



**THE EQUAL PROTECTION PROJECT**  
**A Project of the Legal Insurrection Foundation**  
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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 The University Of Rochester School Of Medicine & Dentistry 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.<sup>1</sup>

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 University of Rochester School of Medicine & Dentistry ("Rochester") – a private institution that receives federal funds from the U.S. Department of Education – for creating, supporting, and promoting a program, entitled the

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

Science and Technology Entry Program (“SMD-STEP”), that engages in invidious discrimination on the basis of race, color and national origin for students in grades 7 through 12. The SMD-STEP impermissibly gives admission preference to middle school and high school students who identify as “African American/Black,” “Hispanic/Latinx,” “American Indian,” or “Alaskan Native.”<sup>2</sup>

Rochester’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.<sup>3</sup>

OCR should investigate the blatantly discriminatory SMD-STEP 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 Science and Technology Entry Program**

According to the Rochester website, the SMD-STEP is a “New York State funded<sup>4</sup> program for high school students who are economically disadvantaged or from underrepresented backgrounds” that is “designed to stimulate participants’ interest in career development opportunities in medicine and the health care professions.”<sup>5</sup>

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<sup>2</sup> See <https://tinyurl.com/2kzamxx6> [https://archive.ph/uqOGC] (accessed on Aug. 18, 2023).

<sup>3</sup> 42 U.S.C. § 2000d et seq.; 28 C.F.R. Part 100.

<sup>4</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.” 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 SMD-STEP is state-funded is legally irrelevant, since no statute or regulation requires Rochester to create, promote, sponsor or host such programs or to seek STEP funds from the state.

<sup>5</sup> See <https://tinyurl.com/2kzamxx6> [https://archive.ph/uqOGC] (accessed on Aug. 18, 2023).

STEP is a New York State funded program for high school students who are economically disadvantaged or from underrepresented backgrounds. The program is designed to stimulate participants' interest in career development opportunities in medicine and the health care professions. STEP students have the opportunity to work directly with physicians, technical staff, certified teachers, medical, and graduate students. Students are exposed to a variety of academic and professional skill development opportunities to enhance their problem solving, critical thinking and test taking skills with an emphasis on active or "hands-on" learning.

Students in the SMD-STEP participate in a summer program in which they are “exposed to a variety of academic and professional skill development to enhance problem solving, critical thinking and test taking skills through ‘hands-on’ learning.”<sup>6</sup> Applications for the program were accepted through April 7, 2023.<sup>7</sup>

The SMD-STEP application is posted on the Rochester website and mirrors the website’s description of the program, stating that the SMD-STEP is a “New York State funded program for high school students who are economically disadvantaged or from underrepresented backgrounds,” and that it is “designed to stimulate participants’ interest in career development opportunities in medicine and the health care professions.”<sup>8</sup>

The eligibility guidelines contained on the application page provide that “[a]pplicants **must** be members of an Underrepresented Group,” which include “African American/Black,” “Hispanic/Latinx,” “American Indian,” or “Alaskan Native,” or else be “economically disadvantaged” (emphasis added).<sup>9</sup>

Applicants must be members of an Underrepresented Group (see groups below):

- African American/Black
- Hispanic/Latinx
- American Indian
- Alaskan Native

OR

- Applicants must be economically disadvantaged ([Economic Criteria](#))

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<sup>6</sup> See <https://redcap.urmc.rochester.edu/redcap/surveys/?s=FL37WAYH8JCALAPM> [https://archive.ph/wip/1nIDg] (accessed August 2, 2023).

<sup>7</sup> See <https://tinyurl.com/2kzamxx6> [https://archive.ph/uqOGC] (accessed on Aug. 18, 2023).

<sup>8</sup> See <https://redcap.urmc.rochester.edu/redcap/surveys/?s=FL37WAYH8JCALAPM> [https://archive.ph/wip/1nIDg] (accessed Aug. 2, 2023).

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

To that end, the application for the SMD-STEP requires each applicant to those programs to identify their race and ethnicity.<sup>10</sup> That portion of the application is reproduced below:

**6) Ethnicity**  
\* must provide value

African-American  
 Native-American/Alaska Native  
 Hispanic/Latinx  
 Other

reset

African-American includes students from Africa and the Caribbean

**7) If other, please specify.**

Please refer to the Appendix Guidelines for Student Eligibility to determine if you are economically disadvantaged. If you do not provide documentation as required by New York State, your application will not be accepted.

The discrimination is apparent: if applicants are African American/Black, Hispanic/Latinx, American Indian, or Alaskan Native, 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 SMD-STEP Violates the Law**

It violates Title VI of the Civil Rights Act of 1964 for a recipient of federal money, such as Rochester, to discriminate on the basis of race, color or national origin.<sup>11</sup>

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

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

<sup>11</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 Rochester. 42 U.S.C. § 2000(a)(a). Similarly, the SMD-STEP defies the civil rights protections of the New York State Human Rights Law, *see* N.Y. Exec. L. § 296, as well as the non-discrimination policy of Rochester’s parent institution, University of Rochester. *See* <https://tinyurl.com/ykz9udff> [<https://archive.ph/bKnTF>] (accessed on Aug. 16, 2023).

to universities receiving federal financial assistance). As Rochester receives federal funds, it is subject to Title VI.<sup>12</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.” *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 any other reason or motive the recipient might assert.” *Id.* at \*170 (cleaned up). Thus, regardless of Rochester’s reasons for creating, sponsoring and promoting the SMD-STEP, it violated Title VI by doing so.

Moreover, insofar as the purpose of the SMD-STEP 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 NYU-STEP are “imprecise,” “plainly overbroad,” “arbitrary,” “undefined” and “opaque.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at \*47-48,<sup>13</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.*

### **OCR Has Jurisdiction**

OCR has jurisdiction over this complaint. Rochester is a recipient of federal funds<sup>14</sup> and therefore is liable for violating Title VI.

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<sup>12</sup> See <https://tinyurl.com/r2y9jyeh> [<https://tinyurl.com/3kjyn5ef>] (accessed on Aug. 16, 2023).

<sup>13</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>14</sup> *Id.*

### **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 Rochester’s role in creating, sponsoring, supporting and promoting the SMD-STEP – and to discern whether Rochester 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 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 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 Rochester’s SMD-STEP based on racially discriminatory criteria, and that it ensure that all ongoing and future programming through Rochester comports with the applicable civil rights laws.

Sincerely,



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