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February 28, 2024

Universities of Wisconsin
Board of Regents
Chancellors of the Universities of Wisconsin
Office of the General Counsel
Van Hise Hall
1220 Linden Drive
Madison, WI 53706

Re: Ongoing Race Discrimination at the Universities of Wisconsin

Dear Members of the Board of Regents, Chancellors of the Universities of Wisconsin, and General Counsel Quinn Williams:

We are writing to alert you to a significant number of race-based programs that continue to discriminate against students at the Universities of Wisconsin (UW), despite contrary public statements that UW intends to comply fully with federal nondiscrimination law. We are calling on the Board of Regents to investigate all remaining race-based programs at each UW campus and to make a public statement clarifying that UW does not condone any program or policy that continues to use race as a factor in any decision. We appreciate that this has been an ongoing process since June 2023, but we urge UW to dismantle these remaining discriminatory programs as soon as possible.

Background

On June 30, 2023, the United States Supreme Court prohibited educational institutions from using race as a factor in admissions. The legal principles announced were not limited to admissions. The decision was broad, impacting all university policies and programs where race is a factor. The Supreme Court wrote that a university is never permitted to "use race as a factor in affording educational opportunities." Even where a university hopes to achieve the "benefits of diversity," race may not be even one factor among many. In practice, race can never be used as a "negative," such as when one student is given a preference over another or access to a specific program or job based on race. Moreover, a university may never use a "stereotype," such as when a university employee says, "a black student can usually bring something that a white person cannot offer." Stereotyping would also include the use of imprecise and arbitrary racial categories such as "white," "Asian," or "Hispanic." In short, the Court explained that "eliminating race discrimination

means eliminating all of it." *See generally*, *Students for Fair Admission v. President and Fellows of Harvard College,* 600 U.S. 181 (2023).

In response to *SFFA*, UW took several commendable steps. On the day of the decision, UW-Madison Chancellor Mnookin promised, "we will, of course, adapt our practices to comply with the law." UW also posted a webpage about the decision. Although these public-facing websites appear to have remained unchanged since August, several components of UW quietly made other changes. For example, the internal "First-Year Application Evaluation Instructions" for UW-Madison was changed to reflect that "the undergraduate admissions process does not consider race/ethnicity as one of the criteria for consideration for admission" and "we will not consider race in and of itself as part of the evaluation." An internal presentation from Chancellor Mnookin also listed that racial data was removed from "application materials for review," steps were taken to ensure admission reviewers "do not have access [to] store race/ethnicity data," and any diversity-related question required legal review and approval.[1] Finally, UW-Madison changed the definition of diversity to remove race as an element.[2]

Most notably, the UW took important public steps to come into compliance with *SFFA* through their negotiations with the Wisconsin State Legislature. UW agreed to eliminate diversity, equity and inclusion (DEI) statements for employees and students, agreed to a cap on DEI hiring and restructuring of a third of DEI positions, and ended a diversity hiring program, among other things. Another significant announcement came in January 2024, when UW spokesman Mark Pitsch told WisPolitics that UW will eliminate the use of race as a factor in all non-statutory UW scholarships.[3]

These are important steps, although we remain skeptical on some of these reforms considering UW's decision to re-brand DEI as "Inclusive Excellence."[4] We were also disappointed to see the comments of UW Whitewater Chancellor Corey King, who told reporters that "nothing has been closed," that DEI is "just work being reimagined and restructured," and that DEI employees are now working under different offices but have the "same job responsibilities they did previously."

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[1] *See* Mnookin, *Academic Leadership Summit Presentation* (Aug. 30, 2023).

[2] *See, e.g.,* Charles Isbell, *TOP and Other Recruiting and Retention Programs Memo* (Sept. 6, 2023). We should note that although UW adopted an "institutional statement" on diversity that removed all references to race, some sectors of UW persist in using race as a part of the definition of diversity. We assume these webpages have simply not been updated and you are working to correct these issues. *See* School of Nursing, "Diversity & Inclusion," last visited Feb. 26, 2024, available here (defining "diversity" differently from the institutional statement and including "race, ethnicity" and other protected categories); Office of the Secretary of the Faculty, "Realizing Equity, Diversity, Inclusion, and Belonging at UW-Madison," last visited Feb. 26, 2024, available here (defining "diversity" contrary to the institutional statement and including "race and ethnicity, sex; gender" and other legally protected categories).

[3] A screenshot of this reporting is in the appendix.

[4] *See, e.g.,* Jennifer Noyes, *Emails on Inclusive Excellence* (August 2023).

We hope these comments are not representative of UW's overall policy towards race-based DEI.

Remaining Race-Based Scholarships & Other Programs

Despite these public actions and statements, race discrimination remains entrenched in many corners of UW. We have heard complaints, including anonymous complaints, from both students and staff. Through public records requests and reviewing other resources, we discovered many ongoing race-based programs. We are writing because you are likely unaware of some of these existing programs, given UW's public statements promising compliance with *SFFA* and promises to eliminate, for example, race as a factor in scholarships. Nevertheless, these programs exist, and we are calling on you to open them up to all students, regardless of race:

1. *Board of Regents 2024 Diversity Awards*. On February 9, 2024, the Board of Regents presented "Diversity Awards" worth $7,500 each to "students who are members of historically underrepresented populations (including African American, Native America, Hispanic/Latino, Asian American, and Southeast Asian), first-generation and/or economically disadvantaged." Race is used here as a preference since some students who are not first-generation or economically disadvantaged were disqualified by their race. This is illegal and unconstitutional.

2. *UW-Madison Kemper-Knapp Fellowship*. UW-Madison's Office of the Vice Chancellor for Research and Graduate Education advertises and administers a fellowship open to students "from underrepresented backgrounds, such as students of color and low-income first-generation students." By its own terms, some students will not be on an equal footing to compete for this scholarship based on race.

3. *UW-Madison BIPOC Fellows Program*. The "Community Engaged BIPOC Fellows Program" is a scholarship program for "undergraduate Students of Color." This program is currently the subject of a federal civil rights complaint. It is illegal because it discriminates based on race.

4. *UW-Madison Marion McCammond Award*. This award is for an "outstanding student of color." Awards and scholarships based on race are illegal and unconstitutional.

5. *UW-Madison Multicultural Student Center Internships*. MSC operates an ongoing internship program that is "dedicated to enhancing the student of color experience." The center's website lists internship jobs for the following racial categories: "Latinx," "Black," "Indigenous," "APIDA" (serving a limited

group of students from Asia), and "MENA" (Middle Eastern North African). Notably, in one of the job listings, UW-Madison provides this as its "equal employment opportunity statement": "UW-Madison is an Equal Employment, Equal Access Employer committed to increasing the diversity of our workforce." This is not an equal opportunity statement, but the opposite: it commits UW to discrimination based on race.

6. *UW-Parkside Chase Diversity Scholarship*. This scholarship is open for applicants through April 24, 2024, and states that the "recipient must be a student of color and must show evidence of leadership activities." Such a scholarship, administered by a state agency and funded by a private entity, violates the state and federal constitution, Title VI, and several provisions of the Civil Rights Act, including Sections 1981, 1983, and 1985.

7. *UW-Whitewater McNair Scholarship*. This scholarship, which is currently open for applicants, is limited to first-generation college students, economically disadvantaged students, or "Black, Latinx, Native American, Pacific Islander" students. The scholarship therefore discriminates based on race because white, Asian, and Middle Eastern students, for example, are ineligible if they are not first-generation or economically disadvantaged.

8. *UW-Whitewater Kaleidoscope Students of Color Group Therapy*. This service offers "group therapy for students of color from counselors of color." This program is particularly surprising because in October 2021, WILL warned UW-Madison that it could not offer race-based mental health counseling. In response, UW-Madison agreed that it would not, in fact, discriminate based on race. So it is confusing as to why UW-Whitewater would attempt the same type of programming that UW-Madison admitted was not lawful.

9. *UW-Green Bay New Scholars Rising Program*. According to its website, UW-Green Bay offers a mentorship program only to "first year students of color and first-generation college students." These first-year students will then be paired with a "BIPOC" mentor. The program offers a $400 scholarship.

10. *UW-Madison Race-Based Housing*. Despite federal prohibitions on race discrimination in education and housing, UW-Madison persists in sponsoring race-based housing. For example, UW-Madison advertises the "Essence Theme Community," which is a portion of Witte Residence Hall reserved for 57 students who identify as "Black diaspora."

The ten scholarships, awards, or opportunities above are merely examples of race-based policies or programs that persist at UW. There are likely more. We call on you to investigate any remaining race-based policies or programs and open them up to all students, regardless of race.

We appreciate that UW is a large institution and compliance with *SFFA* is a process. Moreover, we understand that some of the ten examples above may be slated for reform in the coming months. We would appreciate a response updating us, and the public in general, on UW's plans to comply with federal law.

The steps taken by UW so far have been substantial and important. You should now finish the job. Refusal or delay may result in liability, including federal investigations or lawsuits, under Title VI and other federal civil rights laws. To avoid these unnecessary risks, we encourage you now to take swift and decisive action.

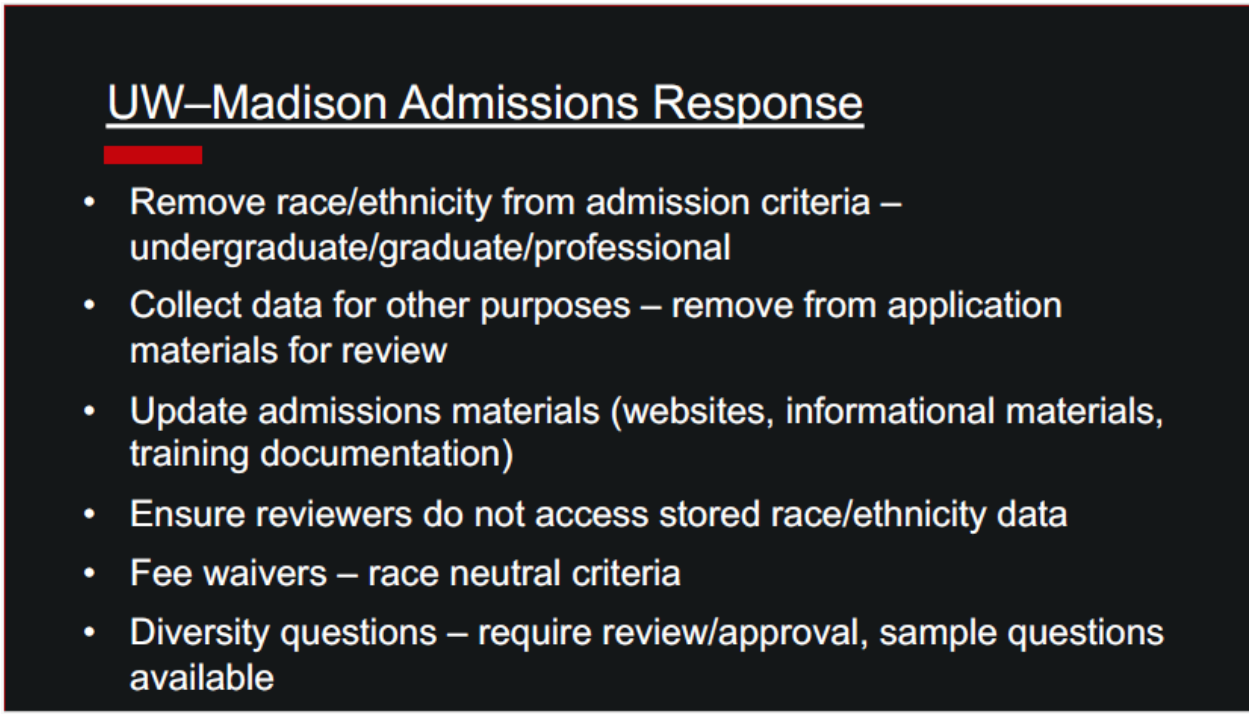
Sincerely,

Daniel P. Lennington
Deputy Counsel
Equality Under the Law Project
Wisconsin Institute for Law & Liberty

Attachment: Appendix of Images

Appendix – Images of Items Referenced

1. Academic Leadership Summit Presentation (excerpt) (Aug. 30, 2023).



2. TOP and Other Recruiting and Retention Programs Memo (excerpt) (Sept. 6, 2023).

Date: September 6, 2023
To: Deans and assistants
From: Charles Lee Isbell, Jr., Provost and Vice Chancellor for Academic Affairs
Subject: TOP and other recruiting and retention programs

As we begin another year of faculty recruitment and retention, I write to make you aware of a slightly revised funding structure for the TOP program and the number of positions available to your school, college, or division this academic year, as well as some additional resources for hiring.

As you are aware, the TOP program helps academic departments recruit faculty who would greatly enhance the quality and diversity of the department. Please note that UW–Madison's statement on diversity recognizes diversity broadly, and broadly speaking, diversity is an important component of inclusive excellence for our departments and our institution. Relevant forms of diversity that may expand the inclusive excellence of a department may include or relate to identity, culture, background, experience, disability, intellectual viewpoint and perspective, and opinion.

Appendix – Images of Items Referenced

3. University of Wisconsin, Institutional Statement on Diversity (2023).

Institutional Statement on Diversity

Diversity is a source of strength, creativity, and innovation for UW–Madison. We value the contributions of each person and respect the profound ways their identity, culture, background, experience, status, abilities, and opinion enrich the university community. We commit ourselves to the pursuit of excellence in teaching, research, outreach, and diversity as inextricably linked goals.

The University of Wisconsin–Madison fulfills its public mission by creating a welcoming and inclusive community for people from every background – people who as students, faculty, and staff serve Wisconsin and the world.

4. Emails on Inclusive Excellence (excerpts) (Aug. 2023).

From: Jennifer L Noyes
To: Jennifer Mnookin
Subject: Any Thoughts? Meeting Tomorrow
Date: Sunday, August 20, 2023 5:43:46 PM
Attachments: EDI Questions from Jay Combined and Reorganized to Align with Presentation.docx
image001.png

Chancellor –

I am not sure if you have looked at the questions Jay sent out in the packet of materials in re: the meeting tomorrow morning. (For my part, inclusive excellence is the direction I believe you want to go. But everyone who works in this area does not below in "student success" because – at least on our campus – inclusive excellence is also about faculty and staff. I am concerned that this concept gets lost in the framing that Jay has presented.)

Anyway, I am pretty comfortable with most of this.

The one question is if you think the chancellors should be aligned on a set of principles relative to DEI and how we articulate those principles.

Thanks.

Jennifer

Jennifer L. Noyes
Interim Chief of Staff, Office of the Chancellor

Appendix – Images of Items Referenced

Continued…

Discussion Questions

- Given political landscape and legislative decisions, do we need to refer to EDI as something else (e.g., "inclusive excellence)?
  - Should we change the titles of our diversity personnel?
  - Should we have greater clarity on the EDI numbers provided to the legislature?
  - Should we reorganize and place EDI staff into student success areas?
  - At what stage do we compromise our principles relative to reevaluating EDI?

- On a system-wide basis, we have not had much success in increasing the percentage of URM students or closing the retention and graduation gaps for URM students. In that context, should we be reevaluating what has and has not worked?
  - What are we doing well? Where are the voids? Are there benchmarks to determine whether efforts are effective? Are efforts aligned with strategic aims?
  - In what ways are the critics of EDI correct?

- How do we approach EDI goals in light of Harvard/UNC?

- Do the chancellors need to be aligned on the approach moving forward?
  - Are there a set of principles we can agree on relative to EDI?
  - How do we articulate those principles?

- What role can/should UWSA play in all of this given that most of the work/staffing is at the university level?

Appendix – Images of Items Referenced

5. UW Statement to WisPolitics (Jan. 12, 2024).

Universities of Wisconsin working to eliminate race as a factor in scholarships

The Universities of Wisconsin expects to eliminate race as a factor in most scholarships by the end of the academic year, according to a UW spokesperson.

The change comes as Republicans in the Legislature have blasted the universities' diversity, equity and inclusion efforts and sought to eliminate racial considerations in academic programs.

The only scholarships or grants where race could be used as a factor would be scholarships or grants that require or allow race to be considered under state or federal law, Universities of Wisconsin spokesperson Mark Pitsch told WisPolitics.

6. Board of Regents Diversity Awards (Feb. 9, 2024).

Presentation of the Board of Regents 2024 Diversity Awards.

SUMMARY

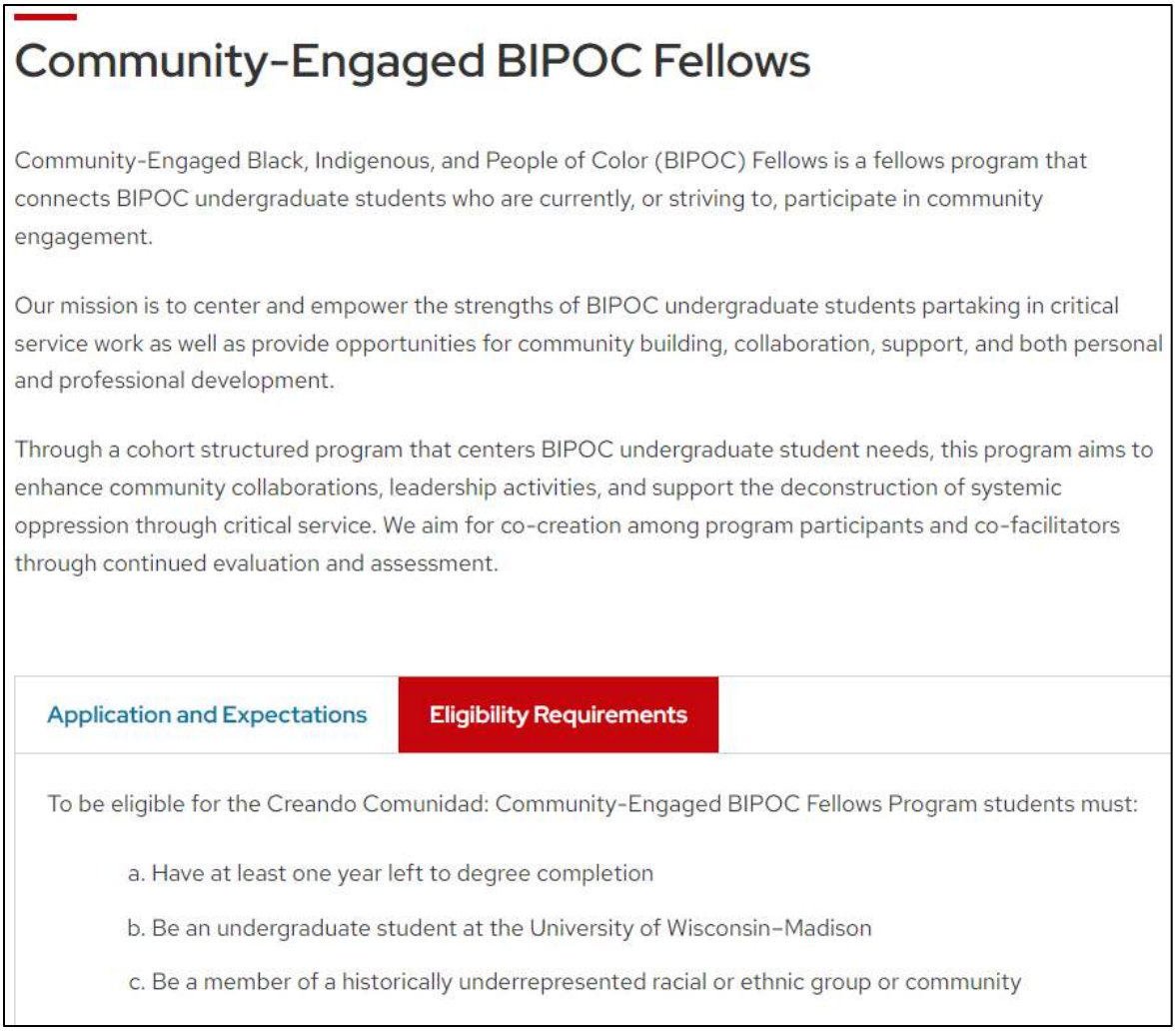
The purpose of the annual Regents Diversity Awards is to recognize university change agents who have established a successful record in fostering greater access and success for students who are members of historically underrepresented populations (including African American, Native American, Hispanic/Latino, Asian American, and Southeast Asian), first- generation and/or economically disadvantaged.

Each of the Universities of Wisconsin may nominate one staff member and one academic department/program/unit/team for these awards. The Regents Diversity Awards Committee selects the recipients, including two individual and one program, who receive awards of $7,500 to support individualized professional development or continuing programmatic activities.

Appendix – Images of Items Referenced

7. UW-Madison Kemper-Knapp Fellowship (2024-2025).

8. UW-Madison BIPOC Fellows Program (2023-24).



Appendix – Images of Items Referenced

9. UW-Madison Marion McCammond Award (2024).

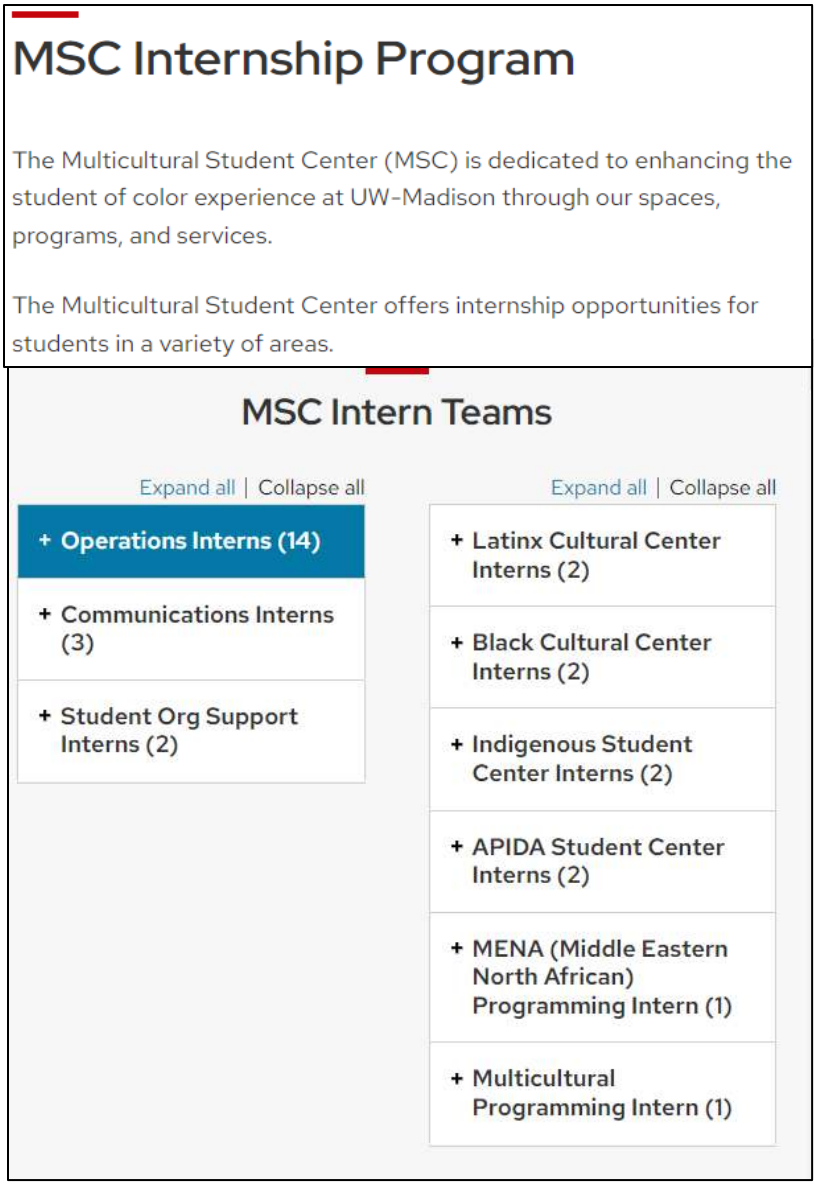
Marion McCammond Award

The Marion McCammond Award recognizes an outstanding student of color who has made contributions to the University community, greater Madison community, or the student's hometown.

Submit an Application/Nomination Here

Application/Nomination deadline: 5pm, April 2, 2024

10. UW-Madison Multicultural Student Center Internships (2024).



MSC Internship Program

The Multicultural Student Center (MSC) is dedicated to enhancing the student of color experience at UW-Madison through our spaces, programs, and services.

The Multicultural Student Center offers internship opportunities for students in a variety of areas.

MSC Intern Teams

Expand all | Collapse all

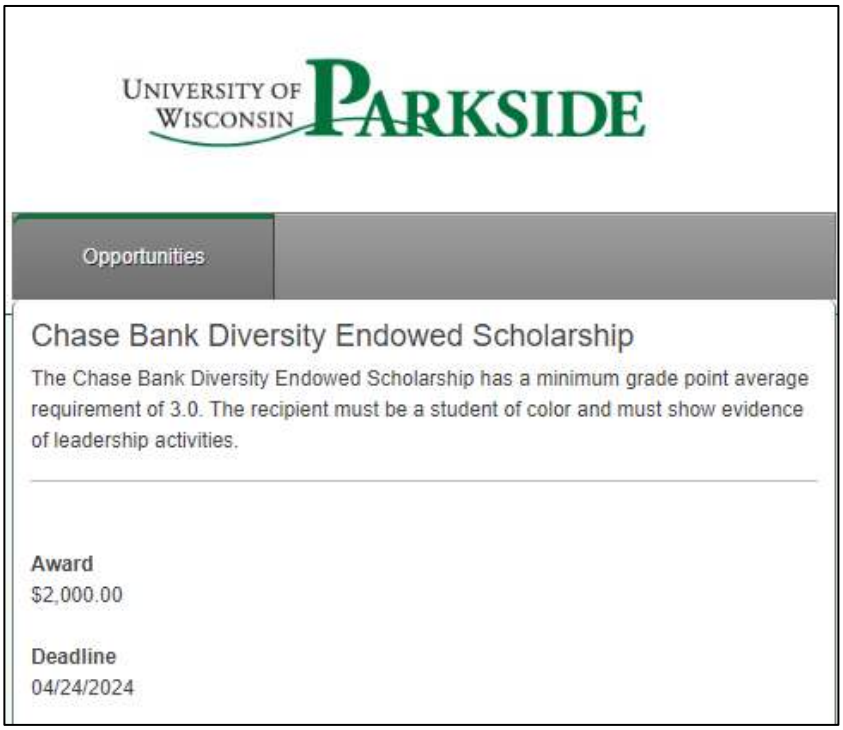
+ Operations Interns (14)
+ Communications Interns (3)
+ Student Org Support Interns (2)

Expand all | Collapse all

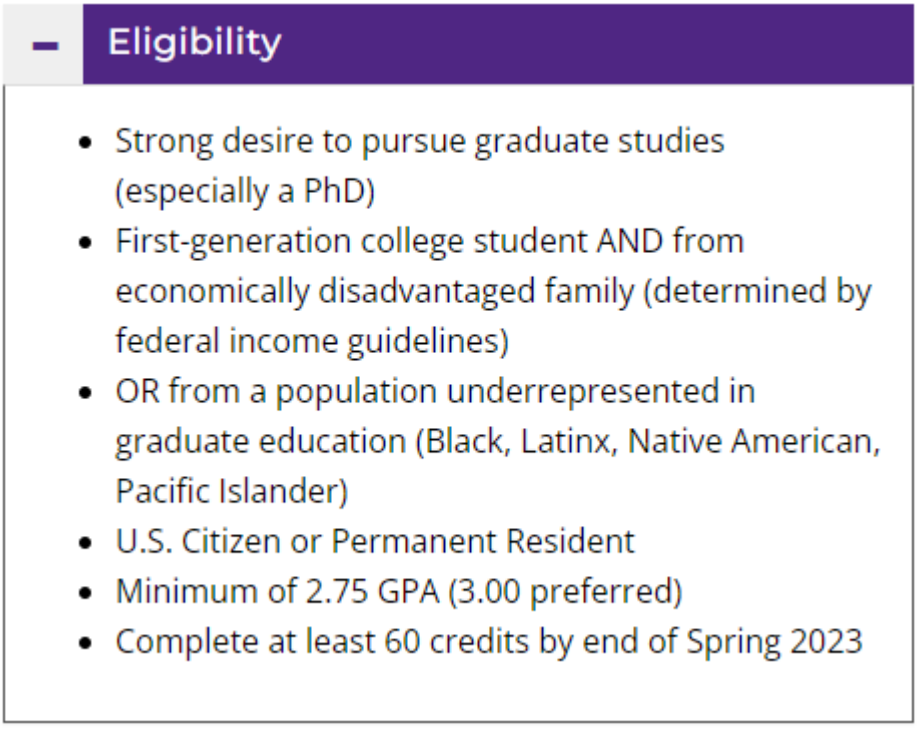
+ Latinx Cultural Center Interns (2)
+ Black Cultural Center Interns (2)
+ Indigenous Student Center Interns (2)
+ APIDA Student Center Interns (2)
+ MENA (Middle Eastern North African) Programming Intern (1)
+ Multicultural Programming Intern (1)

Appendix – Images of Items Referenced

11. UW-Parkside Chase Diversity Scholarship (2024).



12. UW-Whitewater McNair Scholarship (2023-24).



Appendix – Images of Items Referenced

13. UW-Whitewater Students of Color Group Therapy (2020).

1. Kaleidoscope Students of Color Group Therapy: For Mental Health Needs

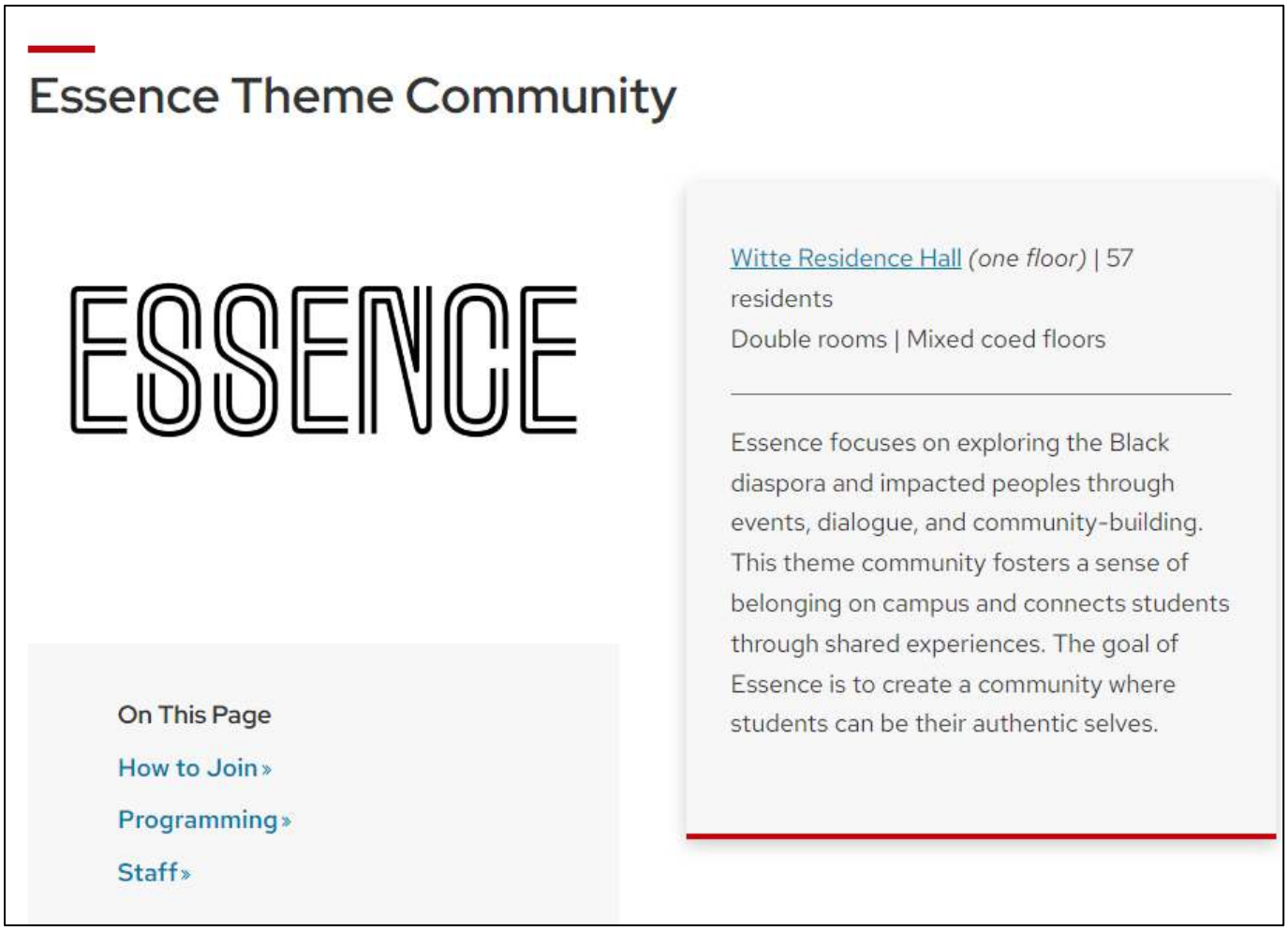
The University Health & Counseling Services at Ambrose Center offers group therapy for students of color from counselors of color. Amanda Isunza, a mental health counselor, facilitates discussions on the struggles faced by students of color on campus, such as impostor syndrome, trying to prove one's self, and engaging in uncomfortable discussions with white folks. These meetings happen once a week on the second floor of Ambrose Health Center and are free of charge! For more information, contact Amanda Isunza at IsunzaA09@uww.edu or call 262-472-1300 to set up an appointment.

14. UW-Green Bay New Scholars Rising Program (2024).

UNIVERSITY of WISCONSIN GREEN BAY

NEW SCHOLARS RISING

Thank you for your interest in New Scholars Rising (formerly BIPOC R.I.S.E.) peer mentoring program!
We pair first year students of color and first-generation college students with a peer mentor who is committed to helping and mentoring first year students. Our focus is on helping you grow and finding your unique strengths, while helping to ease your transition to college.

Appendix – Images of Items Referenced

15. UW-Madison Race-Based Housing (2024).