



**THE EQUAL PROTECTION PROJECT**  
**A Project of the Legal Insurrection Foundation**  
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July 25, 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 University At Buffalo And Jacobs School Of Medicine Concerning Programs 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. *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 State University of New York at Buffalo ("UB"), a public institution, and the Jacobs School of Medicine and Biomedical Sciences at the University at Buffalo ("UB Jacobs") for creating, supporting, and promoting two separate but related programs that engage in invidious discrimination on the basis of race, color and national

origin: 1) its year-round Medical Science Technology Entry Program (“Medical Science STEP”) for high school students; and 2) its Middle School Summer Enrichment Program for 7<sup>th</sup> and 8<sup>th</sup> graders (“Middle School STEP”) (collectively “UB Medical STEP”). The UB Medical STEP programs impermissibly give admission preference to high school and middle school students, respectively, who identify as “Black/African-American,” “American Indian/Alaska Native” and “Hispanic/ Latino.”

UB’s creation, ongoing sponsorship and active promotion of the UB Medical STEP programs that explicitly give admissions preference based on race and skin color violates the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution as well as Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations. *See* 42 U.S.C. § 2000d et seq.; 28 C.F.R. Part 100; *see also Gratz v. Bollinger*, 539 U.S. 244, 276 n.23 (2003) (“We have explained that discrimination that violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal funds also constitutes a violation of Title VI.”).

The unlawfulness of such racial preferences in admissions was confirmed recently by the United States Supreme Court in *Students for Fair Admissions Inc. v. President & Fellows of Harv. Coll.*, 2023 U.S. LEXIS 2791 (2023). There, the 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 [and race] are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality.” *Id.* at 35 (citation omitted).

OCR should investigate the blatantly discriminatory UB Medical STEP programs and the circumstances under which they were 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.

### **Medical Science Technology Entry Program**

According to the UB website, STEP “is a New York State grant-funded program<sup>1</sup> that prepares secondary school students (in grades 7 to 12) who are either economically

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<sup>1</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.” *Id.* 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 UB Medical Step programs are

disadvantaged or historically underrepresented for entry into college and improves their participation rate in mathematics, science, technology, health-related fields and the licensed professions.”<sup>2</sup> UB has implemented this statewide initiative at its medical school.<sup>3</sup>

## Science and Technology Entry Program (STEP)

We’re part of a statewide initiative to encourage minority and economically disadvantaged high school students to pursue careers in medicine and other health-related professions.

According to the UB Jacobs’ website, the school’s Medical Science STEP meets on campus from 10:00 a.m. to 2:30 p.m. each Saturday during the school year “for formalized academic instruction and laboratory exercises.”<sup>4</sup> In addition, there is a six-week summer program during which participants “work or conduct research at UB-affiliated hospitals or clinics four days a week” and participate in “classroom instruction and college admissions preparatory sessions one day a week.”<sup>5</sup> Applications for the Medical Science STEP are accepted on a rolling basis throughout the year.<sup>6</sup>

The Medical STEP also accepts 10 middle school students (in 7<sup>th</sup> and 8<sup>th</sup> grades) for its Middle School STEP.<sup>7</sup> The applications for this summer’s program were due in June 2023, and the program – which began this year on Friday, July 14 – meets every Friday through the third week of August in the Jacobs School of Medicine building.<sup>8</sup>

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state funded is legally irrelevant, since no statute or regulation requires UB to create, promote, sponsor or host such programs or to seek STEP funds from the state.

<sup>2</sup> See <https://www.buffalo.edu/cpmc/step.html> [https://archive.is/bVIC1] (accessed on July 22, 2023).

<sup>3</sup> See <https://medicine.buffalo.edu/education/md/diversity/step.html> [https://archive.is/dfezm] (accessed on July 22, 2023).

<sup>4</sup> See <https://medicine.buffalo.edu/education/md/diversity/step.html> [https://archive.is/dfezm] (accessed on July 22, 2023).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> See <https://medicine.buffalo.edu/education/md/diversity/step.html> [https://archive.is/dfezm] (accessed on July 22, 2023).

The applications for both of these programs are posted on the UB Jacobs' website. Those applications state that the Medical Science STEP is a program "designed for students attending secondary school (grades 7-12) in New York State who are either minorities historically underrepresented in the scientific, technical, health related and licensed professions, or economically disadvantaged[.]"<sup>9</sup>

The eligibility guidelines contained on the applications provide that "[f]or the purpose of the Medical STEP, minorities historically underrepresented in the scientific, technical, health related and licensed professions include residents of New York State who are African American, American Indian/Alaska Native or Hispanic."<sup>10</sup> The program defines "African Americans" as those who are "black," and includes those who are "from Africa and the Caribbean."<sup>11</sup>

#### GUIDELINES FOR STUDENT ELIGIBILITY

**The Science and Technology Entry Program is designed for students attending secondary school (grades 7-12) in New York State who are either minorities historically underrepresented in the scientific, technical, health related and licensed professions, or economically disadvantaged as defined below. For the purpose of STEP, minorities historically underrepresented in the scientific, technical, health related and licensed professions include residents of New York State who are African American, American Indian/ Alaska Native or Hispanic. If you are economically disadvantaged, you may be eligible for STEP. Please refer to the guidelines below and provide the required documentation.**

Both applications make clear that students who do not fall into these racial or ethnic categories – i.e., students who identify as white or Asian – must demonstrate that they are "economically disadvantaged" in order to be eligible.

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 guidelines for being "economically disadvantaged." The "historically underrepresented minorities" are not required to prove any economic need.

The application forms for both the Medical Science STEP and the Middle School STEP programs require each applicant to those programs to identify their race and ethnicity. That portion of the application is reproduced below:

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

Ethnicity<sup>1</sup>: (Check One)

<input type="checkbox"/> Black/African-American *	<input type="checkbox"/> Hispanic/ Latino
<input type="checkbox"/> American Indian/Alaska Native	<input type="checkbox"/> White **
<input type="checkbox"/> Asian/Pacific Islander **	<input type="checkbox"/> Other (please specify)**

\* Includes students from Africa and the Caribbean.

\*\* (Documentation confirming economically disadvantaged status is required)

\*\*If you checked “other”, please refer to the **Appendix Guidelines for Student Eligibility** to determine if you are economically disadvantaged. **If you do not provide financial documentation as required by New York State, your application will not be accepted.**

The University at Buffalo – the Jacobs School of Medicine’s parent institution – also promotes the Medical Science STEP program on its website and provides an online application form for students to complete. On it, UB makes clear that students who are “Asian,” “Caucasian/White” or “Native Hawaiian/Pacific Islander” are excluded from consideration for STEP unless they meet the low-income criteria – something that students who are “African-American/Black,” “Hispanic/Latino” or “Native American/Alaskan Native” never have to demonstrate.<sup>12</sup>

Race/Ethnicity (check one) \*

- African-American/Black
- Asian\*\*
- Caucasian/White\*\*
- Hispanic/Latino
- Native American/Alaskan Native
- Native Hawaiian/Pacific Islander\*\*

\*\*Per state mandate, students who are not historically underrepresented must provide income verification. See [NYS Income Guidelines \(PDF\)](#)

### **The Medical Science STEP and Middle School STEP Programs Violate The Law**

It violates Title VI for a recipient of federal money to create, support and promote a racially segregated program. When a public institution does so, such conduct also violates the Equal Protection Clause of the Fourteenth Amendment.<sup>13</sup>

<sup>12</sup> See <https://www.buffalo.edu/cpmc/step/step-application.html> [https://archive.is/Cpkjf] (accessed on July 22, 2023).

<sup>13</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 UB and its Jacobs School of Medicine. 42 U.S.C. § 2000(a)(a). Similarly, UB’s Medical STEP and Middle School Summer Enrichment Program defy the civil rights protections of the New York State Human Rights Law, see N.Y. Exec. L. § 296, as well as UB’s own non-discrimination policy. See

Title VI of the Civil Rights Act 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 UB receives federal funds, it is subject to Title VI.<sup>14</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.” *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 UB’s reasons for creating, sponsoring and promoting the Medical STEP and Middle School Summer Enrichment Program, it violated Title VI by doing so.

And, because UB is a public institution, its creation, sponsorship and promotion of the Medical Science STEP and Middle School STEP 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 \*34 (internal quotation marks and citation omitted). The UB Jacobs programs at issue here flunk 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

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[https://medicine.buffalo.edu/offices/gme/policies/umrs-udrs-discrimination-and-harassment-policy.html#:~:text=The%20University%20at%20Buffalo%20\(UB,state%20laws%2C%20regulations%20or%20executive](https://medicine.buffalo.edu/offices/gme/policies/umrs-udrs-discrimination-and-harassment-policy.html#:~:text=The%20University%20at%20Buffalo%20(UB,state%20laws%2C%20regulations%20or%20executive) [https://archive.is/uP6UO] (accessed on July 23, 2023).

<sup>14</sup> *See* <https://www.buffalo.edu/content/dam/www/administrative-services/pdf-docs/Financial/Budget%20Book%202022-23.pdf> [https://archive.is/v7cJy ] (accessed on July 23, 2023)

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, UB cannot demonstrate that giving admissions preference to black, African American, American Indian, Alaskan Native or Hispanic students serves any legitimate governmental purpose, let alone an extraordinary 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).<sup>15</sup> Neither applies here.

To the extent that the purpose of the Medical Science STEP and Middle School STEP aims to increase the participation rate of “historically underrepresented minorities” in the medical profession, achieving such racial balance is an objective that the Supreme Court has “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 Medical Science STEP and Middle School STEP further a compelling interest, they are 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. If applicants are not black, African American, American Indian, Alaskan Native or Hispanic, they are automatically ineligible for the programs

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<sup>15</sup> 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.”)

unless they can demonstrate that they meet the guidelines for being “economically disadvantaged.” 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 Medical Science STEP and Middle School STEP 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 UB for their STEP programs are “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at \*47-48,<sup>16</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.*

Similarly, the requirement that applicants who are white, Asian, native Hawaiian or Pacific Islanders must demonstrate that they are “economically disadvantaged” to qualify for the Medical Science STEP and Middle School STEP programs makes those programs underinclusive since the criteria to measure “economically disadvantage” is arbitrary and fluctuates annually. A relevant excerpt from the Guidelines for Student Eligibility is reproduced below:<sup>17</sup>

The economic eligibility standards set forth in this Appendix apply only at the time of application to the Science and Technology Entry Program and this criteria changes each year. Once admitted, a participant may continue to receive services, even if the family income rises above the current eligibility standards.

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.

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<sup>16</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>17</sup> See <https://medicine.buffalo.edu/education/md/diversity/step.html> [https://archive.is/dfezm] (accessed on July 22, 2023).



Because UB’s blatant racial preference system for the Medical Science STEP and Middle School STEP is presumptively invalid, and since there is no extraordinary government justification for such invidious discrimination, UB’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. UB is a public institution and a recipient of federal funds.<sup>18</sup> It therefore is liable for violating Title VI and the Equal Protection Clause.

### **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. As Justice Thomas correctly noted in *Students for Fair Admissions*, race-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*, 2023 U.S. LEXIS 2791, at \*150 (Thomas, J., concurring).

Because the exclusion of white, Asian, native Hawaiian and Pacific Islander applicants in the Medical Science STEP and Middle School STEP is presumptively invalid, and since UB cannot show any extraordinary government justification for having created, engaged in or promoted such invidious discrimination, its conduct violates federal civil rights statutes and constitutional equal protection guarantees.

The Office for Civil Rights has the power and obligation to investigate UB’s role in creating, sponsoring, supporting and promoting the Medical Science STEP and Middle School STEP programs – and to discern whether UB and UB Jacobs are engaging in such discrimination in their other activities – and to impose whatever remedial relief is necessary to hold those schools 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

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<sup>18</sup> See <https://www.buffalo.edu/content/dam/www/administrative-services/pdf-docs/Financial/Budget%20Book%202022-23.pdf> [https://archive.is/v7cJy ] (accessed on July 23, 2023).

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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 the University at Buffalo’s Jacobs School of Medicine Medical Science STEP and Middle School STEP programs based on racially discriminatory criteria, and that it ensures that all ongoing and future programming through UB and Jacobs School of Medicine comports with the Constitution and federal civil rights laws.

Sincerely,



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