



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

August 4, 2024

BY EMAIL (OCR.NewYork@ed.gov)

Office for Civil Rights,
New York Office
U. S. Department of Education
26 Federal Plaza, Suite 31-100
New York, NY 10278

Re: Civil Rights Complaint Against Fordham University
Regarding Discriminatory Programs

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.

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

We write in connection with Fordham University in New York City (“Fordham”), a private university, arising from its illegal race- and ethnicity- based discrimination in violation of Title VI. As set forth below, Fordham operates, administers and promotes three discriminatory scholarship programs: The “Diversity Fund,” the “Fordham Scholarship,” and the “Latino Social Work Coalition Scholarship Program.” These scholarship programs, among other things, set up unequal standards of eligibility so that students similarly situated are treated differently based on race and ethnicity, in clear violation of Title VI.

The Diversity Fund

The Diversity Fund is described on Fordham’s website as a “Funding Initiative” that “fosters greater diversity among the student body at Fordham by providing financial support to students of color and those from first-generation or lower-income backgrounds. It was created in early 2021 to ease the burdens of student loans and part-time work that disproportionately affect Black and Latinx [*sic*] students.”²

The Diversity Fund criteria set up a racially discriminatory standard: “the Diversity Fund is a current-use fund that fosters greater diversity among the student body at Fordham by providing financial support to **students of color and those from first-generation or lower-income backgrounds.**” (emphasis added). Accordingly, “students of color” are eligible regardless of whether they are “first-generation” or “lower-income.” Students who are not “of color” (i.e. whites) are eligible only if they are first-generation or lower-income. As a result, two similarly situated students – one “of color” and one white – who are not first-generation or lower-income are treated differently depending on their race and skin color.

The screenshot below is taken from the same Fordham web page and is explicit in its discriminatory standards:

² See, Fordham University Website, “The Cura Personalis Campaign,” “Diversity, Equity and Inclusion,” found at <https://curapersonalis.fordham.edu/campaign-priorities/featured-funding-initiatives/diversity-fund/>. See also, <https://thefordhamram.com/82623/news/the-diversity-fund-begins-its-first-run/> [2021], “The Diversity Fund is a part of Fordham’s bigger diversity action plan ... [T]here are currently 15 Diversity Scholars that received financial support through the Diversity Fund, 13 of which are in the class of 2025.”

[Home](#) / [Cura Personalis](#) / [Campaign Priorities](#) / [Featured Funding Initiatives](#) / [Diversity Fund](#)

Funding Initiative: The Diversity Fund

Established by Fordham Trustee [Valerie Rainford](#), the Diversity Fund is a current-use fund that fosters greater diversity among the student body at Fordham by providing financial support to students of color and those from first-generation or lower-income backgrounds. It was created in early 2021 to ease the burdens of



student loans and part-time work that disproportionately affect Black and Latinx students. The fund provides "last-dollar" aid that closes the final financial gap for students, helping them not only enroll but also take advantage of on-campus housing and other opportunities.

Uses of the Diversity Fund include the following:

- Financial aid
- Housing funds
- Study abroad

In violation of Title VI, the Diversity Fund illegally discriminates against white students based on their race.

The Fordham Scholarship

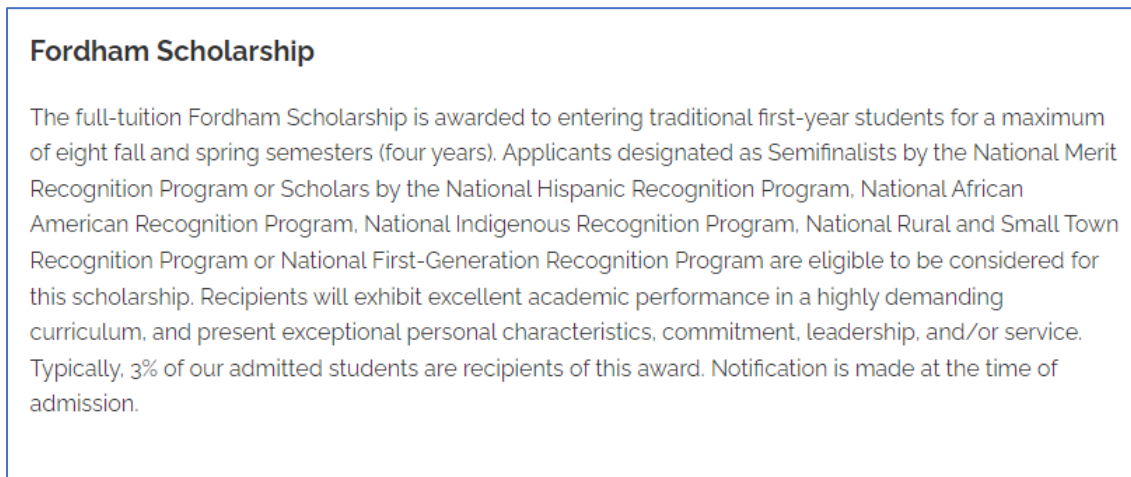
The Fordham Scholarship is explicitly limited to applicants that fall into prescribed racial categories such as "Hispanic" and "African American."³

"The full-tuition Fordham Scholarship is awarded to entering traditional first-year students for a maximum of eight fall and spring semesters (four years). Applicants designated as Semifinalists by the National Merit Recognition Program or Scholars by the National **Hispanic** Recognition Program, National **African American** Recognition

³ See, e.g., Fordham University website, "Financial Aid," Scholarships for U.S. Citizens/Eligible Non-Citizens, found at <https://www.fordham.edu/undergraduate-financial-aid/types-of-financial-aid/fordham-scholarships-and-grants/scholarships-for-us-citizenseligible-non-citizens/>.

Program, National Indigenous Recognition Program, National Rural and Small Town Recognition Program or National First-Generation Recognition Program are eligible to be considered for this scholarship.”⁴ (Emphasis added.)

The screenshot below is taken from the Fordham Scholarship program web page:



As with the Fordham Diversity Fund, different standards are applied depending on the race and ethnicity of the student. An Asian or white student who is not rural/small town or first-generation is not eligible, while a similarly situated African American or Hispanic student is eligible. In violation of Title VI, the above-listed program illegally discriminates against non-Black or non-Hispanic persons based on their race or national origin.

Latino Social Work Coalition Scholarship Program

The Latino Social Work Coalition Scholarship Program, offered through the Fordham Graduate School of Social Work⁵ is restricted to “[applicants who are Latino/x/e and bilingual students with significant economic needs....”

⁴ The College Board programs referred to in the Fordham Scholarship description as prerequisites to eligibility include categories that are race-based, described by the College Board as a “tangible way to recognize the academic achievements of rural area/small town, African American/Black, Hispanic/Latino, Indigenous/Native American, and (new in 2024) first-generation students.” See, College Board “Big Future” website, “National Recognition Programs,” found at <https://bigfuture.collegeboard.org/communities-events/national-recognition-programs>.

⁵ See, Fordham University website, “Financial Aid,” Scholarship Opportunities, Merit Scholarships for On Campus & Hybrid Students, found at <https://www.fordham.edu/graduate-school-of-social-service/admissions/tuition-and-financial-aid/scholarship-opportunities/>.

Latino Social Work Coalition Scholarship Program

Applicants who are Latino/x/e and bilingual students with significant economic needs who are entering their 2nd or 3rd year pursuing a master's degree in social work. Each student selected for a Latino Social Work Coalition Scholarship Fund receives from \$500 to \$1500

Applicants must agree to participate in the Core Mentorship Program. The program consists of attending one monthly Saturday mentorship session together with your cohort.

[Link to apply.](#)

(Note that the scholarship is only for on campus students not online students)

This scholarship discriminates based on ethnicity because “Latino/x/e” students who are not bilingual are eligible, while similarly situated other students who are not bilingual (Black, Asian, white) are not eligible. In violation of Title VI, the above-listed program illegally discriminates against non-Hispanic persons based on their race and ethnicity.

These Fordham Scholarship Programs Violate the Law

Fordham violates Title VI by conditioning eligibility for or providing preferential treatment for the above programs based on a student’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 Fordham receives federal funds,⁶ it is subject to Title VI.⁷

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. 289 (Gorsuch, J., concurring). And, irrespective of whether a program’s classifications based on immutable characteristics further a compelling

⁶ According to Fordham’s 2022 Form 990, Fordham receives funding from numerous federal agencies and programs, including but not limited to, The National Science Foundation, U.S. Department of Education, and U.S. Department of Health and Human Services. See <https://www.fordham.edu/media/home/departments-centers-and-offices/office-of-finance/pdfs/IRS-Form-990-for-Fiscal-Year-2023.pdf> See also, Fordham University website, “Financial Aid,” “Federal Direct Subsidized and Unsubsidized Loans,” found at <https://www.fordham.edu/undergraduate-financial-aid/loan-resources/federal-direct-subsidized-and-unsubsidized-loans/>; “Federal Direct PLUS Parent Loans,” found at <https://www.fordham.edu/undergraduate-financial-aid/loan-resources/federal-direct-plus-parent-loans/>.

⁷ 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 Fordham. 42 U.S.C. § 2000(a)(a). This Complaint also reaches conduct that is prohibited under the New York Human Rights Law, which provides that “The opportunity to obtain education [and] the use of places of public accommodation . . . because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, marital status, or disability, as specified in section two hundred ninety-six of this article, is hereby recognized as and declared to be a civil right.” N.Y. Exec. Law § 291. The conduct also violates Fordham’s own non-discrimination policies. <https://www.fordham.edu/about/leadership-and-administration/administrative-offices/gender-equity-and-title-ix-office/non-discrimination-policy/>

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 and ethnic preferences described above are explicit, it also is clear from Fordham’s website that the programs are “signaling” a preference for minority students as recipients of these scholarships, which is unlawful. 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, Fordham’s racial and ethnicity requirements for the programs described above violate Title VI.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. OCR enforces Title VI of the Civil Rights Act of 1964⁸ and its implementing regulation,⁹ which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. As set forth above, Fordham receives federal funding and administers federal grants and contracts. Accordingly, Fordham is subject to Title VI.

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. at 505. 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. Sch.*, 551 U.S. at 748. The Office for Civil Rights has

⁸ 42 U.S.C. §§ 2000d-2000d-7.

⁹ 34 C.F.R. Part 100.

U.S. Dept. of Education, Office for Civil Rights
Civil Rights Complaint – Fordham University
August 4, 2024
Page 8 of 8

the power and obligation to investigate Fordham’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.

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 scholarship programs described above based on discriminatory criteria, and ensure that all ongoing and future programming at Fordham comports with the federal civil rights laws.

Respectfully submitted,

Ronald D. Coleman
Director of Litigation
The Equal Protection Project
ron.coleman@legalinsurrection.com

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