



THE EQUAL PROTECTION PROJECT
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BY E-MAIL (OCR.DC@ed.gov)

Washington DC (Metro)
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1475

Re: CORRECTED VERSION – Civil Rights Complaint Against The University Of Virginia For Race-Based Mentorship Program

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 University of Virginia (“UVA”), a public university located in Charlottesville, Virginia, for creating, sponsoring and promoting a racially discriminatory program called the BIPOC Alumni-Student Mentoring Program (“BIPOC Mentoring Program”).

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

UVA’s School of Education and Human Development (“EHD”) recently announced on its website the creation of the BIPOC Mentoring Program.² According to the website, a portion of which is reproduced below, the BIPOC Mentoring Program “provides **up to 25 BIPOC undergraduates** in EHD each fall with individual guidance and support from alumni educators as they navigate the early stages of their program and/or career. The program’s goal is **to improve BIPOC undergraduates’** program experiences, career opportunities, and retention through pairing these learners with alumni mentors.”³

The BIPOC Alumni-Student Mentoring Program provides up to 25 BIPOC undergraduates in EHD each fall with individual guidance and support from alumni educators as they navigate the early stages of their program and/or career. The program’s goal is to improve BIPOC undergraduates’ program experiences, career opportunities, and retention through pairing these learners with alumni mentors.

In addition to conditioning its students’ eligibility to participate in the program on their being “BIPOC” – which UVA’s website defines as “[a]n acronym for black, indigenous and people of color”⁴ – the program imposes the same racial and ethnic requirement on UVA graduates who wish to participate as program mentors.⁵

The mentoring program is an opportunity for our BIPOC alumni to share opportunities with students while reducing barriers that prevent them from entering and remaining in the K-12 teacher and educator pipeline.

The application for the BIPOC Mentoring Program asks students to identify their “race and/or ethnicity” and to “indicate [their] interest in having an alumni mentor of Color ... in the 2024-2025 academic year.”⁶

² See <https://education.virginia.edu/about/diversity-equity-and-inclusion/dei-programming/bipoc-alumni-student-mentoring-program> [<https://archive.is/nlH4B>] (accessed on Sept. 28, 2024).

³ *Id.* (emphasis added).

⁴ See <https://hr.virginia.edu/about-us-home/how-we-serve/hr-diversity-equity-and-inclusion> [<https://archive.is/d8I4C>] (accessed on Sept. 29, 2024).

⁵ See <https://education.virginia.edu/about/diversity-equity-and-inclusion/dei-programming/bipoc-alumni-student-mentoring-program> [<https://archive.is/nlH4B>] (accessed on Sept. 28, 2024).

⁶ See https://virginia.az1.qualtrics.com/jfe/form/SV_cRR7XKgsis1fMoK [https://web.archive.org/save/https://virginia.az1.qualtrics.com/jfe/form/SV_cRR7XKgsis1fMoK] (accessed on Sept. 28, 2024).



SCHOOL of EDUCATION
and HUMAN DEVELOPMENT
Office of Diversity, Equity, and Inclusion

EHD Undergraduate Alumni-Student Mentoring Program

This program will pair EHD undergraduates with EHD alumni to improve students’ program experiences and career opportunities. With the EHD Office of Diversity, Equity, and Inclusion’s guidance and support, mentors and mentees will meet monthly to build relationships.

Please use this form to indicate your interest in having an alumni mentor of Color through the EHD Office of Diversity, Equity and Inclusion (ODEI) in the 2024-2025 academic year.

Name

Race and/or ethnicity

The application asks student applicants to explain “why [they] are interested in being paired with a BIPOC alumni mentor and “what [they] are looking for in a BIPOC alumni mentor.”⁷

⁷ *Id.*

Why are you interested in being paired with a BIPOC alumni mentor? (three to five sentences)

What are you looking for in a BIPOC alumni mentor? (check all that apply)

Career/Professional Development

Social Emotional Support

Friendship and Camaraderie from an Alum of Color

Advice about Navigating UVA EHD as a Person of Color

Networking

The fact that the application form inquires if students are seeking to join the program to obtain “advice about navigating UVA EHD as a person of color” makes clear that a student’s eligibility to participate in the program turns on his or her race and ethnicity.⁸

The BIPOC Mentoring Program Violates The Law

The BIPOC Mentoring Program violates Title VI because it conditions eligibility for participation on a student’s race, ethnicity and skin color. And, because UVA is a public university, its creation, sponsorship, promotion and hosting of this discriminatory program also violates the Equal Protection Clause of the Fourteenth Amendment.⁹

⁸ 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 Sept. 29, 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.”)

⁹ The BIPOC Mentoring Program also violates Virginia law, which makes it unlawful to discriminate on the basis of race and other protected statuses, see Va. Code § 2.2-3900 et seq., and

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 UVA receives federal funds,¹⁰ it is subject to Title VI and OCR’s jurisdiction.

Indeed, based on the requirement that participating students be BIPOC, any reasonable student viewing the information on the UVA website would understand the racially exclusionary basis of the program, and non-BIPOC students would be dissuaded from even applying or attempting to participate.¹¹

It is no defense that 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

UVA’s own non-discrimination policy. *See* <https://eocr.virginia.edu/notice-non-discrimination-and-equal-opportunity> [<https://archive.is/dZIVK>] (accessed on Sept. 29, 2024).

¹⁰ *See* [https://news.virginia.edu/content/uva-medical-research-received-nearly-20-million-more-nih-last-year#:~:text=UVA%20Medical%20Research%20Received%20Nearly%20\\$20%20Million%20More%20From%20the%20NIH%20Last%20Year](https://news.virginia.edu/content/uva-medical-research-received-nearly-20-million-more-nih-last-year#:~:text=UVA%20Medical%20Research%20Received%20Nearly%20$20%20Million%20More%20From%20the%20NIH%20Last%20Year) [<https://archive.is/W0AtG>] (accessed on Sept. 29, 2024); *see also* <https://www.usaspending.gov/recipient/d604415e-e1c8-650f-1b30-5e424b71fcf7-C/latest> [<https://archive.is/tKxd4>] (accessed on Sept. 29, 2024).

¹¹ *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 Sept. 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.”)

of the reasons why UVA sponsors and promotes the BIPOC Mentoring Program, it violates Title VI by doing so.

And, because UVA is a public university, its sponsorship and promotion of the BIPOC Mentoring Program 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 program 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. Peña*, 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, UVA 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). Restricting eligibility for the BIPOC Mentoring Program based on race, skin color or ethnicity serves no 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).¹² Neither applies here.

If the BIPOC Mentoring Program is intended to achieve racial and ethnic balance in the 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).

¹² 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).

And, irrespective of whether the BIPOC Mentoring Program 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 BIPOC selection criterion is mechanically applied. If applicants are not BIPOC, they are automatically ineligible for the mentorship program. To the extent that any individualized consideration exists, it only applies to distinguish between students 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 “BIPOC” eligibility requirement 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 racial and ethnic groups favored by the [policy] were added without attention to whether their inclusion was justified”).

In *Students for Fair Admissions*, the Supreme Court found that similar racial categories as those being used by UVA for the BIPOC Mentoring Program 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 BIPOC Mentoring Program 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 BIPOC Mentoring Program are presumptively invalid, and in the absence of any compelling government justification for such invidious discrimination, the use of such criteria violates federal civil rights statutes and constitutional equal protection guarantees.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. UVA is a public university and a recipient of federal funding, including from the U.S. Department of Education.¹³ The BIPOC Mentoring Program 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” – as OCR noted in its 2023 Guidance on Race and School Programming, all “[s]chool programs – including the ... establishment, recognition, or support of a school group, club, or other extracurricular organization” are covered by Title VI.¹⁴

UVA therefore is liable for violating Title VI and the Equal Protection Clause, and is subject to OCR’s jurisdiction.¹⁵

The Complaint is Timely

This complaint is timely brought because, as evidenced by the screenshot of UVA’s website below,¹⁶ it includes allegations of discrimination based on race, color and national origin that occurred within the last 180 days and that are ongoing.

¹³ See [https://news.virginia.edu/content/uva-medical-research-received-nearly-20-million-more-nih-last-year#:~:text=UVA%20Medical%20Research%20Received%20Nearly%20\\$20%20Million%20More%20From%20the%20NIH%20Last%20Year](https://news.virginia.edu/content/uva-medical-research-received-nearly-20-million-more-nih-last-year#:~:text=UVA%20Medical%20Research%20Received%20Nearly%20$20%20Million%20More%20From%20the%20NIH%20Last%20Year) [<https://archive.is/W0AtG>] (accessed on Sept. 29, 2024); see also <https://www.usaspending.gov/recipient/d604415e-e1c8-650f-1b30-5e424b71fcf7-C/latest> [<https://archive.is/tKxd4>] (accessed on Sept. 29, 2024).

¹⁴ 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>]

¹⁵ See <https://legalinsurrection.com/wp-content/uploads/2024/09/OCR-Case-Processing-Manual.pdf> at 7-8.

¹⁶ See <https://education.virginia.edu/about/diversity-equity-and-inclusion/dei-programming/bipoc-alumni-student-mentoring-program> [<https://archive.is/nIH4B>] (accessed on Sept. 28, 2024).

— Program Structure and Timelines

- August 2024: Initial program meeting kickoff (in person)
- January 2025: Mid-year program meeting/check-in and assessment (in person)
- May 2025: End-of-year program meeting/closing (in person)
- Mid-June 2025: Program evaluation and assessment and mentor recruitment (online survey) and retention and training for the second year of the program

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- and color-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 eligibility criteria of the BIPOC Mentoring Program are presumptively invalid, and because UVA cannot show any compelling justification for those restrictions, the limitation of this mentorship based on race, color and ethnicity violates federal civil rights statutes and constitutional equal protection guarantees.

The Office for Civil Rights has the power and obligation to investigate UVA’s role in creating, 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.

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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 those who have been illegally excluded from the UVA’s BIPOC Mentoring Program based on discriminatory criteria and ensure that all ongoing and future programming through UVA comports with the Constitution and federal civil rights laws.

Respectfully submitted,

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