



THE EQUAL PROTECTION PROJECT
A Project of the Legal Insurrection Foundation
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October 23, 2024

BY EMAIL (ocr.sanfrancisco@ed.gov)

San Francisco Office
Office for Civil Rights
U.S. Department of Education
50 United Nations Plaza
Mail Box 1200, Room 1545
San Francisco, CA 94102

Re: Civil Rights Complaint Against Santa Clara University
Regarding Racially Discriminatory Program

Dear Sirs or Madams:

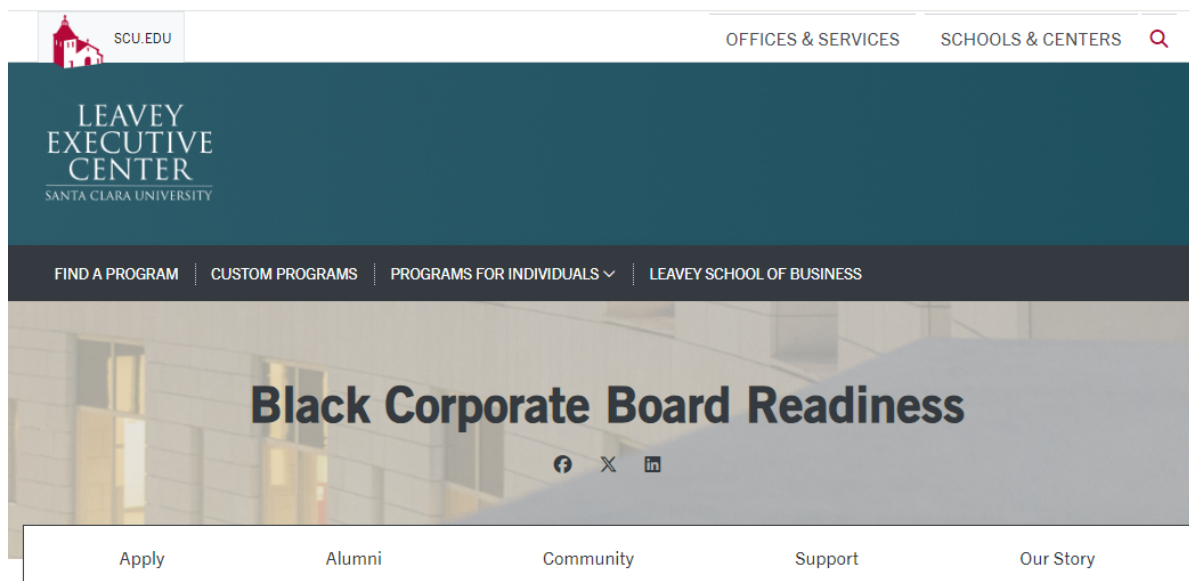
This is a federal civil rights complaint submitted pursuant to the U.S. Department of Education's Office for Civil Rights ("OCR") discrimination complaint resolution procedures.¹ We write on behalf of the Equal Protection Project of the Legal Insurrection Foundation, a non-profit entity that, among other things, seeks to ensure equal protection under the law and non-discrimination by the government and by recipients of government funds, and that opposes unlawful discrimination in any form.

We write in connection with Santa Clara University ("SCU"), a private university located in Santa Clara, California, which, through its Leavey School of Business ("Leavey"), operates, administers and promotes The Black Corporate Board Readiness Program ("BCBR") – an

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

executive education program “designed to accelerate diverse representation in corporate governance”² – which is only open to Blacks, in clear violation of Title VI.

As demonstrated in the screenshot below, which is taken from the SCU web page, BCBR explicitly discriminates on the basis of race by offering training only to black individuals (yellow highlighting added):



Black Corporate Board Readiness

Empowering Black Excellence in Corporate Governance

The Black Corporate Board Readiness (BCBR) program is an initiative designed to accelerate diverse representation in corporate governance by preparing highly experienced, qualified Black leaders for board service. Through a structured executive education program comprising over 40 virtual contact hours and 4 hours of individual mentorship, participants gain comprehensive knowledge on corporate governance, personal marketing for board positions, and the unique realities of being a Black corporate director. BCBR’s impact extends beyond the program itself, offering ongoing networking opportunities, continuing education, and a growing alumni network dedicated to excellence in corporate board service and advancing racial equity in business leadership.



The racially exclusive nature of BCBR is further shown on the program’s application page, which, under the heading “Alumni,” states that “[t]he purpose of BCBR is to get more Black leaders on public and private corporate boards.”³

² <https://www.scu.edu/execed/bcbr/> [https://archive.is/KqvY] (accessed on Oct. 22, 2024).

³ <https://www.scu.edu/execed/bcbr/#alumni> [https://archive.is/fl5Qe] (accessed on Oct. 22, 2024).

Alumni

The purpose of BCBR is to get more Black leaders on public and private corporate boards, leading to better business outcomes and racial justice. Our outcome metric is 100% placement of BCBR program alumni on public or private corporate boards within 12 months of program completion.

150+ PUBLIC AND PRIVATE BOARD SEATS OCCUPIED BY BCBR ALUMNI

Meet Alumni

Further, the “Our Story” section of BCBR’s website makes clear that the program was designed by Blacks for Blacks: “BCBR was designed as a ‘for us, by us’ initiative to prepare Black executives[.]”⁴

⁴ <https://www.scu.edu/execed/bcbr/#our-story> [https://archive.is/FU1nT] (accessed on Oct. 22, 2024).

Our Story

How It All Began

The Black Corporate Board Readiness program, co-founded by Thane Kreiner and Dennis Lanham in 2020, emerged as a response to structural racism and the need for greater diversity in corporate governance. Guided by experienced Black corporate directors, BCBR was designed as a "for us, by us" initiative to prepare Black executives for the unique challenges of board service. The program quickly gained traction, exceeding initial expectations and fostering a growing community of board-ready Black talent.

[Learn More about BCBR's History](#)

The "Frequently Asked Questions" portion of the "Our Story" section makes clear that the program is only open to Black executives:

"The BCBR program is **open to Black executives** who have gained extensive senior leadership experience or an equivalent span of control, including as a CEO or general manager. **From among qualified Black executives nationwide who apply, up to 35 participants are selected** per BCBR cohort." (emphasis added)

Frequently Asked Questions

What does the Black Corporate Board Readiness Program (BCBR) do? >

Why was the BCBR founded? >

How are BCBR participants chosen? ▼

The BCBR program is open to Black executives who have gained extensive senior leadership experience or an equivalent span of control, including as a CEO or general manager. From among qualified Black executives nationwide who apply, up to 35 participants are selected per BCBR cohort.

The “History” section of BCBR’s website delineates that only Blacks are invited to apply, stating, “We invite proven Black leaders to apply to a future cohort[.]”⁵

We are deeply grateful to everyone who has contributed so far to the success of BCBR. We invite proven Black leaders to apply to a future cohort, and we encourage anyone with advisory or decision-making roles for corporate boards to contact us to be matched with accomplished Black leaders to add to your boards.

It is clear that any reasonable person reading BCBR’s program details as set forth on SCU’s website would understand the racially restrictive nature of the program.⁶

The BCBR Program Violates the Law

SCU violates Title VI by conditioning eligibility for BCBR on an applicant’s race, color and/or ethnicity. 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 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 SCU receives federal funds and administers federal funding programs,⁷ it is subject to Title VI.⁸

⁵ <https://www.scu.edu/execed/bcbr/history/> [https://archive.is/zJ0ba] (accessed on Oct. 22, 2024).

⁶ *See* OCR Guidance on Race and School Programming (2023), <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-20230824.pdf> [https://web.archive.org/web/20240919154554/https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-20230824.pdf] (accessed on Oct. 22, 2024) (“In 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.”).

⁷ https://www.scu.edu/media/public/controller/afs-990/2023-Santa-Clara-University_Single-Audit_Secured.pdf [https://archive.is/EeNdx] (accessed on Oct. 22, 2024).

⁸ Although your office does not enforce Title II of the Civil Rights Act of 1964, that statute makes it unlawful to discriminate based on race or color in a place of “public accommodation” such as SCU. 42 U.S.C. § 2000(a)(a). BCBR also violates California’s antidiscrimination law, Cal. Gov. Code § 11135(a), as well as SCU’s own non-discrimination policies. <https://www.scu.edu/csi/organizations/resources/policies/non-discrimination/> [https://archive.is/DIDt7] (accessed on Oct. 22, 2024).

BCBR clearly falls within the scope of Title VI and OCR’s jurisdiction. It does not matter that a particular program may be considered “extracurricular” or just a “club” or “group,” the same considerations apply, as OCR noted in its 2023 Guidance on Race and School Programming.⁹

As you know, in *Students for Fair Admissions Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181 (2023), the Supreme 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 [including race] are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Id.* at 35.

In discrimination cases, it does not matter if a recipient of federal funding discriminates to advance a benign “intention” or “motivation.” *See Bostock v. Clayton Cty.*, 590 U.S. 644, 661 (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.”). “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*, 600 U.S. at 289 (Gorsuch, J., concurring). And, irrespective of whether a program’s classifications based on immutable characteristics further a compelling interest, a race-conscious program must be based on “individualized consideration,” and race must be used in a “nonmechanical way.” *Grutter v. Bollinger*, 539 U.S. 306, 334 (2003).

We note that while the use of racial barriers described above are explicit, it also is clear from SCU’s website that the programs are “signaling” a preference for Black applicants. *See Ragin v. New York Times Co.*, 923 F.2d 995, 999–1000 (2d Cir. 1991) (Fair Housing Act prohibits all housing advertisements that indicate racial preference to ordinary reader; “Ordinary readers may reasonably infer a racial message from advertisements that are more subtle than the hypothetical swastika or burning cross, and we read the word ‘preference’ to describe any ad that would discourage an ordinary reader of a particular race from answering it”).

For these reasons, SCU’s racial requirements for BCBR violate Title VI.

⁹ <https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-20230824.pdf> [<https://web.archive.org/web/20240919154554/https://www.ed.gov/sites/ed/files/about/offices/list/ocr/letters/colleague-20230824.pdf>] (accessed on Sept. 22, 2024), at 3 (recognizing that “[s]chool programs – including the ... establishment, recognition, or support of a school group, club, or other extracurricular organization” are covered by Title VI).

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. OCR enforces Title VI of the Civil Rights Act of 1964¹⁰ and its implementing regulations,¹¹ which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. SCU receives federal funding, including from the U.S. Department of Education.¹² Accordingly, SCU is subject to Title VI and OCR has jurisdiction.

The Complaint is Timely

This complaint is timely brought because it includes allegations of discrimination based on race, color or national origin that appear to be ongoing.

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. 469, 505 (1989). This is true regardless of which race suffers discrimination. Racial 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).

“The way to stop discrimination,” the Supreme Court has taught, “is to stop discriminating.” *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007). The Office for Civil Rights has the power and obligation to investigate SCU’s role in creating, supporting and promoting the discriminatory scholarship programs 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.

¹⁰ 42 U.S.C. §§ 2000d-2000d-7.

¹¹ 34 C.F.R. Part 100 et seq.

¹² <https://www.usaspending.gov/recipient/ba970858-0b66-b727-3893-ba65c6b5594d-C/latest> [<https://archive.is/RSGLQ>] (accessed on Oct. 22, 2024); *see also* https://www.scu.edu/media/public/controller/afs-990/2023-Santa-Clara-University_Single-Audit_Secured.pdf [<https://archive.is/EeNdx>] (accessed on Oct. 22, 2024).

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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 anyone who may have been illegally excluded from the program described above based on discriminatory criteria, and ensure that all ongoing and future programming at SCU comports with the federal civil rights laws.

Respectfully submitted,

/William A. Jacobson/

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