



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

October 30, 2024

BY EMAIL (OCR.Chicago@ed.gov)

U. S. Department of Education
Office for Civil Rights – Chicago Office
John C. Kluczynski Federal Building
230 S. Dearborn Street, 37th Floor
Chicago, IL 60604

Re: Civil Rights Complaint Against University of Wisconsin-Madison Regarding Race-Based BIPOC MOSAIC Program

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 University of Wisconsin-Madison (“UW-Madison”), a public institution, for supporting and promoting the Mentorship Opportunities in Science and Agriculture for Individuals of Color (“BIPOC MOSAIC”), a program that engages in invidious discrimination on the basis of race, color and national origin. We request expedited

action by OCR because, as set forth below, UW-Madison is a repeat offender, having previously resolved another OCR complaint regarding another BIPOC-only program, yet instituting and promoting the present BIPOC MOSAIC program anyway. Clearly OCR action is needed to bring UW-Madison into compliance with the law.

BIPOC MOSAIC Program

According to the UW-Madison website, the “Mentorship Opportunities in Science and Agriculture for Individuals of Color (“BIPOC MOSAIC)” is a UW-Madison program, offered through the university’s College of Agricultural & Life Sciences, designed to “foster a supportive community by connecting BIPOC postdocs and graduate students with enthusiastic mentors who understand and share their experiences.”¹

The stated “Purpose” of the program is “to render potential mentors of color more visible to up-and-coming academics of color, including postdocs and graduate students.... Our goal is to reduce the virtual space between graduate-level BIPOC on this campus and foster a closer community through these connections and guidance from enthusiastic mentors with shared experiences.”²

Our Purpose

The purpose of MOSAIC is to render potential mentors of color more visible to up-and-coming academics of color, including postdocs and graduate students. Unfortunately, these connections don’t happen organically in a predominantly white institution. Students of color report feelings of isolation and in an overwhelmingly white space like UW Madison.

Our goal is to reduce the virtual space between graduate-level BIPOC on this campus and foster a closer community through these connections and guidance from enthusiastic mentors with shared experiences.

MOSAIC seeks to aggregate BIPOC faculty, staff, post-docs, and alumni to serve as mentors for BIPOC graduate students at UW Madison.

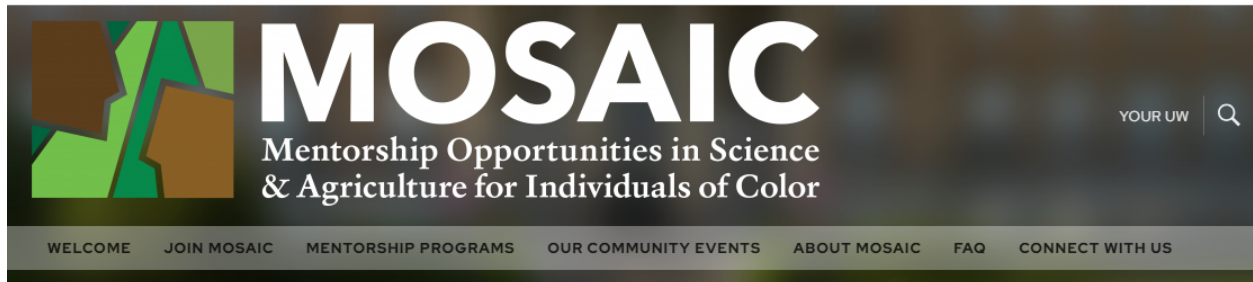
As the name of the program suggests, race- and ethnicity-based criteria dictate who can participate in the BIPOC MOSAIC program. Eligibility is restricted to BIPOC (Black Indigenous, People of Color)³ graduate students and postdocs (along with BIPOC faculty and

¹ <https://mosaic.cals.wisc.edu/> [https://archive.is/t5133] [visited Oct. 29, 2024]

² *Id.*

³ UW-Madison appears to use this standard definition of BIPOC throughout the university, e.g. <https://hr.wisc.edu/equity-inclusion-and-employee-well-being/communities/bipoc-employee-network/> [https://archive.is/cmrkp] [visited Oct. 29, 2024].

alumni): “Our Mentorship Opportunities in Science and Agriculture for Individuals of Color (MOSAIC) mentorship program opens doors for BIPOC students”⁴



MENTORSHIP PROGRAMS

Our Mentorship Opportunities in Science and Agriculture for Individuals of Color (MOSAIC) mentorship program opens doors for BIPOC students to connect with supportive mentors from diverse backgrounds, creating valuable relationships for underrepresented students outside of their program advisor(s). Mentorship contributes to underrepresented minoritized students’ educational and professional development by increasing access, promoting persistence, and allowing students to visualize what success looks like throughout every stage of their training.

The phrase “Students of Color” is defined by UW-Madison as “[a] domestic (non-international) student who identifies, alone or in combination with other racial/ethnic categories, as African American/Black, American Indian/Alaska Native, Asian, Hispanic/Latino(a), or Native Hawaiian/Pacific Islander.”⁵

The BIPOC MOSAIC program membership form requires that an applicant attest to whether they are BIPOC: “Do you identify as BIPOC? (While "yes" is sufficient, we understand that personal identity is frequently a complicated question. Please feel free to take as much or as little space as you would like in answering.)”⁶

⁴ See <https://mosaic.cals.wisc.edu/meet-our-mentors/> [https://archive.is/pTg0k] [visited Oct. 29, 2024]

⁵ See <https://search.data.wisc.edu/glossary/284597> [https://archive.is/4IYaf] [visited Oct. 29, 2024]

⁶ See <https://mosaic.cals.wisc.edu/join-mosaic/> [https://archive.is/tidDF] [visited Oct. 29, 2024]

Do you identify as BIPOC? (While "yes" is sufficient, we understand that * personal identity is frequently a complicated question. Please feel free to take as much or as little space as you would like in answering.)

Your answer _____

The Frequently Asked Questions section of the website states that “participating on the mentorship program is free for all BIPOC graduate students in UW-Madison.”⁷

Is participation in the MOSAIC Mentorship Program free?

Yes, participating on the mentorship program is free for all BIPOC graduate students in UW-Madison.

BIPOC MOSAIC has several graduate student coordinators,⁸ and additional employees of UW-Madison are heavily involved in the operation and support of the BIPOC MOSAIC program, including several senior administrators⁹:

⁷ See <https://mosaic.cals.wisc.edu/faq/#is-participation-in-the-mosaic-mentorship-program-free> [

⁸ See, <https://mosaic.cals.wisc.edu/about/> [https://archive.is/YY9Pv] [visited Oct. 29, 2024], some of whom upon information and belief would also be employees of UW-Madison.

⁹ See <https://mosaic.cals.wisc.edu/meet-our-mentors/> [https://archive.is/pTg0k] [visited Oct. 29, 2024]; see also <https://mosaic.cals.wisc.edu/about/> [https://archive.is/YY9Pv] [visited Oct. 29, 2024](stating short term goal “to institutionalize MOSAIC through UW”).

Acknowledgement & Gratitude

In addition to our volunteer mentors, we would like to thank the following people for their support, guidance, encouragement, and helpful feedback all along the way. We are thankful to you for championing this cause:

- **Jo Handelsman** (Director, Wisconsin Institute for Discovery)
- **Lindsay Stoddard** (Faculty Services, Office of the Secretary of the Faculty)
- **Claudia Calderon** (Faculty Associate, Department of Horticulture)
- **Parmesh Ramanathan** (Associate Dean, Graduate School)
- **Christopher Yue** (Interim Assistant Dean, Office of Diversity, Inclusion, and Funding, Graduate School)
- **Cheryl Gittens** (Interim Deputy Vice Chancellor for Diversity & Inclusion, Elzie Higginbottom Vice Provost & Chief Diversity Officer)
- **Abbey Thompson** (Associate Director, SciMed GRS)
- **Liza Chang** (Postdoctoral Fellow, WISCIENCE)

The BIPOC MOSAIC Program At UW-Madison Violates The Law

UW-Madison’s voluntary and ongoing participation in and active promotion of the BIPOC MOSAIC program, which provides mentorship to students based on their 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 was confirmed recently by the United States Supreme Court in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (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 206 (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 206 (citation omitted).

The BIPOC MOSAIC program at UW-Madison makes clear that students who do not meet the prerequisite racial categories – for example, students who identify as white – are automatically ineligible. Indeed, based on the requirement that participating students be BIPOC or “of color,” any reasonable student viewing the information on the UW-Madison website would understand the racially exclusionary basis of the program, and non-BIPOC students would be dissuaded from even applying or attempting to participate.¹⁰

The discrimination is apparent: if applicants are African American/Black, American Indian/Alaska Native, Asian, Hispanic/Latino(a), or Native Hawaiian/Pacific Islander, they are automatically eligible for the program. Applicants who do not fall into one of those racial categories are automatically excluded from consideration.

It violates Title VI for a recipient of federal money to create, support and promote a racially segregated program.¹¹ When a public institution does so, such conduct also violates the Equal Protection Clause of the Fourteenth Amendment.¹²

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,”

¹⁰ *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. 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.”)

¹¹ *Id.*

¹² 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 UW-Madison. 42 U.S.C. § 2000(a)(a). Similarly, the BIPOC MOSAIC program defies UW-Madison’s own non-discrimination policy. *See*

<https://www.wisconsin.edu/regents/policies/discrimination-harassment-and-retaliation/> [https://archive.is/CaJP1] (accessed on Oct. 29, 2024). Wisconsin state law also provides that “[n]o student may be denied admission to, participation in or the benefits of, or be discriminated against in any service, program, course or facility of the [University of Wisconsin] system or its institutions because of the student’s race, color [or] ... national origin[.]” Wis. Stat. § 36.12(1). UW-Madison’s BIPOC MOSAIC program obviously violates this law.

and thus applies to universities receiving federal financial assistance). As UW-Madison receives federal funds,¹³ it is subject to Title VI.

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 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 206 (cleaned up). Thus, regardless of UW-Madison’s reasons for sponsoring and promoting the BIPOC MOSAIC program, it violated Title VI by doing so.

And, because UW-Madison is a public institution, its creation, sponsorship and promotion of the BIPOC MOSAIC 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 206 (internal quotation marks and citation omitted). The UW-Madison 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. Pena*, 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, 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, UW-Madison cannot demonstrate that limiting program

¹³ See <https://www.wisconsin.edu/news/download/BOR-FY24-Annual-Budget-Presentation.pdf> [<https://archive.is/gen2E>] (accessed on Oct. 29, 2024).

participation to African American/Black, American Indian/Alaska Native, Asian, Hispanic/Latino(a), or Native Hawaiian/Pacific Islanders 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).

The U.S. 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).¹⁴ Neither applies here.

To the extent that the BIPOC MOSAIC program’s purpose is to achieve racial balance, 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).

And, irrespective of whether the BIPOC MOSAIC 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 race-based eligibility criterion is mechanically applied. If applicants are not African American/Black, American Indian/Alaska Native, Asian, Hispanic/Latino(a) or Native Hawaiian/Pacific Islanders, they are automatically ineligible for the scholarship. 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 race- and ethnicity-based eligibility requirement for the BIPOC MOSAIC program applies in an undifferentiated fashion to multiple racial groups, it is overbroad and therefore not narrowly tailored. *Id.* (the “gross overinclusiveness” and undifferentiated use of racial classifications suggests that “the

¹⁴ 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).

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 UW-Madison for the BIPOC MOSAIC 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 MOSAIC program makes that program underinclusive, since the racial criterion is arbitrary and excludes swaths of students who are in need of mentoring but are not permitted to apply due to their skin color, race and ethnicity.

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 UW-Madison’s blatant racial preference system for the BIPOC MOSAIC program is presumptively invalid, and since there is no compelling government justification for such invidious discrimination, its use of racial preferences violates federal civil right and constitutional equal protection guarantees.

OCR Has Jurisdiction

OCR has jurisdiction over this complaint. UW-Madison is a public institution and a recipient of federal funds, including from the U.S. Department of Education.¹⁵ It is therefore 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 and is ongoing.¹⁶

¹⁵ See <https://www.usaspending.gov/recipient/f044e52c-101e-349e-69e4-aaa93e72f7ab-C/latest> [https://archive.is/RKMwn] [visited Oct. 29, 2024]

¹⁶ See, e.g., <https://mosaic.cals.wisc.edu/our-community-events/> [https://archive.is/BsWEs] [accessed Oct. 29, 2024] and “Timeline” <https://mosaic.cals.wisc.edu/about/> [https://archive.is/YY9Pv] [visited Oct. 29, 2024]

Request For Investigation And Enforcement

UW-Madison is aware that such BIPOC and students-of-color only programs are unlawful. UW-Madison recently resolved another complaint¹⁷ regarding another UW-Madison program (OCR Docket # 05-24-2221) by renaming that program to eliminate race- and ethnicity-based references and removing racial and ethnic eligibility criteria.¹⁸ That UW-Madison instituted and continued this unlawful BIPOC-only program despite the prior complaint and resolutions demonstrates the need for OCR action.

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 exclusion of white applicants in the BIPOC MOSAIC program is presumptively invalid, and since UW-Madison cannot show any compelling government justification for such an invidiously discriminatory program, its conduct violates federal civil rights statutes and constitutional equal protection guarantees.

The Office for Civil Rights has the power and obligation to investigate UW-Madison’s role in participating in, sponsoring, supporting and promoting the BIPOC MOSAIC program – and to discern whether UW-Madison 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.

¹⁷ See <https://equalprotect.org/wp-content/uploads/2024/05/OCR-Complaint-UW-Madison.pdf>

¹⁸ See <https://equalprotect.org/wp-content/uploads/2024/01/05-24-2221-C-110d-UW-Madison-dismissal-9-19-24.pdf>.

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Accordingly, we respectfully ask the Department of Education's Office for Civil Rights to impose remedial relief as the law permits for the benefit of those who have been illegally excluded from UW-Madison's BIPOC MOSAIC program based on racially discriminatory criteria, and to ensure that all ongoing and future programming through that university comport with the Constitution and federal civil rights laws.

Respectfully submitted,

/William A. Jacobson/

William A. Jacobson, Esq.
President
Legal Insurrection Foundation
Contact@legalinsurrection.com