



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

May 28, 2024

(Via Email)

Dr. Lovell Brown
Superintendent
Ithaca City School District
400 Lake Street
Ithaca, NY 14850

Dr. Sean Eversley Bradwell
President
Ithaca Board of Education
400 Lake Street
Ithaca, NY 14850

Re: Concerns Regarding Racially Exclusionary “Student of Color United Summit 2024”

Dear Drs. Brown and Bradwell,

We write on behalf of the Equal Protection Project (EPP) 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. As set forth on our website ([EqualProtect.org](http://www.EqualProtect.org)), EPP believes that there is no “good” form of racism, and that the remedy for racism is not more racism. We hope you share this philosophy.

The nation recently commemorated the 70th Anniversary of the Supreme Court ruling in *Brown v. Board of Education*, 347 U.S. 483 (1954), which held, among other things, that segregation of

students by race in public schools violates the Equal Protection Clause of the 14th Amendment to the United States Constitution. In light of this historic anniversary, we are deeply troubled to learn of a program in the Ithaca City School District (ICSD) which appears to segregate students by race.

According to the official online Ithaca High School (IHS) calendar,¹ the Student of Color United (SOCU) Summit 2024, is scheduled for May 31, 2024, to be held at IHS from 9 a.m. through 12 p.m. A poster promoting SOCU 2024 indicates that SOCU 2024 is only for “Students of Color in grades 6-12 in Ithaca City School District.”



(The QR code on the SOCU 2024 poster directs to a Google document which requires an ICSD email address. We ask that such documents and other records related to SOCU summits be preserved as we will be serving a separate FOIL request for public records related to ICSD SOCU summits.)

Additionally, it appears that an email or message was circulated by a supervisory level staff member of ICSD informing staff (and possibly others) of SOCU 2024, how staff could assist students in registering, and stating that the event was “for students of color to interact with each other...” The message goes on to emphasize the exclusionary nature of the summit, and explicitly delineates that “[a]llies are not invited to this event.” We understand in this context that the word “allies” refers to white students and staff. In fact, the message goes on to invite only non-white staff, stating: “If you are a staff member of color and would like to attend the summit with our students, please email”

SOCU 2024 thus appears intended to exclude whites and to be promoted as open only to students and staff “of color.”

This is consistent with how ICSD and IHS have run prior SOCU summits. SOCU 2021 was discussed at a public Ithaca Board of Education meeting on May 25, 2021. There, non-white

¹ <https://www.ithacacityschools.org/o/highschool/events?view=cal-month> [last viewed 5-27-2024][archive <https://archive.is/yXCgg>]

students explained to the Board how important it was to them to have had an event open only to other “students of color.” During the exchange, one of the students recounted an interaction with a mixed-race schoolmate, who was unsure whether the event was open to her. In response, one of the Board members stated:

“We’ve had some people ask us as a Board, I’m sure Dr. Brown has heard this, why would we support something that separates young people out by the color of their skin?”

Promotional materials for SOCU 2021-2023,² and post-event postings on social media make clear that the events were racially exclusionary, and open only to students of color. The following examples illustrate this:

- In May 2021, ICSD posted on social media: “On Friday, May 21, BIPOC students from Boynton Middle School, DeWitt Middle School, Lehman Alternative Community School, and Ithaca High School gathered for a day of affirmation, scholarship, joy, and artful expression....”
- In June 2022, ICSD posted that: “The Students of Color United (SOCU) Summit is a day of affirmation, scholarship, joy, and artful expression for BIPOC students at Boynton, DeWitt, LACS, and IHS.”
- In June 2023, ICSD posted on social media: “The third-annual Students of Color United (SOCU) Summit took place on June 7th! The affinity event welcomed students of color from all ICSD secondary schools....”

It appears that these 2021-2023 annual Students of Color United summits were promoted and conducted as racially exclusionary, and that SOCU 2024 is following in that path. We don’t think you will seriously dispute this.³

ICSD knows that it is not permitted to segregate students by race for any reason. On March 13, 2023, the non-profit group Parents Defending Education filed a complaint with the U.S. Department of Education Office for Civil Rights (OCR) regarding a different ICSD affinity event scheduled for February 8, 2023. According to a September 7, 2023, letter⁴ from OCR dismissing

² <https://sites.google.com/icسد.k12.ny.us/socu-summit-site/frequently-asked-questions> [archive <https://archive.is/s1xxi>]

³ Even if white students and staff were not physically turned away, such promotions were unlawful. “When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group,” the constitutional harm is “the imposition of the barrier, not the ultimate inability to obtain the benefit.” *Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 666 (1993). Thus, the existence of racially exclusive criteria was the harm, not whether white students and staff were actually kept out.

⁴ https://defendinged.org/wp-content/uploads/2023/09/02-23-1241-Ithaca-City-SD_Redacted.pdf

the complaint as moot, ICSD made the following representations to the U.S. Department of Education:

“The District informed OCR that the affinity groups listed on the announcement and scheduled for February 8, 2023, did not take place. **The District further informed OCR that all of the District’s programming is open to all participants regardless of race and there are no affinity groups or other programs that are exclusionary based on race.** OCR confirmed that the announcement listing the affinity groups no longer exists on the District’s website.” [emphasis added]

It seems hard to square ICSD’s representations to OCR with how the SOCU summits appear to have been promoted and conducted since 2021, but we look forward to that explanation.

Because ICSD is a public school district, these programs that discriminate based on race and skin color violate the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. In *Students for Fair Admissions Inc. v. President & Fellows of Harv. Coll.*, 2023 U.S. LEXIS 2791 (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). 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.” *Students for Fair Admissions*, 2023 U.S. LEXIS 2791, at *150 (Thomas, J., concurring).

Further, because ICSD also receives federal funding,⁵ these programs also violate Title VI of the Civil Rights Act of 1964 (“Title VI”) and its implementing regulations.⁶

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*, 2023 U.S. LEXIS 2791, at *154 (Gorsuch, J., concurring).

⁵ <https://data.nysed.gov/expenditures.php?year=2020&instid=800000036448>

⁶ Analogous provisions of New York State and City of Ithaca human rights laws and policies also are implicated, including as to public accommodations. And, to the extent only staff of color were invited, this also may violate employment-related laws, such as Title VII. See 42 U.S.C. § 2000e, et seq.

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 *170 (cleaned up). Thus, regardless of ICSD’s reasons for sponsoring and promoting the SOCU summits, it is violating Title VI by doing so.

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 (citation omitted). This is true regardless of which race suffers – discrimination against whites is just as unlawful as discrimination against blacks or other non-whites.

Request For Remedial Action

Dr. Brown, you may recall that in 2015, when our Legal Insurrection website uncovered that an anti-Israel activist had been brought into an ICSD third-grade classroom without proper notice and authorization, you did the right thing and issued a very forceful public statement denouncing what had happened as not appropriate or aligned with ICSD standards.⁷ We ask that you take similar action here, and publicly denounce and renounce past and planned segregationist programs, and open up the upcoming SOCU Summit to all students and staff without regard to race.

It is particularly important for you to do this promptly and publicly, because based on past practice and current promotions, white students and staff likely would be dissuaded from attending on the assumption they are not invited. ICSD needs not only to open the SOCU Summit to all students and staff, ICSD needs to inform all students and staff that the racial barrier has been removed.

If for whatever reason the SOCU Summit 2024 is not going to take place, ICSD still needs to inform students and staff that the announced racial barrier was improper. Such barriers not only are contrary to law, they are contrary to ICSD policies, and part of remedying the damage from past and planned segregated events is to make clear that such practices are not ICSD policy.

⁷ See, e.g., <https://ithacavoice.org/2015/09/ithaca-superintendent-apologizes-for-anti-israeli-comments-made-to-3rd-graders/>; see also <https://legalinsurrection.com/2015/09/superintendent-third-grade-event-politically-skewed-inflammatory-against-israel/>

Drs. Lovell Brown and Sean Eversley Bradwell

May 28, 2024

Page 6 of 6

Please provide us with evidence of ICSD's compliance with (or denial of) this request prior to the May 31, 2024, SOCU Summit.

Respectfully,

/William A. Jacobson/

William A. Jacobson, Esq.

Founder, Equal Protection Project.

President, Legal Insurrection Foundation

Cc (by email):

Robert Van Keuren

ICSD Director of Human Resources and Labor Relations

Mary Grover

ICSD Assistant Superintendent of Inclusion