



COUNCIL for OPPORTUNITY in EDUCATION

*Dedicated to furthering the expansion of college opportunities for low-income, first-generation students, and students with disabilities.*

January 9, 2024

The Honorable Miguel Cardona  
Secretary of Education  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202

Dear Secretary Cardona:

I am writing to you in my role as President of the Council for Opportunity in Education (“COE”), which represents the interests of more than 1,000 colleges, universities, and agencies that host Federal TRIO Programs. It has come to my attention that in the wake of the U.S. Supreme Court ruling in *Students for Fair Admissions, Inc. v. the University of North Carolina* and *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, the Equal Protection Project has filed a number of civil rights complaints with the Department’s Office of Civil Rights against institutions in Colorado and Washington State. It is my understanding that these complaints allege that the selection criteria for the Ronald E. McNair Postbaccalaureate Achievement program (“McNair Program”),<sup>i</sup> is discriminatory and further that the McNair Program’s eligibility criteria discriminate against White and Asian students.

The McNair Program does not discriminate based on race. Any such allegation is erroneous and fails to take into account the language and spirit of the law.

As you are aware, Congress established the McNair Program “to provide disadvantaged college students with effective preparation for doctoral study.”<sup>iii</sup> The governing legislation requires that “*not less than two-thirds* of individuals participating in the project...be low-income individuals who are first-generation college students.”<sup>iiii</sup> Congress’s two-thirds requirement is not a ceiling, but a floor. Therefore, a McNair program could fill its entire program with first-generation, low-income participants – regardless of race – without offending the statute.

The remaining eligibility criteria in no way restrict program participants to any specific racial background. Rather, the legislation requires that “the remaining persons participating in the project...be from a group that is *underrepresented in graduate education*.”<sup>iv</sup> For purposes of the McNair Program, the Department’s regulations define “groups underrepresented in graduate education” as students who are “Black (non-Hispanic), Hispanic, American Indian, Alaskan Native,” “Native Hawaiians,” and “Native American Pacific Islanders.”<sup>v</sup> However, the regulations further clarify that McNair Programs may serve individuals under this rubric, whether or not they are a member of a group listed above, if the student belongs to a group that is “*underrepresented in certain academic disciplines* as documented by standard statistical references or other national survey data.”<sup>vi</sup> Thus, a female student of any race would qualify for admission to the program if she were seeking a doctoral degree in Computer Science, as females represented just 25 percent of all such doctoral degrees conferred in 2020-2021.<sup>vii</sup> Further, that same year, white males were underrepresented among doctoral degrees conferred in several fields, including Engineering (26%), Architecture and related services (31%), and Mathematics and statistics (34%). In such instances, a white male seeking admission to the McNair Program to pursue a terminal degree in such a field would be considered “underrepresented.”<sup>viii</sup>

The McNair Program plays a critical role in ensuring that students from underrepresented backgrounds have the opportunity to adequately prepare for, enroll in, and complete doctoral study. At least 27 million jobs in the U.S. will require a graduate degree by 2031.<sup>ix</sup> Yet students from low-income and first-generation backgrounds

lag far behind their peers in attaining doctoral education, with low-income learners representing just 14 percent of doctoral students and first-generation students obtaining just 28 percent of all doctoral degrees conferred in recent years.<sup>x</sup> Regardless of race, underrepresented students are just that—underrepresented. The need to prioritize support for such students to pursue doctoral study is clear. It is my sincere hope that the Department will continue to defend the work of the McNair Program and all TRIO programs, as well as the students they serve.

Sincerely,



Kimberly Jones, JD, CAE  
President

CC: The Honorable James Kvaal, Under Secretary  
The Honorable Catherine Lhamon, Assistant Secretary for Civil Rights

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<sup>i</sup> The McNair Program is one of the eight Federal TRIO Programs.

<sup>ii</sup> 20 U.S.C. § 1070a-15(a)

<sup>iii</sup> 20 U.S.C. § 1070a-15(d)(1) (emphasis added)

<sup>iv</sup> 20 U.S.C. § 1070a-15(d)(2) (emphasis added)

<sup>v</sup> 34 C.F.R. § 647.7

<sup>vi</sup> 34 C.F.R. §647.3(c)(3) (emphasis added)

<sup>vii</sup> Bachelor's, master's, and doctor's degrees conferred by postsecondary institutions, by sex of student and field of study: Academic year 2020-21, U.S. Department of Education, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), Fall 2021

<sup>viii</sup> Doctor's degrees conferred to males by postsecondary institutions, by race/ethnicity and field of study: Academic years 2019-20 and 2020-21, National Center for Education Statistics, Integrated Postsecondary Education Data System (IPEDS), Fall 2022

<sup>ix</sup> Anthony P. Carnevale, Nicole Smith, Martin Van Der Werf, and Michael C. Quinn. *After Everything: Projections of Jobs, Education, and Training Requirements through 2031*. Washington, DC: Georgetown University Center on Education and the Workforce, 2023

<sup>x</sup> U.S. Department of Education, National Center for Education Statistics, 2015–16 National Postsecondary Student Aid Study (NPSAS:16), National Center for Science and Engineering Statistics, Survey of Earned Doctorates (2021)