



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

August 13, 2026

BY EMAIL (OCR@ed.gov)

Kimberly Richey
Assistant Secretary Office for Civil Rights
Office for Civil Rights
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

BY EMAIL (OCR.Denver@ed.gov)

Office for Civil Rights
U.S. Department of Education
Cesar E. Chavez Memorial Building
1244 Speer Boulevard, Suite 310
Denver, CO 80204-3582

**Re: Civil Rights Complaint Against Wabash College Regarding Racially
Discriminatory “Pathway to Your Future” Program**

Dear Assistant Secretary Richey and OCR Staff:

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 opposes unlawful discrimination in any form.

We bring this civil rights complaint against Wabash College (“Wabash”), a private institution, regarding Wabash’s Pathway To Your Future (“Pathway”) which racially discriminates in favor of “minority” students in violation of Title VI.

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

THE PATHWAY PROGRAM VIOLATES TITLE VI

Link: <https://www.wabash.edu/programs/pathway/>

Archived Link: [<https://archive.is/wip/9RxJy>] (accessed August 11, 2026).

Discriminatory Requirement: “Pathway To Your Future is a free week-long visit program for rising sophomores and juniors in high school who are **underrepresented minority students**, eligible for federal Pell Grants, and/or first-generation college students.”²



Description

Pathway is a “free week-long visit program for rising sophomores and juniors in high school who are underrepresented minority students, eligible for federal Pell Grants, and/or first-

² Wabash uses the term “minority” to refer to “members of designated racial/ethnic minority groups.” https://www.wabash.edu/institutional_research/docs/cds-2023-20244.pdf [<https://archive.is/wip/9uDqX>] (accessed August 12, 2026). Courts also understand the term “minority” to mean non-white racial and ethnic groups. See *Boston Chapter, NAACP, Inc. v. Beecher*, 295 F. Supp. 3d 26, 28 (D. Mass. 2018); see also *Kirkland v. N.Y. State Dep’t of Corr. Servs.*, 552 F. Supp. 667, 674, 677 (S.D.N.Y. 1982); *Arbor Hill Concerned Citizens Neighborhood Ass’n v. Cnty. of Albany*, 281 F. Supp. 2d 436, 455 (N.D.N.Y. 2003); *Coalition to Defend Affirmative Action, Integration and Immigrant Rights and Fight for Equality by Any Means Necessary v. Regents of Univ. of Mich.*, 701 F.3d 466, 493 (6th Cir. 2012). As discussed below in the legal section, that Wabash adds to this minority preference other categories such as Pell Grant eligibility or first-generation status does not negate the racial preference.

generation college students.”³ Students must apply to participate in the program which has ran annually since 2022.⁴

The program “aims to ensure that all students, regardless of background, graduate with the necessary skills to lead thoughtful conversations and to help build more inclusive communities.”⁵

Wabash.

Providing a taste of collegiate life, **Pathway to Your Future** aims to ensure that all students, regardless of background, graduate with the necessary skills to lead thoughtful conversations and to help build more inclusive communities. Pathway to Your Future is provided specifically for underrepresented minority students to learn about the numerous benefits that come with being a Wabash Man, and to build a connection with guys they will see again when they come to Wabash.

Benefits

Pathway participants have the opportunity to receive annual scholarships of up to \$25,000 following completion of the program. Participants also receive mentorship, hands-on learning experiences, and networking opportunities. Wabash covers all travel, food, and lodging expenses associated with the program.⁶

³ <https://www.wabash.edu/programs/pathway/> [<https://archive.is/wip/9RxJy>] (accessed August 11, 2026).

⁴ <https://www.wabash.edu/news/story/12955> [<https://archive.is/wip/bqKPb>] (accessed August 11, 2026).

⁵ <https://apply.wabash.edu/portal/PTYF> [<https://archive.is/wip/IpTHJ>] (accessed August 11, 2026).

⁶ <https://www.wabash.edu/programs/pathway/> [<https://archive.is/wip/9RxJy>] (accessed August 11, 2026).

Students will:

- Have the potential to receive an **annual scholarship up to \$25,000** upon completion of this program in addition to **MERIT SCHOLARSHIPS** upon admission to Wabash College;
- Engage superior faculty and staff in student-centered, hands-on learning experiences;
- Enjoy the College's first-class athletics and recreational facilities;
- Learn from civic and business leaders to develop transferable skills; and
- Build life-long connections with high school students from around the country.

Travel expenses are covered, and the event is free. The only funds participants will need to bring are for incidentals. Health insurance is required to attend Wabash summer programs.

Wabash will transport Indiana students to the event via a College van, while participants who choose to drive themselves will be reimbursed for their travel expenses.⁷ For participants residing outside Indiana, Wabash will provide airfare and transportation to and from the airport.

How is transportation managed?

Indiana Participants: Transportation will be provided via a College van with an approved driver (pick-up details to be determined). Guardians may otherwise bring their son and be reimbursed for mileage according to College policy (62.5 cents per mile).

National Participants: The College will make flight arrangements. An electronic travel itinerary will be provided relative to your origination city. (A College-approved driver will provide direct transportation to and from campus from the arrival city.)

⁷ <https://www.wabash.edu/programs/pathway/> [<https://archive.is/wip/9RxJy>] (accessed August 11, 2026).

Requirements

Wabash created the program in 2022 “... specifically for rising high school sophomores and juniors who are underrepresented minority students, eligible for federal Pell Grants, and/or first-generation college students.”⁸ Since then, Wabash has consistently described the program as being “specifically” for “underrepresented minority students.” For example, the main Pathway to Your Future webpage describes the program as “an opportunity specifically provided for underrepresented minority students to learn about the numerous benefits that come with being a Wabash Man.”

Wabash.

Providing a taste of collegiate life, **Pathway to Your Future** aims to ensure that all students, regardless of background, graduate with the necessary skills to lead thoughtful conversations and to help build more inclusive communities. Pathway to Your Future is an opportunity specifically provided for underrepresented minority students to learn about the numerous benefits that come with being a Wabash Man, and to build connections with guys they will see again when they attend college at Wabash.

In 2023, the Wabash student newspaper further explained the program’s eligibility criteria, stating: “Much like a scholarship, the Pathway to Your Future program requires these high school students to fit one of three criteria to apply: they must be a first-generation college student, come from a poor socioeconomic background or be an underrepresented minority in secondary education.”⁹

⁸ <https://www.wabash.edu/news/story/12955> [<https://archive.is/wip/bqKPb>] (accessed August 11, 2026).

⁹ <https://media.wabash.edu/bachelor/Bachelor-2023-08-25.pdf> [<https://archive.is/wip/iZiRJ>] (accessed August 12, 2026).

possible.

Much like a scholarship, the Pathway to Your Future program requires these high school students to fit one of three criteria to apply: they must be a first-generation college student, come from a poor socioeconomic background or be an underrepresented minority in secondary education.

The program's current eligibility requirements remain materially the same. To apply, students must be "underrepresented minority students, eligible for federal Pell Grants, and/or first-generation college students."¹⁰ Under this structure, being an "underrepresented minority" satisfies the eligibility requirement without any further hurdles while non-minorities need to show something more, e.g. Pell Grant eligibility or first-generation status.

Wabash.



Wabash College will be hosting a **FREE**, week-long visit program this summer with **SCHOLARSHIP OPPORTUNITY** from **June 20-June 25, 2026** for rising sophomores and juniors in high school who are *underrepresented minority students, eligible for federal Pell Grants*, and/or *first-generation college students*.

Wabash's promotional materials further reinforce that, although the program includes two race-neutral eligibility criteria, it is specifically intended for minority students. The

¹⁰ <https://www.wabash.edu/programs/pathway/> [<https://archive.is/wip/9RxJy>] (accessed August 11, 2026).

photographs and videos used to promote the program depict exclusively or almost exclusively minority participants.¹¹

The Pathway Program Violates The Law

Pathway violates Title VI by discriminating on the basis of race, color, or national origin.¹² The Program is designed specifically for underrepresented minorities. Further, the eligibility is limited to “underrepresented minority students, those eligible for federal Pell Grants, and/or first-generation college students.” This language reflects that the program is immediately available to students who are racial and ethnic minorities, but students who are not minorities are excluded from eligibility unless they can satisfy additional requirements; satisfy the financial requirements for a Pell grant or be a first-generation college student in order to be eligible. This two-tier system of eligibility discriminates against non-minority students.

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 Wabash receives federal funds,¹³ it is subject to Title VI.

In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 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 206 (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 208.

¹¹ See <https://www.wabash.edu/photo-albums/album/5768/> [<https://archive.is/wip/5JMkV>] (accessed August 12, 2026); https://youtu.be/CRX2KeZMrW4?si=z_TQdjC9Pt40PWw3 [<https://archive.is/wip/cJGlq>] (accessed August 12, 2026).

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 Wabash. 42 U.S.C. § 2000(a). This program also violates Indiana state law. Ind. Code § 22-9-1-2(a) (2026). Finally, this program violates Wabash’s own nondiscrimination policy. *See* <https://www.wabash.edu/discrimination/> [<https://archive.is/wip/u7wgB>] (accessed on August 11, 2026).

¹³ See https://www.usaspending.gov/award/ASST_NON_P063P251427_091 [archive.is/wip/bzUEG] (accessed on August 11, 2026).

Regardless of Wabash’s reasons for offering, promoting, and administering such a discriminatory program, Wabash is violating Title VI by doing so. It does not matter if the recipient of federal funding discriminates in order to advance a benign “intention” or “motivation.” *Bostock v. Clayton Cnty.*, 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.”); *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*, 600 U.S. at 289 (Gorsuch, J., concurring).

It is no defense that Wabash imposes racial, ethnic, and national-origin preferences alongside lawful criteria such as Pell Grant eligibility or first-generation status. Non-minority applicants are eligible only if they satisfy an additional criterion, such as Pell Grant eligibility or first-generation status, while underrepresented minority applicants qualify based on minority status alone. That differential treatment itself constitutes unlawful discrimination regardless of whether non-minority students are excluded (which based upon the photos and videos promoting and documenting the program, appears to restrict membership to non-minorities).

Further, Wabash expressly states that the program is “specifically provided for underrepresented minority students.” That language signals that, even if a student satisfies one of the race-neutral eligibility criteria, the student is not part of the program’s intended audience unless the student also belongs to an underrepresented minority group. This racial signaling is reinforced by the fact that the program is run through Wabash’s Malcolm X Institute of Black Studies.

Racial criteria and preferences serve as “signals” of racial-based preferences. As the Second Circuit recognized in *Ragin v. New York Times Co.*, 923 F.2d 995, 999–1000 (2d Cir. 1991), even subtle messaging can convey discriminatory preferences: “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.”

Here, Wabash’s messaging would reasonably deter students from racial, ethnic, or national-origin groups not favored by the program from applying. The inclusion of race-neutral criteria does not cure the discriminatory preference communicated by Wabash’s express use of race and ethnicity.

Wabash’s discriminatory program is presumptively invalid; therefore, its offering, promotion, and administration of this program violates federal civil rights laws.

OCR Has Jurisdiction

OCR enforces Title VI of the Civil Rights Act of 1964¹⁴ and its implementing regulation,¹⁵ which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving federal financial assistance. As a recipient of federal financial assistance, including from the Department of Education,¹⁶ Wabash is subject to Title VI and OCR has jurisdiction over this case.

The Complaint Is Timely

This complaint is timely brought because it includes allegations of discrimination based on race, color, or national origin that occurred within 180 days and that appear to be ongoing. This program occurs yearly and ran this summer.¹⁷

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. 469, 505 (1989) (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.” 600 U.S. at 287 (Thomas, J., concurring).

Because the discrimination outlined above is presumptively illegal, the fact that it targets eligibility for this program on race, color, and/or national origin violates Title VI.

The Office for Civil Rights has the power and obligation to investigate Wabash’s role in creating, funding, promoting and administering this program and to discern whether Wabash is engaging in such discrimination in its other activities – as well as the duty to impose whatever remedial relief is necessary to hold it accountable for this unlawful conduct. This includes, if necessary, imposing fines, initiating administrative proceedings to suspend or terminate federal

¹⁴ 42 U.S.C. §§ 2000d-2000d-7.

¹⁵ 34 C.F.R. Part 100.

¹⁶ See https://www.usaspending.gov/award/ASST_NON_P063P251427_091 [archive.is/wip/bzUEG] (accessed on August 11, 2026).

¹⁷ <https://www.wabash.edu/programs/pathway/> [<https://archive.is/wip/9RxJy>] (accessed August 11, 2026).

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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 ... is to stop discriminating[.]” *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 748 (2007).

Accordingly, we respectfully ask that the Department of Education’s Office for Civil Rights promptly open a formal investigation, impose such remedial relief as the law permits for the benefit of those who have been illegally excluded from programming at Wabash based on discriminatory criteria, and ensure that all ongoing and future programs at Wabash comports with the federal civil rights laws.

Respectfully submitted,

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

/Maureen S. Riordan/
Chief Counsel
Legal Insurrection Foundation
m.riordan@legalinsurrection.com

/Robert J. Fox/
Robert J. Fox
Attorney
Legal Insurrection Foundation
Robert.Fox@legalinsurrection.com