on Apr. 15, 2024).

of IMSA's reasons for creating, sponsoring and promoting the Summer 2024 PROMISE-SEAMS Program, it is violating Title VI by doing so.

And, because IMSA is a public institution, its creation, sponsorship and promotion of the Summer 2024 PROMISE-SEAMS Program also violates the Equal Protection clause of the Fourteenth Amendment.

“Any exception to the Constitution’s demand for equal protection must survive a daunting two-step examination known ... as strict scrutiny.” *Students for Fair Admissions Inc. v. President & Fellows of Harv. Coll.*, 2023 U.S. LEXIS 2791, at *34 (2023) (internal quotation marks and citation omitted). The Summer 2024 PROMISE-SEAMS Program flunks that exacting test.

Under strict scrutiny, suspect classifications “are constitutional only if they are narrowly tailored measures that further compelling governmental interests.” *Adarand Constructors v. Pena*, 515 U.S. 200, 227 (1995). It is the government that bears the burden to prove “that the reasons for any [racial] classification [are] clearly identified and unquestionably legitimate.” *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 505 (1989). Here, the government cannot carry its burden.

A “racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification.” *Shaw v. Reno*, 509 U.S. 630, 643-44 (1993) (citation omitted). Here, IMSA cannot demonstrate that giving admissions preference to black, African American and Latinx students serves any legitimate governmental purpose, let alone a compelling one. Classifications based on immutable characteristics like skin color “are so seldom relevant to the achievement of any legitimate state interest” that government policies “grounded in such considerations are deemed to reflect prejudice and antipathy – a view that those in the burdened class are not as worthy or deserving as others.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985).

Indeed, the Supreme Court has recognized only two interests compelling enough to justify racial classifications. The first is remedying the effects of past de jure segregation or discrimination in the specific industry and locality at issue in which the government played a role, and the second is “avoiding imminent and serious risks to human safety in prisons, such as a race riot.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *35 (citation omitted).¹⁸ Neither applies here.

To the extent that the purpose of the Summer 2024 PROMISE-SEAMS Program aims to promote “equity,” achieving such racial balance is an objective that the Supreme Court has

¹⁸ Until recently, a third interest, “the attainment of a diverse student body,” existed, see *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 720-22 (2007), but that was substantively overruled by *Students for Fair Admissions*, a fact recognized by Justice Thomas in his concurring opinion. *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *149 (Thomas, J. concurring) (“The Court’s opinion rightly makes clear that *Grutter* is, for all intents and purposes, overruled.”)

“repeatedly condemned as illegitimate” and “patently unconstitutional.” *Parents Involved in Cmty. Sch.*, 551 U.S. at 726, 730 (“Accepting racial balancing as a compelling state interest would justify the imposition of racial proportionality throughout American society, contrary to our repeated recognition that at the heart of the Constitution’s guarantee of equal protection lies the simple command that the Government must treat citizens as individuals, not as simply components of a racial, religious, sexual or national class”) (cleaned up, citation omitted).

And, irrespective of whether the Summer 2024 PROMISE-SEAMS Program furthers a compelling interest, it is not narrowly tailored. *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003) (to be to be narrowly tailored, a race-conscious program must be based on “individualized consideration,” and race must be used in a “nonmechanical way”). Here, the race-based admissions criterion is mechanically applied.

Students who identify as black, African American or Latinx are universally eligible for the Summer 2024 PROMISE-SEAMS Program. Meanwhile, applicants who fall outside of those racial categories are automatically *ineligible* for the program unless they can demonstrate that they meet the guidelines for being “rural” or of “low-socioeconomic status.”¹⁹ To the extent that any individualized consideration exists, it only applies to distinguish between applicants who have first satisfied the threshold racial litmus test.

Further, a policy is not narrowly tailored if it is either overbroad or underinclusive in its use of racial classifications. *J.A. Croson Co.*, 488 U.S. at 506. Because the “historically underrepresented minorities” eligibility requirement for the Summer 2024 PROMISE-SEAMS Program applies in an undifferentiated fashion to multiple racial and ethnic groups, it is overbroad and therefore not narrowly tailored. *Id.* (the “gross overinclusiveness” and undifferentiated use of racial classifications suggests that “the racial and ethnic groups favored by the [policy] were added without attention to whether their inclusion was justified”).

Indeed, In *Students for Fair Admissions*, the Supreme Court found that the same racial categories used by IMSA for its 2024 PROMISE-SEAMS Program are “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *47-48,²⁰ 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.*

Similarly, the requirement that applicants who are not black, African-American or Latinx (i.e., those who are white, Asian, native Hawaiian or Pacific Islanders) must demonstrate that they are “rural” or of “low- socioeconomic status” to qualify for the Summer 2024 PROMISE-

¹⁹ See <https://go.boarddocs.com/il/imsa/Board.nsf/goto?open&id=AXVRKP68F803> [<https://archive.is/JZiX0>] (accessed on Apr. 15, 2024).

²⁰ 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).

SEAMS Program makes that program underinclusive since the criteria to measure those categories is undefined, arbitrary and subject to fluctuation.²¹

Finally, for a policy to survive narrow-tailoring analysis, the government must show “serious, good faith consideration of workable race-neutral alternatives,” *Grutter*, 539 U.S. at 339, and that “no workable race-neutral alternative” would achieve the purported compelling interest. *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297, 312 (2013). There is no evidence that any such alternatives were ever contemplated here.

Because IMSA’s blatant racial preference system for the Summer 2024 PROMISE-SEAMS Program is presumptively invalid, and since there is no compelling government justification for such invidious discrimination, IMSA’s use of racial preferences violates state and federal civil rights statutes and constitutional equal protection guarantees.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. IMSA is a public institution and a recipient of federal funds. It is therefore liable for violating Title VI and the Equal Protection Clause of the Fourteenth Amendment.

The Complaint Is Timely

This complaint is timely brought because it includes allegations of discrimination based on race, color and national origin that occurred within the last 180 days and is ongoing. Indeed, the application period for the Summer 2024 PROMISE-SEAMS Program just passed, and the admissions decisions will be released on April 30, 2024.

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 NCU’s role in participating in, sponsoring, supporting and promoting the Summer 2024 PROMISE-SEAMS Program – and to discern whether IMSA is engaging in such discrimination in its other activities²² – and to impose whatever remedial relief is necessary to hold it accountable for that

²¹ See <https://go.boarddocs.com/il/imsa/Board.nsf/goto?open&id=AXVRKP68F803> [] (accessed on Apr. 15, 2024).

²² In February 2024, an OCR complaint was lodged against IMSA due to its promotion and support of racially-exclusive affinity groups. See https://defendinged.org/wp-content/uploads/2024/02/OCR_Illinois-

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 the Department of Education’s Office for Civil Rights to impose remedial relief as the law permits for the benefit of those who have been illegally excluded from IMSA’s Summer 2024 PROMISE-SEAMS Program based on racially discriminatory criteria, and to ensure that all ongoing and future programming through that state agency and school comport with federal civil rights laws.

Sincerely,

William A. Jacobson, Esq.
President
Legal Insurrection Foundation
The Equal Protection Project
Contact@legalinsurrection.com