



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

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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 the Minnesota Office of Higher Education
for Racially Discriminatory Scholarship**

To Whom It May Concern:

This is a federal civil rights complaint submitted 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 entity 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 make this civil rights complaint against the Minnesota Office of Higher Education (“MOHE”) – a cabinet-level state agency that provides students with financial aid programs to help them gain access to postsecondary education² – for administering a racially discriminatory

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

² See https://legalinsurrection.com/wp-content/uploads/2024/09/ATCFY23AnnualReport_ADA.pdf at 1 (accessed on Sept. 8, 2024).

scholarship called the Minnesota Aspiring Teachers of Color Scholarship Pilot Program (“Teachers of Color” scholarship).³

The Teachers of Color scholarship “provides postsecondary financial assistance to eligible undergraduate and graduate students who are preparing to become teachers, have demonstrated financial need, and belong to racial or ethnic groups underrepresented in the state’s teacher workforce.”⁴

Minnesota Aspiring Teachers of Color Scholarship Pilot Program provides postsecondary financial assistance to eligible undergraduate and graduate students who are preparing to become teachers, have demonstrated financial need, and belong to racial or ethnic groups underrepresented in the state’s teacher workforce.

To be eligible for the Teachers of Color scholarship, an applicant must, among other things, be an undergraduate or graduate student who is preparing to become teachers and be “a person of color or American Indian.”⁵


³ In 2021, Gov. Tim Walz signed into law legislation that authorized the appropriation of funding for postsecondary financial assistance to undergraduate and graduate students who are preparing to become teachers, have demonstrated financial need, and belong to racial or ethnic groups underrepresented in the Minnesota teacher workforce. Minnesota Session Laws – 2021, 1st Special Session, Chapter 2, Article 2, Sec. 45. The legislation requires that, to be eligible for a scholarship under this program, each applicant must affirm that he or she “is a person of color or American Indian.” See <https://www.revisor.mn.gov/laws/2021/1/Session+Law/Chapter/2/> [https://archive.is/XC3UW] (accessed on Sept. 8, 2024). In 2024, Gov. Walz signed into law HF 5237, an education supplemental budget bill that appropriated \$1,000,000 for the Teachers of Color scholarship. See <https://www.revisor.mn.gov/bills/bill.php?b=House&f=HF5237&ssn=0&y=2023> [https://archive.is/QwM7L] (accessed on Sept. 8, 2024).

⁴ See <https://www.ohse.state.mn.us/mPg.cfm?pageID=2508> [https://archive.is/cP0NV] (accessed on Sept. 7, 2024); see also <https://www.revisor.mn.gov/laws/2021/1/Session+Law/Chapter/2/> [https://archive.is/XC3UW] (accessed on Sept. 8, 2024).

⁵ See <https://www.ohse.state.mn.us/mPg.cfm?pageID=2508> [https://archive.is/cP0NV] (accessed on Sept. 7, 2024).

Who is Eligible?

To be eligible, students must:

- Attend an eligible Minnesota institution and:
 - Be admitted and enrolled in a **Professional Educator Licensing and Standards Board (PELSB) approved teacher preparation program seeking initial licensure**; or
 - Be enrolled in a two-year program specifically designed to prepare early childhood educators;
- Be a person of color or American Indian; 
- Be meeting Satisfactory Academic Progress (SAP) requirements as defined by the institution;
- Not be in default on a federal or state student loan; and
- Demonstrate financial need.

The scholarship provides students who are accepted into the program with up to \$10,000 annually with a lifetime cap of \$25,000.⁶

How Much Money Can You Get?

The annual award for full-time students is up to \$10,000 (*so up to \$5,000 a semester*). Awards for students enrolled less than full-time are prorated on a per-credit basis.

- For undergraduate students, full-time means enrollment in a minimum of 15 or more credits per term.
- For graduate students, full-time means enrollment in a minimum of six graduate credits or equivalent.

The lifetime maximum a student can receive is \$25,000.

By denominating the scholarship as one for “teachers of color,” and by explicitly limiting eligibility for the scholarship to “person[s] of color or American Indian[s],” the MOHE has made clear to white students that they should not apply. 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 ... whether advertisements or other communications would lead a reasonable

⁶ *Id.*

student ... to understand that all students are welcome to participate.”⁷ Here, any reasonable person would understand that not all students are welcome to participate in the Teachers of Color scholarship.

This was borne out by a report prepared by the MOHE for the Minnesota Legislature about the racial and ethnic identities of applicants for the Teachers of Color scholarship in fiscal year 2023. According to that report, from which the table below was taken, only two of the 225 applicants to the program – less than 1% of the total applicant pool – were white, non-Hispanic students.⁸

Racial or Ethnic Identity of Applicants and Recipients

Table 4 below provides racial or ethnicity identity data for applicants and recipients.

Table 4. Aspiring Teachers of Color Scholarship Pilot Racial or Ethnic Identity of Applicants and Recipients (Fiscal Year 2023)

Race/Ethnicity	Applicants	Recipients
American Indian or Alaska Native	5	3
Asian	45	37
Black or African American	91	72
Hispanic or Latino	59	49
Two or More Races	18	14
White, Not Hispanic or Latino	2	0
Not Reported	5	0

The Teachers of Color Scholarship Violates The Law

The Teachers of Color scholarship violates Title VI because it conditions eligibility for participation the scholarship on a student’s race, ethnicity and skin color. And, because the MOHE is a public agency, its administration of this discriminatory program also violates the Equal Protection Clause of the Fourteenth Amendment.⁹

⁷ See <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-20230824.pdf> [https://archive.is/5wWb1] (accessed on Sept. 1, 2024) at 11.

⁸ See https://legalinsurrection.com/wp-content/uploads/2024/09/ATCFY23AnnualReport_ADA.pdf at 1 (accessed on Sept. 8, 2024).

⁹ The Teachers of Color scholarship also violates Minnesota’s Human Rights Act, which makes it unlawful to discriminate on the basis of race in “the access to, admission to, full utilization of or benefit from any public service.” Minn. Stat. §§ 363A.11(1).

Title VI prohibits intentional discrimination based on 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 public system of higher education.” *See* 42 U.S.C. § 2000d-4a(2)(A). As the MOHE receives federal funds, it is subject to Title VI.¹⁰

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 Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 289-90 (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 *290 (cleaned up). Thus, regardless of the reasons why the MOHE sponsors, promotes and administers the Teachers of Color program, it violates Title VI by doing so.

And, because the MOHE is a public agency, its sponsorship and promotion of the Teachers of Color scholarship 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.” *Id.* at 184 (internal quotation marks and citation omitted). The scholarship at issue here 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 MOHE 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

¹⁰ *See* https://www.usaspending.gov/award/ASST_NON_P334S170014_9100 [https://archive.is/NPVKc] (accessed on Sept. 8, 2024).

(1993). The MOHE cannot demonstrate that restricting eligibility for the scholarship based on race, skin color or ethnicity serves any legitimate governmental purpose, let alone an extraordinary one. Classifications based on such immutable characteristics “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*, 600 U.S. at 207 (citation omitted).¹¹ Neither applies here.

According to the state legislation that created the Teachers of Color scholarship, the scholarship is intended to achieve racial and ethnic balance in Minnesota’s teacher workforce. Such an objective has been “repeatedly condemned as illegitimate” and “patently unconstitutional” by the Supreme Court. *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 Teachers of Color scholarship 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- and nationality-based selection criterion is mechanically applied. If applicants are not “persons of color” or American Indians, they are automatically ineligible for the scholarship. To the extent that any individualized consideration exists, it only applies to distinguish between applicants who have first satisfied the threshold racial and ethnic 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 “persons of color” eligibility requirement for the Teachers of Color scholarship applies in an undifferentiated fashion to multiple racial/ethnic groups, it is overbroad and therefore not narrowly tailored. *Id.* (the “gross overinclusiveness” and undifferentiated use of racial classifications suggests that “the

¹¹ Until recently the courts represented a third interest, “the attainment of a diverse student body,” 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*. *Students for Fair Admissions*, 600 U.S. at 233 (Thomas, J. concurring).

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 similar racial categories as those being used by the MOHE for the Teachers of Color scholarship were “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 600 U.S. at 186-87, 217, 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.* at 217.

Similarly, the ineligibility of white students for the Teachers of Color scholarship makes that program underinclusive, since the ethno-racial restriction is arbitrary and excludes swaths of candidates who could benefit from the program but who are not permitted to apply due to their race, ethnicity and skin color.

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 the racial and ethnic requirements for the Teachers of Color scholarship are presumptively invalid, and in the absence of any compelling government justification for such invidious discrimination, the MOHE’s use of such criteria violates federal civil rights statutes and constitutional equal protection guarantees.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. The MOHE is a state agency and a recipient of federal funding, including from the U.S. Department of Education.¹² It is therefore liable for violations of Title VI and the Equal Protection Clause, and subject to OCR jurisdiction.¹³

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 that are ongoing.

¹² See note 10, *supra*.

¹³ See <https://legalinsurrection.com/wp-content/uploads/2024/09/OCR-Case-Processing-Manual.pdf> at 7-8.

Indeed, applications for Teachers of Color scholarship for the 2024-25 academic year are still being reviewed, and the priority deadline was August 2, 2024.¹⁴

What Is the Application Process?

A complete application must be submitted to the Minnesota Office of Higher Education by the priority deadline to be considered for an award. Applications will still be accepted after the priority deadline but eligible students may be placed on the waitlist. *Incomplete applications will not be reviewed.*

Complete applications must include the following:

- Aspiring Teachers of Color Scholarship application;
- Completed Free Application for Federal Student Aid (FAFSA) or Minnesota Dream Act application; and
- Financial data form submitted by the Financial Aid Office at the institution the student attends.

2024-2025 Application – [Click here to apply](#) for the online Aspiring Teachers of Color Scholarship. Paper application is available upon request. Email financialaid.ohe@state.mn.us.

Priority Deadline: August 2, 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. This is true regardless of which race suffers discrimination. Race- color- and nationality-based admissions preferences “fly in the face of our colorblind Constitution and our Nation’s equality ideal” and “are plainly – and boldly – unconstitutional.” *Students for Fair Admissions*, 600 U.S. at 287 (Thomas, J., concurring).

Because the discriminatory scholarship eligibility criteria for the Teachers of Color scholarship are presumptively invalid, and because the MOHE cannot show any compelling justification for those restrictions, the limitation of this scholarship based on race, color and ethnicity violates federal civil rights statutes and constitutional equal protection guarantees.

¹⁴ See <https://www.ohe.state.mn.us/mPg.cfm?pageID=2508> [https://archive.is/cP0NV] (accessed on Sept. 8, 2024).

The Office for Civil Rights has the power and obligation to investigate the MOHE's role in promoting and administering this program 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," the Supreme Court has taught, "is to stop discriminating." *Parents Involved in Cmty. Sch.*, 551 U.S. at 748.

Accordingly, we respectfully ask that the Department of Education's Office for Civil Rights open a formal investigation, impose such remedial relief as the law permits for the benefit of those who have been illegally excluded from the Teachers of Color scholarship based on discriminatory criteria, and ensure that all ongoing and future programming through the MOHE comports with the Constitution and federal civil rights laws.

Very truly yours,

/William A. Jacobson/

William A. Jacobson
President
Legal Insurrection Foundation
Contact@legalinsurrection.com