

No. _____

In the
Supreme Court of the United States

YI FANG CHEN, INDIVIDUALLY AND ON
BEHALF OF HER MINOR CHILDREN M.P., MA.P., AND P.P.,

Applicant,

v.

ZOHRAN MAMDANI, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF NEW YORK;
KAMAR H. SAMUELS, IN HIS OFFICIAL CAPACITY AS CHANCELLOR OF THE NEW YORK
CITY DEPARTMENT OF EDUCATION; AND NEW YORK CITY DEPARTMENT OF EDUCATION,

Respondents,

TEENS TAKE CHARGE, DESIS RISING UP AND MOVING,
COALITION FOR ASIAN AMERICAN CHILDREN AND FAMILIES, VERONICA CARRASQUILLO,
ON BEHALF OF HER MINOR CHILD, A.C., WANG JIN HUA, ON BEHALF OF HER MINOR
CHILD, A.Z., HALIMATOU DIALLO, ON BEHALF OF HER MINOR CHILD, K.D.,
JENNIFER VELEZ, ON BEHALF OF HER MINOR CHILD G.R.,

Intervenor-Respondents.

*To the Honorable Sonia Sotomayor, Associate Justice of the Supreme Court
of the United States and Circuit Justice for the Second Circuit*

**APPENDIX TO EMERGENCY APPLICATION
FOR AN INJUNCTION PENDING APEAL**

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S.D.N.Y. – N.Y.C.
26-cv-3355
Ramos, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 8th day of September, two thousand twenty-six.

Present:

Guido Calabresi,
Susan L. Carney,
Myrna Pérez,
Circuit Judges.

Yi Fang Chen, individually and on behalf of her
minor children M.P., Ma.P., and P.P.,

Plaintiff-Appellant,

v.

26-2066

Zohran Mamdani, in his official capacity as Mayor
of the City of New York, et al.,

Defendants-Appellees,

Teens Take Charge, et al.,

*Intervenor-Defendants-
Appellees.*

Appellant moves for an injunction pending appeal. Appellees oppose.

Applying the relevant precedents, we cannot conclude that Appellant has made the heightened showing that entitles her to the extraordinary relief she requests. *See Agudath Israel of Am. v. Cuomo*, 980 F.3d 222, 225–26 (2d Cir. 2020). There are complicated disputes of fact and law that we cannot resolve on the limited record before us for this emergency motion.

Upon due consideration, and for the foregoing reasons, it is hereby ORDERED that Appellant's motion for an injunction pending appeal is DENIED.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court







CERTIFIED COPY ISSUED ON 09/08/2026

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YI FANG CHEN, *individually and on behalf
of her minor children M.P., Ma.P, and P.P,*

Plaintiff,

-against-

ZOHRAN MAMDANI, *in his official capacity
as Mayor of the City of New York*, KAMAR H.
SAMUELS, *in his official capacity as
Chancellor of the New York City Department
of Education*, and NEW YORK CITY
DEPARTMENT OF EDUCATION,

Defendants.

ORDER
26-cv-3355

EDGARDO RAMOS, United States District Judge:

The Court conducted a show cause hearing concerning Plaintiff's motion for a preliminary injunction on July 21, 2026. For the reasons stated on the record, Plaintiff's motion is denied. In addition, Ma.P and P.P. are dismissed for a lack of standing. The Clerk of Court is respectfully directed to terminate the motion, Doc. 14, and terminate Ma.P. and P.P. as parties.

SO ORDERED.

Dated: July 21, 2026
New York, New York



EDGARDO RAMOS
United States District Judge

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1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF NEW YORK
 -----x

3 YI FANG CHEN, et ano,

4 Plaintiffs,

5 v.

26 Civ. 3355 (ER)

6 ZOHRAN MAMDANI, et al,

7 Defendants.

Argument

8 -----x

New York, N.Y.
 July 21, 2026
 2:35 p.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13 APPEARANCES

14 PACIFIC LEGAL FOUNDATION

15 Attorneys for Plaintiffs

16 BY: DEAN McGEE

17 GLENN E. ROPER

CAITLYN A. FELLNER

18 CORPORATION COUNSEL

SPECIAL FEDERAL LITIGATION DIVISION

Attorneys for Defendants

19 BY: TONYA JENERETTE

ABIGAIL STRANGE

20 NAACP LEGAL DEFENSE & EDUCATIONAL FUND INC.

21 Attorneys for Intervenor Defendants

22 BY: DONYA KHADEM

ASJA TOWNS

-and-

23 LATINOJUSTICE PRIDEF

24 BY: MARIANA LOPEZ

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1 (Case called)

2 THE DEPUTY CLERK: Counsel, please state your name for
3 the record.

4 MR. MCGEE: Dean McGee, on behalf of plaintiff, with
5 my colleagues Glenn Roper and Caitlin Fellner.

6 And I'd like to acknowledge the presence of my client,
7 Yi Fang Chen, and her son, here today.

8 MS. STRANGE: Abigail Strange, for the city.

9 MS. JENERETTE: Good afternoon, your Honor.

10 Tonya Jenerette, for the city and the Department of
11 Education.

12 MS. KHADEM: Good afternoon, your Honor.

13 Donya Khadem on behalf of defendant intervenors. And
14 I also have my colleagues here, who I'll let introduce.

15 MS. TOWNS: Asja Towns, for defendant intervenors.

16 MS. LOPEZ: Hi, your Honor. Mariana Lopez, for
17 defendant intervenors.

18 THE COURT: Good afternoon to you all.

19 This matter is on for a preliminary injunction
20 hearing. And it is the plaintiffs that are seeking an
21 injunction. So, Mr. McGee or Mr. Roper, I'm happy to hear you.
22 And you can remain seated; just bring the microphone close to
23 you.

24 MR. MCGEE: Sounds good. Thank you, your Honor.

25 It was around seven years ago that Yi Fang Chen was

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1 among a group of plaintiffs who filed an action seeking to
2 enjoin racially motivated changes to the Discovery Program.
3 Her concerns recently came to fruition, with her son earning a
4 score that would have admitted him to Stuyvesant but for those
5 revisions.

6 Of course, the Court denied the preliminary injunction
7 in 2019. And the natural question for the Court to ask is
8 what's changed?

9 Our answer is: Quite a lot, both in the development
10 of equal protection clause jurisprudence, and in the
11 development of the factual record through the related case and
12 the discovery that's now been presented here.

13 So starting with the developments in the law and
14 focusing on the preliminary injunction factor of likelihood of
15 success on the merits, I think the best place to start is
16 *Students for Fair Admission*, and specifically what that
17 decision meant for the issue of discriminatory intent. Because
18 discriminatory intent is certainly an area where I think the
19 parties are kind of talking past each other. And as I read
20 defendants' papers, both intervenors and the city, they take
21 the perspective that it's our burden to show actual animus
22 towards the Asian-American students. That is not the law,
23 certainly not after *SFFA*.

24 So the Court in *SFFA* acknowledged — as it really had
25 to — that the race-focused admissions processes they struck

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1 down were likely "well-intentioned and implemented in good
2 faith by the school administrators." For purposes of this
3 motion, it's fair to presume the same about the defendants
4 here. They were addressing something they viewed as a problem,
5 which was the racial demographics of the specialized high
6 schools.

7 But *SFFA* nevertheless struck down that program. It
8 held that the use of race in the admissions process was
9 unlawful and operated with discriminatory intent, in violation
10 of the equal protection clause.

11 How did they reach that conclusion? I think it really
12 comes down to the issue of zero sum admissions and the nature
13 of zero sum admissions in schools.

14 From the decision: "Admissions are zero sum, a
15 benefit provided to some applicants, but not to others,
16 necessarily disadvantages the former group at the expense of
17 the latter."

18 So in the documents here, when defendants are talking
19 about using the Discovery Program as a "lever" to admit certain
20 demographics, but not others, and when they are projecting
21 different ENI cutoffs, modeling different ways to essentially
22 racially balance the schools or, as they said publicly, to make
23 them look like New York City, that is discriminatory intent,
24 despite its benevolent framing. And *SFFA* said that efforts at
25 racial balancing are "patently unconstitutional" and that

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1 racial manipulations within a zero sum system violate one of
2 the twin commands of equal protection, which is that someone's
3 race should never be used by the government as a negative
4 against them.

5 THE COURT: But wasn't the Supreme Court's focus, at
6 least in large part, that the policies at issue in *SFFA* were
7 openly racial; they were policies that were meant to highlight
8 or benefit individual applicants because of their race.

9 Correct?

10 MR. McGEE: Yes. It's true that the admissions
11 processes specifically struck down in *SFFA*, you know,
12 explicitly, sort of on the back end, as they're reviewing
13 applications, would give points based on race. But *SFFA* also
14 said, sort of, you know, poetically, the Constitution deals
15 with shadows, not substance, right, as something that can't be
16 done explicitly. You can't give it a different name and try to
17 get around that to reach the same result. That's sort of the
18 point of the *Arlington Heights* analysis, is it allows the Court
19 to kind of look beyond the veil of facial racial neutrality and
20 examine the record.

21 So our perspective on that is when you look at the
22 internal record, the ENI -- the defendants openly talked about
23 racial goals. And then when you look at the documents that
24 were from the related action, discovery documents, you see them
25 essentially using ENI as a racial proxy, right, trying to

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1 racially balance using ENI as a proxy.

2 THE COURT: But you don't dispute that the policy
3 itself or the program, the Discovery Program, and the changes
4 that were sought to be implemented by the prior mayoral
5 administration were racially neutral.

6 MR. McGEE: No, I don't dispute facial racial
7 neutrality; I just ask the Court to consider *Arlington Heights*,
8 the quote I gave from *SFFA*, and the obligation to kind of look
9 beyond the facial racial neutrality to the purpose and the
10 design of the program.

11 THE COURT: And, by the way, the Supreme Court has
12 never held that diversity can never be a legitimate
13 governmental goal; correct?

14 MR. McGEE: *SFFA* is pretty clear that it certainly
15 does not satisfy strict scrutiny. And our argument is, of
16 course --

17 THE COURT: The diversity or the matter at which one
18 would want to arrive at?

19 MR. McGEE: I'm paraphrasing, but *SFFA*, my read of it
20 certainly is that, sort of, general goals of diversity are
21 quite clearly, after *SFFA*, not considered a compelling
22 governmental interest.

23 I would also draw the Court's attention to Judge
24 McMahon's decision in the *National Endowment for the Humanities*
25 case, where she essentially said that often those types of

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1 racial decisions don't even satisfy rational basis scrutiny.

2 THE COURT: Okay.

3 MR. McGEE: On the issue of intent, I just also wanted
4 to briefly reference Judge Vyskocil's decision in *Herrera*,
5 because I think it is instructive; very similar statements from
6 the same city decision-makers: Former Chancellor Carranza,
7 former Mayor de Blasio, talked about in hiring at the DOE, that
8 they wanted to make the demographics "look like New York City."

9 And Judge Vyskocil took that as evidence, among other things,
10 of racial discriminatory intent as part of a broader package of
11 evidence showing essentially an effort at racial balancing in
12 hiring.

13 THE COURT: I'm sorry. So did Judge Vyskocil refer to
14 Richard Carranza's and Mayor de Blasio's statements?

15 MR. McGEE: She did. And it was in denial of summary
16 judgment by the city I believe was the context of that
17 decision, so not the same context. But she took that as
18 evidence, among other things, of unlawful race-based
19 decision-making.

20 THE COURT: And those statements were statements that
21 were brought to my attention in connection with the original or
22 the preliminary injunction motion in *Christa McAuliffe*;
23 correct?

24 MR. McGEE: That's correct, your Honor.

25 THE COURT: That preliminary injunction was upheld by

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1 the Second Circuit.

2 MR. MCGEE: Yes, it was.

3 And so, of course, we're asking the Court two things.
4 And I mentioned in the beginning that there have been
5 significant shifts.

6 One is through the equal -- the shift in jurisprudence
7 governing the equal protection clause after *SFFA*. And the
8 second significant development is in the factual record that
9 your Honor did not have before this Court through the discovery
10 documents in the *CACAGNY* action.

11 THE COURT: But you still relied to a great extent --
12 at least my reading of your papers -- on those prior statements.

13 MR. MCGEE: That is part -- but no longer all -- of the
14 evidence we are submitting.

15 And I appreciate my colleague pointing out that the
16 upholding of the PI denial really only addressed standing, but
17 not the merits of the decision --

18 THE COURT: Okay.

19 MR. MCGEE: -- as it related to discriminatory intent.

20 And then briefly on the issue of intent, we do think
21 it's worth emphasizing the simplicity with which the Supreme
22 Court more recently, after the filing of this case, summarized
23 *SFFA* and *Arlington Heights* in the *Callais v. Louisiana*
24 decision, saying very bluntly: If race played a role, strict
25 scrutiny applies. Judge McMahon, citing *Callais*, said

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1 similarly: When the government uses race to create a
2 classification for purpose of official action, the government
3 must satisfy strict scrutiny.

4 That brings us to the other big shift in equal
5 protection clause jurisprudence, which is the Second Circuit's
6 CACAGNY decision, again, in the related case. Now, we know
7 that the Second Circuit declined to make any finding as to
8 discriminatory intent.

9 I still think it's worth noting that, like the Supreme
10 Court, the Second Circuit zeroed in on the idea of a zero sum
11 admissions world and how to view equal protection clause cases
12 within that world.

13 From the decision: "Specialized high school admission
14 is a zero sum game, in that admitting more students from a
15 particular demographic means admitting fewer from other
16 demographics. Thus, the city's modeling also projected that
17 the changes to the Discovery Program would decrease the number
18 of Asian-Americans at the specialized high schools."

19 This only buttresses our point that the evidence of
20 discriminatory intent or purpose in a case like this does not
21 require overt animus, simply the intent by government actors to
22 categorize young people by their race and make decisions that
23 will ultimately negatively impact some of them based on their
24 race, even if they are framed positively or in a benign manner.
25 In other words, in a zero sum system, those aren't independent

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1 consequences; it's part of the patently unconstitutional.

2 That's the quote from the Supreme Court, racial balancing.

3 THE COURT: In this particular case, there isn't just
4 the test, right, there is the Discovery Program. And you have
5 no qualms with that program, do you?

6 MR. MCGEE: No, the program is permitted to exist
7 under the law. The big limitation, statutory – not
8 constitutional – limitation on it is just that it ultimately
9 can't hinder the academic performance of the school.

10 I'm paraphrasing.

11 THE COURT: And you have no qualm, I take it, with the
12 fact that part of what the city wanted to do was to expand the
13 Discovery Program.

14 MR. MCGEE: No. And certainly not for purposes of an
15 equal protection clause analysis. That's the pure expansion,
16 if not part of a, sort of, broader racial balancing goal, would
17 not trigger an equal protection clause.

18 THE COURT: And I take it you have no dispute with the
19 notion that a legitimate goal of the Discovery Program is to
20 expand educational opportunities for individuals from
21 economically disadvantaged backgrounds.

22 MR. MCGEE: Yes, I agree, that's the purpose of the
23 Discovery Program within Hecht-Calandra.

24 THE COURT: Okay. I guess we're just sort of
25 distilling this down to your case rises or falls on whether or

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1 not you are able to establish at this juncture, by whichever
2 standard we apply, that the defendant was intentionally
3 discriminating against Asian students.

4 MR. McGEE: Yes, through that lens that I just
5 discussed of the zero sum admissions, right, which would not
6 require a showing of a conscious decision to hurt
7 Asian-American students; it's the acknowledgment that when you
8 start to racially balance -- when you make efforts to racially
9 balance -- in this case through the ENI cutoffs, not just
10 expansion of the Discovery Program, but the specific ENI
11 targeting -- that was used as a racial proxy.

12 THE COURT: And so long as it's done however
13 appropriately under your theory, I take it -- I used the word
14 "diversity" before, let me now change it up just a little bit.
15 Would you quarrel with the fact that it's appropriate for the
16 government in any appropriate way to attempt to address the
17 impact of prior discrimination?

18 MR. McGEE: I'll answer that through the way the
19 Supreme Court answered it in *SFFA*, where any efforts to use
20 race to remedy prior discrimination has to be -- and I'm
21 paraphrasing a bit here, but it's specific racial
22 discrimination relevant to the program, it violated the
23 Constitution or a statute. That's a weak paraphrase. But in
24 the decision you'll see the Supreme Court actually did very --
25 only very narrowly allow that consideration to come into play

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1 if the government is using race as a factor.

2 THE COURT: But if the government is not using race as
3 a factor, then it is allowable.

4 MR. McGEE: It always depends on the circumstances,
5 right, to look to see, of course, whether race was the
6 motivating reason to do it. But, sure, with that caveat, if --
7 you know, yeah.

8 So I talked about how CACAGNY is relevant to the issue
9 of discriminatory intent, though it didn't address it
10 explicitly. It's most important for its discussion of
11 discriminatory impact. It clarified that a student like M.P.
12 unambiguously has a valid equal protection clause claim, even
13 though the projected decrease in overall Asian-American
14 representation at the specialized high schools failed to
15 materialize. And the Court pointed out as an example of an
16 Asian-American student who had had a viable claim through the
17 CACAGNY decision as an Asian-American student who is denied
18 entry to one of the more -- who got into the specialized high
19 schools, but was denied entry to the elite schools. Stuyvesant
20 specifically was called out by the Second Circuit as there
21 being evidence that Asian-American students -- fewer
22 Asian-American students were admitted to Stuyvesant as a result
23 of the changes.

24 THE COURT: I'm sorry. Did the Second Circuit say
25 that someone in the young students' situation here, someone who

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1 got into Bronx Science or Brooklyn Tech, but not Stuyvesant,
2 stated a claim?

3 MR. McGEE: Essentially, yes. Because it acknowledged
4 that there was not an overall reduction on the specialized high
5 schools as an aggregate, but "the number of Asian-Americans
6 receiving offers to the two most selected specialized high
7 schools, Stuyvesant and Bronx Science, declined."

8 So they did, I believe.

9 So essentially it was a reminder from the Second
10 Circuit that while we talk about these group protections in the
11 context of the equal protection clause, it is ultimately an
12 individual right and creates a valid equal protection clause
13 claim for a student in precisely M.P.'s position. That's
14 Ms. Chen's son.

15 Before turning to the other PI factors, I want to get
16 back to what I said about how not only has the law changed, but
17 the facts too.

18 We know that this Court already reviewed the public
19 documents available in 2019 and found that those alone were not
20 sufficient to establish discriminatory purpose. Again, we ask
21 you to revisit that decision in light of *SFFA* and *Callais*.
22 But, regardless, the discriminatory intent, when viewed through
23 those lenses, is beyond evident in the internal deliberations
24 now available to the Court.

25 So just some highlights.

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1 Exhibit 2 of the Roper declaration talks about the
2 city using Discovery as a lever to admit more black and
3 Hispanic --

4 THE COURT: I'm sorry. You'll need to slow down.

5 MR. McGEE: Apologies.

6 Exhibit 2 of the Roper declaration, it uses this
7 phrase -- the city said, We want to use Discovery as a "lever
8 to admit more black and Hispanic students."

9 Exhibit 3, the city is then talking about how to do
10 that. And they are talking about which ENI cutoffs
11 specifically --

12 THE COURT: By the way, that first part is -- you have
13 no qualm with, I assume.

14 MR. McGEE: So the big picture, right, as I walk
15 through these exhibits, the qualm, the concern, again, is with
16 the zero sum -- what that means in the context of zero sum
17 admissions, right, where in the context of what the Supreme
18 Court described as patently unconstitutional racial balancing.
19 It's when you start making those manipulations to achieve
20 racial goals in a zero sum system, as you make decisions that
21 increase one, you're necessarily making decisions that decrease
22 others.

23 So through that lens, if we do have a concern about
24 it, only within that context of what that means for our
25 clients, right, it ultimately is sending the message that the

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1 intent — though not stated explicitly — was to reduce, because
2 that is the mathematical consequence of trying to racially
3 balance.

4 Just briefly then on the exhibits.

5 In Exhibit 3, the city discusses using the ENI cutoff
6 specifically for that purpose, rejecting alternatives that "did
7 not change the racial makeup."

8 Exhibit 4 talks about ENI to target certain
9 demographics and includes the specific racial projections.

10 Exhibit 5 shows that once they decided on that 60
11 percent ENI cutoff, there are charts showing the projection to
12 decrease Asian participation in the Discovery Program from 64
13 percent to 38 percent.

14 And then Exhibit 7 is an internal summary that
15 specifically notes as a con "vociferous" opposition from
16 Asian-American leadership and resistance generally from those
17 who would have received seats in the absence of change.

18 So this takes it from a case where we're talking about
19 maybe just awareness of race to an explicit purposeful attempt
20 at racial balancing.

21 Unless your Honor has any more questions on
22 discriminatory intent, I'm happy to discuss the other PI
23 factors.

24 THE COURT: You can go on.

25 MR. McGEE: Okay.

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1 So with respect to irreparable harm, we don't think
2 there's any reason for this Court to revisit its decision that
3 equal protection clause violations are, in and of themselves,
4 irreparable harm. That would put the equal protection clause
5 right on par with the First, Fourth, and Eighth Amendments,
6 which the Second Circuit has recognized are entitled to that
7 presumption and which this Court recognized. Defendants rely
8 on Second Amendment cases. We view them as distinguishable for
9 that reason alone.

10 But, in any event, the irreparable harm here is clear.
11 It's the loss of a once-in-a-lifetime opportunity to attend
12 what is arguably the best high school in the country that he
13 earned but for this program.

14 THE COURT: Why should I conclude that, that he earned
15 it?

16 MR. McGEE: I don't think it's contested on the papers
17 in any meaningful way, that that three-point gap between his
18 score and the cutoff, he would have been in the range to be
19 admitted into Stuyvesant but for the 20 percent reservation of
20 students to the Discovery Program as part of the racial
21 balancing. I don't think that's contested. The city's own
22 projections – I believe it's Exhibit 8 – at the time projected
23 a ten percent difference. So that three points is well within
24 what the city itself projected.

25 THE COURT: Do I need to make a qualitative analysis

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1 as between Stuyvesant and Brooklyn Tech? Because, as I
2 understand it, he has a seat at Brooklyn Tech. By everyone's
3 account here, they are -- Brooklyn Tech, Bronx Science, and
4 Stuyvesant are the top three. Do I have to make a
5 determination that Brooklyn Tech is so much the lesser school
6 that it would be a constitutional violation to prevent or to
7 require that the young man to attend Brooklyn Tech?

8 MR. McGEE: The Court need not measure the differences
9 between Stuyvesant and Brooklyn Tech. I think the *Foulke*
10 decision which we cite is apt for its analysis. There, in a
11 different factual context -- divorce -- you had a student who had
12 the opportunity to go to Rye Day School, an excellent private
13 school in Westchester, or Mamaroneck, an excellent public
14 school. The Court said, I'm not going to weigh the comparative
15 merits of those schools.

16 The chance to miss a year that you can't get back at a
17 school that you want to go to as a child -- in this case it was
18 a parent, in that case, wanted the kid to go to -- is, in and of
19 itself, irreparable harm. I think that's true just from a
20 common sense perspective. You can't get your freshman year of
21 high school back, the friends you would make, the courses you
22 would take in a specific school. So I don't think the Court
23 needs to get into various merits.

24 I do think the record is clear, and even in the
25 CACAGNY decision, that Stuyvesant, among great schools -- and

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1 three of my best friends went to Bronx Science. But, you know,
2 Stuyvesant is considered the most elite of the specialized high
3 schools.

4 THE COURT: By the way, as I understand it from the
5 papers, you can apply to Stuyvesant for your sophomore year.

6 MR. McGEE: You can apply to Stuyvesant for your
7 sophomore year.

8 THE COURT: Do you know how many people do that?

9 MR. McGEE: I don't. But, again, we don't think that
10 changes the calculus of irreparable harm. Because the harm is
11 losing that freshman year at a school that he earned admission
12 to but for the unconstitutional program.

13 THE COURT: Okay.

14 MR. McGEE: As to balance of equities, hardships, and
15 the public interest, your Honor's denial in the related action
16 emphasized that unwinding the whole program, which was the
17 relief sought, that it had been planned for nearly a year, on
18 the eve of its implementation, weighed in the city's favor.
19 That's, of course, not at issue here.

20 We're talking about admitting one student who, again,
21 we argue, earned his place but for an unlawful attempt at
22 racial balancing. Your Honor's decision also emphasized that
23 the plaintiffs' hardships in that case were largely
24 speculative. That was, of course, understandable at the time
25 in that case, but is no longer true here. We have concrete

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1 harm: A student who was denied admission to his dream school.

2 And, as a general matter, the public interest is
3 always served when constitutional rights are upheld.

4 THE COURT: Let me ask you about that.

5 I understand that the student came in several points
6 below the cutoff.

7 MR. McGEE: Three points below the cutoff; correct.

8 THE COURT: Was he the first student below the cutoff
9 line?

10 MR. McGEE: I don't have access to the list, so that's
11 not a question I can answer in the abstract.

12 THE COURT: Presumably he was not.

13 MR. McGEE: Happy to presume hypothetically he was
14 not. I just don't know.

15 THE COURT: Okay. So if he was not the very first
16 student below the list, aren't you, in essence, asking me to
17 have him jump the line ahead of someone else who ranked even
18 higher? And defense makes the point -- I don't know whether you
19 would agree -- that that would actually be a violation of the
20 law establishing these schools.

21 MR. McGEE: So we don't agree.

22 First, I guess I'll start with the second point of
23 your question. We don't agree that this would violate
24 Hecht-Calandra. Hecht-Calandra establishes the necessity of
25 the SHSAT with the Discovery -- making allowance for Discovery

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1 Program. And our client took the SHSAT. He went through the
2 process that Hecht-Calandra requires. And what the Court has
3 to look for with the plaintiff before it is what is the -- if
4 the Court finds it was unlawful, what is the but-for world that
5 you should return him to for purposes of injunctive relief;
6 and, in this case, it's admission to the school. It's what the
7 Supreme Court did in the *Bakke v. Regents of California* case;
8 admission for one student who established would have been
9 admitted in that world but for a racial balancing program.

10 THE COURT: I happen to be old enough to remember
11 *Bakke*, and I don't recall that the admissions process was as
12 regimented there as it is here. So if it's regimented -- and
13 by that I mean there is a list of people who qualify or not.

14 And if the young plaintiff here is not first or second
15 or third or fourth on that list -- and I don't like to engage in
16 parades of horrors, but if I place him in the school, and the
17 first and second and third and fourth students who ranked ahead
18 of him came in tomorrow and said, What about me? wouldn't I be
19 required under what you're asking me to do to place them at
20 Stuyvesant?

21 MR. McGEE: No, your Honor. And let me just first
22 address the issue --

23 THE COURT: By the way, they could be Asian students,
24 they could be black, they could be white students. And if they
25 would have qualified but for this program, aren't you

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1 essentially requiring me to place them in the school?

2 MR. MCGEE: No, your Honor. I'll answer that question
3 first and then I want to go back to the violation of
4 Hecht-Calandra.

5 We're not, in part because, frankly, as far as we
6 know, none of those students have filed suit. And as your
7 Honor recognized in the --

8 THE COURT: Well, not yet.

9 MR. MCGEE: But as your Honor recognized in the
10 *Christa McAuliffe* action, it is well within the Court's
11 discretion on a preliminary injunction to consider the timing
12 of a lawsuit when considering the balance -- you know, when
13 making those balancing decisions. So there's, frankly, a big
14 difference between a plaintiff who filed back in April, as our
15 client did, and someone waiting, you know, until the month
16 before admissions are finalized. So, no, your Honor would be
17 able to say, Frankly, for this school year, you're too late.

18 The other kind of core point is we don't agree this
19 would be a violation of Hecht-Calandra. But the Supreme
20 Court's *Milliken* decision, which was a racial desegregation
21 case, made very clear that state rules governing school
22 admissions are not sacrosanct. Ultimately, it is protecting an
23 individual's constitutional rights, as we're asking the Court
24 to do here, would come above those considerations anyway.

25 So I'm happy to conclude here.

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1 Again, just to reemphasize, this motion concerns one
2 student who would have been attending his dream school but for
3 a policy designed to reallocate educational opportunities by
4 race. We think it's clear from the public statements, but
5 certainly clear from the internal documents in the Roper
6 declaration, that the purpose was an effort at racial
7 balancing. So not mere incidental awareness of race, but
8 making decisions because of race. And so on this motion,
9 Ms. Chen is not asking the Court to dismantle the admissions
10 systems or displace other students, just that her son would be
11 placed where he would have been absent the constitutional
12 violation.

13 THE COURT: Let me ask you briefly – the intervenors
14 make the point that two of the other plaintiffs don't have
15 standing because of their relative age. And previously I did
16 not grant standing, for example, to the young gentleman here
17 because he was too far removed from being either hurt or not by
18 this policy.

19 MR. MCGEE: I believe both of those students are at
20 least a year older than M.P. was at the time your Honor made
21 the decision. One of them I'm almost certain is in middle
22 school, right, so more of the exact type of student who could
23 be granted prospective relief. And as to the younger student,
24 I think under the CACAGNY decision, it would be worth
25 revisiting your Honor's prior decision, frankly, just through

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1 the lens of how long that case has taken. It shows that these
2 things can, in fact, take longer than anyone anticipated. And
3 so it's not necessarily prudent to deny that relief on standing
4 and have them refile years later.

5 THE COURT: Thank you.

6 Ms. Jenerette.

7 MS. JENERETTE: Yes, your Honor.

8 So I guess two points: One, there has not been a
9 change in equal protection jurisprudence.

10 THE COURT: There's been some change in equal
11 protection jurisprudence.

12 MS. JENERETTE: Not that applies here or that should
13 affect the outcome here.

14 *Students for Fair Admission* is inapplicable to this
15 case because, in that case, the Supreme Court considered the
16 admissions policies at Harvard and UNC that were explicitly
17 race-based. And both of those cases, the admissions policies
18 considered race as an explicit factor in admissions decisions.
19 And the Court considered whether or not using race as a
20 classification to advantaged or disadvantaged students in the
21 admissions process could survive strict scrutiny. And the
22 Court found that on the facts presented there, it did not.

23 The Court also held that Harvard and UNC could have
24 and should have considered race-neutral options to achieve
25 racial diversity. And the Court did not strike down – did not

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1 hold — that race-neutral policies could not be used to achieve
2 racial diversity. And that is what we have here.

3 The Discovery Program, by their own admissions, the
4 2018 changes to the Discovery Program challenged here are
5 race-neutral, is a race-neutral policy to try to achieve racial
6 diversity in the specialized high schools.

7 It's worth noting too that in the Second Circuit --
8 the Second Circuit's decision in *CACAGNY* is a narrow procedural
9 holding that merely remanded the case, the *CACAGNY* case, to
10 this Court for discovery on the question of discriminatory
11 intent. The Court did not find that the changes to the
12 Discovery Program violated the equal protection clause, nor did
13 the Court find that the defendants acted with discriminatory
14 intent to exclude Asian-American students from the Discovery
15 Program.

16 The Second Circuit remanded the case for discovery on
17 the issue of discriminatory intent. And, in so doing, it is
18 worth noting that in footnote 7, the Court particularly
19 emphasized that because there was no discovery on the issue of
20 discriminatory intent, that they would have to presume intent
21 in their reasoning, the reasoning that plaintiffs cite around
22 zero sum admissions.

23 But the Court emphasized that their holding in no way
24 undermines or even implicates the Supreme Court's guidance in
25 *Feeney*, as applied by the Second Circuit and other under

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1 *Arlington Heights*, namely, that discriminatory purpose implies
2 that this decision-maker selected or reaffirmed a particular
3 course of action because of – not in spite of – its adverse
4 effects on an identifiable group.

5 And the Court held that the simple fact that the
6 board -- that a decision-maker may have been able to discern
7 that expanding – quoting *Coalition for T.J.* – the fact that the
8 board may have been able to discern that expanding the school's
9 black and Hispanic student population might, as a natural and
10 foreseeable consequence, impact enrollment figures for
11 Asian-American students or students of another racial group is,
12 under *Feeney*, wholly insufficient from which to infer a
13 constitutionally impermissible intent. And that is exactly
14 what we have here. And this is the point that plaintiffs fail
15 to grapple with; they refuse to grapple with it. Because they
16 cannot establish and have not established discriminatory intent
17 under that standard.

18 THE COURT: Let me ask a couple of questions,
19 Ms. Jenerette.

20 First of all, let me ask, with respect to discovery,
21 is discovery complete in *Christa McAuliffe*?

22 MS. JENERETTE: Yes.

23 THE COURT: And the plaintiffs highlight a particular
24 chart and particular discussions about a chart and how the
25 Board of Education modeled the Discovery Program, and how,

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1 pursuant to one model, the percentage of Asian students
2 dropped -- I forget exactly what the numbers were -- from like 64
3 to 38, am I right about that, something along those lines?

4 And they emphasized that the explicit discussions
5 around that modeling shows that this was a race-based
6 determination.

7 MS. JENERETTE: Yeah. So the plaintiffs -- their
8 description of that chart is misleading and it is false based
9 on the face of the document itself, right. So the modeling
10 that they refer to, it's referenced in Roper declaration
11 Exhibit 4, the chart. And it says that the percentage of Asian
12 students would drop from 47 percent to 38 percent.

13 But in that chart, your Honor, it says that the
14 pool -- that refers to the pool of diverse students who would
15 be eligible for the program, for the Discovery Program, the
16 applicant pool under different models. And under that model,
17 the pool of Asian students would drop from 47 percent to 38
18 percent. And the percentage of black students in the applicant
19 pool would increase from 11 percent to 24 percent.

20 But what plaintiffs ignore is that the demographics of
21 the students in that same model of Asian students who would
22 receive actual offers to the Discovery Program under the model
23 with the 20 percent expansion of the Discovery Program, with
24 the 60 percent ENI floor, the percentage of Asian students who
25 would receive offers to the Discovery Program would be 51

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1 percent. And that is also Roper Exhibit 4, the page is
2 CHMCE-065911.

3 And that is exactly what happened once the changes
4 implemented; that the percentage of Asian students continued to
5 receive more than 50 percent and, in some years, over 60
6 percent of the -- well, 50 percent of the offers, and they were
7 over 60 percent of the students who actually enrolled in the
8 Discovery Program.

9 THE COURT: How long has the Discovery Program been in
10 place now?

11 MS. JENERETTE: So the Discovery Program has been in
12 place since 1971. But the changes that they are challenging
13 here have been in place since 2018.

14 As the defendants establish in the declaration that we
15 submitted in support of our papers, the percentage of Asian
16 students admitted through the Discovery Program over that
17 eight-year period has steadily increased. And so certainly if
18 the goal of defendants was to discriminate against
19 Asian-American students and to reduce the percentage of
20 Asian-American students admitted to the Discovery Program, we
21 had eight years to reverse the changes that have resulted, and
22 more than 60 percent of Discovery enrollees being
23 Asian-American students, which has been the case every year.

24 In 2018, Asian students received -- and that was the
25 year the program was adopted. Asian students received 43

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1 percent of Discovery Program invitations, and they comprised 62
2 percent of students ultimately approved to participate.

3 In 2019, Asian-American students received 54 percent
4 of Discovery Program invitations, and comprised 65 percent of
5 students ultimately approved to participate.

6 In 2020, they received 50 percent of Discovery Program
7 invitations, and comprised 59 percent of students ultimately
8 approved to participate.

9 And I could go on.

10 Last year, in 2025, Asian-American students received
11 52 percent of Discovery Program invitations, and comprised 63
12 percent of students ultimately approved to participate.

13 Every single year since these programs -- since these
14 changes were adopted, from 2018 to the present, Asian students
15 have comprised no less than 56 percent of Discovery Program
16 participants. And that the goal then of the city of New York
17 and the Department of Education was to reduce the percentage of
18 Asian students participating in the program. We certainly
19 would not have continued with these changes.

20 THE COURT: Okay.

21 MS. JENERETTE: I think that was the last point that I
22 wanted to make.

23 Basically, that the plaintiff cannot prevail on the
24 extraordinary remedy of a preliminary injunction because she is
25 not likely to succeed on the merits, because she cannot

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1 establish on the facts here – even the facts that she's
2 presented from the *Christa McAuliffe* case – that there was any
3 intention to discriminate against any Asian-American students.

4 *SFFA* does not stand for the proposition that the
5 government may not implement race-neutral methods to achieve
6 racial diversity. The Supreme Court has had every opportunity
7 to consider that issue and in each case it has upheld the
8 constitutionality of it.

9 *Callais* is completely distinguishable here because
10 that is a voting rights actions case; it has nothing to do with
11 K through 12 or college admissions.

12 So the standard that plaintiffs have asked the Court
13 to apply, which is that any effort to achieve racial diversity
14 or to remedy the historical race discrimination is necessarily
15 discriminatory against any other ethnic group that may be
16 impacted by that as a Fourteenth Amendment violation. They can
17 cite no constitutional support for that argument. They can
18 cite no case law for that argument. Because the Supreme Court
19 has not held that, and the Second Circuit did not so hold.

20 THE COURT: What about the point that was made that
21 the fact that this program prevented him from attending his
22 first-choice school and what is arguably the most prestigious
23 of even the top three of the specialized high schools, isn't
24 that a constitutional damage that can be addressed?

25 MS. JENERETTE: It's not, your Honor. Because the

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1 plaintiff speculates that he would have been admitted to
2 Stuyvesant but for the 2018 changes to the Discovery Program.

3 THE COURT: Well, I mean, I think Mr. McGee
4 indicated -- and let me just ask straight out, do you agree
5 with the math that but for the changes to the Discovery
6 Program, the cutoff would have been lower and he would have
7 been accepted?

8 MS. JENERETTE: There's no way to know that, your
9 Honor. I mean, it's entirely speculative. The cutoff scores
10 change every year.

11 THE COURT: By the way, do you know whether or not he
12 was the first person below the cutoff line?

13 MS. JENERETTE: My understanding is that he was not.
14 I cannot state that with certainty, but my understanding is
15 that we can't say for sure that he would be admitted to
16 Stuyvesant. Based on that score, we don't know who's ahead of
17 him in the queue; we can't say with certainty that he's the
18 first person on the list so that he would get into Stuyvesant.

19 THE COURT: But I believe you made the point in your
20 papers that if I were to grant the relief sought, he would be
21 leapfrogging over other students.

22 MS. JENERETTE: He would be. We believe that he would
23 be. We can't say with certainty that he would not be, that he
24 would not leapfrog over other students.

25 THE COURT: Okay. Thank you.

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1 MS. JENERETTE: If I can just say one more thing on
2 the issue of his admission to Stuyvesant.

3 The courts in this jurisdiction have consistently held
4 that a student not getting their first choice or their
5 preferred choice of school is not the deprivation of an
6 education such that it's a violation of a constitutional right.
7 He cites *Foulke v. Foulke*, which is completely distinguishable
8 from this case. It's divorce. It's not binding, in any event.

9 THE COURT: That's the Mamaroneck case?

10 MS. JENERETTE: Sorry?

11 THE COURT: That's the Mamaroneck case?

12 MS. JENERETTE: Yeah. I mean, it's a case where the
13 child was -- you know, he had an offer to, or she -- I don't
14 know what the child's gender was -- had an offer to attend a
15 private school that he would lose if they did not accept it,
16 and then would be foreclosed from attending that school.

17 And so based on those facts, the Court found that
18 there was, you know, some harm that may have sufficed for a
19 preliminary injunction.

20 That is not the case here. I mean, if this student
21 can walk into Brooklyn Tech and take his seat in September, on
22 September 10th, irrespective of what happens here, he will
23 attend one of the most prestigious specialized high school in
24 New York City. He has a seat at Brooklyn Tech. Nobody is
25 going to take that away from him.

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1 The question just becomes, is he entitled to a seat at
2 Stuyvesant based on his speculation – unproven, entirely
3 unproven – and to give him a seat in violation of state law,
4 which requires that a student be admitted based solely on the
5 cutoff score, which he did not make. And he can speculate that
6 the only reason his cutoff score didn't qualify him for Stuy
7 was because of the Discovery Program.

8 But admitting him to Stuyvesant would be a violation
9 of state law and based totally on speculative harms. And
10 absent that, this student can still go to Brooklyn Tech, and he
11 can still do exactly what his mother said he's going to do,
12 which is, sit for the SHSAT again next year and start his
13 sophomore year at Stuyvesant if he makes the cutoff score.

14 THE COURT: I believe I read in your papers that there
15 is no Discovery Program for sophomore hires or admittees.

16 MS. JENERETTE: That is correct.

17 THE COURT: Can you give me an idea of how many
18 students are able to get into Stuyvesant in their sophomore
19 year?

20 MS. JENERETTE: I am not sure. But if he takes the
21 test and he makes a cutoff score, he will be admitted to
22 Stuyvesant. It's not like the DOE will say, Sorry, all the
23 seats are filled. You can't go to Stuyvesant. There are no
24 more sophomore seats available for you.

25 If he takes the test and makes the cutoff score, he'll

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1 get a seat.

2 THE COURT: Thank you.

3 Ms. Khadem, is there anything that you wanted to add?

4 MS. KHADEM: Yes, your Honor. And really quickly, I
5 just want to correct something for the record.

6 Our understanding is that in *McAuliffe*, discovery is
7 not yet completed, not on every issue in the case.

8 MS. JENERETTE: That is fair to say. The fact
9 discovery is completed. Expert witness discovery is not
10 completed, because we moved to challenge their standing. And
11 so if the Court finds that they have standing, then expert
12 witness depositions will go forward.

13 THE COURT: Okay.

14 Mr. McGee.

15 MR. MCGEE: Thank you, your Honor. Just briefly.

16 My understanding is fact discovery is completed but
17 for our right to take depositions on the issue of
18 discriminatory intent.

19 THE COURT: That hasn't happened yet?

20 MR. MCGEE: No.

21 THE COURT: How could discovery be complete?

22 MR. MCGEE: So there's depositions and then there's
23 expert discovery.

24 THE COURT: Okay. Very well.

25 Ms. Khadem, anything else?

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1 MS. KHADEM: Yes, your Honor.

2 I would like to address a few of plaintiffs' primary
3 points.

4 First, the Court should deny plaintiffs' motion for a
5 mandatory preliminary injunction, which is extraordinary
6 relief, solely because not only do they not meet any of the
7 factors for a mandatory preliminary injunction, but, most
8 importantly, they don't meet the requirement that they can show
9 a clear and substantial likelihood of success on the merits.
10 Because nothing in the record at this time and nothing in the
11 papers that plaintiffs point to as evidence of intent are
12 actually evidence that the defendants intended to discriminate
13 against Asian-American students in the creation of the 2018
14 Discovery Program.

15 So I'll just address a few of the plaintiffs' points
16 directly.

17 So, first, there is nothing impermissible – there's
18 nothing constitutionally impermissible about a school district
19 taking race-neutral steps or adopting a race-neutral policy
20 with the goal of ensuring that all students, regardless of the
21 neighborhoods they grew up in, the middle schools they
22 attended, the income of their families, their access to
23 resources, or their race, can equally compete for admission to
24 specialized high schools. *SFFA* did not change that, and
25 neither did *Callais*.

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1 Second, your Honor, the Economic Need Index is a
2 factor in invitation to the Discovery Program or in eligibility
3 for the Discovery Program is not a proxy for race. Proxy
4 discrimination occurs when the challenged policy treats
5 individuals differently based on seemingly neutral criteria
6 that is so closely associated that it can't be disentangled.

7 THE COURT: What happens, as I believe the plaintiffs
8 are urging, when facially neutral factors are going to affect
9 racial groups differently, and you're aware of it before you
10 implement the policy?

11 MS. KHADEM: Your Honor, the law has made very clear
12 both at the Supreme Court and in this circuit that mere
13 awareness of race or on impacts along racial lines when
14 adopting a racially neutral policy does not rise to the level
15 of discriminatory intent.

16 So it was completely okay, for example, for the school
17 district to be aware of the years of gross inequities in the
18 admissions rates of certain groups to the specialized high
19 schools, and to know that that needed to be addressed. But the
20 issue was really whether or not they intended in making those
21 changes to discriminate against Asian-American students. And
22 the record makes clear they didn't. A lot of the charts that
23 plaintiffs point to actually support the argument that there
24 was not any intent, so I can turn to some of those.

25 So just, first of all, the context really matters for

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1 a lot of the internal documents that plaintiffs cite to, so
2 that's the new evidence as they describe them. Both Wallack
3 and Chadha were part of the working group of staff members that
4 modeled potential Economic Need Index options, but neither of
5 them have ultimate decision-making authority under *Arlington*
6 *Heights*.

7 In the Roper declaration, it's very clear that Josh
8 Wallack could not adopt an ENI by himself, and that the
9 decision-makers would need to be the higher-ups, such as
10 then-Mayor de Blasio or then-Chancellor Carranza.

11 And so when you read the statements that your Honor
12 already considered in *McAuliffe*, where you decided that their
13 statements made clear that they did not have an intent to
14 discriminate, as part of understanding these ENI emails which
15 you'll see is that defendants actually used a multitude of
16 factors, including race-neutral factors, when they were
17 modeling the process.

18 So, for example, the ENI was really not chosen out of
19 thin air, as plaintiffs suggest. The ENI of 60 percent was
20 chosen after really thoughtful modeling and consideration of
21 alternatives, which were really focused on targeting
22 high-poverty schools, a race-neutral factor, and a desire to
23 increase middle school diversity. This is completely aligned
24 with then-Mayor de Blasio's statement that the specialized high
25 schools really had a geographic issue, as he says in one of his

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1 contemporaneous statements.

2 This is also reflected in the Power Point in Exhibit
3 3, which notes that four percent of the middle schools at the
4 time comprised 50 percent of the offers to the specialized high
5 schools. This is on page 31 of the Roper declaration document.

6 This is also aligned with the emails in Exhibit 4,
7 where Chadha writes that the 60 percent Economic Need Index is
8 grounded in the citywide average, not in anything related to
9 race. And she actually rejected using an 80 percent Economic
10 Need Index, because it would exclude too many
11 resource-challenged students. Nothing about race, just about
12 access to resources.

13 Plaintiffs say that the Department of Education
14 rejected alternative models in the Power Point in Exhibit 3
15 because they didn't increase diversity enough. But what
16 plaintiffs neglect to mention when they make that argument is
17 that the very next slide in the exhibits they provide says that
18 these alternative measures invited bias, which is why they
19 didn't go with that.

20 THE COURT: Invited?

21 MS. KHADEM: Biases.

22 THE COURT: Biases.

23 MS. KHADEM: Yes.

24 What plaintiffs' papers actually show is that they are
25 assuming, without support, that simply because the Department

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1 of Education ultimately chose a threshold that was projected to
2 increase the number of black and Latinx students admitted, that
3 the policy was necessarily chosen to discriminate against
4 Asian-American students.

5 But in this circuit, in the Second Circuit, the
6 *Jana-Rock* case makes very clear that awareness of an increase
7 in the number of individuals admitted through a certain policy
8 from certain racial groups should not be conflated with the
9 desire to decrease numbers from other groups.

10 I also think it's really important, your Honor, to
11 just point out a few of the discrepancies or misrepresentations
12 made in plaintiffs' arguments around the middle schools. So
13 plaintiffs point to the fact that 11 out of the 24 majority
14 Asian-American middle schools were excluded in the ENI
15 threshold that was selected; but they neglect to mention that
16 in the 2017 to 2018 school year. 106 schools were ineligible
17 for Discovery meaning that the 11 schools that were a majority
18 Asian-American and were no longer eligible were really only
19 10.4 percent of the schools that were no longer eligible. And
20 it's relevant that 15 majority black schools were also
21 excluded.

22 (Alarm sounded)

23 THE COURT: That generally means we'll get a message
24 in just a moment.

25 MS. KHADEM: Should I continue, your Honor?

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1 THE COURT: Wait.

2 MS. KHADEM: Okay.

3 (Pause)

4 THE COURT: Why don't you go ahead.

5 MS. KHADEM: Okay. Thank you, your Honor.

6 So I bring up these statistics and this understanding
7 of the data just to show that these are all facially neutral
8 and independently valid criteria that were used to adopt the
9 ENI, and nothing related to race.

10 Additionally, your Honor, I wanted to address directly
11 plaintiffs' reliance on *Herrera* and also on the *American*
12 *Council* case which are misplaced.

13 So *Herrera* involved a motion for summary judgment,
14 where plaintiffs needed only to demonstrate a genuine dispute
15 of material fact. Here, of course, we're in a preliminary
16 injunction posture, and the issue is whether or not there's a
17 substantial likelihood of success on the merits, and here there
18 isn't.

19 Second, *Herrera* arose in the context of Title VII in a
20 Section 1983 employment discrimination claim. And although the
21 Court did consider statements by Mayor de Blasio and Chancellor
22 Carranza expressing a desire for leadership to reflect
23 diversity of the city or look like New York City, it did not
24 hold that those statements alone constituted unlawful
25 race-based decision-making. And when you look at the whole

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1 record here, it is clear that the intent was to eliminate
2 barriers to access to the specialized high schools and not to
3 discriminate against Asian-American students.

4 Additionally, *American Council of Learned Societies* is
5 readily distinguishable from this case. It involved evidence
6 that the government expressly classified grants based on
7 protected characteristics, and used those classifications as
8 the operative criteria for terminating federal grants. And
9 here, there is no race used in the decision-making process for
10 who is invited to or eligible to the Discovery programs.

11 Additionally, your Honor, I wanted to make sure that I
12 spent a second talking about the other factors.

13 So not only do plaintiffs fail to meet their burden of
14 showing that they are likely to succeed on the merits of their
15 equal protection or Title VI claim – because intent would be
16 required for both – but they also fail to meet the other
17 requirements for a mandatory preliminary injunction.

18 I will start with the harm prong, the irreparable harm
19 prong, your Honor.

20 Their injury is entirely rooted in an alleged
21 constitutional violation. And this circuit and this district
22 has held that where the harm is the loss of a constitutional
23 right, as plaintiffs allege here, it's impossible to
24 disentangle whether or not there is a likelihood of success on
25 the equal protection claim here and the irreparable harm. And

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1 because they cannot establish an equal protection claim here
2 because of a lack of intent, they also cannot establish
3 irreparable harm.

4 Next, your Honor, it is speculative whether or not the
5 plaintiff M.P. would be admitted to Stuy but for the adoption
6 of the challenged policy here. And that's primarily because
7 prior to the adoption of the 2018 version of the Discovery
8 Program at issue here today, schools each had their own
9 independent discretion with respect to how many seats they
10 would leave open to Discovery Program students. So it's
11 actually the case that nobody knows how many seats Stuy would
12 have had. They might have had more than 20 percent of their
13 seats going to Discovery.

14 THE COURT: Is it still the case that Stuyvesant can
15 determine how many seats are open to Discovery?

16 MS. KHADEM: It's the case that they have to have 20
17 percent of seats open to Discovery.

18 THE COURT: So now they are required to have 20
19 percent.

20 MS. KHADEM: That's correct. And every one of the
21 specialized high schools is.

22 And so there is a world in which maybe Stuy decided
23 they wanted more students who were Discovery participants to be
24 at their schools, and so it would be possible that that
25 three-point difference still would not have allowed plaintiff

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1 M.P. to attend Stuy.

2 So there's speculation there. And given that this is
3 extraordinary relief, and particularly because the balance of
4 equities are not in favor, that's concerning.

5 And finally, your Honor, for all the reasons that my
6 colleague already addressed, admitting the plaintiff to Stuy
7 for the fall would mean that there's potential he would be
8 skipping students. But more than that, your Honor, it would
9 suggest to the public and to current Discovery Program students
10 and to those interested in participating in the Discovery
11 Program that it's tainted by a constitutional violation. It
12 would suggest that current Discovery Program students,
13 including several of our clients as defendant intervenors, got
14 in through a program that discriminated against others, and
15 that is a serious harm.

16 THE COURT: Serious harm to whom?

17 MS. KHADEM: It's a serious harm to the public. It's
18 a serious harm to students who are interested in attending the
19 specialized high schools. It's a kind of dignitary harm. And
20 that's why it's really important that a mandatory preliminary
21 injunction is not granted unless there is clear and substantial
22 likelihood of success on the merits. Because the merits really
23 inform what the Discovery Program appears to the public.

24 And then finally, your Honor, can I just say that the
25 younger students do not have standing to bring these claims.

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1 As you spoke with plaintiffs earlier, you've already held in
2 *McAuliffe* that students that are many years away from sitting
3 for the specialized high schools admissions test and who just
4 have these future goals of applying do not have standing to
5 bring claims challenging the policy.

6 THE COURT: Thank you.

7 Mr. McGee, I'll give you a couple minutes to respond.

8 MR. MCGEE: Thank you, your Honor.

9 I first want to be clear that I don't think it's fair
10 to say we're admitting race neutrality. I want to just be
11 clear about our allegations. The ENI cutoffs were used as a
12 racial proxy to advance racial balancing goals.

13 And *SFFA* said, acknowledging that this type of thing
14 could happen, said that which cannot be done directly cannot be
15 done indirectly.

16 I also want to be clear that there is no finding in
17 *SFFA* that the administrators intended to harm Asian-American
18 students. To the contrary, the Court acknowledged and even
19 sort of presumed benevolent intent conceptually, but focused on
20 that kind of mathematical ledger in a zero sum world, where you
21 temper racial balancing. You're necessarily using race as a
22 negative for those that you want fewer of.

23 It's important to note *Coalition for T.J.* is a case
24 from the Fourth Circuit relied upon by the defendants. That is
25 a pre-*SFFA* case.

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1 There was some discussions of the charts. And I
2 believe the city's counsel was focused on Exhibit 5.

3 There are charts in Exhibit 4 that are important to
4 understanding the internal deliberations of the city. But it
5 is the first page of Exhibit 5 that most explicitly projects
6 that if they make these changes, there will be a decrease of
7 Asian-American participation in Discovery from 64 percent to 38
8 percent.

9 Again, so the entire discussion about overall
10 attendance of Asian-American students at the specialized high
11 schools is effectively irrelevant after the CACAGNY decision,
12 particularly because CACAGNY recognized harm to a student like
13 this who gets into a specialized high school, but not the one
14 that he wanted to get into as a result of a constitutional
15 program, which the Second Circuit had to presume for purposes
16 of that decision was implemented with discriminatory intent.

17 As to the allegation that we are speculating that he
18 would have -- that Ms. Chen's son would have gotten in, I don't
19 think it's fair for the city defendants to say that we are
20 speculating. They are uniquely positioned to know how many
21 students are in between and what the numbers would have been in
22 a but-for world. And on the papers themselves, they don't
23 contest our general proposition that that three-point delta
24 would have gotten him in but for the 20 percent reserved for
25 Discovery students. In fact, Stuyvesant, my understanding,

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1 some years prior to these changes had zero Discovery students;
2 generally had very few.

3 The precedent about -- it was referenced by the city's
4 counsel, about denial of first choice not being a
5 constitutional harm, my understanding of all those cases is
6 that was in the context of alleging the deprivation of the
7 right to an education. We're not saying he's being denied his
8 right to an education. We're saying he has equal protection
9 harm that has denied him his entrance into his dream school.
10 That's an important distinction.

11 THE COURT: Does that exist as a constitutional
12 principle?

13 MR. McGEE: Yes. Right.

14 In *Bakke*, for example, right, it's an equal protection
15 case. The Court admitted the proper -- the Court decided that
16 the proper injunctive relief was to admit the plaintiff in that
17 case to the school he wanted to --

18 THE COURT: Was Mr. Bakke -- had he been admitted to
19 another medical school?

20 MR. McGEE: I don't know off the top of my head. It
21 certainly wouldn't surprise me if he was, in fact, admitted to
22 another medical school, in the same way another hypothetical
23 would be an employment discrimination case, right. Someone
24 applies to the job they really want, they are denied for
25 discriminatory reasons. Well, they have a job that's second

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1 best. That doesn't undermine the fact that they were harmed by
2 discrimination in their denial of a job opportunity at their
3 first choice.

4 The phrase "aware of race" was used by the defendants
5 a few times. We just want to be clear, we're not alleging this
6 is a case where the defendants were merely aware of race.
7 Awareness is different. It's making decisions because of race,
8 specifically for the purpose of racial balancing, specifically
9 for the purpose of racial balancing in a zero sum admissions
10 context, which is *SFFA*.

11 THE COURT: So that's what you're asking me to find on
12 this record, that they did this because of race.

13 MR. MCGEE: Because of race, not awareness of race.

14 And we think that's very clear from the record. I
15 think the dispute is about, you know, discriminatory intent.
16 And that's where, again, I refer your Honor to *SFFA*, the fact
17 that the Court acknowledged conceptually benevolent intent;
18 said it's still not good enough in a zero sum admissions
19 context.

20 I believe it was the intervenor defendants who said
21 that our arguments about harm are entirely rooted in a
22 presumption that a constitutional violation is harm. That is
23 what your Honor found in the 2019 decision. But, of course,
24 we've detailed the harm that we view would apply to our client
25 just from denial of his freshman year at Stuyvesant. There was

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1 a factual question about the number of students admitted
2 through this sophomore year program. I also don't know the
3 numbers, but I do know that it's very few. It's an
4 extraordinarily narrow path.

5 And I think that -- if I could just talk to my
6 colleague. I think that sufficiently addresses --

7 THE COURT: Let me ask you this question, and I
8 struggle with how to raise it.

9 The defendants provide information essentially showing
10 that, if anything, Asian students' participation in the
11 specialized high schools over the course of the life of the
12 Discovery Program as amended during the de Blasio
13 administration, has, if anything, increased rather than
14 decreased. And, therefore, is this plaintiff being hurt by the
15 fact that those that are being admitted into the program now
16 are Asian students or perhaps relatively economically
17 disadvantaged as to him?

18 MR. MCGEE: When viewed through the lens of the Second
19 Circuit's *CACAGNY* decision, what matters is intent, right,
20 coupled with injury to one student who is of the race, you
21 know, that the intent was to harm. And, again, it always
22 brings us back to that question of what is intent? We have
23 different perspectives on that. We think *SFFA* says, again, you
24 don't have to intend to harm the Asian-American students; it's
25 just that the mathematical consequence of racial balancing is

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1 the intent.

2 THE COURT: Thank you.

3 MR. McGEE: Thank you.

4 THE COURT: I'm going to take five minutes. I'll be
5 right back, so don't anyone move.

6 You can move. Don't go anywhere.

7 (Recess)

8 THE COURT: A preliminary injunction will not issue.

9 To obtain a preliminary injunction, a moving party
10 must show, first, that he is likely to succeed on the merits;
11 two, that he is likely to suffer irreparable harm in the
12 absence of preliminary relief; three, that the balance of
13 equities tips in his favor; and four, that an injunction is in
14 the public interest.

15 Courts refer to preliminary injunctions as prohibitory
16 or mandatory. Prohibitory injunctions maintain the status quo
17 pending resolution of the case. Mandatory injunctions alter it
18 because mandatory injunctions disrupt the status quo. A party
19 seeking one must meet a heightened legal standard by showing
20 clear or substantial likelihood of success on the merits. And
21 here I am citing to *North American Soccer League v. U.S. Soccer*
22 *Federation*, 883 F.3d 32 (2d Cir. 2018).

23 I find that plaintiff is seeking a mandatory
24 injunction, as she request that the Court alter the status quo
25 by admitting her son, M.P., to Stuyvesant for the 2026-2027

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1 school year, despite the fact that he was not admitted this
2 year. Therefore, in order for the Court to grant her
3 preliminary injunction, plaintiff will need to show a clear or
4 substantial likelihood of success on the merits, that they are
5 likely to suffer irreparable harm absent preliminary relief,
6 and that the balance of equities tips in their favor, and that
7 an injunction is in the public interest.

8 With respect to the first factor, clear or substantial
9 likelihood of success on the merits, plaintiff brings claims
10 under the equal protection clause of the U.S. Constitution and
11 Title VI. I find that she has not met her burden with respect
12 to either claim at this juncture.

13 With respect to the equal protection standard,
14 government action can discriminate on the basis of race in
15 various ways:

16 First, a law or policy discriminates on its face if it
17 expressly classifies persons on the basis of race.

18 Second, a law or policy that is facially neutral
19 discriminates on the basis of race if it is enforced in a
20 discriminatory way.

21 And third, a law or policy that is facially neutral
22 discriminates on the basis of race if it is motivated by a
23 discriminatory purpose, and its application results in a
24 discriminatory effect. And here I am quoting *Village of*
25 *Arlington Heights*, 429 U.S. 252 (1977).

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1 If the policy is racially discriminatory, it is
2 evaluated with strict scrutiny; otherwise, it is evaluated with
3 rational basis.

4 Here, the Discovery Program changes are facially
5 race-neutral, is a facially race-neutral policy that is
6 enforced in a nondiscriminatory manner. And so to demonstrate
7 that the policy is discriminatory, plaintiff must demonstrate
8 that the policy is motivated by a discriminatory purpose and
9 results in a discriminatory effect.

10 The Supreme Court in *Arlington Heights* recognized that
11 discriminatory intent is rarely susceptible to direct proof,
12 and so it broadened the scope of what may serve as evidence of
13 intent, including whether the impact of the official action
14 bears more heavily on one race than another, the historical
15 background of the decision, the specific sequence of events
16 leading up to the challenged decision, departures from the
17 normal procedural sequence, or substantive departures and
18 contemporaneous statements from the legislative or
19 administrative record, here quoting *United States v.*
20 *Suquilanda*, 116 F.4th 129 (2d Cir. 2024).

21 Under the *Arlington Heights* framework, to meet a
22 burden of establishing discriminatory intent, a plaintiff must
23 demonstrate that the city selected or reaffirmed a particular
24 course of action at least in part because of and not merely in
25 spite of its adverse effects upon an identifiable group.

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1 Here, fundamentally the plaintiff has not met the
2 burden to demonstrate that the Discovery Program changes were
3 enacted because of their effects on Asian-American students.

4 The Court has previously evaluated the statements of
5 then-Mayor de Blasio and Chancellor Carranza concerning the
6 Discovery Program changes and found that they don't constitute
7 evidence of intent to discriminate against Asian-Americans
8 specifically. Those statements do show that the city lauded
9 the fact that the program could increase enrollment for blacks
10 and Latino students at specialized high schools which have
11 historically been very underrepresented when compared to the
12 demographics of the city of New York.

13 At this juncture, internal Department of Education
14 documents that plaintiff cites similarly do not demonstrate
15 that the city enacted the Discovery Program changes because of
16 their effects on Asian-American students. They highlight that
17 diversity was a guiding principle of the changes to the
18 Discovery Program, that an aim was to admit black and Hispanic
19 students, and that the Department of Education modeled several
20 potential changes to the Economic Need Index to understand the
21 impact on racial demographics.

22 Further, plaintiff argues that because the Economic
23 Need Index resulted in almost 75 percent of Asian-American
24 majority middle schools being ineligible for the Discovery
25 Program, whereas majority black and Hispanic middle schools

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1 were impacted only in the single digits. However, again, this
2 does not demonstrate that the threshold was determined because
3 of the impacts on Asian-American students.

4 Just as the Court said in its February 2019 order in
5 *McAuliffe v. De Blasio*, plaintiffs' conclusion requires one to
6 accept the proposition that a facially neutral policy seeking
7 to improve racial diversity necessarily carries with it a
8 discriminatory intent. That is not the law.

9 In *Hayden v. County of Nassau*, 180 F.3d 42 (2d Cir.
10 1999), the Second Circuit affirmed the use of racial
11 preferences to remedy past racial discrimination, and added
12 that even in the absence of specific and identified
13 discrimination, nothing in our jurisprudence precludes the use
14 of race-neutral means to improve racial and gender
15 representation.

16 As the Second Circuit explained in *Jana-Rock*
17 *Construction v. New York State Department of Economic*
18 *Development*, 438 F.3d 195 (2d Cir. 2006) to equate a desire to
19 eliminate the discriminatory impact on some disadvantaged
20 groups with an intent to discriminate against other groups
21 could seriously stifle attempts to remedy discrimination.

22 Plaintiff argues that this reasoning is no longer
23 applicable because of the Supreme Court's recent equal
24 protection case law, specifically, *Students for Fair Admissions*
25 *Inc. v. President & Fellows of Harvard College*, 600 U.S. 181

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1 (2023), and *Louisiana v. Callais*, 146 S. Ct. 1131 (2026), in
2 which that Court affirmed that the use of race by a
3 decision-maker necessitates evaluation under strict scrutiny.
4 However, both of these cases concern policies and decisions
5 that facially took race into account rather than the facially
6 race-neutral and evenly applied policy we have here.

7 Though the Second Circuit has not squarely addressed
8 the issue, in *Boston Parent Coalition for Academic Excellence*
9 *Corp. v. School Committee for the City of Boston*, 89 F.4th 46
10 (1st Cir. 2023), the First Circuit found no reason to conclude
11 that *Students for Fair Admissions* changed the law governing the
12 constitutionality of facially neutral valid secondary education
13 admissions policies under equal protection principles.

14 For such policies to merit strict scrutiny, the
15 challenger must still demonstrate, one, that the policy exacts
16 a disparate impact on a particular racial group; and two, that
17 such impact is traceable to an invidious discriminatory intent.
18 The Court finds the First Circuit's reasoning persuasive to
19 support its conclusion.

20 Accordingly, the plaintiff has not met her burden to
21 demonstrate that Discovery Program changes were enacted with
22 discriminatory intent and, therefore, the Court evaluates the
23 program under rational basis.

24 In *Chinese American Citizens Alliance of Greater New*
25 *York v. Adams*, 116 F.4th 161 (2d Cir. 2024), the Second Circuit

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1 confirmed that if the government enacts a law or policy with a
2 proven discriminatory motive against a certain race, a valid
3 equal protection claim can be based on a showing that any
4 individual has been negatively affected or harmed by that
5 discriminatory law or policy based on race, even if there is no
6 disparate impact to members of that racial class in the
7 aggregate.

8 However, as previously discussed, plaintiff has failed
9 to demonstrate that the changes were enacted with
10 discriminatory intent against Asian-Americans, at least at this
11 juncture, and, therefore, has failed to demonstrate
12 discriminatory impact based on M.P.'s denial of admission to
13 Stuyvesant.

14 As plaintiff has failed to demonstrate that Discovery
15 Program changes are discriminatory, they must be evaluated
16 under a rational basis; and under that standard, the challenged
17 government policy must be upheld if it is rationally related to
18 a legitimate government interest. Rational basis review
19 affords the government's policy a strong presumption of
20 validity.

21 The Discovery Program changes would likely be upheld
22 under rational basis review. The expansion of the Discovery
23 Program is rationally related to the legitimate government
24 interest in fostering diversity and helping more economically
25 disadvantaged students receive a high-quality education.

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1 Accordingly, I find that the plaintiff has failed to
2 demonstrate a clear or substantial likelihood of success on
3 their equal protection claim.

4 Both parties acknowledge that plaintiffs' Title VI
5 claim rises and falls with the same intentional discrimination
6 analysis set forth above and, accordingly, plaintiffs have also
7 failed to demonstrate a clear or substantial likelihood of
8 success on their Title VI claim.

9 With respect to the second factor for a preliminary
10 injunction standard, irreparable harm, irreparable harm is an
11 injury that is not remote or speculative, but actual and
12 imminent, and for which a monetary award cannot be adequate
13 compensation.

14 In the constitutional context, courts in this district
15 have linked a demonstration of irreparable harm with the
16 likelihood of success on the merits on the constitutional
17 claim, citing *Seventh Regiment Armory Conservancy v. Knight*,
18 811 F. Supp. 3d 467 (2d Cir. 2025), which indicates that when a
19 constitutional violation is alleged, the two prongs of the
20 preliminary injunction threshold merge into one; in order to
21 show irreparable injury, a plaintiff must show a likelihood of
22 success on the merits.

23 Here, plaintiff has failed to demonstrate a likelihood
24 of success on their equal protection or Title VI claims.
25 Absent that showing, plaintiff has failed to demonstrate

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1 irreparable harm.

2 Further, irreparable harm must not be remote or
3 speculative. Here, as we have discussed, plaintiff argues that
4 but for the Discovery Program changes, M.P.'s scores would have
5 been sufficient for admission to Stuyvesant, which was three
6 points below that threshold. The parties this afternoon have
7 vigorously disputed whether or not he would have met that
8 threshold, and I find that there is insufficient evidence
9 before me to determine whether or not he, in fact, would have
10 met the threshold.

11 With respect to Factors 3 and 4, the balance of
12 equities and the public interest, the balance of the hardships
13 and the public interest factors merge when the government is
14 the opposing party. And here, citing *Nken v. Holder*, 556 U.S.
15 418 (2009).

16 Here, given plaintiff has failed to demonstrate that
17 the Discovery Program changes are unconstitutional or contrary
18 to federal law, the balance of equities and public interest
19 favor maintaining the status quo. While the admission of M.P.
20 alone may not be a large administrative burden for the city,
21 the city has persuasively argued that such admission could open
22 opportunities for widespread similar litigation and endanger
23 the orderly administration of decisions to specialized high
24 schools. Absent a showing of constitutional or federal injury,
25 the balance of equities favors the status quo.

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1 Similarly, the public interest is not served by
2 admitting M.P. to Stuyvesant, contrary to a lawful policy.
3 Accordingly, and again, based just at this juncture and based
4 on the information before me, plaintiffs' request for a
5 preliminary injunction is denied.

6 And finally, the Court finds that the two students,
7 Ma.P. and P.P., lack standing, as they are in the fourth and
8 first grade and, therefore, their injury is not actual or
9 imminent, and so they are dismissed.

10 And with that, is there anything else that we should
11 do today, Mr. McGee?

12 MR. MCGEE: Yes, your Honor.

13 We're going to consult with our clients about the
14 prospect of what would be styled as an emergency appeal to the
15 Second Circuit. It's my understanding that there is a
16 procedural requirement that we first make a request before this
17 Court, that we would expect you to deny based on your ruling.
18 We just ask if we do make that request, that you please deny it
19 promptly so that we can take our decision up to the Second
20 Circuit.

21 THE COURT: I'm happy to deny it as soon as I receive
22 it.

23 MR. MCGEE: I figured as much. Thank you.

24 THE COURT: Anything else from you, Ms. Jenerette?

25 MS. JENERETTE: Nothing from the city, your Honor.

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1 Thank you.

2 THE COURT: Ms. Khadem?

3 MS. KHADEM: No, your Honor. Thank you.

4 THE COURT: So as it appears that the next step will
5 be an application for an appeal to the Second Circuit, there's
6 no need at this point to discuss further procedural steps.

7 MR. MCGEE: I think that's right at this stage.

8 THE COURT: Very well.

9 So in that event, I want to thank the parties for
10 their very excellent papers and very excellent argument here
11 this afternoon. As I emphasized at a couple points during my
12 recitation, this decision is, I believe, the appropriate one at
13 this juncture. There will be additional Discovery, and I'm
14 sure there will be additional arguments.

15 So I look forward to seeing all of you again.

16 We're adjourned.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YI FANG CHEN, individually and on behalf
of her minor children M.P., Ma.P., and P.P.,

Plaintiff,

v.

ZOHRAN MAMDANI, in his official
capacity as Mayor of the City of New York;
KAMAR H. SAMUELS, in his official
capacity as Chancellor of the New York City
Department of Education; and the
NEW YORK CITY DEPARTMENT OF
EDUCATION,

Defendants.

Case No. 1:26-cv-03355

COMPLAINT

INTRODUCTION

1. M.P. is the son of Chinese immigrants. He is also a high-achieving New York City public school student who seeks admission to Stuyvesant High School, one of the most selective public schools in the nation. He recently took the Specialized High School Admissions Test (SHSAT) and ranked Stuyvesant as his first choice. He missed admission by three points. But for the City's racially motivated set-aside of 20 percent of Stuyvesant's seats for students who scored more than 60 points below M.P., he would have been admitted.

2. New York City's specialized high schools (SHSs) are among the most academically rigorous public high schools in the nation. Starting in 2020, the City began reserving 20 percent of its SHS seats for a separate admissions pathway—the Discovery program—that excludes students based on criteria the City purposefully selected to change the racial composition of those schools. The City adopted and continues to enforce that policy in an

effort to reduce the number of Asian-American students and increase the number of black and Hispanic students admitted to the SHSs.

3. Because of that racially discriminatory policy, M.P., a Chinese American, lost the opportunity to compete for all available seats and was not admitted to his preferred school. Unless the policy changes, his siblings Ma.P. and P.P. will face the same discrimination.

4. Plaintiff Yi Fang Chen—the mother of M.P., Ma.P., and P.P.—came to the United States to build a better life for herself and her children. She has lived and worked in New York City for decades and raised her family with the expectation that merit—not race—would determine their opportunities in public education.

5. Chen brings this action to vindicate her and her children’s rights under the Equal Protection Clause of the Fourteenth Amendment and Title VI of the Civil Rights Act of 1964, which forbid the government from structuring admissions policies to disadvantage students because of their race.

6. In *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023), the Supreme Court held that government officials may not manipulate admissions systems—whether through explicit classifications or facially neutral proxies—to produce race-based outcomes. Defendants have done exactly that here. Chen requests declaratory and injunctive relief to remedy that constitutional violation and to restore a race-neutral admissions process in which students like M.P. can compete on equal terms.

JURISDICTION AND VENUE

7. This action arises under the Fourteenth Amendment to the United States Constitution; 42 U.S.C. § 1983; and Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* The Court has jurisdiction over these federal claims under 28 U.S.C. §§ 1331 (federal

question) and 1343(a) (redress for deprivation of civil rights). Declaratory relief is authorized by the Declaratory Judgment Act, 28 U.S.C. §§ 2201–2202.

8. Venue is proper in this district under 28 U.S.C. § 1391(b)(1)–(2). Defendants reside within this district and a substantial part of the events giving rise to the claim have occurred or will occur in the Southern District of New York.

PLAINTIFF

9. Plaintiff Yi Fang Chen was born in China; she moved to the United States in 1996 as a teenager. Although she came to this country speaking little English, she worked hard and eventually earned a Ph.D. in statistics from Stanford University. She has been naturalized as a U.S. citizen and now works as a data scientist in Manhattan.

10. Chen and her husband, a naturalized immigrant from Hong Kong, have three children and live in Brooklyn. Their oldest son, M.P., is an eighth grader at I.S. 239, Mark Twain Intermediate School for the Gifted and Talented. Chen and her family have long had the goal that M.P. would attend an SHS. For years they have planned for him to seek admission to Stuyvesant High School, the most selective of the schools and the one at which they think M.P. will receive the best education and have the best opportunities. Accordingly, when he registered for the SHSAT, M.P. listed Stuyvesant as his top choice.

11. M.P. took the SHSAT in the fall of 2025. He was notified in March 2026 that his score was 558. Although a score of 558 would have been sufficient to gain admission to Stuyvesant for the 2025–26 school year, when the cutoff was 556, it was three points below this year’s Stuyvesant cutoff of 561.

12. Stuyvesant’s incoming class is at least 800 students, meaning Defendants’ 20 percent Discovery set-aside reserves more than 160 seats each year for students with scores

below the overall SHSAT cutoff. Absent the expansion of the Discovery program, those seats would have been available to students admitted through the standard SHSAT process. Restoring those seats would have lowered Stuyvesant's cutoff score by at least three points, to a level at or below M.P.'s score of 558. M.P. therefore would have been offered admission to Stuyvesant were it not for the Discovery program changes.

13. A Department of Education analysis using 2019 SHSAT data concluded that setting aside 20 percent of seats for the Discovery program increased the cutoff score for Stuyvesant by ten points, from 552 to 562. The set-aside had a similar effect for the 2025 SHSAT.

14. Because of the increased cutoff score, M.P. was denied admission to Stuyvesant, his preferred school, and offered admission to his second choice. If he is unable to attend Stuyvesant starting this fall, M.P. plans to retake the SHSAT and reapply to Stuyvesant as a ninth grader.

15. Chen has two other children. Ma.P. is a fourth grader at P.S. 185 in Brooklyn who has begun active SHSAT preparation, including regularly working through practice exam questions from prior tests. He plans to take the SHSAT in 2029 as an eighth grader and list Stuyvesant as his top choice. P.P. is currently a first grader at P.S. 185.

16. Because of the Discovery program changes, Chen's children are excluded from competing for 20 percent of the seats at each SHS. The restructuring of Discovery has made it more difficult for them to gain admission to any SHS, and to their preferred schools.

DEFENDANTS

17. Defendant Zohran Mamdani is the Mayor of New York City. In his capacity as Mayor, Mamdani exercises ultimate authority over the New York City Department of Education

(DOE) and the admissions process at the SHSs, subject to state law. He is sued in his official capacity.

18. Defendant Kamar H. Samuels is the Chancellor of the DOE. Defendant Samuels serves at the pleasure of the Mayor, and the DOE operates under the Mayor's authority. Samuels is charged with overseeing New York City's public schools, including the SHSs. He is sued in his official capacity.

19. Defendant Mamdani took office as Mayor in January 2026, and Defendant Samuels serves as his Chancellor. Although the admissions changes challenged here were initially adopted in 2018 under former Mayor Bill de Blasio and former Chancellor Richard Carranza, Defendants Mamdani and Samuels continue to apply and enforce those changes, including in the 2026 admissions cycle.

20. Defendant New York City Department of Education (DOE) is a municipal agency of the City of New York responsible for administration and operation of the City's public school system, including the SHSs. The DOE receives federal financial assistance within the meaning of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, and is therefore subject to Title VI's prohibition on discrimination based on race, color, or national origin. DOE is responsible for implementing, administering, and enforcing the admissions policies challenged in this action.

GENERAL ALLEGATIONS

I. NEW YORK CITY'S SPECIALIZED HIGH SCHOOLS

21. The DOE operates the City's SHSs, including some of the most rigorous and prestigious public secondary schools in the United States. Most prominent among them are the oldest: Stuyvesant High School (Stuyvesant), Bronx High School of Science (Bronx Science),

and Brooklyn Technical High School (Brooklyn Tech), collectively referred to as the “Big Three.” These schools offer students access to a world-class education and a pathway to the nation’s elite universities.

22. Stuyvesant is widely regarded as the most selective and prestigious of the SHSs. It enrolls approximately 3,200 students, including a substantial number from economically disadvantaged backgrounds. Its students achieve extraordinary academic success: recent data show average SAT scores around 1500 and a four-year graduation rate of approximately 99 percent. Stuyvesant has produced four Nobel Laureates and numerous leaders in science, law, and public life.

23. The remaining SHSs are Brooklyn Latin School (Brooklyn Latin); High School for Mathematics, Science and Engineering at City College (HSMSE); High School of American Studies at Lehman College (HSAS); Staten Island Technical High School (Staten Island Tech); and Queens High School for the Sciences at York College (Queens Science).

24. The Fiorello H. LaGuardia High School of Music and Art and Performing Arts is a specialized high school, but because it is arts-focused and uses an audition process for admissions, it is not relevant to this lawsuit.

II. RACIAL DEMOGRAPHICS OF THE SPECIALIZED HIGH SCHOOLS

25. According to public data maintained by the City, as of the 2024–25 school year, the racial demographics of the New York City public school system were 42.3 percent Hispanic, 19.3 percent black, 18.7 percent Asian (listed as “Asian and Pacific Islander”), and 16.1 percent white.¹

¹ *Demographic Snapshot 2024-25: Visual Guide*, NYC Public Schools, <https://infohub.nyced.org/docs/default-source/default-document-library/2024-25-demographic-snapshot-summary.pdf>, at 5.

26. According to the City’s “Demographic Snapshot” spreadsheets, the SHSs have a predominantly Asian student population, comprising about 60 percent of students. Each of the SHSs has a higher percentage of Asian students than New York City public schools as a whole.²

27. The Big Three, which have much larger enrollments than the other SHSs, are majority Asian. According to the Demographic Snapshot, in 2024–25, Stuyvesant was 71.8 percent Asian, Bronx Science was 60.8 percent Asian, and Brooklyn Tech was 58.5 percent Asian.

III. THE SHSAT

28. Under a New York law enacted in 1971, known as the Hecht-Calandra Act, admission to the SHSs must be based “solely and exclusively by taking a competitive, objective and scholastic achievement examination, which shall be open to each and every child in the city of New York.” N.Y. Educ. Law § 2590-g(12)(b) (1997). The current version of the statute incorporates that requirement by reference. N.Y. Educ. Law § 2590-h(1)(b).

29. The SHSs use the Specialized High School Admissions Test (SHSAT) as the sole factor in admissions decisions. To be eligible for the SHSAT, a student must be a City resident and currently in eighth grade or a first-time (i.e., not repeating the grade) ninth grader.

30. Students seeking admission to an SHS must take the SHSAT and rank their preferred schools in order (they need not rank all eight). Students are then ordered from highest to lowest SHSAT score and assigned, in that order, to the highest-ranked school on their list that has an available seat. If a student’s first-choice school is full, the student is considered for his or her second choice, and so on. After all available seats across the SHSs are filled, no additional students are admitted based solely on SHSAT score.

² See <https://infohub.nyced.org/docs/default-source/default-document-library/demographic-snapshot-2020-21-to-2024-25-public.xlsx>.

31. Once all SHSAT seats are filled at a school, the lowest SHSAT score among admitted students is referred to as that school's "cutoff" score.

32. Cutoff scores can vary from year to year. For the 2026–27 school year, Stuyvesant's cutoff was 561—the highest of any SHS.³ The overall cutoff, set by Brooklyn Latin at 495, was the lowest score at which any student was admitted through the SHSAT process.

IV. THE DISCOVERY PROGRAM

33. The Hecht-Calandra Act permits establishment of a "Discovery program" to help some low-income students gain admission into the SHSs. N.Y. Educ. Law § 2590-h(1)(b). State law expressly requires that the Discovery program must not "in any manner interfer[e] with the academic level of those schools." N.Y. Educ. Law § 2590-g(12)(d) (1997).

34. Prior to the changes challenged here, the Discovery program was open to all New York City students who were economically disadvantaged.

35. Hecht-Calandra establishes requirements for participation in Discovery. To be eligible, a student must (1) take the SHSAT and score just below the overall cutoff; (2) be certified as disadvantaged; (3) be recommended as having "high potential for the special high school program"; and (4) successfully complete a summer preparatory program. N.Y. Educ. Law § 2590-g(12)(d) (1997).

36. New York state law does not prescribe the size of the Discovery program, and historically each SHS set its own Discovery numbers. Between 2006 and 2015, only one to three percent of SHS admissions came through Discovery. Stuyvesant did not participate in Discovery at all for many years, and in 2018 admitted only 23 students through the program out of a freshman class of more than 800.

³ *Specialized High Schools*, NYC Public Schools, <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/specialized-high-schools>.

37. In 2018, the year before the Discovery program changes were announced, a total of 270 students participated in the program across all SHSs, representing less than five percent of the total number of students admitted.

38. Because students in the Discovery program score below the overall cutoff, this year all Discovery students admitted to Stuyvesant will have scored below 495—at least 66 points lower than students admitted based solely on the SHSAT.

39. Prior to the challenged changes, approximately two-thirds of the students participating in the Discovery program were Asian American. These students were, by definition, economically disadvantaged.

V. DEFENDANTS' CHANGES TO DISCOVERY

40. On June 3, 2018, then-Mayor de Blasio and then-Chancellor Carranza announced a plan to expand and reorganize the Discovery program. All SHSs were directed to increase the share of students admitted through Discovery to 20 percent of their incoming classes by 2020.

41. The plan also imposed a new eligibility restriction for Discovery. Specifically, eligibility was limited to students attending middle schools with an “Economic Need Index” (ENI) of 0.6 (60 percent) or higher.

42. A school’s ENI is a metric used to estimate the average level of economic need among its student population. It is the average of the “Economic Need Values” (ENV) of all students attending that school, which are based on factors such as eligibility for public assistance, living in temporary housing, and census-tract poverty data. Each student’s ENV, and thus each school’s ENI, falls between 0.0 and 1.0 (0% and 100%).

43. The ENI restriction imposed in 2018 limited eligibility for Discovery not simply to poor students, but to poor students who attend particular middle schools. As a result, an eighth

grader attending a school with an ENI below the 0.6 threshold is ineligible for Discovery, even if that student meets the highest indicators of economic need—such as qualifying for public assistance or living in temporary housing.

44. M.P.’s middle school, I.S. 239, has an ENI below the 0.6 threshold. As a result, M.P. and his classmates are ineligible for the Discovery program regardless of their economic circumstances.

45. The SHS admissions changes were fully implemented starting in the 2020–21 school year. They have remained in place, and Defendants continue to implement and enforce those changes.

A. The Changes Were Designed To Disadvantage Asian Students

46. Defendants designed the Discovery changes in an effort to increase black and Hispanic enrollment at the SHSs at the expense of Asian students. Defendants’ estimate, based on internal modeling, was that offers to black and Hispanic students would increase from 9 percent to 16 percent under the new plan.

47. Because SHS admission is a zero-sum process, increasing admissions for a particular demographic group reduces the number of seats available to others.

48. Defendants designed and selected an ENI restriction of 0.6 to exclude students attending middle schools with substantial Asian-American populations that had historically sent many students to the SHSs. Based on ENI data considered when designing the policy, a disproportionate number of majority Asian-American schools were rendered ineligible for Discovery compared to majority black and majority Hispanic schools.

49. When Defendants designed the plan, they relied on 2016–17 ENI calculations in deciding what ENI restriction to impose. Under those calculations, students at about 75% of the

majority Asian-American schools with eighth grade enrollment would be excluded from the Discovery program by a 0.6 ENI restriction.⁴ Although the 2017–18 school year ENI calculations were not as stark, students attending 11 of the 24 majority Asian-American schools were rendered ineligible for Discovery under the 0.6 ENI restriction. That compares to just 15 of the 185 majority black schools and just seven of the 232 majority Hispanic schools with eighth grade enrollment.

50. A simple expansion of the Discovery program without an ENI restriction would have increased offers to economically disadvantaged students regardless of race. But because Asian Americans already constituted roughly two-thirds of Discovery participants, expansion alone would not have served Defendants’ goal of altering the racial composition of students at the SHSs.

51. Use of a 0.6 ENI restriction transformed the expansion of Discovery into a racial proxy. If Defendants’ objective had been solely to increase the number of low-income students in the program, there would have been no need to restrict eligibility based on school-level ENI thresholds.

B. Contemporaneous Public Comments Show Racial Intent

52. In reference to the demographics of the SHSs, the day before announcing the Discovery changes, Mayor de Blasio wrote in an op-ed: “Can anyone defend this? Can anyone look the parent of a Latino or black child in the eye and tell them their precious daughter or son

⁴ See <https://infohub.nyced.org/docs/default-source/default-document-library/demographic-snapshot-2016-17-to-2020-21-public.xlsx>.

has an equal chance to get into one of their city’s best high schools?”⁵ He referred to the racial demographics of the SHSs as a “monumental injustice.”

53. The day that the changes were announced, de Blasio tweeted: “Stuyvesant High School just admitted almost a thousand students, but only ten of those students were African American and less than thirty were Latino. In a city that is majority African American and Latino.”⁶

54. Referring to the large proportion of Asian-American students at the SHSs, Chancellor Carranza stated in an interview with New York’s Fox affiliate WNYW that “I just don’t buy into the narrative that any one ethnic group owns admission to these schools.”⁷

55. The City’s press release announcing the Discovery program changes noted that they were intended to “support greater . . . racial . . . diversity” at the SHSs.⁸ It presented the revised Discovery program as an important step in making the admission process “fairer.” It also stated that the SHS student population “is not representative of the New York City high school population” because “Black and Latino students comprise 9 percent of SHS offers, but 68 percent of all New York City high school students” and because “[t]he incoming freshman class at Stuyvesant High School only has 10 African-American students in a class of more than 900.”⁹

⁵ Bill de Blasio, *Our Specialized Schools Have a Diversity Problem. Let’s Fix It.*, Chalkbeat (June 2, 2018), <https://chalkbeat.org/posts/ny/2018/06/02/mayor-bill-de-blasio-new-york-city-will-push-for-admissions-changes-at-elite-and-segregated-specialized-high-schools/>.

⁶ Then-Mayor Bill de Blasio, tweeting from the @NYCMayor account (June 3, 2018), <https://twitter.com/nycmayor/status/1003414958464487425>.

⁷ Elizabeth A. Harris & Winnie Hu, *Asian Groups See Bias in Plan to Diversify New York’s Elite Schools*, N.Y. Times (June 5, 2018), <https://www.nytimes.com/2018/06/05/nyregion/carranza-specialized-schools-admission-asians.html>.

⁸ Office of the Mayor, *Mayor de Blasio and Chancellor Carranza Announce Plan to Improve Diversity at Specialized High Schools* (June 3, 2018), https://a860-gpp.nyc.gov/concern/nyc_government_publications/nc580q26h.

⁹ *Id.*

The press release emphasized that City modeling suggested that the revised Discovery program would result in 16 percent of offers going to black and Latino students—up from a rate of 9 percent.

56. Quotes in the press release from supportive public officials emphasized the racial focus of the proposed plan. Mayor de Blasio is quoted as saying, “[f]or far too long our specialized high schools have failed to reflect the diversity of our city” and that “[w]e cannot let this injustice continue.” Board of Regents Chancellor Betty A. Rosa called the proposal a “bold plan to . . . support greater equity at New York City’s specialized high schools.” City Council member Ydanis Rodriguez stated that changing the SHS admissions policy “is an important step in ensuring the student population reflects the city’s population.” Other quotes likewise focused on “equity,” “diversity,” and “students of color,” and repeatedly connected the racial makeup of the SHSs to the proposed admissions changes.¹⁰

57. In announcing the changes, de Blasio and Carranza also declared their intention to eventually eliminate the SHSAT requirement. They predicted that this part of their plan, which would require the New York legislature to repeal the Hecht-Calandra Act, would increase black and Hispanic enrollment at the SHSs to 45 percent. Like their change to the Discovery program, de Blasio and Carranza sought elimination of the SHSAT on the ground it would change the racial balance of the SHSs, again at the expense of Asian students.

C. Internal Documents Show Racial Intent

58. Internal documents from DOE and the Mayor’s office show that one of the primary goals in changing the SHS admissions policy was to increase the percentage of black and Hispanic students accepted into the schools, at the expense of Asian students.

¹⁰ *Id.*

59. An internal DOE slide deck dated April 2018 states that the SHSs “are much less racially diverse than NYC high schools overall” and includes a chart showing that 62% of students at the SHSs were Asian, as compared to 16% of all City high schools. It states that one of DOE’s “guiding principles” in changing the admissions process is to “[i]ncrease the diversity” of the SHSs. It further notes that researchers had modeled the effect of alternative admissions processes, but that “without incorporating geography there was no substantial change to the percent of Black and Hispanic students offered seats at Specialized High Schools.” Indeed, “in many of the models the percentage of Black students decreased.”

60. The slide deck dismisses alternative admissions approaches—such as using recommendation letters, interviews, or writing assessments—because they are “unlikely to increase diversity.” Instead, it proposes options with a greater racial effect, such as reserving seats for top students at each middle school. It also discusses the plan that Defendants ultimately implemented—to “[a]djust and expand the Discovery program to achieve more racial diversity.” According to the slides, modeling showed that expanding the Discovery program and including an ENI restriction would mean “[m]ore Black and Hispanic students would become eligible for Discovery.”

61. An April 2018 DOE email chain discussed proposals to change the SHS admissions process. Deputy Chancellor Josh Wallack asked: “given the low percentage of black students in Discovery, how much bigger would the Discovery program need to be at Bronx Science (as an example) to increase the percentage of black students by 1%?” Director of Research and Policy Nadiya Chadha responded that it was “an imperfect calculation” but that “to increase the population of Black ninth graders” by about 1%, “the program would need to expand to ~60 students (6x larger than their summer 2017 program).” However, she noted that if

Discovery expansion included an ENI restriction, that “would not require as large a program, since it would be easier to target Black students directly for that program.”

62. Later in the same email chain, Chadha provided modeling showing how different ENI restrictions would affect the racial composition of the SHSs. She evaluated ENI levels of 40%, 60%, and 80% and stated: “in the 60% model, the minimum discovery cut score does drop, but the pool is more diverse and the average proficiency of students barely changes.” Chadha noted, however, that just changing the Discovery program and adding an ENI restriction would not have as great a racial effect as other proposals and called Asian students “overrepresented” at the SHSs: “Even if we expand Discovery and adjust the definition, the percentages of students by race do not change drastically (compared to our other proposals). Asian and White students are similarly overrepresented; the total Black and Hispanic percentage increases from 10% to 18% at most.”

63. A May 30, 2018, email from Chadha was particularly blunt, stating that “we currently want to use the Discovery program as a lever to admit more Black and Hispanic students.”

64. Defendants’ racial focus is also evident in an internal DOE document titled “Making admissions to the Specialized High Schools more equitable for all students.” It claims that the student population at the SHSs “does not represent the full breadth and excellence of New York City students,” including because “Black and Hispanic students make up 68% of the NYC high school population, but only 9% of those offered a seat in a Specialized High School.” It discusses the plan to expand Discovery and add an ENI restriction, stating that “[a]s a result, offers to Black and Hispanic students across the Specialized High Schools would nearly double, going from ~9 percent currently to ~16%.”

65. Other internal emails confirm that DOE ran modeling to determine the racial effect of its proposed plan. In August 2018—two months after the plan was announced—DOE Press Secretary Will Mantell emailed DOE officials to state that “CH” (City Hall) was “asking what we expect the racial breakdown to be once we’re at scale under the new eligibility criteria.” Chadha responded with a chart showing “rough estimates” of the effect of expanding Discovery to 20 percent with a 0.6 ENI restriction. According to Chadha, the racial composition of students in Discovery would change significantly: Asian students would drop from 64% to 38%, whereas black students would increase from 10% to 22% and Hispanic students from 12% to 31%:

Ethnicity	Percent of students who received SHS offers through Discovery, for fall 2018 admissions [preliminary]	Model for expanded Discovery [20% of seats, 60% ENI minimum]*
Asian	64%	38%
Black	10%	22%
Hispanic	12%	31%
White	11%	7%
Other	2%	2%
Unknown	2%	N/A
*Data for students who would have been eligible to apply for Discovery in summer 2017. Does not reflect income eligibility or student interest in participating.		

VI. PRIOR LAWSUIT

66. In December 2018, a coalition of plaintiffs—which then included Chen—filed a lawsuit against Mayor de Blasio and Chancellor Carranza, alleging that the plan to revise the Discovery program violated the Equal Protection Clause.

67. The plaintiffs sought a preliminary injunction to prevent implementation of the Discovery changes, but the district court denied the request. *Christa McAuliffe Intermediate School PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253 (S.D.N.Y. 2019). As part of that ruling, the court concluded Chen lacked standing because her son was then in first grade and too young for his injury to be imminent. *Id.* at 272.

68. Chen's dismissal was jurisdictional, not on the merits. Her son M.P. has now taken the SHSAT, received his score, and been denied admission to Stuyvesant as a direct result of the Discovery program changes.

69. The other lawsuit continued without Chen. After limited discovery, the City sought summary judgment, arguing that aggregate disparate impact is a necessary element of an equal protection claim and that the overall percentage of Asians at the SHSs had increased slightly following the Discovery program changes. The district court agreed and granted summary judgment. *Christa McAuliffe Intermediate Sch. PTO, Inc. v. De Blasio*, 627 F. Supp. 3d 253 (S.D.N.Y. 2022).

70. On appeal, the Second Circuit reversed, holding that an aggregate disparate impact is not a required element of an equal protection claim. *Chinese American Citizens Alliance of Greater New York v. Adams*, 116 F.4th 161 (2d. Cir. 2024). It held that proof of discriminatory intent combined with a negative effect on individual Asian-American applicants is sufficient to trigger strict scrutiny. *Id.* at 165. The court also noted that expert analysis showed that "under the revised Discovery Program, the number of Asian Americans receiving offers to the two most selective SHSs, Stuyvesant and Bronx Science, declined," which supported the claim of an equal protection violation. *Id.* at 169, 178.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Violation of the Equal Protection Clause of the Fourteenth Amendment, through 42 U.S.C. § 1983)

71. Plaintiff hereby realleges and incorporates each of the preceding paragraphs as though fully set forth herein.

72. The Fourteenth Amendment to the United States Constitution provides in relevant part: “No State shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws.” U.S. Const. amend. XIV, § 1.

73. Defendants were and are acting “under color of state law” within the meaning of 42 U.S.C. § 1983.

74. Facially neutral state action violates the Equal Protection Clause when it is motivated by a racially discriminatory purpose and has a discriminatory effect. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–65 (1977).

75. The plan to expand and reorganize the Discovery program was intended to racially balance the schools by increasing the number of black and Hispanic students and limiting the number of Asian students who are admitted.

76. The Discovery program changes were made “at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

77. Defendants expected and intended the changes to reduce the number of Asian Americans who are admitted to the SHSs and to exclude some Asian Americans from being accepted into their preferred SHSs.

78. Facially neutral policies enacted with discriminatory intent are subject to strict scrutiny and are invalid unless the government can prove that they are narrowly tailored to further a compelling government interest. *Students for Fair Admissions*, 600 U.S. at 206–07.

79. The same equal protection principles apply whether race is used explicitly or as a proxy through facially neutral criteria designed to produce race-based outcomes.

80. There are limited circumstances in which race-based governmental action may be permissible, including remedying specific instances of past discrimination that violated the Constitution or a statute, or avoiding imminent and serious risks to human safety in prisons. No such circumstances are present here, and there is no compelling government interest supporting Defendants' changes to the SHS admissions policy.

81. Even if a compelling government interest existed, Defendants' changes to the Discovery program are not narrowly tailored, including because they rely on overbroad and arbitrary classifications, are not necessary to achieve a compelling interest, and do not have a logical endpoint.

82. To survive constitutional scrutiny, a public school admissions policy must comply with "the twin commands of the Equal Protection Clause." *Id.* at 218. First, "an individual's race may never be used against him in the admissions process." *Id.* And second, race "may not operate as a stereotype." *Id.*

83. Defendants' changes to the Discovery program violate the "twin commands" because they use facially neutral criteria as a proxy for race and operate to disadvantage Asian-American applicants. By selecting an ENI threshold specifically because DOE modeling showed it would reduce Asian-American admissions, Defendants used race as a negative in the admissions process. Defendants also relied on the stereotype that there are too many Asians at the SHSs.

84. Chen, individually and on behalf of her minor children, is entitled to injunctive relief to prevent Defendants from continuing to enforce the Discovery changes and a declaration that the changes are unconstitutional.

85. Because the Discovery program changes resulted in M.P. being denied admission to his preferred SHS, Plaintiff is entitled to appropriate injunctive relief, including an order requiring M.P.’s admission to Stuyvesant starting in the 2026–27 school year.

SECOND CAUSE OF ACTION

(Violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, against the DOE only)

86. Plaintiff hereby realleges and incorporates each of the preceding paragraphs as though fully set forth herein.

87. Title VI of the Civil Rights Act of 1964 provides: “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d.

88. Title VI creates a private right of action for individuals harmed by intentional discrimination on the basis of race by recipients of federal financial assistance. *See Alexander v. Sandoval*, 532 U.S. 275, 279–80 (2001).

89. Defendant DOE receives substantial federal funds each year, including under Title I of the Elementary and Secondary Education Act, and the SHS admissions process constitutes a “program or activity” within the meaning of 42 U.S.C. § 2000d-4a.

90. The DOE adopted and continues to enforce the Discovery program changes for the purpose of reducing the number of Asian-American students admitted to the specialized high schools.

91. Title VI prohibits discrimination “on the ground of” race. Under the governing standard, a Title VI plaintiff need only show that discrimination was a substantial or motivating factor.

92. DOE's changes to the Discovery program and to SHS admissions were intentional and discrimination was a substantial or motivating factor in the changes.

93. But for the race of Asian-American students, the DOE would not have expanded and restructured the Discovery program as it did. The purpose of the changes was to increase the share of black and Hispanic students and reduce the share of Asian-American students at the SHSs, and DOE's own modeling confirmed that the ENI threshold was designed to target middle schools with substantial Asian-American populations.

94. The ENI restriction was a but-for cause of the exclusion of Asian-American applicants from 20 percent of SHS seats.

95. M.P. was harmed by the DOE's intentional discrimination on the basis of race. But for the race-based manipulation of the Discovery program, M.P. would have been admitted to Stuyvesant.

96. DOE's continued enforcement of the Discovery program changes constitutes ongoing intentional racial discrimination in violation of Title VI. Chen, individually and on behalf of her minor children, is entitled to appropriate declaratory and injunctive relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the following relief:

1. An entry of judgment declaring that Defendants' expansion and reorganization of the Discovery program for admission to New York City's specialized high schools violates the Equal Protection Clause and Title VI of the Civil Rights Act of 1964.
2. Entry of a preliminary and permanent injunction against Defendants prohibiting them from continuing to enforce the changes to the Discovery program.

3. Entry of a preliminary and permanent injunction against Defendants requiring that Plaintiff's child M.P. be admitted to Stuyvesant High School starting in the 2026-27 school year.
4. Nominal damages in the amount of \$1.00.
5. An award of attorneys' fees and costs in this action pursuant to 42 U.S.C. § 1988.
6. An award of any further legal or equitable relief this Court may deem just and proper.

DATED: April 23, 2026.

Respectfully submitted,

/s/ Dean McGee

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*Counsel for Plaintiff Yi Fang Chen, individually
and on behalf of her minor children M.P., Ma.P.,
and P.P.*

*pro hac vice motions forthcoming

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
YI FANG CHEN, individually and on behalf of her minor
children M.P., Ma.P., and P.P.,

Plaintiffs,

-against-

ZOHRAN MAMDANI, in his official capacity as Mayor of
the City of New York; KAMAR H. SAMUELS, in his
official capacity as Chancellor of the New York City
Department of Education; and the NEW YORK CITY
DEPARTMENT OF EDUCATION,

Defendants.

----- X

**DEFENDANTS' ANSWER TO
THE COMPLAINT**

26 CV 03355 (ER)(OTW)

Defendants Zohran Mamdani, in his official capacity as Mayor of the City of New York, Kamar H. Samuels, in his official capacity as Chancellor of the New York City Department of Education, and the New York City Department of Education, by their attorney, Steven Banks, Corporation Counsel of the City of New York, hereby answer the Complaint, upon information and belief, as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first two sentences of the Complaint; deny the allegations set forth in the third sentence of the Complaint.
2. Deny the allegations set forth in paragraph "2" of the Complaint; except admit that DOE plans to assign 20% of the seats in the eight testing Specialized High Schools through the Discovery Program consistent with state law.
3. Deny the allegations set forth in paragraph "3" of the Complaint.

4. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “4” of the Complaint.

5. Deny the allegations set forth in paragraph “5” of the Complaint, except admit that plaintiff purports to proceed as set forth therein.

6. Deny the allegations set forth in paragraph “6” of the Complaint, except admit that plaintiff purports to proceed as set forth therein, and respectfully refer the Court to the case cited therein for a complete and accurate statement of its content.

7. The allegations set forth in paragraph “7” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

8. The allegations set forth in paragraph “8” of the Complaint are contentions of law that do not require a response, but to the extent that a response is required, those allegations are denied, except admit that the Mayor and Schools Chancellor reside in the City of New York and the DOE is headquartered in the City of New York.

9. Deny knowledge or information sufficient to form a belief as to the truth of allegations set forth in paragraph “9” of the Complaint.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “10” of the Complaint.

11. Deny the allegations set forth in paragraph “11” of the Complaint, except admit that M.P. took the Specialized High School Admissions Test (“SHSAT”) in the fall of 2025 and that his score was 558.

12. The allegations set forth in paragraph “12” of the Complaint are expressions of opinion that require no response, but to the extent a response is required, those allegations are denied.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the Complaint, except admit that M.P. was offered admission to Brooklyn Technical High School.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the Complaint.

16. Deny the allegations set forth in paragraph “16” of the Complaint.

17. Deny the allegations set forth in paragraph “17” of the Complaint, except admit that Zohran Mamdani is the Mayor of the City of New York and that plaintiff purports to proceed as set forth therein.

18. Deny the allegations set forth in paragraph “18” of the Complaint, and respectfully refer the Court to Section 2590-H of the New York Education Law for a complete and accurate statement of the powers and duties of the Chancellor.

19. Deny the allegations set forth in paragraph “19” of the Complaint, except admit that the Discovery Program was last changed in 2018.

20. Deny the allegations set forth in paragraph “20” of the Complaint, and respectfully refer the Court to Art. 52-A of the New York Education Law for a complete and accurate statement of the powers and functions of the DOE, except admit that plaintiff purports to proceed as set forth therein.

21. Paragraph “21” of the Complaint is an expression of opinion that requires no response; but to the extent a response is required, admit that DOE operates nine Specialized High Schools, eight of which use the SHSAT toward determining admission, that Stuyvesant High School,

Bronx High School of Science, and Brooklyn Technical High School are the oldest and largest of the Specialized High Schools, that the Specialized High Schools strive to offer an excellent education and that many graduates of these school are offered admission to selective colleges and universities.

22. Paragraph “22” of the Complaint is an expression of opinion that requires no response; but to the extent a response is required, admit that Stuyvesant enrolls more than 3,000 students, including students from disadvantaged backgrounds, and that many students achieve academic and professional success.

23. Admit that Brooklyn Latin School, the High School of Mathematics, Science and Engineering at City College, High School of American Studies at Lehman College, Staten Island Technical High School, and Queens High School for the Sciences at York College are among the Specialized High Schools operated by DOE, as set forth in paragraph “23” of the Complaint.

24. Admit that the Fiorello H. LaGuardia High School of Music and the Performing Arts is among the Specialized High Schools operated by the DOE and that plaintiff does not purport to challenge its admissions process, as set forth in paragraph “24” of the Complaint.

25. Deny the allegations set forth in paragraph “25” of the Complaint, except respectfully refer the Court to the website link cited therein for a true and accurate statement of its content.

26. Deny the allegations set forth in paragraph “26” of the Complaint, except respectfully refer the Court to the website link cited therein for a true and accurate statement of its content.

27. Deny the allegations set forth in paragraph “27” of the Complaint, except respectfully refer the Court to the Demographic Snapshot referenced therein for a true and accurate statement of its content.

28. The allegations set forth in paragraph “28” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied and the Court is respectfully referred to the Hecht-Calandra Act for a full and accurate statement of its contents.

29. The allegations set forth in paragraph “29” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied and the Court is respectfully referred to the Hecht-Calandra Act for a full and accurate statement of its contents.

30. Deny the allegations set forth in paragraph “30” of the Complaint, except admit that offers to the testing Specialized High Schools are made in descending order of SHSAT score, combined with each student’s preferences listed on their SHSAT registration, as follows: the student with the highest SHSAT score receives an offer to their first choice school. The student with the next highest SHSAT score receives an offer to their first choice school. This continues student by student in downward score order until a student’s first-choice school does not have any remaining seats. That student is then considered for their second-choice school. If there are remaining seats at the second-choice school, that student receives an offer there. If the second-choice school has no remaining seats, that student is considered for their third-choice school, and so on. This continues until all seats at all Specialized High Schools have been filled.

31. Deny the allegations set forth in paragraph “31” of the Complaint, except admit that the lowest qualifying SHSAT score for admission to each testing Specialized High School each year may be referred to as that school’s “cutoff” score.

32. Deny the allegations set forth in paragraph “32” of the Complaint, except admit that for ninth-grade admission for the 2026-2027 school year, the lowest qualifying SHSAT score for

Stuyvesant High School (“Stuyvesant”) was 561, that the lowest qualifying SHSAT score for The Brooklyn Latin School’s (“Brooklyn Latin”) was 495, which was the lowest cutoff of all the testing specialized high schools, and that the lowest qualifying scores may change from year to year.

33. The allegations set forth in paragraph “33” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied and the Court is respectfully referred to the Hecht-Calandra Act for a full and accurate statement of its contents.

34. Deny the allegations set forth in paragraph “34” of the Complaint.

35. The allegations set forth in paragraph “35” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied and the Court is respectfully referred to the Hecht-Calandra Act for a full and accurate statement of its contents.

36. Deny the allegations set forth in paragraph “36” of the Complaint, except respectfully refer the Court to the Hecht-Calandra Act for a full and accurate statement of its contents, and admit that the Hecht-Calandra Act does not set limits on the size of the Discovery Program, and that Stuyvesant increased the size of its Discovery Program as a result of the changes announced in 2018

37. Deny the allegations set forth in paragraph “37” of the Complaint.

38. Deny the allegations set forth in paragraph “38” of the Complaint, except admit that any student who scored a 495 or above was not eligible for the Discovery Program for admission for the 2026-2027 school year.

39. Deny the allegations set forth in paragraph “39” of the Complaint, except admit that 58.6% of students approved to participate in the Summer 2016 Discovery Program identified as Asian,

67.9% approved to participate in the Summer 2017 Discovery Program identified as Asian, and 61.9% approved to participate in Summer 2018 identified as Asian.

40. Deny the allegations set forth in paragraph “40” of the Complaint, except admit that in 2018 changes were made to the Discovery Program, including an expansion to 20% of each testing Specialized High School’s seats, and respectfully refer the Court to the public statements of former Mayor de Blasio and former Schools Chancellor Carranza for a true and complete recitation of their contents.

41. Deny the truth of the allegations set forth in paragraph “41” of the Complaint, except admit that if a student attends a New York City district or charter middle school, that school must have an Economic Need Index of 60% or higher to be eligible for the Discovery Program for ninth grade admission.

42. Deny the allegations set forth in paragraph “42” of the Complaint, except admit that a school’s ENI is a metric used to estimate the average level of economic need among its student population. It is the average of the “Economic Need Values” (ENV) of all students attending that school, which are based on factors such as eligibility for public assistance, living in temporary housing, and census-tract poverty data. Each student’s ENV, and thus each school’s ENI, falls between 0.0 and 1.0 (0% and 100%).

43. Deny the allegations set forth in paragraph “43” of the Complaint, except admit that as a result of changes to the Discovery Program eligibility criteria, an eighth-grader attending a school with an ENI below the 0.6 threshold might not be eligible for the Discovery Program, even if the student’s family demonstrates indicators of economic need

44. Deny the allegations set forth in paragraph “44” of the Complaint, except admit that M.P.’s middle school currently has an ENI below the 0.6 threshold.

45. Deny the allegations set forth in paragraph “45” of the Complaint, except admit the 2018 changes to the Discovery Program have remained in place.

46. Deny the allegations set forth in paragraph “46” of the Complaint, except admit that Defendants stated that they expected the Discovery Plan to increase enrollment of African-American and Latino students from approximately 9% to approximately 16% and respectfully refer the Court to the statements of former Mayor de Blasio and former Chancellor Carranza for a true and complete statement if its contents.

47. The allegations set forth in paragraph “47” of the Complaint are arguments and contentions that do not require a response, but to the extent that a response is required, those allegations are denied.

48. The allegations set forth in paragraph “48” of the Complaint are arguments and contentions that do not require a response, but to the extent that a response is required, those allegations are denied, and Defendants expressly deny the allegations that the challenged policy was designed to discriminate against Asian-American students.

49. Deny the allegations set forth in paragraph “49” of the Complaint and expressly deny the allegations that the challenged policy was designed to discriminate against Asian-American students.

50. Deny the allegations set forth in paragraph “50” of the Complaint, expressly deny the allegations that the challenged policy was designed to discriminate against Asian-American students or to racially balance the Specialized High Schools.

51. Deny the allegations set forth in paragraph “51” of the Complaint.

52. Deny the allegations set forth in paragraph “52” of the Complaint and respectfully refer the Court to the statements of former Mayor de Blasio for a true and complete statement of their contents.

53. Deny the allegations set forth in paragraph “53” of the Complaint and respectfully refer the Court to the cited tweet of former Mayor de Blasio for a true and complete statement of its content.

54. Deny the allegations set forth in paragraph “54” of the Complaint and respectfully refer the Court to the statement of Chancellor Carranza for a true and complete statement of its content.

55. Deny the allegations set forth in paragraph “55” of the Complaint and respectfully refer the Court to the press release for a true and complete statement of its content.

56. Deny the allegations set forth in paragraph “56” of the Complaint and respectfully refer the Court to the press release for a true and complete statement of its content.

57. Deny the allegations set forth in paragraph “57” of the Complaint, expressly deny the allegations that the challenged policy was designed to discriminate against Asian-American students, and respectfully refer the Court to the press release for a true and complete statement of its content.

58. Deny the allegations set forth in paragraph “58” of the Complaint.

59. Deny the allegations set forth in paragraph “59” of the Complaint and respectfully refer the Court to the referenced document for a true and complete statement of its content.

60. Deny the allegations set forth in paragraph “60” of the Complaint, expressly deny the allegations that the challenged policy was designed to discriminate against Asian-American students or to racially balance the Specialized High Schools, and respectfully refer the Court to the referenced document for a true and complete statement of its content.

61. Deny the allegations set forth in paragraph “61” of the Complaint, expressly deny the allegations that the challenged policy was designed to discriminate against Asian-American students or to racially balance the Specialized High Schools, and respectfully refer the Court to the referenced document for a true and complete statement of its content.

62. Deny the allegations set forth in paragraph “61” of the Complaint, expressly deny the allegations that the challenged policy was designed to discriminate against Asian-American students or to racially balance the Specialized High Schools, and respectfully refer the Court to the referenced document for a true and complete statement of its content.

63. Deny the allegations set forth in paragraph “63” of the Complaint, and respectfully refer the Court to the cited email for a true and correct statement of its content.

64. Deny the allegations set forth in paragraph “64” of the Complaint, and respectfully refer the Court to the document referenced therein for a true and complete statement if its content.

65. Deny the allegations set forth in paragraph “65” of the Complaint, expressly deny the allegations that the challenged policy was designed to discriminate against Asian-American students or to racially balance the Specialized High Schools, and respectfully refer the Court to the referenced document for a true and complete statement of its content.

66. The allegation set forth in paragraph “66” of the Complaint are arguments and contentions of law that do not require a response, but to the extent a response is required, the allegation is denied.

67. The allegations set forth in paragraph “67” of the Complaint are arguments and contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

68. The allegations set forth in paragraph “68” of the Complaint are arguments and contentions that do not require a response, but to the extent a response is required, those allegations are denied.

69. The allegations set forth in paragraph “69” of the Complaint are arguments and contentions that do not require a response, but to the extent a response is required, those allegations are denied.

70. The allegations set forth in paragraph “70” of the Complaint are arguments and contentions that do not require a response, but to the extent a response is required, those allegations are denied.

71. In response to paragraph “71” of the Complaint, Defendants hereby re-allege each and every response contained in Paragraphs “1” through “70” above as though set forth herein.

72. The allegations set forth in paragraph “72” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied and the Court is respectfully referred to the Fourteenth Amendment of the United States Constitution for a full and accurate statement of its content.

73. The allegation set forth in paragraph “73” of the Complaint is a contention of law that does not require a response, but to the extent a response is required, that allegation is denied.

74. The allegations set forth in paragraph “74” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

75. Deny the allegations set forth in paragraph “75” of the Complaint, and specifically deny that the challenged admissions policy is devised to discriminate against Asian-American students or to racially balance the Specialized High Schools.

76. Deny the allegations set forth in paragraph “76” of the Complaint, and specifically deny that the challenged admissions policy is devised to discriminate against Asian-American students or to racially balance the Specialized High Schools.

77. Deny the allegations set forth in paragraph “77” of the Complaint, and specifically deny that the challenged admissions policy is devised to discriminate against Asian-American students.

78. The allegations set forth in paragraph “78” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

79. The allegations set forth in paragraph “79” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

80. The allegations set forth in paragraph “80” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied and specifically deny that the challenged admissions policy is devised to discriminate against Asian-American students.

81. The allegations set forth in paragraph “81” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

82. The allegations set forth in paragraph “82” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

83. Deny the allegations set forth in paragraph “83” of the Complaint, and specifically deny that the challenged admissions policy is devised to discriminate against Asian-American students or to racially balance the Specialized High Schools.

84. Deny the allegations set forth in paragraph “84” of the Complaint, except admit that plaintiff purports to proceed as set forth therein.

85. Deny the allegations set forth in paragraph “85” of the Complaint.

86. In response to paragraph “86” of the Complaint, Defendants hereby re-allege each and every response contained in Paragraphs “1” through “85” above as though set forth herein.

87. The allegations set forth in paragraph “87” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

88. The allegations set forth in paragraph “88” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

89. The allegations set forth in paragraph “89” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

90. Deny the allegations set forth in paragraph “90” of the Complaint, and specifically deny that the challenged admissions policy is devised to discriminate against Asian-American students or to racially balance the Specialized High Schools.

91. The allegations set forth in paragraph “91” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

92. Deny the allegations set forth in paragraph “92” of the Complaint, and specifically deny that the challenged admissions policy is devised to discriminate against Asian-American students or that race was a motivating factor in adopting the policy.

93. Deny the allegations set forth in paragraph “93” of the Complaint, and specifically deny that the challenged admissions policy is devised to discriminate against Asian-American students or to target middle schools with substantial Asian-American populations or to racially balance the Specialized High Schools.

94. Deny the allegations set forth in paragraph “94” of the Complaint.

95. Deny the allegations set forth in paragraph “95” of the Complaint.

96. Deny the allegations set forth in paragraph “96” of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

97. The Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

98. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

99. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably in the proper and lawful exercise of their discretion.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

100. Any injury alleged to have been sustained resulted from Plaintiffs’ own culpable or negligent conduct and was not the proximate result of any act of the Defendants.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

101. This action is barred in whole or in part by the doctrines of res judicata and or collateral estoppel.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

102. The individual plaintiffs Ma.P and P.P lack standing to bring this action and the Court therefore lacks jurisdiction over this case.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

103. No equitable relief, either preliminary or permanent, should be awarded.

WHEREFORE, Defendants request judgment dismissing the complaint in its entirety, and denying all relief requested therein, together with such other costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
June 17, 2026

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By: /s/
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No. 26-847

**In The United States Court Of Appeals
For The Second Circuit**

YI FANG CHEN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN
M.P., MA.P., AND P.P.,
Plaintiff – Appellant,

v.

ZOHRAN MAMDANI, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF
NEW YORK; KAMAR H. SAMUELS, IN HIS OFFICIAL CAPACITY AS
CHANCELLOR OF THE NEW YORK CITY DEPARTMENT OF EDUCATION; AND
NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants – Appellees,

TEENS TAKE CHARGE, DESIS RISING UP AND MOVING, COALITION FOR
ASIAN AMERICAN CHILDREN AND FAMILIES, VERONICA CARRASQUILLO, ON
BEHALF OF HER MINOR CHILD, A.C., WANG JIN HUA, ON BEHALF OF HER
MINOR CHILD, A.Z., HALIMATOU DIALLO, ON BEHALF OF HER MINOR CHILD,
K.D., JENNIFER VELEZ, ON BEHALF OF HER MINOR CHILD G.R.,

Intervenor-Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

**APPELLANT’S EMERGENCY MOTION
FOR INJUNCTION PENDING APPEAL**

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*Counsel for Plaintiff Yi Fang Chen, individually
and on behalf of her minor children M.P., Ma.P., and P.P.*

INTRODUCTION

In 38 days, 13-year-old M.P. will begin his high school career. Resolution of this motion will determine whether New York City may deny him entry into his dream school based on a racially engineered admissions policy—one designed to reduce the admission of Asian-American students like himself. Under 28 U.S.C. § 1292(a)(1) and Fed. R. App. P. 8(a)(2), Plaintiff Yi Fang Chen seeks an emergency injunction ordering that her son M.P. be admitted to Stuyvesant High School for the 2026–27 school year, pending appeal of the district court’s denial of her preliminary injunction motion. An emergency injunction will uphold critical Equal Protection Clause precedent from this Court and the Supreme Court—precedent that the district court disregarded—and prevent imminent harm to M.P.

M.P. *should* be starting at Stuyvesant—the most selective of New York City’s prestigious specialized high schools (SHSs). M.P. took the competitive examination required by state law (the SHSAT) and earned a score that would have secured his admission to Stuyvesant but for the City’s restructuring of the admission policy. That restructuring was an explicit effort to rebalance the SHSs’ racial demographics: internal

documents expose that the City modeled ways to use ostensibly race-neutral criteria as a “lever to admit more Black and Hispanic students” at the expense of others. This, of course, is precisely the type of “racial balancing” effort that the Supreme Court held to be “patently unconstitutional” in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*). And in *Chinese American Citizens Alliance of Greater New York v. Adams*, 116 F.4th 161, 169 (2d Cir. 2024) (*CACAGNY*), this Court held that an Asian-American student denied admission to Stuyvesant would have a valid equal protection claim if the very policy at issue here was enacted with a racially discriminatory purpose.

Instead of following these monumental developments in Equal Protection Clause jurisprudence, the district court denied a preliminary injunction, hewing instead to its own 2019 decision in a related action. As further justification for its decision, the district court explicitly relied on a First Circuit decision—one that has been recognized by the Third Circuit as irreconcilable with this Court’s decision in *CACAGNY*.

Because a faithful application of *SFFA* and *CACAGNY* confirms that Plaintiff will likely succeed on her Equal Protection Clause and Title

VI claims, and because M.P. will forever lose his freshman year at Stuyvesant without relief, this Court should enjoin the City from racially discriminating against him now. With the school year beginning on September 10, **Plaintiff respectfully asks this Court to rule on this motion by September 1.**

BACKGROUND

I. New York’s Specialized High Schools

The SHSs are among the most academically rigorous public schools in the United States. “The two most selective SHSs [are] Stuyvesant and Bronx Science.” *CACAGNY*, 116 F.4th at 169. Stuyvesant is the most selective and has produced four Nobel Laureates and numerous leaders in science, law, and public life.¹

To ensure these schools maintain rigorous academic standards, New York’s Hecht-Calandra Act requires admissions to focus “solely and exclusively” on the SHSAT. *See* N.Y. Educ. Law § 2590-g(12)(b)(1994).² Applicants rank their preferred schools, take the test, and starting with

¹ Stuyvesant High School, History of the School, https://stuy.enschool.org/apps/pages/index.jsp?uREC_ID=126631&type=d&pREC_ID=251657&hideMenu=1.

² This text no longer appears in the statute but has been incorporated by reference. *See* N.Y. Educ. Law § 2590-h(1)(b) (1998).

the highest scorer, each student is offered admission to their highest-ranked SHS with an available seat. *Id.* The SHSAT score of the last student admitted to each school is that school’s “cutoff” score.

Hecht-Calandra also authorizes a “Discovery Program, for a limited number of disadvantaged students who demonstrated potential for success at the SHS, but did not obtain a qualifying score on the standardized entrance exam.” *CACAGNY*, 116 F.4th at 165. By law, the Discovery Program may not “in any manner interfer[e] with the academic level of these schools.” *Id.* (quoting N.Y. Educ. Law § 2590-g(12)(d) (1996)). “To be eligible for the Discovery Program, students must take the SHSAT, be certified as ‘disadvantaged’ and be recommended as having high potential by their middle schools, and pass a summer preparatory program.” *Id.* The Discovery Program was traditionally small and left to the discretion of each SHS. *Id.* (“between 2006 and 2015, annually only approximately 1 percent to 3 percent of students admitted at the SHSs came through the Discovery Program”).

II. The 2018 Admission Policy Changes

Around 2018, then-Mayor Bill de Blasio and then-Department of Education (DOE) Chancellor Richard Carranza decided that it was

problematic that the racial demographics of the SHSs differed from those of the New York City public schools as a whole—specifically, that Asian-American students were, in their view, overrepresented and Hispanic and black students underrepresented. *CACAGNY*, 116 F.4th at 166–67. On June 3, 2018, they announced a two-pronged plan to change the racial composition of the SHSs. The first prong, challenged here, was an expansion and reorganization of the Discovery program.³ Under that plan, “the Discovery Program no longer would be a narrow alternative admission path. Instead, each SHS would now be required to set aside 20 percent of its seats for Discovery Program students, a dramatic increase from the 1 percent to 3 percent of seats that were previously reserved.” *CACAGNY*, 116 F.4th at 167.

Critically, the plan also narrowed Discovery eligibility, limiting participation to students attending middle schools with an Economic Need Index (ENI) of 60% or higher. *Id.* ENI is a metric designed to

³ Press Release, Office of the Mayor, *Mayor de Blasio and Chancellor Carranza Announce Plan to Improve Diversity at Specialized High Schools* (June 3, 2018), <https://a860-gpp.nyc.gov/concern/nyc-government-publications/nc580q26h?locale=en>. The second prong, which would have required legislative repeal of Hecht-Calandra, was to eliminate the SHSAT altogether and replace it with reserved seats for the top-ranked students at each NYC middle school. *Id.*

measure “the economic hardship of the community the school serves.” *Id.* at 167 & n.3.⁴ Under the new policy, an individual economically disadvantaged student is ineligible for Discovery if they attend a school with an ENI below 60%. *Id.* at 165. The restriction thus conditions eligibility not on the economic circumstances of the child, but on which middle school the child attends. If the goal were simply to help low-income students, a school-level metric would be an odd choice; it makes sense only if the goal was to exclude students attending particular schools.

III. Public and Private Statements Show That Defendants Designed the Changes to Achieve Racial Balancing

In *CACAGNY*, this Court highlighted a series of public statements between 2017 and 2018 by Mayor de Blasio and Chancellor Carranza. They declared that “the racial demographics of the SHSs were a ‘monumental injustice’” which they “sought to address ... by overhauling

⁴ ENI is the average of a school’s individual students’ economic needs value (ENV). Students are assigned an ENV of 1 if they are on public assistance, live in temporary housing, or come from a non-English speaking home. *Id.* “Otherwise, a student’s ENV is the percentage, divided by 100, of families with school-age children in the student’s census tract with incomes below the poverty level.” *Id.* Each student’s ENV, and by extension each school’s ENI, falls between 0.0 and 1.0 (i.e., between 0% and 100%).

the Discovery Program” in a manner “designed to increase the numbers of Black and Latino students at the SHSs.” *CACAGNY*, 116 F.4th at 166–67. This included a press release “touting” that “the City’s modeling suggested that the revised Discovery Program would result in 16 percent of offers at SHSs going to Black and Latino students—up from the then-current 9 percent rate.” *Id.* at 167. It also included Chancellor Carranza’s response to allegations that the changes “unfairly discriminated against high-achieving Asian-American students,” in which he told the media that he did not “buy into the narrative that any one ethnic group owns admission to these schools.” *Id.*

Internal documents—which were not before this Court in its 2024 *CACAGNY* decision—confirm that racial balancing was the motivating factor for the Discovery program changes. For example, in an email less than a week before the policy was announced, the DOE Director of Research and Policy stated the goal was “to use the Discovery program as a lever to admit more Black and Hispanic students.” Ex. 2 at ChMc_E_066808.⁵ An internal DOE slide deck from April 2018 identified

⁵ The Declaration of Glenn Roper submitted to the district court is attached as Exhibit B. For ease of reference, exhibits thereto are cited as “Ex.” with the appropriate bates number identified where relevant.

“[i]ncreas[ing] the diversity of the Specialized High Schools” as a “guiding principle[]” for the admissions changes. Ex. 3 at ChMc_E_114807, 114809. The City dismissed alternative race-neutral options—recommendation letters, interviews, writing assessments—because they would not “change the racial makeup” or “substantial[ly] change ... the percent of Black and Hispanic students offered seats at Specialized High Schools.” *Id.* at ChMc_E_114808. In contrast, DOE expected its Discovery Program expansion “to achieve more racial diversity,” with the ENI restriction in particular ensuring “[m]ore Black and Hispanic students would become eligible for Discovery.” *Id.* at ChMc_E_114811, 114815. DOE similarly explained that the ENI restrictions were critical “since it would be easier to target Black students directly for that program.” Ex. 4 at ChMc_E_065916. DOE also acknowledged that this approach would harm other racial groups, identifying in a “pro/con” list the “con” of “vociferous opposition” from Asian Americans and “those who would have received those seats in absence of change.” Ex. 7.

DOE staff modeled the racial effects of different ENI thresholds and selected the one designed to produce its desired outcome. They evaluated ENI cutoffs of 40 percent, 60 percent, and 80 percent and reported that

the 60 percent model yielded a “more diverse” pool while the average proficiency of admitted students “barely change[d].” *Id.* at ChMc_E_065914.⁶ A chart prepared for City Hall confirms that the “diversity” DOE cared about was *racial* diversity, and projected that under the new plan the Asian-American share of Discovery admittees would drop from 64 percent to 38 percent, while the black and Hispanic share would rise substantially:

Ethnicity	Percent of students who received SHS offers through Discovery, for fall 2018 admissions [preliminary]	Model for expanded Discovery [20% of seats, 60% ENI minimum]*
Asian	64%	38%
Black	10%	22%
Hispanic	12%	31%
White	11%	7%
Other	2%	2%
Unknown	2%	N/A
*Data for students who would have been eligible to apply for Discovery in summer 2017. Does not reflect income eligibility or student interest in participating.		

Ex. 5 at ChMc_E_075252. Under the new criteria, “11 of 24 majority-Asian-American middle schools were rendered ineligible for the Discovery Program,” thereby excluding “Asian-American students at those 11 middle schools ... from a fifth of all SHS seats under the new Discovery Program.” *CACAGNY*, 116 F.4th at 177. By contrast, only

⁶ Using an 80% cutoff significantly lowered the projected proficiency of Discovery admittees, which Hecht-Calandra prohibits.

about 8% of majority-black middle schools and 3% of majority-Hispanic middle schools were excluded.⁷

Put simply, the newly adopted ENI threshold excluded majority-Asian-American schools at a vastly higher rate than majority-black and majority-Hispanic schools. Combined with the fact that Asian Americans made up roughly two-thirds of Discovery participants under the pre-2018 rules, the targeting analysis makes the design unmistakable: the 60% ENI restriction was selected to produce a specific desired racial outcome.

IV. Plaintiff Chen and the Related CACAGNY Litigation

In 2018, Plaintiff Yi Fang Chen, a Chinese-American immigrant, was among the group of plaintiffs who sued to enjoin the changes to the Discovery program, alleging that the City unconstitutionally used race to reduce the number of Asian-American students like her son. In early 2019, the district court dismissed Chen for lack of standing because it considered M.P., then in first grade, too young for his injury to be imminent. *Christa McAuliffe Intermediate Sch. PTO v. de Blasio*, 364 F.

⁷ See *Demographic Snapshot 2020-21*, <https://infohub.nyced.org/docs/default-source/default-document-library/demographic-snapshot-2016-17-to-2020-21-public.xlsx>.

Supp. 3d 253, 272 (S.D.N.Y. 2019). It also denied the remaining plaintiffs' request for a preliminary injunction. *Id.* at 284.

The case proceeded to summary judgment, which the district court granted for the City on the ground that the plaintiffs had not shown that the new admission policy caused an aggregate disparate racial impact on Asian Americans. *CACAGNY*, 116 F.4th at 169. On appeal, this Court reversed. While not making a ruling on the issue of discriminatory intent, it emphasized that "SHS admission is a zero-sum game in that admitting more students from a particular demographic means admitting fewer from other demographics." *Id.* at 167. It also held that aggregate disparate impact is not a required element of an equal protection claim; if discriminatory intent is proven, a negative effect on *individual* Asian-American applicants is sufficient to trigger strict scrutiny. *Id.* at 165. The Court specifically rejected the City's argument "that a reduction of the Asian-American students at ... Stuyvesant and Bronx Science, that resulted from the changes to the Discovery Program[,] could not independently satisfy the requisite discriminatory effect." *Id.* at 178. If discriminatory intent was shown, "an equal protection claim would arise

if such discrimination resulted in certain Asian-American students being deprived of placement in their preferred high school.” *Id.*

This is precisely the case here, as M.P. is an Asian-American student deprived of placement in his preferred school. Although Chen was dismissed from the *CACAGNY* lawsuit nearly eight years ago, her worst fears about the Discovery changes have come to fruition. Her son—who attended a middle school ineligible for Discovery because of ENI cutoffs—has missed the Stuyvesant cutoff by just three points, scoring 558 compared to a cutoff of 561. *See* Ex. C. (Declaration of Yi Fang Chen) at ¶ 13. That gap is directly traceable to the Discovery expansion, as DOE’s own internal modeling concluded that setting aside twenty percent of seats for Discovery increased the Stuyvesant cutoff score by 10 points. Ex. 8.⁸ In the absence of an injunction, he will be attending Brooklyn Tech, his second-choice school.

⁸ The last two columns of the table calculate SHSAT cutoff scores using a 20% Discovery set-aside versus the original Discovery size. Stuyvesant’s cutoff score increases 10 points, from 552 to 562. Although this analysis was done using 2019 data, DOE can conduct the same analysis using 2025 data, which is sure to show a similar effect.

V. Denial of Chen's Preliminary Injunction Motion

Chen filed this action shortly after M.P. received the news of his high school placement, and she sought a preliminary injunction directing DOE to admit M.P. to Stuyvesant for the 2026–27 school year. Chen explained that the internal DOE documents produced after the district court's 2019 preliminary-injunction ruling, together with intervening decisions including *SFFA* and *CACAGNY*, required a fresh analysis of the challenged policy.

On July 21, 2026, following oral argument, the court denied the preliminary injunction motion from the bench, largely reiterating its conclusions from the *CACAGNY* litigation in 2019. The court concluded that Chen had not established discriminatory intent because she did not show that the Discovery revisions were adopted “because of their effects on Asian-American students.” Tr. 50:21–51:3.⁹ The court distinguished *SFFA* because those admissions policies explicitly used race, whereas the Discovery revisions are facially race neutral. Tr. 52:22–53:6. The court distinguished *CACAGNY* by saying this Court had not squarely

⁹ The transcript of the preliminary injunction denial is attached as Exhibit A. Citations to that transcript are hereinafter abbreviated as “Tr.”

addressed whether *SFFA* altered the analysis of facially neutral selective-school admissions policies. The district court instead adopted the First Circuit's reasoning in *Boston Parent Coalition for Academic Excellence Corp. v. School Committee for the City of Boston*, 89 F.4th 46 (1st Cir. 2023). Tr. 53:7–19. The district court acknowledged this Court's holding that an individual applicant may establish discriminatory impact even without aggregate harm to the racial group, but nevertheless concluded that M.P.'s individualized injury could not satisfy that standard because Chen had not established discriminatory intent. Tr. 53:24–54:13.

Having declined to apply strict scrutiny, the court applied rational-basis review to the policy and concluded that the Discovery expansion was rationally related to the legitimate interests of fostering diversity and expanding educational opportunity for economically disadvantaged students. Tr. 54:14–55:3. It therefore found that Chen had not demonstrated a clear or substantial likelihood of success. Tr. 55:4–13.

The court next concluded that Chen had not shown irreparable harm because she had not demonstrated likely success on her constitutional claims. Tr. 55:14–56:1. The court separately concluded

there was insufficient evidence that M.P. would have been admitted to Stuyvesant absent the Discovery revisions, notwithstanding DOE's own modeling showing that the 20-percent reservation increased Stuyvesant's cutoff by ten points. Tr. 56:2–10.

Finally, the court held that the equities and public interest favored maintaining the status quo of the revised admissions policy. Although it recognized that admitting one additional student would impose little administrative burden, it credited the City's argument that relief could encourage similar litigation and interfere with orderly administration of SHS admissions. Tr. 56:11–57:5.

Consistent with Fed. R. App. P. 8(a)(1) and Fed. R. Civ. P. 62(d), Chen requested that the district court enter an injunction pending appeal, which the district court denied. Dkt. No. 60. On July 30, Plaintiff's counsel notified all parties and the Clerk of this Court by email that this motion was forthcoming. Defendants and Intervenors oppose and will file responses.

ARGUMENT

“[E]ntitlement to relief pending appellate review” is warranted when appellants show (1) “that their [constitutional] claims are likely to

prevail,” (2) “that denying them relief would lead to irreparable injury, and” (3) “that granting relief would not harm the public interest.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020) (granting injunction pending appeal after this Court denied that relief).

Despite the prohibitory nature of the relief sought—stopping the City from enforcing a discriminatory policy—the district court found that Chen was instead seeking a “mandatory” injunction and therefore needed to show a “clear or substantial likelihood of success.” Tr. 48:15–22. Such distinctions are often “more semantic than substantive.” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018). But even if Chen needs to satisfy that higher standard, it is easily satisfied here.

I. Chen Is Likely to Succeed on the Merits

When a facially race-neutral policy is adopted with discriminatory purpose and produces a discriminatory effect, strict scrutiny applies. *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–66 (1977). And it was undisputed before the district court that if strict scrutiny applies here, the Discovery Program revisions must be found unconstitutional. This Court has already ruled that the “discriminatory

effect” requirement of *Arlington Heights* is satisfied for “Asian-American students being deprived of placement in their preferred high school under the new criteria.” *CACAGNY*, 116 F.4th at 178. Thus, the only remaining question is whether discriminatory purpose was a motivating factor in the City’s decision. *Arlington Heights*, 429 U.S. at 265–66. As discussed in detail below, the record, when read in light of *CACAGNY*, *SFFA*, and other recent Equal Protection Clause cases, mandates that conclusion because the City designed the Discovery revisions to balance racial outcomes in a zero-sum admissions process. Chen is therefore likely to establish discriminatory intent and succeed on the merits of her claim.

A. Under modern Equal Protection Clause jurisprudence, facially race-neutral admissions policies implemented to achieve racial balancing must satisfy strict scrutiny

In its most recent term, the Supreme Court could not have been clearer: the Constitution is “colorblind.” *Allen v. Milligan*, 146 S. Ct. 1377, 1380 (2026) (per curiam). As such, the proper reading of *SFFA* is both simple and broad: “if race played a role in a decision made by a government actor, strict scrutiny applie[s].” *Louisiana v. Callais*, 146 S. Ct. 1131, 1146 (2026) (citing *SFFA* and *Arlington Heights*). Consistent with that rule, *Herrera v. New York City Department of Education* cited

SFFA in holding that strikingly similar statements by Mayor de Blasio and Chancellor Carranza—including general statements about achieving “equity” and statements that city officials should “look like New York City”—could support a finding of unlawful race-based decision-making. No. 1:21-CV-7555-MKV, 2024 WL 245960, at *1–2, *7–8 (S.D.N.Y. Jan. 23, 2024). Likewise, *American Council of Learned Societies v. National Endowment for the Humanities* recognized the impact of *Callais* on “race-based governmental decisionmaking,” enjoining the termination of grants where race-based search terms were used because “[w]hen the government uses race to create a classification for purposes of official action, the government must satisfy strict scrutiny.” No. 25-CV-3657-CM, 2026 WL 1256545, at *55, *57 (S.D.N.Y. May 7, 2026).

The District Court acknowledged that “diversity” (i.e., desire to reengineer the racial demographics at the SHSs) “was a guiding principle of the changes to the Discovery Program.” Tr. 51:13–21. Nevertheless, it essentially reaffirmed its own 2019 decision from the *CACAGNY* case, finding that because the City’s revised policy was “facially neutral” and sought to “improve racial diversity” it did not “carr[y] with it a discriminatory intent.” Tr. 52:4–8. That approach would effectively

require Chen to prove outright animus against Asian-American students by the City. But *SFFA* recognized that the admissions programs there were likely “well intentioned and implemented in good faith” and still held them “patently unconstitutional.” 600 U.S. at 213, 223 (quotation omitted). The reason is straightforward: in competitive admissions, “a benefit provided to some applicants but not to others necessarily advantages the former group at the expense of the latter.” *Id.* at 218–19. This Court made the same point in *CACAGNY*: “SHS admission is a zero-sum game in that admitting more students from a particular demographic means admitting fewer from other demographics.” 116 F.4th at 167 (“The City’s modeling also projected that the changes to the Discovery Program would decrease the number of Asian Americans at the SHSs.”).

Facial neutrality does not change the analysis. *CACAGNY* held that the facially neutral Discovery revisions would trigger strict scrutiny if motivated by discriminatory intent and producing a discriminatory effect. *Id.* at 171. As *SFFA* explained, “[w]hat cannot be done directly cannot be done indirectly. The Constitution deals with substance, not shadows.” 600 U.S. at 230 (citation modified). That is the very point of

Arlington Heights, which commands courts to review circumstantial and direct evidence of the kind submitted here to determine whether “race played a role in a decision made by a government actor.” *Callais*, 146 S. Ct. at 1146 (citing *Arlington Heights*, 429 U.S. at 265–66).

In a case that explicitly relied on this Court’s decision in *CACAGNY*, the Third Circuit recently applied those principles to a facially neutral selective-school admissions policy in *Sargent v. School District of Philadelphia*, 165 F.4th 727 (3d Cir. 2026). Philadelphia argued that its geographic preferences were race neutral and applied equally to every student, but the court held that the relevant question was whether “the antecedent decision to implement the Admissions Policy itself” was made for a discriminatory purpose. *Id.* at 746–47. The court, in reversing a grant of summary judgment for the city, emphasized that selective-school admissions are a “zero-sum game in which the admission of one student means the rejection of another,” making the process closely analogous to *SFFA*. *Id.* at 746. Evidence that officials implemented the policy to “alter the racial composition of the student body” or “achieve racial proportionality” could therefore support a finding of discriminatory purpose. *Id.* at 742–43. And in rejecting the First

Circuit’s contrary analysis, *Sargent* expressly relied on *CACAGNY*, calling this Court’s individualized-harm framework the “sounder approach.” *Id.* at 748–50.

The same analysis applies here. DOE did not simply adopt economic or geographic criteria and later discover that they had racial effects. It modeled different ENI thresholds according to the racial outcomes they would produce, and selected the threshold projected to cut the Asian-American share of Discovery offers nearly in half. DOE officials described the revisions as a “lever to admit more Black and Hispanic students” and acknowledged that there would be opposition from Asian Americans. Ex. 2 at ChMc_E_066808; Ex. 7. The ENI threshold may have been facially economic, but the record shows that it was selected and used as a proxy to achieve a desired racial result. This Court has affirmed findings of racial motivation on far less evidence. *See, e.g., MHANY Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 608–11 (2d Cir. 2016) (agreeing there was discriminatory intent where record contained only “code words” about neighborhood “character” without direct racial statements).

B. The District Court relied on superseded and distinguishable precedent

On the issue of intent, the District Court cited *Hayden v. County of Nassau*, 180 F.3d 42 (2d Cir. 1999), for the proposition that racial preferences may be appropriate to remedy past discrimination “even in the absence of specific and identified discrimination.” Tr. 52:9–15. But *SFFA* foreclosed that approach, specifying that any remedial use of race must be limited to “specific, identified instances of past discrimination that violated the Constitution or a statute.” 600 U.S. at 207. And in any event, *Hayden* is factually inapposite: there, a county redesigned a police entrance exam to reduce conceded past discrimination, and administered the application process identically to all of the candidates. 180 F.3d at 51. Here, by contrast, Defendants did not administer a truly neutral process—they created a set-aside aided by a racial proxy, reducing the seats available through the SHSAT while categorically excluding students at targeted middle schools from the alternative pathway.

Jana-Rock Construction v. New York State Department of Economic Development, 438 F.3d 195 (2d Cir. 2006), is similarly inapposite. There, the plaintiffs challenged the underinclusiveness of an affirmative-action definition, but conceded the validity of the remedial program as a whole.

438 F.3d at 200–01. And to the extent *Jana-Rock* suggests that a plaintiff must show a separate “intent to harm” the excluded group, *id.* at 211, Chen has shown it here: in a zero-sum admissions system, the City’s deliberate effort to increase admissions for some racial groups necessarily meant an intent to reduce admissions for others, and its own modeling showed that Asian-American students would lose seats. *See SFFA*, 600 U.S. at 218–19.

Finally, the district court relied on the First Circuit’s decision in *Boston Parent Coalition*. But that case applied a framework that this Court expressly rejected in *CACAGNY*. The First Circuit concluded that the challenged policy lacked a discriminatory effect because Asian-American students remained overrepresented among admitted students compared to the eligible school-age population. 89 F.4th at 57–59. *CACAGNY*, by contrast, held that a plaintiff need not demonstrate aggregate harm to a racial group and may instead establish discriminatory effect by showing that “any individual has been negatively affected or harmed by that discriminatory law or policy based on race.” 116 F.4th at 173. The Third Circuit in *Sargent* expressly recognized this conflict, concluding that this Court adopted a “sounder

approach” than the First Circuit. 165 F.4th at 748–50. As *Sargent* explained, courts may not excuse intentional racial discrimination merely because the disadvantaged racial group remains, in the court’s view, “sufficiently successful.” *Id.* at 749.

Taken together, the record and governing precedent show that Chen is likely to prevail on the merits of both her Equal Protection and Title VI claims:¹⁰ the City adopted the Discovery revisions to balance racial outcomes in a zero-sum admissions environment, thereby triggering strict scrutiny which the City concedes the policy cannot satisfy.

II. M.P. Will Suffer Irreparable Injury Absent an Injunction Pending Appeal

The District Court largely tied its irreparable harm analysis to the likelihood of success on the merits, holding that “[a]bsent that showing, plaintiff has failed to demonstrate irreparable harm.” Tr. 55:23–56:1. Should this court conclude Chen is likely to succeed on the merits, it

¹⁰ Plaintiff’s Title VI claim is likely to succeed for the same reasons as her Equal Protection Clause claims. Tr. 55:4–8.

should necessarily find irreparable harm. *See Seventh Regiment Armory Conservancy, Inc. v. Knight*, 811 F. Supp. 3d 467, 478 (S.D.N.Y. 2025).

More fundamentally, the harm faced by M.P. is irreparable in the most concrete sense. If M.P. begins high school elsewhere, no later ruling can restore his freshman year at Stuyvesant, including the coursework, teachers, peer cohort, extracurricular opportunities, and relationships that begin forming on the first day of ninth grade. Because an injunction would preserve that opportunity while its denial would permanently extinguish it, this factor weighs decisively in Plaintiff's favor. This is true even though he has an offer to attend Brooklyn Tech. This Court has already recognized Stuyvesant as the more prestigious school. *CACAGNY*, 116 F.4th at 169. And, regardless, this Court should decline "to judge the comparative merits" of the two schools, recognizing instead that "educational experiences" are inherently "unique," and that the loss of the chance to enroll in one's chosen or preferred school is irreparable harm because final resolution of the case could take "years to come." *Foulke v. Foulke*, 896 F. Supp. 158, 160–61 (S.D.N.Y. 1995).

The district court also erroneously held that M.P.'s injury is "remote or speculative" because there was "insufficient evidence ... to determine

whether or not he, in fact, would have met” the Stuyvesant cutoff absent the admissions changes. Tr. 56:2–10. But the record points decidedly in the opposite direction: M.P. scored only three points below that cutoff, and DOE’s own 2019 internal analysis concluded that the Discovery revisions raised the Stuyvesant cutoff by ten points. The City has offered no competing calculation for 2025. It speaks volumes that the City did not dispute in its briefing before the district court that M.P.’s score would have sufficed for admission to Stuyvesant absent the challenged revisions. Although the City’s counsel professed at oral argument not to know whether M.P.’s score would have sufficed, the City alone has the ability to perform that calculation, and this Court rightly places the burden on “the party with easier access to relevant information” to avoid requiring the other party to prove a negative. *Nat’l Commc’ns Ass’n v. AT&T Corp.*, 238 F.3d 124, 130–31 (2d Cir. 2001).

III. An Injunction Would Not Harm the Public Interest

“The government does not have an interest in the enforcement of an unconstitutional law.” *N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (quotation omitted). Thus, if Chen is likely to

succeed on the merits of her claims, the public interest is served by a grant of this motion.

The district court acknowledged that admitting M.P. would not create a significant administrative burden for the City. Tr. 56:19–20. Stuyvesant admits more than 800 students each year, and Chen seeks only the admission of one additional student, without displacing anyone else. The district court nevertheless relied on the possibility that granting relief could lead to additional lawsuits. Tr. 56:19–24. But the possibility that others may seek to enforce their constitutional rights does not harm the public interest, as that argument would foreclose an injunction in almost any constitutional challenge to a generally applicable policy. And given the imminent start of the school year, it would be nearly impossible for hypothetical plaintiffs to successfully seek admission to the SHSs for 2026–27. Thus, the possibility of future litigation does not justify denying narrow relief to M.P., and granting the injunction would not harm the public interest.

CONCLUSION

This Court should grant an injunction ordering that M.P. be admitted to Stuyvesant High School for the 2026–27 school year pending resolution of Plaintiff’s appeal.

DATED: August 3, 2026.

Glenn E. Roper
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Respectfully submitted,

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*Counsel for Plaintiff Yi Fang Chen, individually
and on behalf of her minor children M.P., Ma.P., and P.P.*

CERTIFICATE OF COMPLIANCE

Type-Volume Limit, Typeface Requirements, and Type-Style Requirements

This document complies with the type-volume limitation of Local Rule 32.1(a)(4),(5)/Fed. R. App. P. 27(d)(2)(A),(C), excluding the parts of the document exempted by Fed. R. App. P. 32(f), because this document contains 5,200 words.

This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 in font style Century Schoolbook and font size 14.

DATED: August 3, 2026.

s/ Dean McGee
Dean McGee
Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

I hereby certify that on August 3, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Dean McGee
Dean McGee
Counsel for Plaintiff-Appellant

Case: 26-2066, 08/03/2026, DktEntry: 17.3, (1 of 70)

EXHIBIT B

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YI FANG CHEN, individually and on behalf
of her minor children M.P., Ma.P., and P.P.,

Plaintiff,

v.

ZOHRAN MAMDANI, in his official
capacity as Mayor of the City of New York;
KAMAR H. SAMUELS, in his official
capacity as Chancellor of the New York City
Department of Education; and the NEW
YORK CITY DEPARTMENT OF
EDUCATION,

Defendants.

Case No. 1:26-cv-03355

**DECLARATION OF GLENN ROPER IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

I, Glenn E. Roper, declare as follows under 28 U.S.C. § 1746:

1. I am lead counsel for the Plaintiff in this action.
2. I am over the age of eighteen and have personal knowledge of the facts set forth in this declaration. If called to testify, I could and would testify competently to these facts.
3. The attached documents are true and correct copies of nonconfidential documents that were filed, or produced in discovery by, the Defendants in the case originally captioned *Christa McAuliffe Intermediate School PTO v. de Blasio*, No. 1:18-cv-11657 (S.D.N.Y.):

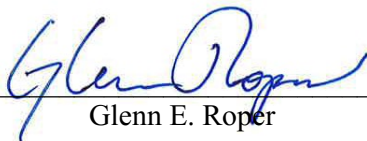
Exhibit	Bates Label	Description
1	N/A	Defendants' Answer in <i>Christa McAuliffe Intermediate School PTO, Inc., et al. v. de Blasio, et al.</i> , No. 1:18-cv-11657, Dkt. No. 42 (S.D.N.Y. Jan. 10, 2019). ¹
2	ChMc_E_066808-11	May 30, 2018, email from Nadiya Chadha saying "we currently want to use the Discovery program as a lever to admit more Black and Hispanic students."
3	ChMC_E_114804-16	April 17, 2018, slide deck saying that portfolios, recommendation letters, interviews, and writing assignments are "unlikely to increase diversity of Specialized High Schools," and suggesting adding an ENI cutoff to increase the number of black and Hispanic students eligible for the Discovery program.
4	ChMC_E_065909-23	April 2018, emails between Josh Wallack and Nadiya Chadha discussing the racial outcomes of various ENI cutoffs under an expanded twenty percent Discovery program, saying that including ENI makes it "easier to target Black students directly" for Discovery, and asking how much bigger the Discovery program would have to be "to increase the percentage of black students by 1%[.]"
5	ChMc_E_075252-55	August 13, 2018, emails between Will Mantell and Nadiya Chadha responding to a request from City Hall for a "Discovery racial breakdown," including table showing that expanding discovery to twenty percent of seats with a sixty percent ENI minimum was expected to reduce Discovery offers to Asian students from sixty-four percent to thirty-eight percent, while increasing offers to black and Hispanic students.
6	ChMc_E_015823	June 2018, document discussing the expansion of the Discovery program and predicting that offers to black and Hispanic students "would nearly double, going from ~9 percent currently to ~16%."
7	ChMc_E_115049	May 15, 2018, document summarizing a "two-pronged" recommendation for the Specialized High Schools and acknowledging prospective "Resistance from those who would have received those seats in absence of change."
8	ChMc_E_117121	Spreadsheet listing cut score for Discovery program for the Specialized High Schools for 2016-2025.

¹ For ease of reference, the *Christa McAuliffe* Complaint, with corresponding allegations, is available here: <https://pacificlegal.org/wp-content/uploads/2018/12/2018.12.13-001-PLF-Complaint.pdf>

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 27, 2026.



Glenn E. Roper

EXHIBIT 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

CHRISTA McAULIFFE INTERMEDIATE SCHOOL
PTO, Inc. et al,

Plaintiffs,

**DEFENDANTS’
ANSWER**

18 CV 11657 (ER)(OTW)

-against-

BILL DE BLASIO, in his official capacity as Mayor of
New York, et ano.,

Defendants.

-----X

Defendants, Bill de Blasio, in his official capacity as Mayor of the City of New York, and Richard A. Carranza, in his official capacity as Chancellor of the New York City Department of Education (“DOE”) (collectively “Defendants”), by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, hereby answer the Complaint as follows:

1. The first sentence of paragraph “1” of the Complaint is the expression of an opinion that requires no response; deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second sentence; and deny the allegations set forth in the third sentence.

2. Deny the truth of the allegations set forth in paragraph “2” of the Complaint; except admit that for the eight Specialized High Schools that rely on the Specialized High Schools admissions test (“SHSAT”) for admission,¹ DOE plans to assign 20% of the seats

¹ There are nine Specialized High Schools in the New York City School District. In accordance with State law, admission to eight of these nine schools is based on the SHSAT. Admission to the ninth Specialized High School, Fiorello H. LaGuardia High School of Music & Art and Continued...

in the eight Specialized High Schools through the Discovery Program, and affirmatively state that such change is designed to be phased in over two school years.

3. Deny the truth of the allegations set forth in paragraph “3” of the Complaint, except admit that Plaintiffs purport to proceed as set forth therein.

4. Deny the truth of the allegations set forth in paragraph “4” of the Complaint, except admit that Plaintiffs purport to proceed as set forth therein.

5. Deny the truth of the allegations set forth in paragraph “5” of the Complaint, and affirmatively state that DOE plans to expand the number of seats assigned through the Discovery Program during the 2018-2019 and 2019-2020 school years, and that admission to 20% of the seats in the eight testing Specialized High Schools will be through the Discovery Program by the 2020-2021 school year.

6. Deny the truth of the allegations set forth in paragraph “6” of the Complaint, except admit that Plaintiffs purport to proceed as set forth therein and admit that DOE maintains offices within the Southern District of New York.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first two sentences of paragraph “7” of the Complaint, except admit that the Christa McAuliffe Intermediate School (“I.S.187”) is a public school located at 1171 65th Street, Brooklyn, New York and that the Christa McAuliffe Intermediate School PTO is recognized by DOE as I.S. 187’s parent organization for the school community. The third sentence is the expression of an opinion that requires no response. Deny the truth of the allegations in the fourth sentence, except admit that 274 students graduated from I.S. 187 in 2018

Performing Arts, is based on audition and the review of a student’s portfolio and academic records.

and that more 2018 graduates of I.S. 187 attend the eight testing Specialized High Schools than graduates of any other intermediate school. Deny the allegations of the fifth sentence, except admit that 67.5% of the students who attended I.S. 187 in the 2017-2018 school year identified as Asian-American and that 65.8% of the students who attended I.S. 187 in the 2017-2018 school year qualified for free or reduced price lunch or were eligible for HRA benefits. In response to the sixth sentence, admit that I.S. 187 students will not be eligible for the Discovery Program in the 2019-2020 school year because the Economic Need Index (“ENI”) of I.S. 187 is less than 0.60. In response to the seventh sentence, deny that 20% of the seats in the Specialized High Schools will be assigned through the Discovery Program for the 2019-2020 school year. In response to the eighth sentence, the allegations set forth therein are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first three sentences in paragraph “8” of the Complaint, except deny the allegations that the challenged admissions policy is devised to discriminate against Asian-American students. In response to the fourth sentence, the allegations set forth therein are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first three sentences in paragraph “9” of the Complaint. In response to the fourth sentence, the allegations set forth therein are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

10. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first four sentences in paragraph “10” of the Complaint, except

admit that A.W. is an eighth-grader at I.S. 5, a public school in Queens, and that she took the SHSAT in October 2018. Deny the allegations in the fifth and sixth sentences and affirmatively state that students at I.S. 5, who are otherwise eligible for the Discovery Program, may participate in the Discovery Program because I.S. 5 has an ENI of 0.60 or above.

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first six sentences in paragraph “11” of the Complaint. In response to the seventh sentence, the allegations set forth therein are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first five sentences in paragraph “12” of the Complaint. In response to the sixth sentence, the allegations set forth therein are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

13. Deny the truth of the allegations set forth in the third sentence of paragraph “13” of the Complaint, except admit that Bill de Blasio is the Mayor of the City of New York and is sued in his official capacity and that he announced the challenged plan with Chancellor Carranza on June 3, 2018.

14. Admit the truth of the allegations set forth in the first and last sentences of paragraph “14” of the Complaint, deny the remaining allegations in the paragraph, and respectfully refer the Court to New York Education Law § 2590-h for a true and accurate statement of significant powers of the Chancellor and the Mayor’s power with respect to the appointment and service of the Chancellor.

15. Paragraph “15” of the Complaint is an expression of opinion that requires no response, but to the extent a response is required, affirmatively state that DOE operates nine

Specialized High Schools, eight of which use the SHSAT in determining admission, that Stuyvesant High School, Bronx High School of Science, and Brooklyn Technical High School are the oldest and largest of the Specialized High Schools, and that many graduates of these schools are offered admission to selective colleges and universities.

16. Admit the truth of the allegations set forth in paragraph “16” of the Complaint, and affirmatively state that the correct names of two of the listed schools are: Queens High School for the Sciences at York College and the Fiorello H. LaGuardia High School of Music & Art and Performing Arts.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence in paragraph “17” of the Complaint, except admit that Stuyvesant High School has previously had the highest minimum SHSAT score for acceptance of the eight testing Specialized High Schools. Deny the allegations of the second sentence, except admit that 44.3% of the students who attended Stuyvesant High School in the 2017-2018 school year qualified for free or reduced price lunch or were eligible for HRA benefits. The third sentence is the expression of an opinion that requires no response. Admit the allegations in the fourth sentence. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the fifth sentence, except admit that Stuyvesant High School reports that four of its graduates have received Nobel prizes.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the first sentence in paragraph “18” of the Complaint, except admit that Bronx High School of Science reports that eight of its graduates have received Nobel prizes. Deny the allegations of the second sentence, except admit that 44.2% of the students who

attended Bronx High School of Science in the 2017-2018 school year qualified for free or reduced price lunch or were eligible for HRA benefits.

19. Admit the truth of the allegations set forth in the first sentence of paragraph “19” of the Complaint in terms of student enrolment. Deny the allegations of the second sentence, except admit that 60.8% of the students who attended Brooklyn Technical High School in the 2017-2018 school year qualified for free or reduced price lunch or were eligible for HRA benefits. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the third sentence, except admit that Brooklyn Technical High School so reports.

20. Admit the truth of the allegations in paragraph “20” of the Complaint concerning the enrollments in school year 2017-18 in the five schools listed and affirmatively state that there is a ninth Specialized High School, the Fiorello H. LaGuardia High School of Music & Art and Performing Arts, which does not use the SHSAT in determining admission. To the extent paragraph “20” contains expression of an opinion, no response is required.

21. The allegations set forth in paragraph “21” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied, and the Court is respectfully referred to N.Y. Education Law § 2590-h(1)(b), incorporating N.Y. Education Law § 2590-g(12), as in effect on March 29, 1997, for a full and accurate statement of its contents.

22. Deny the truth of the allegations set forth in the first and third sentences of paragraph “22” of the Complaint, except admit that eight of the Specialized High Schools utilize the SHSAT in admissions decisions, and affirmatively state that the challenged plan does not

apply to LaGuardia High School. Admit the truth of the allegations in the second sentence in paragraph “22.”

23. Admit the truth of the allegations set forth in paragraph “23” of the Complaint except deny that the maximum possible score on the SHSAT is 800.

24. Admit the truth of the allegations set forth in the first and second sentences of paragraph “24” of the Complaint. Deny the truth of the allegations set forth in the third sentence, except affirmatively state that 482 was the minimum score for admission to the Specialized High Schools for students not participating in the Discovery Program.

25. The allegations set forth in the first sentence of paragraph “25” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied, and the Court is respectfully referred to N.Y. Education Law § 2590-h(1)(b), incorporating N.Y. Education Law § 2590-g(12), as in effect on March 29, 1997, for a full and accurate statement of its contents. Deny the truth of the allegations set forth in the second sentence of paragraph “25” of the Complaint.

26. The allegations set forth in paragraph “26” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied, and the Court is respectfully referred to N.Y. Education Law § 2590-h(1)(b), incorporating N.Y. Education Law § 2590-g(12)(d), as in effect on March 29, 1997, for a full and accurate statement of its contents.

27. Deny the truth of the allegations set forth in paragraph “27” of the Complaint, except admit that Stuyvesant High School offered admission to 23 students through the Discovery Program in 2018, and affirmatively state that the Education Law does not cap the

size of the Discovery Program, and that the Discovery Program was much larger in the years after the enactment of the Hecht-Calandra Act than in more recent years.

28. Admit the truth of the allegations set forth in paragraph “28” of the Complaint.

29. Deny the truth of the allegations set forth in paragraph “29” of the Complaint.

30. Admit the truth of the allegations set forth in paragraph “30” of the Complaint.

31. Admit the truth of the allegations set forth in paragraph “31” of the Complaint.

32. Admit the truth of the allegations set forth in paragraph “32” of the Complaint, except deny that the percentage of students identified as Asian-American at Brooklyn Technical High School in 2017-2018 was 59.6%.

33. Deny the truth of the allegations set forth in paragraph “33” of the Complaint, and respectfully refer the Court to the statement of the Mayor and the Chancellor referenced therein for a true and complete statement of its contents.

34. Deny the truth of the allegations set forth in the first sentence of paragraph “34” of the Complaint, and admit the truth of the allegations in the second sentence.

35. Deny the truth of the allegations set forth in paragraph “35” of the Complaint, except admit that the Economic Need Index (“ENI”) is an existing measure that estimates the percentage of students at a school that face economic hardship.

36. Deny the truth of the allegations set forth in the first sentence of paragraph “36” of the Complaint, except admit that the ENI is distinct from the poverty rate, and admit the allegations in the second sentence.

37. Deny the truth of the allegations set forth in paragraph “37” of the Complaint, except admit the allegations in the last three sentences of the paragraph, and affirmatively state that a student’s Economic Need Value is 1.0 if:

- o The student is eligible for public assistance from the NYC Human Resources Administration (HRA);
- o The student lived in temporary housing in the past four years; or
- o The student has a home language other than English and enrolled in a DOE school for the first time within the last four years.

Otherwise, a student’s Economic Need Value is based on the percentage of families with school-age children in the student’s census tract whose income is below the poverty level, as estimated by the American Community Survey Five-Year estimate. The student’s Economic Need Value equals this percentage divided by 100.

38. The allegations set forth in the first three sentences of paragraph “38” of the Complaint are arguments and contentions that do not require a response, but to the extent a response is required, those allegations are denied, except admit that a student must attend a school with an ENI of 0.60 or greater to be eligible for the Discovery Program for the 2019-2020 school year. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the last sentence of paragraph “38” of the Complaint.

39. Deny the truth of the allegations set forth in paragraph “39” of the Complaint, except admit that there is an expectation that the challenged changes to the Discovery

Program will increase aggregate offers of enrollment of students identified as African-American and Latino from approximately 9% to approximately 16%, and respectfully refer the Court to the statement of the Mayor and the Chancellor referenced therein for a true and complete statement of its contents.

40. Deny the truth of the allegations set forth in the first and third sentences of paragraph “40” of the Complaint, except admit that 20 of the 191 schools where students identified as African-American constitute more than 50% of the enrolment and 9 schools where students identified as Hispanic constitute more than 50% of the enrolment have ENIs less than 0.60. Admit the truth of the allegations in the second sentence, and affirmatively state that of the approximately 12,600 students identified as Asian-American in eighth grade, approximately 8,100, or 64%, attend schools with ENIs of 0.60 or greater.

41. Deny the truth of the allegations set forth in paragraph “41” of the Complaint, and respectfully refer the Court to the press release referenced in footnote 9 of the Complaint for a true and complete statement of its contents.

42. Deny the truth of the allegations set forth in paragraph “42” of the Complaint.

43. Deny the truth of the allegations set forth in the first and second sentences of paragraph “43” of the Complaint. Deny the truth of the allegations set forth in the last sentence, except admit the truth of the allegations concerning the Citywide ENI for 2015-2016, 2016-2017, and 2017-2018.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44” of the Complaint because it is unclear which 18 schools are referenced therein.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “45” of the Complaint because it is unclear which schools are referenced therein.

46. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “46” of the Complaint because it is unclear which schools are referenced therein.

47. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “47” of the Complaint because it is unclear which schools are referenced therein.

48. The allegations set forth in paragraph “48” of the Complaint are arguments and contentions that do not require a response, but to the extent a response is required, those allegations are denied.

49. Deny the truth of the allegations set forth in paragraph “49” of the Complaint, except admit that the criteria used in the Discovery Program are facially race neutral.

50. Deny the truth of the allegations set forth in paragraph “50” of the Complaint, and respectfully refer the Court to the statements of the Mayor for a true and complete statement of their contents.

51. Deny the truth of the allegations set forth in paragraph “51” of the Complaint, and respectfully refer the Court to the statement of the Chancellor for a true and complete statement of its contents.

52. Deny the truth of the allegations set forth in paragraph “52” of the Complaint, and respectfully refer the Court to the press release referenced therein for a true and complete statement of its contents, and affirmatively state that achieving greater geographic,

racial and socioeconomic diversity at the Specialized High Schools will benefit all students who attend those schools, as has been recognized by many persons and organizations, including four Asian-American organizations.² In addition, in the years succeeding enactment of the Hecht-Calandra Act, the Discovery Program contributed a larger percentage of students to the student bodies of Stuyvesant High School, Bronx High School of Science, and Brooklyn Technical High School, and the resulting diversity had a salutary effect as noted, for example, by a former principal of the Bronx High School of Science.³

53. Deny the truth of the allegations set forth in paragraph “53” of the Complaint, and respectfully refer the Court to the press release referenced in paragraph “52” of the Complaint for a true and complete statement of its contents.

² See Statements of Support by various organizations, including four Asian-American organizations, of a complaint filed in May 2012 with the Office of Civil Rights of the United States Department of Education, challenging the lack of diversity in the Specialized High Schools. These four Asian-American organizations are: The Coalition for Asian American Children and Families; the Asian American Legal Defense and Education Fund; the National Asian American Coalition and CAAAV Organizing Asian Communities. <https://www.naacpldf.org/wp-content/uploads/CACF-Statement-on-Specialized-HS.pdf>; <https://www.naacpldf.org/wp-content/uploads/AALDEF-Statement-NYC-Specialized-High-Schools-FINAL.pdf>; <https://www.naacpldf.org/wp-content/uploads/CACF-Statement-on-Specialized-HS.pdf>; [https://www.naacpldf.org/wp-content/uploads/caaav-shs-statement-of-support.docx .pdf](https://www.naacpldf.org/wp-content/uploads/caaav-shs-statement-of-support.docx.pdf) (last visited on January 10, 2019).

³ In 1987, Milton Kopelman, then the Principal of the Bronx High School of Science, described how the Discovery Program, which was implemented at the school in 1972 and through which 10% of the students entered the school, had beneficially transformed a student body that had been primarily middle class, white, Jewish and from the Bronx, to a student body that was almost 14% students identified as African-American, 9% identified as Hispanic, and 23% identified as Asian-American and had members in a dozen different ethnic student clubs. Mr. Kopelman said that, “The diversity has created for me a more vital, interesting and exciting place, one that is more reflective of the real world.” Mr. Kopelman also stated that students entering through the Discovery Program are “highly motivated” and succeeded at the school, and that two of them had won awards in the extremely prestigious national Westinghouse [now Intel] competition. <https://www.nytimes.com/1987/03/04/nyregion/excellence-and-equality-a-conflict.html> (last visited on January 10, 2019).

54. Deny the truth of the allegations set forth in paragraph “54” of the Complaint, but admit that 61% of the students identified as Asian-American, 61% of the students identified as African-American and 53% of the students identified as Hispanic who received offers to attend a Specialized High School in the 2018-2019 school year qualified for free or reduced price lunch or were eligible for HRA benefits.

55. Deny the truth of the allegations set forth in the first sentence of paragraph “55” of the Complaint. Admit the truth of the allegations set forth in the second sentence of paragraph “55.”

56. Deny the truth of the allegations set forth in paragraph “56” of the Complaint, except admit that approximately two-thirds of the students participating in the Discovery Program in the 2017-2018 and 2018-2019 school years were identified as Asian-Americans.

57. Deny the truth of the allegations set forth in paragraph “57” of the Complaint.

58. In response to paragraph “58” of the Complaint, Defendants hereby re-allege each and every response contained in paragraphs “1” through “57” above as though set forth herein.

59. The allegations set forth in paragraph “59” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied, and the Court is respectfully referred to the Fourteenth Amendment of the United States Constitution for a full and accurate statement of its contents.

60. Admit the truth of the allegations set forth in paragraph “60” of the Complaint.

61. The allegations set forth in paragraph “61” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

62. Deny the truth of the allegations set forth in paragraph “62” of the Complaint.

63. Deny the truth of the allegations set forth in paragraph “63” of the Complaint.

64. Deny the truth of the allegations set forth in paragraph “64” of the Complaint, except admit that the impact of the changes is unknowable before they are applied to the test taken in October 2018.

65. Deny the truth of the allegations set forth in paragraph “65” of the Complaint.

66. The allegations set forth in paragraph “66” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

67. The allegations set forth in paragraph “67” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

68. Deny the truth of the allegations set forth in paragraph “68” of the Complaint.

69. The allegations set forth in paragraph “69” of the Complaint are contentions of law that do not require a response, but to the extent a response is required, those allegations are denied.

FOR A FIRST AFFIRMATIVE DEFENSE

58. The Complaint fails to state a claim against the Defendants upon which relief can be granted.

FOR A SECOND AFFIRMATIVE DEFENSE

59. The Defendants have not violated any rights, privileges, or immunities under the United States Constitution or the laws of the United States, the State of New York, or any political subdivision thereof.

FOR A THIRD AFFIRMATIVE DEFENSE

60. Each of the named Plaintiffs lacks standing to bring this action, and the Court therefore lacks jurisdiction over the case.

FOR A FOURTH AFFIRMATIVE DEFENSE

61. The Defendants at all times acted reasonably and in good faith and did not act with deliberate indifference to Plaintiffs' rights.

FOR A FIFTH AFFIRMATIVE DEFENSE

62. No equitable relief, either preliminary or permanent, should be awarded. The prerequisites for both preliminary and permanent equitable relief are not satisfied.

FOR A SIXTH AFFIRMATIVE DEFENSE

63. The Mayor is not a proper defendant in this action challenging a plan of the DOE.

WHEREFORE, Defendants request judgment dismissing the Complaint and denying all relief requested therein, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York
January 10, 2019

ZACHARY W. CARTER
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Room 2-110
New York, New York 10007
(212) 356-0872

By:



Thomas B. Roberts
Marilyn Richter
Assistants Corporation Counsel

Laken D. Padilla

From: NYSD_ECF_Pool@nysd.uscourts.gov
Sent: Thursday, January 10, 2019 4:17 PM
To: CourtMail@nysd.uscourts.gov
Subject: Activity in Case 1:18-cv-11657-ER Christa McAuliffe Intermediate School PTO, Inc. et al v. De Blasio et al Answer to Complaint

Follow Up Flag: Follow up
Flag Status: Completed

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U.S. District Court

Southern District of New York

Notice of Electronic Filing

The following transaction was entered by Roberts, Thomas on 1/10/2019 at 7:17 PM EST and filed on 1/10/2019

Case Name: Christa McAuliffe Intermediate School PTO, Inc. et al v. De Blasio et al
Case Number: [1:18-cv-11657-ER](#)
Filer: Richard A Carranza
Bill De Blasio
Document Number: [42](#)

Docket Text:

ANSWER to [1] Complaint,. Document filed by Richard A Carranza, Bill De Blasio.(Roberts, Thomas)

1:18-cv-11657-ER Notice has been electronically mailed to:

Christopher M. Kieser ckieser@pacificlegal.org, IncomingLit@pacificlegal.org

Joshua P. Thompson jthompson@pacificlegal.org, bas@pacificlegal.org, IncomingLit@pacificlegal.org

Oliver J Dunford odunford@pacificlegal.org, bas@pacificlegal.org, IncomingLit@pacificlegal.org

Thomas B. Roberts throbert@law.nyc.gov

Wencong Fa wfa@pacificlegal.org, IncomingLit@pacificlegal.org

1:18-cv-11657-ER Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=1/10/2019] [FileNumber=21454665-0] [66ba3658641ac47923dabe411f09e57b51bd8803d41adb5f968ec04343bab6aae8f261281086c68f0ceba3594121f17d52a99692902d998b51fd31a4eae83388]]

EXHIBIT 2

Sent: 5/30/2018 3:44:07 PM
To: Liss Emmy [eliss@schools.nyc.gov]; Wright Lianna [lwright13@schools.nyc.gov]; Kleinhandler Sarah [skleinh@schools.nyc.gov]
Subject: RE: SHSAT bill MIS

Okay, thanks [REDACTED] ACC

Any concerns with #1 below, that the Discovery program would cease to exist in Year 3? Just want to make sure you/Josh are fine with that piece. I don't think we would need something like it because we currently want to use the Discovery program as a lever to admit more Black and Hispanic students, which:

- 1) it doesn't do successfully in its current state and
- 2) Seems unnecessary in a year-3 SHS world, where we are making offers to all schools across the city.

The only pushback I could see if that people argue we save

From: Liss Emmy
Sent: Wednesday, May 30, 2018 2:27 PM
To: Chadha Nadiya <NChadha@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>
Subject: RE: SHSAT bill MIS

No one else needs to review it unless you have concerns.

This is probably our last shot at edits, so I just want to triple confirm that you have read it closely and feel comfortable that it allows us to do exactly what we want!

From: Chadha Nadiya
Sent: Wednesday, May 30, 2018 2:23 PM
To: Liss Emmy <ELiss@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>
Subject: Re: SHSAT bill MIS

Smaller group

Emmy- [REDACTED] ACC Sarah and Lianna think it's fine.

Get [Outlook for iOS](#)

From: Chadha Nadiya
Sent: Wednesday, May 30, 2018 2:20:43 PM
To: Gantz Toni; Liss Emmy; Wright Lianna; Wallack Josh; Kleinhandler Sarah
Cc: Friedman Howard
Subject: Re: SHSAT bill MIS

Hi All-

1) [REDACTED] ACC
[REDACTED] ACC

ChMc_E_066808

2) Toni

ACC

ACC

Nadiya

Get [Outlook for iOS](#)

From: Gantz Toni

Sent: Wednesday, May 30, 2018 1:42:53 PM

To: Liss Emmy; Wright Lianna; Chadha Nadiya; Wallack Josh; Kleinhandler Sarah

Cc: Friedman Howard

Subject: RE: SHSAT bill MIS

ACC

From: Liss Emmy

Sent: Wednesday, May 30, 2018 11:06 AM

To: Gantz Toni <TGantz@schools.nyc.gov>; Wright Lianna <LRwright13@schools.nyc.gov>; Chadha Nadiya <NChadha@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>

Cc: Friedman Howard <HFriedman@schools.nyc.gov>

Subject: RE: SHSAT bill MIS

ACC

Thank you!

From: Gantz Toni

Sent: Wednesday, May 30, 2018 10:51 AM

To: Wright Lianna <LRwright13@schools.nyc.gov>; Chadha Nadiya <NChadha@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>

Cc: Friedman Howard <HFriedman@schools.nyc.gov>

Subject: RE: SHSAT bill MIS

ACC

ChMc_E_066809

Roper Declaration - Exhibit 2

Exhibit B

Appellant's Emergency Motion for Injunction Pending Appeal

156a

From: Wright Lianna
Sent: Wednesday, May 30, 2018 10:30 AM
To: Gantz Toni <TGantz@schools.nyc.gov>; Chadha Nadiya <NChadha@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>
Subject: RE: SHSAT bill MIS

Hi Toni –

ACC

-Lianna

From: Gantz Toni
Sent: Wednesday, May 30, 2018 10:08 AM
To: Chadha Nadiya <NChadha@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>
Subject: RE: SHSAT bill MIS

Here is a revised draft of the MIS. If this looks okay, I will send over to Law Department.

From: Chadha Nadiya
Sent: Tuesday, May 29, 2018 10:19 PM
To: Gantz Toni <TGantz@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>
Subject: RE: SHSAT bill MIS

Hi Toni,

See attached with some comments. Happy to talk through tomorrow.

Thanks!
Nadiya

From: Chadha Nadiya
Sent: Tuesday, May 29, 2018 8:07 PM
To: Gantz Toni <TGantz@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>
Subject: Re: SHSAT bill MIS

Hi Toni- I'll take a look a circle back tonight.

Thanks,
Nadiya

From: Gantz Toni
Sent: Tuesday, May 29, 2018 5:01:08 PM
To: Wallack Josh; Liss Emmy; Kleinhandler Sarah; Chadha Nadiya; Wright Lianna
Subject: SHSAT bill MIS

ChMc_E_066810

I've started revising the MIS that would accompany the SHS bill. Can you please review and further revise as needed?

Thanks,
Toni

EXHIBIT 3

A poster for the NYC Specialized High Schools Admissions Process. The left side features a collage of seven black and white photographs showing diverse students in various school settings: two girls looking at a book, a group of students in a hallway, students working at a table, a student using a laptop, a girl writing on a whiteboard, a boy smiling, and a group of students sitting on the floor. The right side has a white background with the 'NYC' logo in a bold, sans-serif font. Below the logo, the title 'Specialized High Schools Admissions Process' is written in a large, bold, sans-serif font. At the bottom right of the white area, the date 'April 2018' is printed in a smaller, regular font. A small number '1' is located in the bottom right corner of the poster's frame.

NYC

Specialized High Schools Admissions Process

April 2018

1

ChMc_E_114804

Roper Declaration - Exhibit 3

Exhibit B
Appellant's Emergency Motion for Injunction Pending Appeal
160a

Table of Contents

- Demographics of the Specialized High Schools
- The DOE's multiple measures approach
- Options for implementation:
 1. Reserve ~25% of seats at each of the 8 schools for top students
 2. Reserve 100% of seats at the 5 additional schools for top students
 3. Reserve 50% of seats at the 5 additional schools for top students
 4. Adjust and expand the Discovery program to achieve more racial diversity within the original 3

The 8 Specialized High Schools that currently use the SHSAT are much less racially diverse than NYC high schools overall

DBN	School Name	Total Enrollment	% Asian	% Black	% Hispanic	% White	% Multiple Race Categories Not Represented
02M475	Stuyvesant High School	3,336	73%	1%	3%	18%	5%
10X445	The Bronx High School of Science	2,995	66%	3%	6%	23%	2%
13K430	Brooklyn Technical High School	5,838	61%	6%	7%	23%	2%
	Total of the Original Three	12,169	66%	4%	6%	3%	22%
05M692	HS for Mathematics, Science and Engineering	500	36%	10%	16%	27%	11%
10X696	HS of American Studies at Lehman College	400	22%	4%	12%	59%	5%
14K449	The Brooklyn Latin School	678	51%	13%	11%	14%	11%
28Q687	Queens HS for the Sciences at York College	473	81%	4%	4%	6%	5%
31R605	Staten Island Technical High School	1,320	48%	1%	3%	45%	3%
	Total of the Additional Five	3,371	49%	5%	8%	6%	32%
	Total of all Specialized High Schools	15,540	62%	4%	6%	4%	24%
	All High Schools	329,600	16%	28%	40%	13%	3%

- 4% of middle schools (21 schools) comprised 50% of offers to Specialized High Schools for fall 2017 admissions.

The DOE is proposing an alternate path for Specialized High Schools admissions which incorporates multiple measures and pathways to admission

Guiding principles include:

- Increase the diversity of the Specialized High Schools
- Incorporate multiple measures beyond just the results of one admissions test
- The process should not result in a *significant* decrease in the incoming proficiency of students into these schools

Researchers have studied the possibility of incorporating existing multiple measures and have found that alone it will not change the racial makeup of Specialized High Schools

- New York University has run models to look at the effect of using alternative existing academic measures including:
 - State math and ELA scores
 - Grades
 - Attendance
- The researchers found that without incorporating geography there was no substantial change to the percent of Black and Hispanic students offered seats at Specialized High Schools and in many of the models the percentage of Black students decreased:
 - Specifically, the simulations, that use a combination of math and ELA State scores and core course grades (math, English, social studies, and science), result in a decrease of offers for Black students.

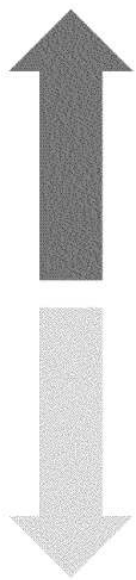
Research shows that new measures can introduce new types of bias to the process and are unlikely to increase diversity of Specialized High Schools

- *Portfolios*: More affluent students have access to rigorous academic exercises and experiences that improve portfolios.
- *Recommendation Letters*: Not all middle school students have equitable access to recommenders that can effectively communicate the student's abilities and potential.
- *Interviews*: If used for more than confirming information gathered via an application, reference letters, or tests, interviews become inherently subjective and difficult to defend.
- *Writing*: Research shows that:
 - English Language Learners are disadvantaged in the admissions process; raters systematically underscore students with significant grammar and usage challenges.
 - It is difficult to achieve reliable writing assessments; on average 3 out of 10 reviewers do not agree on the score of a piece of writing.

Proposal: Set aside a percentage of seats at the Specialized High Schools for top-performing students from each middle school

- Middle school rank would be determined by State math and ELA scores, core course grades, and attendance. The weight granted to each measure would be determined by the Chancellor.
- There should be no *significant* decrease in the incoming proficiency of students into these schools as seen in traditional measures of student proficiency.
 - In addition to being the top performers at their middle schools, those students would need to be in the top 25% of students citywide using the same measures.

Potential Options



Most Racial
Diversity

Least
Legislative
Action
Required

1. Reserve ~25% of seats at each of the 8 schools for top students
2. Reserve 100% of seats at the 5 additional schools for top students
3. Reserve 50% of seats at the 5 additional schools for top students
4. Adjust and expand the Discovery program to achieve more racial diversity within the original 3

Option 1: Reserve ~25% of seats at each of the 8 schools for top-performing middle school students

Legislative action required

Maintain the Specialized High Schools Admissions Test (SHSAT), but set aside seats for the top 3% of students from each middle school, which would account for ~25% of seats at each Specialized High School. This option would:

- Increase the geographic diversity of SHS offers by more than doubling the percentage of offers to students from the Bronx.
- Increase the number of distinct middle schools sending students to Specialized HS by over 250 schools from ~310 to ~590.
- Better reflect the diversity of New York City:
 - *Race*: The percentage of offers to Black and Hispanic students would increase from 9% to 22%.
 - *Gender*: The percentage of female students receiving an offer would increase, resulting in greater gender balance.
 - *Economic Status*: The percentage of Free/Reduced-Price Lunch students receiving an offer would increase.

Ethnicity	Offers for 2018		Proposed Offers		Change in Composition	
	Number of Offers	% of Offers	Number of Offers	% of Offers	Number of Offers	% of Offers
Asian	2,535	50%	2,222	43%	-313	-7%
Black	172	3%	455	9%	283	+6%
Hispanic	298	6%	691	14%	393	+8%
White	1,225	24%	1,085	21%	-140	-3%
Other	179	4%	168	3%	-11	0%
Private	660	13%	493	10%	-167	-3%
Total	5,069	100%	5,114	100%	45	

Option 2: Reserve 100% of seats at the 5 additional schools for top-performing middle school students

De-designation of the additional 5 by PEP required

Maintain the SHSAT at the original three schools, but allocate 100% of seats at the additional five schools to the top 3% of students from each middle school.

- Of ~2,000 top 3% of students, ~29% received an offer to original three. The remaining ~1,400 students would receive an offer to the additional five without needing to take the SHSAT.
- Similar to Option 1, the percentage of offers to Black and Hispanic students across all Specialized High Schools increases to 23%.
- Changing the admissions method at the additional 5 schools alone will not change the demographics of the original 3. This option could also be coupled with changes to the Discovery program at these schools to introduce more diversity (see Option 4).
- This option requires de-designation of the additional 5 schools, which would be voted on by the Panel for Education Policy.

Ethnicity	Offers for 2018				Proposed Offers				Change in Overall Composition
	Overall Offers		Offers at Additional 5		Overall Offers		Offers at Additional 5		
Asian	2,535	50%	540	40%	2,309	45%	314	22%	-5%
Black	172	3%	72	5%	474	9%	374	26%	+6%
Hispanic	298	6%	82	6%	700	14%	484	34%	+8%
White	1,225	24%	398	29%	1,041	20%	214	15%	-4%
Other	179	4%	39	3%	176	3%	36	3%	0%
Private	660	13%	220	16%	440	9%	N/A	N/A	-4%
Total	5,069		1,349		5,140		1,422		

Option 3: Reserve 50% of seats at the 5 additional schools for top-performing middle school students

De-designation of the additional 5 by PEP required

Maintain the SHSAT at the original three schools, but allocate 50% of seats at the additional five to the top 2% of students from each middle school.

- Of ~1,300 top 2% of students, ~35% received an offer to one of the eight SHS through the SHSAT. The remaining 850 students would receive an offer to the additional five.
- This model achieves less racial diversity than Options 1 and 2, increasing the Black and Hispanic percentage of offers to 18% compared to ~23% for the other models.
- This option requires de-designation of the additional 5 schools, which would be voted on by the Panel for Education Policy.

Ethnicity	Offers for 2018				Proposed Offers				Change in Overall Composition
	Overall Offers		Offers at Additional 5		Overall Offers		Offers at Additional 5		
Asian	2,535	50%	540	40%	2,417	46%	422	28%	-4%
Black	172	3%	72	5%	368	7%	268	18%	+4%
Hispanic	298	6%	82	6%	554	11%	338	22%	+5%
White	1,225	24%	398	29%	1,173	22%	346	23%	-2%
Other	179	4%	39	3%	176	3%	36	2%	0%
Private	660	13%	220	16%	550	11%	110	7%	-3%
Total	5,069		1,349		5,238		1,520		

Option 4: Adjust and/or expand the Discovery program at the original 3 schools

No legislative or PEP action required

Maintain the SHSAT at the original three schools, but adjust the Discovery program to target higher-needs students. This could be implemented alone, or coupled with Option 2 or 3.

- To be eligible for the Discovery program currently, students are identified as disadvantaged based on several student-level indicators. The 'disadvantaged' definition could be adjusted to include Economic Need Index (ENI), a school-level indicator that estimates the percentage of students in a school who face economic hardship.
- In this model, a student would be eligible if they satisfy any of the original criteria and attend a higher-needs school (at least 40% ENI, for instance).
- Modeling this on last year's Discovery program, we see that:
 - More Black and Hispanic students would become eligible for Discovery, increasing from ~70 to ~100 at Bronx Science and Brooklyn Tech.
 - The academic levels of students would barely change. The average math proficiency level of eligible students would drop from 4.01 to 3.99.
- The impact of this change could be further leveraged by expanding the size of the Discovery program at each of the schools.

	Asian	Black	Hispanic	White	Other
Current State: Discovery-eligible students in 2017	47%	11%	12%	27%	3%
Model: Discovery-eligible students with 40% ENI floor	47%	15%	18%	17%	2%
Current State: Discovery-eligible students in 2017 at Bronx Science and Brooklyn Tech	50%	10%	10%	26%	4%
Model: Discovery-eligible students with 40% ENI floor at Bronx Science and Brooklyn Tech	51%	13%	16%	16%	3%

Comparison of Options

- Options 1 and 2, while still far from citywide demographics, yield the most racial diversity.

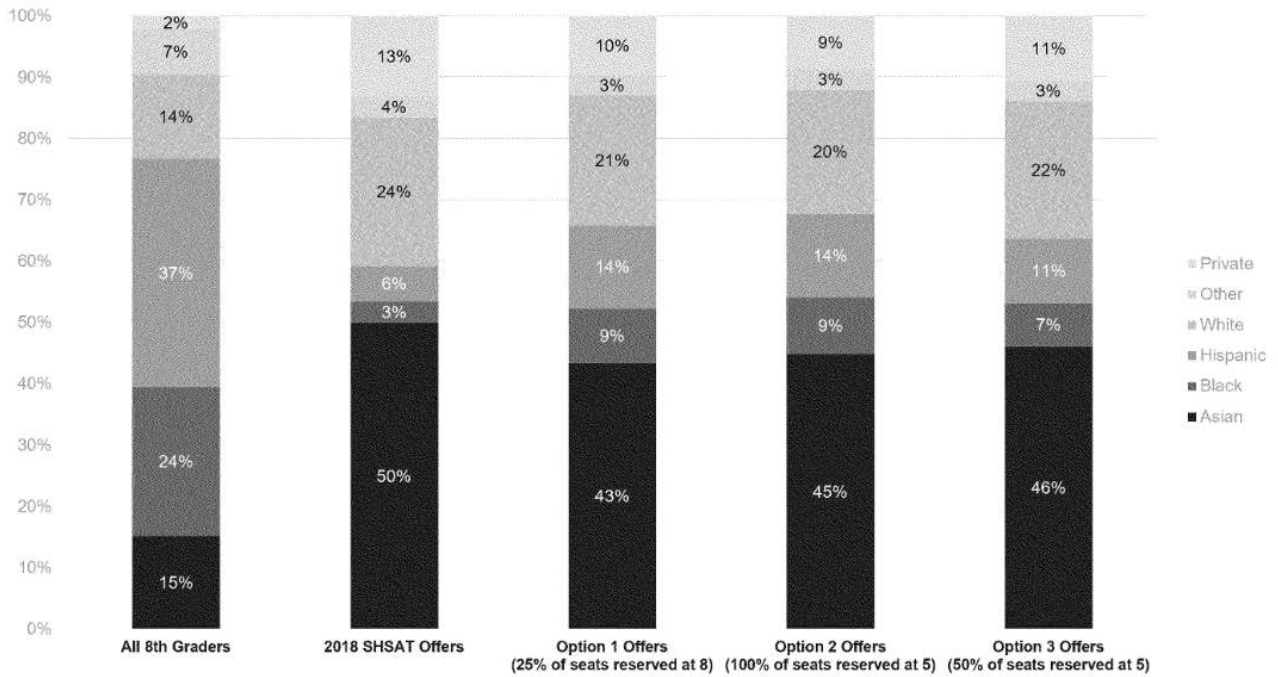


EXHIBIT 4

Sent: 4/22/2018 1:37:59 PM
To: Wallack Josh [jwallack@schools.nyc.gov]; Wright Lianna [lwright13@schools.nyc.gov]
CC: Liss Emmy [eliss@schools.nyc.gov]
Subject: RE: SHS Proposals

Hi Josh- I can look into this. To confirm, are you looking for the impact of the 60% ENI model I showed yesterday on *just* the 3? Or is this model different in some way (i.e., leaving the other 5 schools' discovery programs as is)?

From: Wallack Josh
Sent: Sunday, April 22, 2018 1:19 PM
To: Wright Lianna <LWright13@schools.nyc.gov>; Chadha Nadiya <NChadha@schools.nyc.gov>
Cc: Liss Emmy <ELiss@schools.nyc.gov>
Subject: RE: SHS Proposals

Happy Sunday! Sorry but I have another question:

If we did a discovery program at 20% of the incoming class size for the original 3 at 60% ENI, what would the impact be on the demographic composition of the Discovery programs and on the incoming classes?

From: Wright Lianna
Sent: Saturday, April 21, 2018 4:35 PM
To: Chadha Nadiya <NChadha@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>
Subject: RE: SHS Proposals

Hi –

If we were to de-designate the additional 5, among the ~1,400 students who would get offers to those schools the average ELA and math proficiencies are both 3.9. These schools would have pretty evenly distributed students in terms of performance under de-designation, however, which could be different than a larger Discovery model, where most students entering are extremely high performing and a subset are distinctly lower performing.

-Lianna

From: Chadha Nadiya
Sent: Saturday, April 21, 2018 4:13 PM
To: Wallack Josh <JWallack@schools.nyc.gov>
Cc: Wright Lianna <LWright13@schools.nyc.gov>
Subject: Re: SHS Proposals

Hi-

1) Yes, exactly.

2) I'm sorry but I stepped away from my computer! If I remember correctly it is higher because most of those students are still in the top percentage citywide. Lianna could take a look at that now and we can circle back shortly. Adding her here.

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From: Wallack Josh <jwallack@schools.nyc.gov>
Sent: Saturday, April 21, 2018 15:54
Subject: RE: SHS Proposals
To: Chadha Nadiya <nchadha@schools.nyc.gov>

ChMc_E_065909

Taking others off for a moment – just two quick questions:

1. The first column of numbers represents the number of Black and Hispanic students that would get an offer under that scenario, right?
2. If we de-designated the 5 newer schools, what would the average proficiency be for the students getting those offers?

From: Chadha Nadiya

Sent: Saturday, April 21, 2018 3:34 PM

To: Wallack Josh <JWallack@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>

Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>

Subject: RE: SHS Proposals

Yes, that makes sense. See below for an updated summary. A few notes:

1. I added a row that shows what actually happened in 2017 (2017 SHSAT offers and 2017 Discovery offers). This is more of an apples to apples comparison to the models. I also made some minor adjustments to better account for potential attrition of Discovery students, hence the numbers are slightly updated in this table. Happy to talk through the assumptions in more detail—they're a bit in the weeds of how we make offers for Discovery.
2. The proficiency data to the right (gray headers) is only shown for Discovery students, because showing it for everyone buries their data under that of the 80% of students getting in through the SHSAT.
3. I've added in a column that shows the percentile rank for students receiving an offer in each model. Your assumption about the 80% model is accurate.
 - a. I think the proficiency level does become an issue, because students entering through Discovery end up being markedly different from those entering through the SHSAT. I don't think there's any clearer way to show this really—proficiency levels are what we report on most often in terms of student performance. The percentile rank on SHSAT certainly also shows that very clearly!
 - b. Also, I'm not sure I'd argue that someone who is at a 60%-79% ENI school is significantly more advantaged than someone at an 80%-100% ENI school. 60% at least feels grounded in the citywide average, but 80% feels like we are skipping over legitimately resource-challenged students to get to lower ENI schools.
4. The number of students in the far left column changes because of some technical issues:
 - a. We have to treat all students within a specific score the same, so because the cut score for each school changes under each model, the number of students who satisfy that cut score changes too. All students with a particular cut score get treated as a block which means that the total students matching in at some cut score may sometimes go over our "target" number for our a school.
 - b. Given the confusion over this, I removed it because it doesn't really alter the message. Is that fine?
5. The main takeaway of this is the same: to get to a comparable percentage of Black and Hispanic students under this model, compared to our other proposals, we have to limit Discovery to students attending an 80% ENI school. This raises concerns about preparedness, as well as fairness to students in schools that have a slightly lower ENI, but are still above citywide average.

Let me know if you need anything else!

Nadiya

	Students with SHS Offer	Performance Levels of Discovery Students
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ChMc_E_065910

Expanded and Adjusted Discovery Models	# of Black + Hispanic Students	Asian	Black	Hispanic	White	Other	Minimum SHSAT Cut Score	Minimum SHSAT Percentile Rank of Admits	Average Math Proficiency	Average ELA Proficiency	Average Overall Proficiency
2017 SHSAT Offers Only	524	52%	4%	6%	28%	9%	479	81%	N/A	N/A	N/A
2017 SHSAT Offers + Summer 2017 Discovery	568	53%	4%	7%	27%	9%	467	78%	4.0	3.6	3.8
SHSAT Offers + ~20% of Seats for Discovery with no ENI floor	572	53%	4%	7%	28%	8%	476	80%	4.1	3.7	3.9
SHSAT Offers + ~20% of Seats for Discovery with 40% ENI floor	684	53%	5%	8%	26%	8%	463	77%	4.0	3.7	3.9
SHSAT Offers + ~20% of Seats for Discovery with 60% ENI floor	867	51%	6%	10%	25%	8%	434	67%	3.9	3.6	3.8
SHSAT Offers + ~20% of Seats for Discovery with 80% ENI floor	1,149	47%	7%	15%	24%	8%	327	26%	3.3	3.3	3.3

From: Wallack Josh

Sent: Saturday, April 21, 2018 11:44 AM

To: Chadha Nadiya <NChadha@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>

Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>

Subject: RE: SHS Proposals

I think the percentile rank of SHSAT score would really help.

ChMc_E_065911

Roper Declaration - Exhibit 4

Exhibit B

Appellant's Emergency Motion for Injunction Pending Appeal

176a

If last year, we only had room for kids scoring at the 98th percentile citywide and above on the SHSAT, but under one of these proposals we would admit kids scoring at the 70th percentile, I think opponents would up on it. Not dispositive, but important to know.

In addition, to me the scores mean literally nothing, because I don't know what the top score is! And if I don't, I'm certain our audience does not, either. Make sense?

From: Chadha Nadiya
Sent: Saturday, April 21, 2018 11:23 AM
To: Wallack Josh <JWallack@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>
Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

Hi Josh- Got it, this sounds good. I'm working on this. One clarification on the below bullet- do you mean that folks don't have a good sense of what the cut score on the SHSAT represents in terms of performance? Do you think the proficiency rating columns adequately explain what differences in SHSAT score mean, or do you think specifically the percentile rank (of one's SHSAT score) is necessary to contextualize that data point?

- Add back in the columns from your 3:20PM table showing the cutoff score (and the percentile rank that the score represents because we don't know what those cutoff scores really mean)

From: Wallack Josh
Sent: Saturday, April 21, 2018 7:45 AM
To: Chadha Nadiya <NChadha@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>
Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

Thank you *so* much for working on this on such short notice. This is extremely helpful, and I think will go a long way towards convincing the crowd that this is not a viable way to diversify the schools in isolation from other methods.

I think I need a few more pieces of information to clinch this...

Specifically, I think folks will ask what the impact would be if we used an 80% ENI cutoff. So we should:

- Add a row to your table below showing the results for 80% ENI; and
- Add back in the columns from your 3:20PM table showing the cutoff score (and the percentile rank that the score represents because we don't know what those cutoff scores really mean)

I'm asking for this because I assume our argument is that we believe restricting the pool in that way reduces incoming proficiency enough that it is no longer a desirable option. Is that correct? If so, are there any other pieces of data that would help me make that argument? If not, what was the reason you omitted the 80% scenario?

Also, why does the number of students on the far left column change in each scenario?

Emmy may have other questions, but those are mine for now. Thanks again!

From: Chadha Nadiya
Sent: Saturday, April 21, 2018 1:06 AM
To: Wright Lianna <LWright13@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>

ChMc_E_065912

Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

One correction below!

From: Chadha Nadiya
Sent: Saturday, April 21, 2018 1:01 AM
To: Wright Lianna <LWright13@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>
Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

Hi- Below are some models of an expanded and adjusted Discovery program. The first row shows fall 2017 offers by ethnicity. In the following rows, I've modeled ~20% of seats reserved for Discovery at each school, with 0%, 40%, and 60% ENI floors and shown the resulting overall demographics.

Even if we expand Discovery and adjust the definition, the percentages of students by race do not change drastically (compared to our other proposals). Asian and White students are similarly overrepresented; the total Black and Hispanic percentage increases from 10% to 18% at most (+~400 students).

Let me know if I should add this into the deck/make any other changes!

Expanded and Adjusted Discovery Models	Demographics of Students with SHS Offer						
	# of Students	# of Black + Hispanic Students	Asian	Black	Hispanic	White	Other
2017 SHSAT Offers	5,078	524	52%	4%	6%	28%	9%
SHSAT Offers + ~20% of Seats for Discovery with no ENI floor	5,117	552	53%	4%	7%	28%	8%
SHSAT Offers + ~20% of Seats for Discovery with 40% ENI floor	5,100	671	53%	5%	8%	26%	8%
SHSAT Offers + ~20% of Seats for Discovery with 60% ENI floor	5,105	910	51%	7%	11%	24%	8%

Thanks,
Nadiya

From: Chadha Nadiya
Sent: Friday, April 20, 2018 3:20 PM
To: Wright Lianna <LWright13@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>
Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

Hi All- Below are some additional models for Discovery based on various ENI floors. These models show changes *only* to Discovery, with the SHSAT still being the sole admissions method to the SHS. I've shown changes to race and proficiency, as well as minimum Discovery cut score, which is the lowest SHSAT score for any student getting into Discovery.

ChMc_E_065913

In the 60% model, the minimum discovery cut score does drop, but the pool is more diverse and the average proficiency of students barely changes. By comparison, in the 80% both the SHSAT and average proficiency scores drop pretty significantly. Let me know if it would be helpful for me to walk through in more detail!

I'm working on the additional model (expanded and adjusted Discovery) and will share soon.

Discovery Program Models	Asian	Black	Hispanic	White	Other	Minimum Discovery Cut Score	Average Math Prof	Average ELA Prof	Average Prof
Current State: Discovery-eligible students in 2017	47%	11%	12%	27%	3%	469	4.0	3.7	3.8
40% ENI Model: Discovery-eligible students with 40% ENI floor	47%	15%	18%	17%	2%	462	4.0	3.7	3.8
60% ENI Model: Discovery-eligible students with 60% ENI floor	38%	24%	30%	8%	1%	441	3.9	3.6	3.8
80% ENI Model: Discovery-eligible students with 80% ENI floor	15%	27%	55%	1%	1%	350	3.5	3.4	3.4

Note: Includes only public school students; Lowest offer score through SHSAT was 479.

From: Wright Lianna

Sent: Friday, April 20, 2018 11:58 AM

To: Wallack Josh <JWallack@schools.nyc.gov>; Chadha Nadiya <NChadha@schools.nyc.gov>

Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>

Subject: RE: SHS Proposals

One option could be that Discovery students need to be FRL and meet *either* of the following other criteria:

- Attend a high-needs school (greater than 40% ENI), OR
- Live in a high-needs neighborhood (census tract with a median household income below poverty, for example)

This way private school students could still qualify through option b, and public school students could qualify under either a or b.

-Lianna

From: Wallack Josh

Sent: Friday, April 20, 2018 10:08 AM

To: Chadha Nadiya <NChadha@schools.nyc.gov>

ChMc_E_065914

Roper Declaration - Exhibit 4

Exhibit B

Appellant's Emergency Motion for Injunction Pending Appeal

179a

Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

It might be! But keep thinking...

From: Chadha Nadiya
Sent: Friday, April 20, 2018 10:07 AM
To: Wallack Josh <JWallack@schools.nyc.gov>
Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

Our concern here is that this would create more stringent criteria for public school students than private school students, because public school students would need to be *both* FRL and from a high ENI school, while private school students would just need to be FRL. That almost seems more concerning than excluding private school students from the program completely. Do you think that excluding private school students is an option? We've been searching for a ENI-equivalent for private schools to no avail thus far, but we'll keep looking.

From: Wallack Josh
Sent: Friday, April 20, 2018 8:34 AM
To: Chadha Nadiya <NChadha@schools.nyc.gov>
Cc: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: Re: SHS Proposals

Would this work?

Let's say that, at Stuyvesant, we admit the number 1 student past the cutoff because they happen to come from a high ENI school. The next student that comes from a high-ENI school is number 7. So, as I understand it, we would skip to number 7 and admit them next, and then continue down the list.

Let's say, however, there are private school students at number 5 and number 6 on the list. We determine number 5 would qualify for FRL but number 6 would not. I would propose we admit number 5 to Discovery, but not number 6. As we encounter private school students, we select those that qualify for FRL.

On Apr 19, 2018, at 4:31 PM, Chadha Nadiya <NChadha@schools.nyc.gov> wrote:

Hi- One more thought that I wanted to make sure to flag: Using ENI as eligibility for Discovery makes it inaccessible to non-public students. We brought this up with Corp Counsel a few weeks ago and they seemed to think that the program does need to be available to those students. I wonder if we can push back on that at all.

If not, it's possible we could find a private school indicator comparable to ENI (like Title I funding). I don't think it would be a very useful exercise—last year, only 4 private students participated in Discovery. Nonetheless, the change might still cause a stir if the program essentially excludes them.

-Nadiya

From: Chadha Nadiya
Sent: Thursday, April 19, 2018 1:55 PM

ChMc_E_065915

To: Wallack Josh <JWallack@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>
Cc: Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

Hi Josh- Updated deck attached.

For Discovery- it's an imperfect calculation because it's hard to predict which eligible students would actually choose to participate. That said, to even have enough students *eligible* to increase the population of Black ninth graders by ~8 students (1%), the program would need to expand to ~60 students (6x larger than their summer 2017 program). A few notes:

- This would also simultaneously increase the number of non-Black students getting an offer, which means the percentage itself might not budge as much as intended. It would just allow for increase in the raw number of Black students gaining access, without changing the overall composition of the schools.
- This does not account for a change in the definition to include ENI. Including ENI would not require as large a program, since it would be easier to target Black students directly for that program, but it still would not change the demographics drastically, especially in comparison to these other proposals.

Let me know if you have questions!
Nadiya

From: Wallack Josh
Sent: Thursday, April 19, 2018 11:58 AM
To: Chadha Nadiya <NChadha@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>
Cc: Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

Thanks. This is super strong and I have added a few suggestions as comments.

It would also help for me to have a little factoid in hand: given the low percentage of black students in Discovery, how much bigger would the Discovery program need to be at Bronx Science (as an example) to increase the percentage of black students by 1%? I want to emphasize that, while important, it is tough to move the numbers significantly using Discovery alone.

From: Chadha Nadiya
Sent: Thursday, April 19, 2018 11:30 AM
To: Wallack Josh <JWallack@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>
Cc: Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>
Subject: RE: SHS Proposals

We are currently not using ENI, but would love to if we get approval!

I'm attaching a slightly updated version of the deck here. I needed to suppress some of the Discovery data, so that's taken care of here.

Thanks,
Nadiya

From: Wallack Josh
Sent: Thursday, April 19, 2018 11:25 AM

ChMc_E_065916

To: Chadha Nadiya <NChadha@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>
Cc: Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>

Subject: RE: SHS Proposals

Thank you! When you say you are moving forward with Discovery, are you using ENI or no?

I *may* be able to get permission to use ENI for this year as soon as Tuesday – seems worth waiting for that if at all possible...

From: Chadha Nadiya

Sent: Thursday, April 19, 2018 11:22 AM

To: Wallack Josh <JWallack@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>

Cc: Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>

Subject: RE: SHS Proposals

Hi Josh,

See attached for an updated deck. We talked through with Emmy and wanted to note a few things for you:

- We removed attendance as a factor, so the rank is now based on 45% state exam scores and 55% on four course grades (English, math, science, social studies).
- We think that reserving 5-10% of seats for non-public or new students alone feels like a set-aside for them. We would propose reframing it so that 5-10% of seats are reserved for a lottery amongst these students *and* public students who don't qualify through the top percent but still meet some other criteria, such as a GPA floor. We've left it vague in the deck, but let us know if you have concerns/thoughts.
- Lastly, under Option 1 (changing all 8 SHS), the percentage of offers to female students increases significantly, from 44% currently through the SHSAT to 62%. Only 49% of 8th graders overall are female, but we don't have strong concerns here!

One last note- we are currently moving forward with this year's Discovery program. If you think this will affect this summer's cohort, please let us know.

Thanks!
Nadiya

From: Chadha Nadiya

Sent: Tuesday, April 17, 2018 12:58 PM

To: Wallack Josh <JWallack@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>

Cc: Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>

Subject: RE: SHS Proposals

Hi- some thoughts below:

- I don't intend to exclude private school students. Can you propose a variation of the strawperson that would accommodate them?
 - We spoke with folks in RPSG and tried to think through some options. It seems like the fairest possibility is to have something like 90%-95% of seats go to top performers, and reserve 5-10% of seats for some sort of lottery within private/non-top performing students. This pool would include private applicants who satisfy a cutoff for GPA (as reported by their school), as well as public students who are not in the top 8%.
 - Alternatively, we could see if there is any other type of normed assessment these students could take (e.g., Regents, state tests) on which students would have to score above a certain threshold.

ChMc_E_065917

- I did not understand the program at Bronx was so small. What do you think a reasonable starting place is as a standard to work towards across the schools? It seems like we should think in terms of a percentage of the spots in the incoming class.
 - o We think 5% could be a good place to start for Bronx Science and Stuy (they currently are planning to run a program of 15-20 students, which is about 2% of their respective seats).
 - o Brooklyn Tech already runs a program that's about 9% of their incoming class, so moving them up to 10% could be good to start.
 - o This would naturally reduce the number offers we make earlier in fall through the SHSAT. See final column in the table below.
 - o After Year 1, we could re-evaluate the size based on schools' experience and potentially expand Stuy and Bronx Science to 10% as well.

School DBN	School Name	Fall 2018 Seat Target	Fall 2018 SHSAT Offers (accounts for attrition)	Summer 2018 Discovery size	Current % of seats for Discovery	Year 1 Discovery size (5%-10% of seats)	Year 1 SHSAT Offers
02M475	Stuyvesant High School	814	903	20	2%	41	883
10X445	Bronx High School of Science	730	912	15	2%	37	873
13K430	Brooklyn Technical High School	1400	1903	120	9%	140	1,741

- We used attendance because, at the time, we did not want test scores to count for more than 50% of the calculation. I personally don't like attendance as a factor, because sometimes it is out of the control of the family (especially those in adverse circumstances). Do you agree with that? If you think it is valuable and important, I am open. Otherwise, let's strike it.
 - o We think the results are generally similar without attendance as a factor. This would results in students' ranking based 60% on their course grades and 40% on their state exams.
 - o We should look at this more closely. We'd still want to ensure that students are meeting some minimum attendance rate, because in talking amongst ourselves, we realized there are real implications for the school community with non-attending students. I can take a closer look at what a change like this does to the pool of students being prioritized to get a better sense of what this would look like.

Nadiya

From: Wallack Josh

Sent: Tuesday, April 17, 2018 11:12 AM

To: Chadha Nadiya <NChadha@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>

Cc: Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>

Subject: RE: SHS Proposals

Thanks for this. I have a few responses and then I will think about others.

- I don't intend to exclude private school students. Can you propose a variation of the strawperson that would accommodate them?
- I did not understand the program at Bronx was so small. What do you think a reasonable starting place is as a standard to work towards across the schools? It seems like we should think in terms of a percentage of the spots in the incoming class.
- We used attendance because, at the time, we did not want test scores to count for more than 50% of the calculation. I personally don't like attendance as a factor, because sometimes it is out of the control of the family (especially those in adverse circumstances). Do you agree with that? If you think it is valuable and important, I am open. Otherwise, let's strike it.

ChMc_E_065918

From: Chadha Nadiya
Sent: Tuesday, April 17, 2018 10:10 AM
To: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>
Cc: Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>
Subject: RE: SHS Proposals

Hi Josh,

Overall we find this really compelling (and exciting!). A few considerations to inform your thoughts on this further:

- To be clear, there are non-proficient students who currently receive offers through the SHSAT (about ~40 this year with less than 3.0 on either exam).
- We think it could be problematic to completely exclude both non-public students and students who opt out of the exams (including students who recently moved from out-of-state) from these schools. Could there be legal concerns here?
 - We could talk to folks in RPSG to explore options for inclusion of these students if anyone feels strongly. This past fall, ~650 private students and ~50 opt-out students received an offer.
- Re: Discovery, we're currently in the process of preparing offers for summer 2018 for all schools, not including the ENI business rule. At this point, we would need a decision on ENI pretty quickly (in the next week) in order to make offers in a timely manner. Let us know if you think we should hold on moving forward with this year's Discovery program. In any case, we could easily implement this policy for summer 2019.
- We could more than double the size of Discovery at some of the schools. Currently, Bronx Science takes ~15 students (2% of offers). The corp counsel lawyers, as you know, were very interested in reserving an even higher percentage of seats at all schools for Discovery.
- One clarification: the top 3% calculation, as we've currently been modeling it, includes attendance, in addition to state test scores and percentile rank within school. We're not wed to using attendance, but just wanted to flag for you.
- Increasing the set aside to 8% brings us slightly too high for the schools' capacities. 7.5% is probably more realistic, but we think we could phrase it as "up to 8%" which gives us enough flexibility to not overfill the schools.

Let us know if you have questions/thoughts.

Thanks,
Nadiya + Lianna

From: Wallack Josh
Sent: Tuesday, April 17, 2018 6:23 AM
To: Chadha Nadiya <NChadha@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>
Cc: Liss Emmy <ELiss@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>
Subject: RE: SHS Proposals

Here is a strawperson for consideration:

Long-term vision for original 3, to be announced publicly, is to seek state legislation to:

- Phase out the SHSAT over 5 years;
- Legislation would immediately set aside seats for top 3% of middle schoolers in year 1 based on state test scores and percentile rank within schools (with additional criteria that they must be within the top 25% citywide).
- The percentage of seats distributed by this method would increase 1% for 5 years, rising to ~8% in 5 years -- enough to fill all incoming seats.
- Floor set on state test scores so no student scoring below proficient could be admitted by this method without approval from the principal.

Short-term action in original 3

- Increase size of Discovery programs at Bronx Science and Brooklyn (double them?);

ChMc_E_065919

- Introduce program of comparable size at Stuyvesant;
- Include the school "Economic Need Index" measure in the definition of "disadvantaged."

Short-term action in newest 5:

- De-designate the schools;
- Immediately reserve 100% of seats for top-performing middle school students at those schools;

From: Chadha Nadiya

Sent: Monday, April 16, 2018 8:27 PM

To: Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>

Cc: Liss Emmy <ELiss@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>

Subject: RE: SHS Proposals

Yes- when looking at either math or ELA, there are only about 10-30 students in each of the top groups that have a 1 on either exam. Looking instead at those who are not proficient (Level 1 or 2), we get about ~100 more students each percentage point we drop:

- Top 3%: ~150 of ~2,000 students are not proficient on at least one exam
- Top 4%: ~230 of ~2,700 students are not proficient on at least one exam
- Top 5%: ~330 of ~3,400 students are not proficient on at least one exam

I don't see any particular trends amongst these students: they are not primarily ELLs or SWD. It seems like more of them are scoring worse in Math compared to ELA, and nearly half are from the Bronx.

-Nadiya

From: Kleinhandler Sarah

Sent: Monday, April 16, 2018 8:00 PM

To: Chadha Nadiya <NChadha@schools.nyc.gov>; Wallack Josh <JWallack@schools.nyc.gov>

Cc: Liss Emmy <ELiss@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>

Subject: Re: SHS Proposals

Thanks Nadiya. You make a good point about the Level 1s and perhaps setting a floor on that. Do we know about how many kids have a 1 in either ELA/Math?

Sent from my BlackBerry 10 smartphone on the Verizon Wireless 4G LTE network.

From: Chadha Nadiya

Sent: Monday, April 16, 2018 6:49 PM

To: Wallack Josh

Cc: Liss Emmy; Kleinhandler Sarah; Wright Lianna

Subject: RE: SHS Proposals

In the current version of Option 1, the average proficiency of students in the top 3% is 3.99. There are about 75 students in this pool who are not proficient on state exams (less than 3.0 proficiency, but are still top students because of their course grades and attendance). All of them are in the top 25% citywide.

Even if we go down to the top 5% (~3,400 students), the average proficiency stays high at 3.93, but we do end up with ~150 students who are not proficient. In general, though, they are high-performers and only 3 of them are not in the top 25% of the city overall. I think it just means that we have even more overlap between current SHSAT testers and top performers, but are still making room for some impressive students who don't get in because of the SHSAT. If we are very concerned about level 1 students getting in, we could explore setting a floor on proficiency level as well.

ChMc_E_065920

Nadiya

From: Wallack Josh
Sent: Monday, April 16, 2018 6:10 PM
To: Chadha Nadiya <NChadha@schools.nyc.gov>
Cc: Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>
Subject: Re: SHS Proposals

Thank you! Very helpful and clear!

So let's say we went beyond the top 3 percent of middle school to fill more seats. At what point would we start to see incoming proficiency levels that would give us concern that they would struggle at the schools?

Previously folks had told me below 3 percent it got tricky... Just checking.

On Apr 16, 2018, at 5:34 PM, Chadha Nadiya <NChadha@schools.nyc.gov> wrote:

Hi Josh,

If I understand correctly, we're looking at the implications of a model in which:

- ~25% of seats go to the top 3% of students from each MS
- ~75% of seats go to students with a composite score based on the SHSAT (45%) and their school rank/state test average/attendance (55%).

If so, yes, agree that your intuition is right. We looked at this quickly and found that most of the same students get an offer.

- Of the ~3,100 students receiving an offer solely through the SHSAT in Option 1, ~2,400 (78%) still get in with this multiple-measures approach described above.
- The majority of students who lose an offer are non-public, for whom we can't measure school performance.
- ~200 public school students lose an offer as well.
- Though the percentage of Black and Hispanic students under Option 1 and this model are about the same (~23%), the percentage of offers to Asian and White students increases (from 64 to 73%). This is driven by the fact that no private school students are eligible under this model.

This option would increase access for Asian and White public school students and decrease access for private school students. It's essentially shuffling through the same pool of students on the cusp (high-SHSAT performance, high-performing on other measures, not in top 3%). I think it's a trade-off between (1) our goal of rewarding actual student performance, not a single test and (2) complexity/political risk (it's more difficult to explain to families and doesn't yield a significantly higher number of offers to Black/Hispanic students). I think a clearer way to get at the same goal would be to reserve more than 25% of seats for top-performing students, allowing us to increase the geographic diversity of students which is a near-guarantee that more underrepresented racial groups will gain access.

Hope this helps! Let us know if you need anything else.

Thanks,
Nadiya

From: Wallack Josh
Sent: Monday, April 16, 2018 3:03 PM
To: Chadha Nadiya <NChadha@schools.nyc.gov>

ChMc_E_065921

Cc: Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>
Subject: RE: SHS Proposals

This is extremely well done and helpful. Thank you.

I want to think overnight about what I would recommend. In thinking that through, I have one more question: let's say that, in proposal 1, we wanted to incorporate other measures for the ~75% of seats that, under our current proposal, are distributed solely on the basis of the SHSAT. For example, we might distribute those seats based 45% on the results of the test, and 55% on the basis of a mix of state test scores and percentile rank within the school. My intuition is that roughly the same kids would wind up in those seats. Does that match your intuition?

The reason I am asking is that I think there is a desire to move to a system in which each seat is determined by multiple measures, and I'm trying to determine the impact of that on proposal 1, if we still continue to use the test as a major determinant. I understand that this is theoretical given that this would require a change in law, but I'm also trying to figure out how we would describe what we would ideally like to see.

From: Chadha Nadiya
Sent: Monday, April 16, 2018 9:31 AM
To: Wallack Josh <JWallack@schools.nyc.gov>
Cc: Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>
Subject: SHS Proposals

Hi Josh,

Please see attached for an updated SHS deck reflecting the models we discussed last week. The deck contains much of the same content as the previous version, but includes four options for improving the diversity of the SHS:

1. Reserve ~25% of seats at each of the 8 SHS for the top 3% of students (original proposal).
2. Reserve 100% of seats at the 5 additional schools for the top 3% of students.
3. Reserve 50% of seats at the additional 5 schools for the top 2% of students.
4. Adjust and/or expand the Discovery program, to be implemented alone or coupled with options 2/3.

A few thoughts:

- Option 1 is the most legally challenging, as you know, but yields the greatest degree of racial diversity across all schools.
- Option 2 allows us to increase the diversity of the SHS *as a group* to a similar extent (an increase to about 23% Black and Hispanic), but it does not address the lack of diversity at the original three schools.
 - One caveat here is that private school students are not included in the top 3%, so designating 100% of seats at the 5 schools means they would not be open to non-public students. Not sure how much to stress that in the deck, so just wanted to flag here for your awareness. One solution could be to maintain a very small percentage (5-10%) of seats for SHSAT students at the 5 schools, which would allow a pathway for non-public students.
- In looking at the findings, we think that since Options 2 and 3 require the same de-designation of the additional 5 schools but Option 3 yields less racial diversity, Option 2 seems like the more beneficial proposal. We've included both, in the case it may still be useful for City Hall to review.
- Option 4 (adjusting Discovery) can be both a stand-alone or complementary change to the SHS. We've framed it as something that can be combined with the other options, but we could make changes to the disadvantaged definition and/or size of Discovery regardless of the other proposals. Let us know if we should change the frame here at all.
- Finally, for the Lowell piece, we tried to speak to some of the benefits of that policy, and then highlighted how our proposals achieve the same goals without inserting subjective evaluations into the process. Lianna has connected with a few folks in SF, but has not yet been able to speak to someone who works closely on Lowell admissions, so we aren't sure if there's much more to say here. Do you have ideas on anything we should change?

ChMc_E_065922

Thanks- let us know if we can improve/adjust this in any way.

Nadiya

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EXHIBIT 5

From: Chadha Nadiya [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0AAE1C991890459F85A64FBF5292D46F-CHADHA NADI]
Sent: 8/13/2018 2:52:30 PM
To: Mantell Will [wmantell@schools.nyc.gov]; Basile Amy [abasile2@schools.nyc.gov]; Wright Lianna [lwright13@schools.nyc.gov]
CC: Liss Emmy [eliss@schools.nyc.gov]; Kleinhandler Sarah [skleinh@schools.nyc.gov]; Cohen Doug [dcohen45@schools.nyc.gov]; Holness Toya [tholness@schools.nyc.gov]
Subject: RE: Discovery racial breakdown

Hi Will- As discussed, here are some *very* rough estimates of what new Discovery composition could look like. This was based on summer 2017 Discovery data and reflects only who would be eligible to apply based on their score. It does not account for student interest in the program, or the fact that we may need to extend more invitations than we have in the past. In other words, there are a lot of assumptions built in here that could yield different results in practice.

Ethnicity	Percent of students who received SHS offers through Discovery, for fall 2018 admissions [preliminary]	Model for expanded Discovery [20% of seats, 60% ENI minimum]*
Asian	64%	38%
Black	10%	22%
Hispanic	12%	31%
White	11%	7%
Other	2%	2%
Unknown	2%	N/A
*Data for students who would have been eligible to apply for Discovery in summer 2017. Does not reflect income eligibility or student interest in participating.		

From: Mantell Will
Sent: Monday, August 13, 2018 9:43 AM
To: Basile Amy <ABasile2@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>; Chadha Nadiya <NChadha@schools.nyc.gov>
Cc: Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Cohen Doug <DCohen45@schools.nyc.gov>; Holness Toya <THolness@schools.nyc.gov>
Subject: RE: Discovery racial breakdown

Thanks for quick turnaround on this!

CH is asking what we expect the racial breakdown to be once we're at scale under the new eligibility criteria. Please let me know!

Thank you,
 Will

From: Basile Amy
Sent: Friday, August 10, 2018 5:23 PM
To: Wright Lianna <LWright13@schools.nyc.gov>; Chadha Nadiya <NChadha@schools.nyc.gov>; Mantell Will <WMantell@schools.nyc.gov>
Cc: Liss Emmy <ELiss@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Cohen Doug <DCohen45@schools.nyc.gov>; Holness Toya <THolness@schools.nyc.gov>
Subject: RE: Discovery racial breakdown

ChMc_E_075252

Agree with percentages and offers.

Amy M. Basile

Executive Director, High School Admissions

Office of Student Enrollment

e: ABasile2@schools.nyc.gov | p: 212-374-4952 | f: 212-374-5568

From: Wright Lianna

Sent: Friday, August 10, 2018 5:23 PM

To: Chadha Nadiya <NChadha@schools.nyc.gov>; Mantell Will <WMantell@schools.nyc.gov>

Cc: Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Cohen Doug <DCohen45@schools.nyc.gov>; Holness Toya <THolness@schools.nyc.gov>

Subject: Re: Discovery racial breakdown

Agreed. I think the percentages there are fine to share!

From: Chadha Nadiya

Sent: Friday, August 10, 2018 5:19:35 PM

To: Mantell Will; Wright Lianna

Cc: Liss Emmy; Basile Amy; Kleinhandler Sarah; Cohen Doug; Holness Toya

Subject: Re: Discovery racial breakdown

We report mainly on offers so I would show that.

From: Mantell Will

Sent: Friday, August 10, 2018 5:03:34 PM

To: Wright Lianna

Cc: Chadha Nadiya; Liss Emmy; Basile Amy; Kleinhandler Sarah; Cohen Doug; Holness Toya

Subject: Re: Discovery racial breakdown

All subgroups. Either breakout, but not both.

Just percentages.

You tell me.

On Aug 10, 2018, at 4:54 PM, Wright Lianna <LWright13@schools.nyc.gov> wrote:

Do you want to be able to share entire table, or just for specific subgroups? Are you planning to share overall enrollment numbers or just percentages?

From: Mantell Will

Sent: Friday, August 10, 2018 4:53 PM

To: Wright Lianna <LWright13@schools.nyc.gov>

Cc: Chadha Nadiya <NChadha@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Cohen Doug <DCohen45@schools.nyc.gov>; Holness Toya <THolness@schools.nyc.gov>

Subject: Re: Discovery racial breakdown

Got it. How would you want us to round each number (if at all)?

ChMc_E_075253

On Aug 10, 2018, at 4:44 PM, Wright Lianna <LWright13@schools.nyc.gov> wrote:

Similar. These demographics on the left are for anyone who ever participated in the program (282 total students). The 277 was just a snapshot that we'd shared with you at one point in time, but this is the full group.

Ethnicity	Percent of students who Initially participated in Discovery program, for fall 2018 admissions	Percent of students who received SHS offers through Discovery, for fall 2018 admissions
Asian	61%	64%
Black	11%	10%
Hispanic	13%	12%
White	11%	11%
Other	2%	2%
Unknown	1%	2%

From: Mantell Will

Sent: Friday, August 10, 2018 4:35 PM

To: Wright Lianna <LWright13@schools.nyc.gov>

Cc: Chadha Nadiya <NChadha@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>; Kleinhändler Sarah <SKleinh@schools.nyc.gov>; Cohen Doug <DCohen45@schools.nyc.gov>; Holness Toya <THolness@schools.nyc.gov>

Subject: Re: Discovery racial breakdown

Thank you — what does the 277 number look like?

On Aug 10, 2018, at 4:24 PM, Wright Lianna <LWright13@schools.nyc.gov> wrote:

Hi —

~250 students are receiving offers to a SHS through Discovery. As a note, this is down from 277 students who initially participated in the program -- the decline is driven by students that stopped attending partway through the summer. See below for demographics, though this should still be considered somewhat preliminary. ~22% of all offers through Discovery are to Black/Hispanic students, but this only represents ~55 students so it's still a very small drop in the larger SHS bucket.

Let us know if you have question.

-Lianna

Ethnicity	Percent of Students who Received SHS Offers through Discovery, for Fall 2018 admissions
Asian	64%
Black	10%
Hispanic	12%
White	11%
Other	2%
Unknown	2%

-----Original Message-----

From: Mantell Will

ChMc_E_075254

Roper Declaration - Exhibit 5

Exhibit B

Appellant's Emergency Motion for Injunction Pending Appeal

192a

Sent: Friday, August 10, 2018 1:21 PM

To: Chadha Nadiya <NChadha@schools.nyc.gov>; Wright Lianna <LWright13@schools.nyc.gov>; Liss Emmy <ELiss@schools.nyc.gov>; Basile Amy <ABasile2@schools.nyc.gov>; Kleinhandler Sarah <SKleinh@schools.nyc.gov>; Cohen Doug <DCohen45@schools.nyc.gov>; Holness Toya <THolness@schools.nyc.gov>
Subject: Discovery racial breakdown

Hi folks - do we have a rough racial breakdown of Discovery this summer?

For NY1 story — we can give rough percentages and frame as preliminary.

Thank you!
Will

ChMc_E_075255

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EXHIBIT 6

Making admissions to the Specialized High Schools more equitable for all students

Today, admission to New York City's Specialized High Schools is governed by a single exam – the Specialized High Schools Admissions Test (SHSAT). Under this system, we have a student population at these eight schools that does not represent the full breadth and excellence of New York City students.

- Black and Hispanic students make up 68% of the NYC high school population, but only 9% of those offered a seat in a Specialized High School.
- Female students represent 48% of the NYC high school population, but only 44% of those offered a seat
- Just 4% of middle schools (21 schools) fill 50% of the seats in the Specialized High Schools year after year.

To make admissions to the Specialized High Schools more equitable, we propose a two-part solution – the first to be implemented immediately and the second enacted through legislation.

Expand and enhance the Discovery program

- Over 2 years beginning in September 2019, expand the Discovery program to 20% of seats at each Specialized High School and adjust the eligibility criteria to target students attending higher poverty schools
- As a result, offers to Black and Hispanic students across the Specialized High Schools would nearly double, going from ~9 percent currently to ~16%

Phase out the use of a single admissions test as the criteria for admissions

- Over 3 years, remove the SHSAT as criterion for admissions by allocating seats to top performers from each middle school.
 - Students would be designated top performers using a composite rank based on their state math and ELA exam performance, and their English, math, social studies, and science course grades compared to other students in their school
 - Each year, a greater percentage of seats would go to the top students from each middle school, and fewer seats would be determined based on the SHSAT.
 - In Year 1, the top 3% of students from each middle school will receive offers to the SHS; they will account for 25-30% of all offers to the SHS, and the balance will be filled through the SHSAT.
 - In Year 2, the top 5% of students from each middle school will receive offers to the SHS; they will account for 45-50% of all offers to the SHS, and the balance will be filled through the SHSAT.
 - By Year 3, we would completely eliminate the SHSAT and reserve ~90-95% of seats for the top 7% of students from each middle school. We would maintain the remaining ~5-10% of seats for non-public students, students new to NYC, and any other public student excluded from the top-performer pool with a minimum grade point average. These students could opt into a lottery for the remaining offers.
- This change would have significant impact on the Specialized High Schools, which would better reflect the students of New York City
 - Quadruples offers to Bronx residents
 - Almost doubles the number of middle schools sending students to these high schools
 - Offers to female students go from 44% to 62%
 - Offers to Black and Hispanic students increase from 9% to 45%

ChMc_E_015823

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EXHIBIT 7

Specialized High Schools:

Recommendation – two-pronged approach in combination:

1. **Publicly announce vision this month to phase test out over 5 years and distribute all seats in all specialized schools to top students in each middle school across the city.**

Pros:

- Sets terms of debate on admissions methods for schools - without decreasing proficiency of students; modeled after heralded University of Texas approach.
- Opportunity to test political landscape and get intelligence on strength of support and opposition
- Quadruples offers to Bronx residents
- Almost doubles # of middle schools sending students to specialized high schools
- Offers to females go from 44% to 62%,
- Black & Latino/a students go from 9% to 45%.

Cons:

- Policy decision controlled by Albany; not us.
- Cathy Nolan and other key Albany leaders may staunchly oppose.
- Alum communities, Asian American leadership, and other stakeholders will vociferously oppose; will allege diminishing of quality / standards

2. **Expand Discovery program at all 8 specialized schools to 20% of the incoming class over two years and target students in schools with higher “economic need.”** The Discovery program offers “disadvantaged” children who just missed the test score cutoff the chance to complete a summer program and are admitted if they complete it. We would announce this this spring for admissions in fall 2019.

Pros:

- No external approval needed.
- Would increase diversity in those schools:
~9% black & Latino/a → to ~16%.

Cons:

- Resistance from those who would have received those seats in absence of change.

As we take these actions, we will continue to consider and plan for de-designation of the newer five schools, and explore the possibilities of affirmative litigation either through or in conjunction with allies.

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EXHIBIT 8

		Discovery Program Cut Scores											
School	DBN	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2025)	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2024)	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2023)	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2022)	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2021)	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2020)	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2019)	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2018)	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2017)	Cut Score for Discovery - ALL STUDENTS (Definitely + Maybe + Private) (Summer 2016)	Cut Score for Alternate Scenario 1- ALL STUDENTS (Definitely + Maybe + Private) (Summer 2019)	Cut Score for Alternate Scenario 3- ALL STUDENTS (Definitely + Maybe + Private) (Summer 2019)
Stuyvesant High School (02M475)	02M475	466	465	468	465	452	466	471	479	N/A	N/A	479	463
High School for Mathematics, Science, and Engineering at City College (05M692)	05M692	461	458	456	462	449	461	468	472	473	465	475	464
Bronx High School of Science (10X445)	10X445	457	455	454	455	440	455	463	479	477	N/A	478	452
High School of American Studies at Lehman College (10X696)	10X696	452	451	451	455	438	456	463	475	474	470	472	458
Brooklyn Technical High School (13K430)	13K430	459	455	454	452	437	454	461	472	469	467	473	453
The Brooklyn Latin School (14K449)	14K449	451	447	449	447	432	450	458	469	467	463	470	449
Queens High School for the Sciences at York College (28Q687)	28Q687	461	464	473	465	455	463	468	472	475	469	473	468
Staten Island Technical High School (31R605)	31R605	463	452	452	450	438	452	459	472	470	463	471	451
MINIMUM ACROSS ALL SCHOOLS		451	447	449	447	432	450	458	469	467	463	470	449

Alternate Scenario 1: if we'd lost in court and reverted to original Discovery size and eligibility rules

Alternate Scenario 3: if Discovery were at full 20% of seats

School	Non-Discovery Cut Scores											
	Cut Score for Non-Discovery (For Fall 2025 Admissions)	Cut Score for Non-Discovery (For Fall 2024 Admissions)	Cut Score for Non-Discovery (For Fall 2023 Admissions)	Cut Score for Non-Discovery (For Fall 2022 Admissions)	Cut Score for Non-Discovery (For Fall 2021 Admissions)	Cut Score for Non-Discovery (For Fall 2020 Admissions)	Cut Score for Non-Discovery (For Fall 2019 Admissions)	Cut Score for Non-Discovery (For Fall 2018 Admissions)	Cut Score for Non-Discovery (For Fall 2017 Admissions)	Cut Score for Non-Discovery (For Fall 2016 Admissions)	Cut Score for Alternate Scenario 1 (For Fall 2019 Admissions)	Cut Score for Alternate Scenario 3 (For Fall 2019 Admissions)
Stuyvesant High School (02M475)	556	561	561	563	559	566	557	559	555	552	552	562
High School for Mathematics, Science, and Engineering at City College (05M66)	526	542	518	532	515	522	519	516	500	500	512	523
Bronx High School of Science (10X445)	518	526	521	524	517	531	524	518	511	511	518	529
High School of American Studies at Lehman College (10X696)	504	514	510	516	502	517	518	516	505	506	512	521
Brooklyn Technical High School (13K430)	505	507	503	506	493	507	497	493	486	482	492	503
The Brooklyn Latin School (14K449)	496	492	493	497	481	494	486	482	479	476	481	491
Queens High School for the Sciences at York College (28Q687)	518	524	527	523	515	522	514	511	503	504	508	518
Staten Island Technical High School (31R605)	527	519	521	527	520	529	526	519	515	507	522	529
MINIMUM ACROSS ALL SCHOOLS	496	492	493	497	481	494	486	482	479	476	481	491

Alternate Scenario 1: if we'd lost in court and reverted to original Discovery size and eligibility rules

Alternate Scenario 3: if Discovery were at full 20% of seats

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EXHIBIT C

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

YI FANG CHEN, individually and on behalf
of her minor children M.P., Ma.P., and P.P.,

Plaintiff,

v.

ZOHRAN MAMDANI, in his official
capacity as Mayor of the City of New York;
KAMAR H. SAMUELS, in his official
capacity as Chancellor of the New York City
Department of Education; and the NEW
YORK CITY DEPARTMENT OF
EDUCATION,

Defendants.

Case No. 1:26-cv-03355

**DECLARATION OF YI FANG CHEN IN SUPPORT OF
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

I, Yi Fang Chen, declare as follows under 28 U.S.C. § 1746:

1. I am over the age of eighteen and have personal knowledge of the facts set forth in this declaration. If called to testify, I could and would testify competently to these facts.
2. I am the Plaintiff in this case.
3. I was born in the People's Republic of China. I moved to the United States in 1996, as a teenager. When I arrived, I spoke very little English.
4. Despite the language barrier, I worked hard in school and was eventually admitted to Stanford University, where I earned a Ph.D. in statistics.
5. I have been naturalized as a citizen of the United States. I currently work as a data scientist in Manhattan.

6. I live in Brooklyn, New York, with my husband and our three children. My husband immigrated to the United States from Hong Kong and is also a naturalized U.S. citizen. Our oldest child, M.P., is an eighth grader at Mark Twain Intermediate School 239 for the Gifted and Talented (I.S. 239) in Brooklyn. Our middle child, Ma.P., is a fourth grader at P.S. 185. Our youngest child, P.P., is a first grader at P.S. 185.
7. For many years, my husband and I have planned for our children to attend one of New York City's specialized high schools. We believe these schools offer the strongest academic environment available in the New York City public school system and the best preparation for college and for their futures.
8. Of the specialized high schools, we have long focused on Stuyvesant High School as our preferred school. We believe Stuyvesant offers the most rigorous academic program and the best opportunities for our children. Our son M.P. has known for years that his goal was to attend Stuyvesant.
9. M.P. has worked extremely hard in school. His current school is one of New York City's specialized gifted-and-talented middle schools. It is known for preparing students for admission to the specialized high schools. Throughout middle school, M.P. has maintained strong grades and has demonstrated a particular aptitude for mathematics.
10. In preparation for the Specialized High School Admissions Test (SHSAT), M.P. studied intensively over a period of many months. He worked through practice exam materials, took timed practice tests, and reviewed the sections in which he needed improvement. Our family devoted significant time and resources to his

preparation because we understood how important the SHSAT would be for his educational future.

11. When M.P. registered for the SHSAT in the fall of 2025, he ranked his preferred specialized high schools in order of preference. He listed Stuyvesant as his first choice and Brooklyn Technical High School as his second choice. Attached as Exhibit A is the receipt showing his registration for the SHSAT and his ranking of the specialized high schools.
12. M.P. took the SHSAT in the fall of 2025. In March 2026, he received his SHSAT results. He scored 558 on the test. Attached as Exhibit B is the letter reporting his score results.
13. I understand that a score of 558 would have been sufficient for admission to Stuyvesant in 2025, when Stuyvesant's cutoff was 556. For 2026, however, the Stuyvesant cutoff was 561—three points above M.P.'s score. As a result, M.P. was not admitted to Stuyvesant. He was instead offered admission to Brooklyn Technical High School, his second choice. *See* Exhibit B.
14. When M.P. learned that he had not been admitted to Stuyvesant, he was devastated. He had worked toward this goal for years, and his score would have been high enough for admission last year. Our whole family was deeply disappointed.
15. I understand that the Discovery program is a separate limited pathway to admission to the specialized high schools for students who score below the overall SHSAT cutoff. Under rules adopted in 2018, eligibility for Discovery is limited to students who attend middle schools with an Economic Need Index (ENI) of 0.6 (60 percent) or higher.

16. M.P.'s middle school has an Economic Need Index below the 0.6 threshold. As a result, no student at M.P.'s school is eligible for the Discovery program regardless of economic circumstances.
17. Stuyvesant and Brooklyn Tech are both excellent schools, but they are different. Stuyvesant is somewhat smaller, more selective, and in our judgment offers the strongest peer environment for a student like M.P. who excels in mathematics and science. Prior to receiving his test results and offer, M.P. had identified specific courses, teachers, and extracurricular opportunities at Stuyvesant that he had hoped to take advantage of.
18. The ninth-grade year is a particularly formative one. It is the year in which students form lasting friendships, establish relationships with teachers and counselors, choose their initial course trajectories, and begin the coursework that will appear on their college applications. Beginning that year at a school other than his first choice is not something that can be made up later.
19. If M.P. is not admitted to Stuyvesant this fall, he plans to retake the SHSAT and apply to Stuyvesant as a ninth grader. I understand, however, that Stuyvesant has only a few seats available for students entering as tenth graders. Waiting a year is not an adequate substitute for beginning ninth grade at Stuyvesant this fall.
20. For our family, the harm from M.P.'s denial is not just academic. It represents the loss of an educational opportunity that we have planned and worked for as a family for many years, and that M.P. earned on the merits of his SHSAT performance.
21. My middle child, Ma.P., is currently a fourth grader and plans to take the SHSAT when he is in eighth grade in 2029. He has already begun active preparation for the

test, including regularly working through practice exam questions from prior tests.

He plans to list Stuyvesant as his first choice when he applies.

22. My youngest child, P.P., is currently a first grader. We plan for her to take the SHSAT in the future and to apply to the specialized high schools.
23. In December 2018, I joined a group of plaintiffs in a lawsuit challenging the changes to the Discovery program. That case was originally captioned *Christa McAuliffe Intermediate School PTO v. de Blasio*, No. 1:18-cv-11657 (S.D.N.Y.).
24. At the time that lawsuit was filed, my oldest son M.P. was in the first grade. My understanding is that the district court ruled that I did not have standing to sue because M.P. was too far away from applying to high school.
25. Since that ruling, my circumstances have changed. M.P. has now reached eighth grade, taken the SHSAT, received his score, and been denied admission to Stuyvesant. The harm that the district court considered too remote has now occurred.
26. The school year begins in the fall. If the Court does not act before then, M.P. will be forced to begin his ninth-grade year at Brooklyn Tech and will lose the educational opportunity at Stuyvesant that I believe he earned and that he has worked toward for years. I am asking the Court to order M.P.'s admission to Stuyvesant while this case proceeds.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 22nd, 2026, at Brooklyn, New York.

Yi Fang Chen

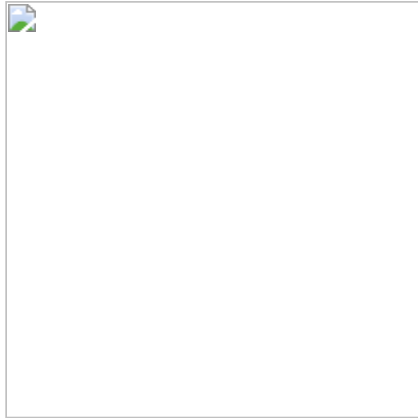
Yi Fang Chen

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EXHIBIT A

3/9/26, 9:12 AM

Template



YOUR RECEIPT:

Specialized High Schools Admissions Test (SHSAT) Registration

Congratulations--you have successfully registered your child! This is your official receipt.

Please note **THIS IS NOT** the SHSAT Ticket.

Submitted by: Yi Fang Chen via PORTAL	Submitted Date/Time: Oct. 7, 2025, 8:02 p.m.
---------------------------------------	--

Tickets will be released **after** the registration period closes, and **before** your child will take the SHSAT.

Student Name: M.P.	Student ID number (OSIS#):
Home Address:	
Current School: MARK TWAIN I.S. 239 FOR THE GIFTED & TALENTED (21K239)	
Current Grade: 8th Grade Official Class:	Date of Birth:
Home Language: English	

SHSAT Registration/School Choices: REGISTERED

SHSAT Religious Observance: << Student can test either day >>

1. 02M475: STUYVESANT HIGH SCHOOL (02M475)
2. 13K430: BROOKLYN TECHNICAL HIGH SCHOOL (13K430)
3. 31R605: STATEN ISLAND TECHNICAL HIGH SCHOOL (31R605)
4. 05M692: HIGH SCHOOL FOR MATHEMATICS, SCIENCE AND ENGINEERING AT CITY COLLEGE (05M692)
5. 14K449: BROOKLYN LATIN SCHOOL, THE (14K449)
6. 10X445: THE BRONX HIGH SCHOOL OF SCIENCE (10X445)
7. 28Q687: QUEENS HIGH SCHOOL FOR THE SCIENCES AT YORK COLLEGE (28Q687)

3/9/26, 9:12 AM

Template

8. 10X696: HIGH SCHOOL OF AMERICAN STUDIES AT LEHMAN
COLLEGE (10X696)

TESTING ACCOMMODATIONS:

If listed, the following accommodations will be provided to this student. If accommodations are pending, they will not appear yet. Contact your school counselor for any corrections or updates.

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EXHIBIT B



Student: M.P.
Student ID number: [REDACTED]
Grade: 8th Grade
Official Class: [REDACTED]
Current School: MARK TWAIN I.S. 239 FOR THE GIFTED & TALENTED (21K239)

Yi Fang Chen
Parent/Guardian of M.P.

March 2026

Dear Yi Fang Chen,

Thank you for applying to high school! This letter includes your child's offer and information about next steps, waitlists, and how to get support if you have questions. We're excited to help your family take this next step.

Your Child's Results

High School Application

Offer: The Clinton School (M64A) The Clinton School (02M260)

We try to match each student to the highest-ranked program on their application. To learn more about how this works, visit schools.nyc.gov/HowAdmissionsWorks.

Specialized High School Admissions Test Results and Offer

- Specialized High School Admissions Test (SHSAT) Score: SHSAT Score: 558
- **Offer:** Brooklyn Technical High School (13K430)
- Verbal Score: 304
- Math Score: 254

Next Steps

Your next steps depend on how many offers your child received and whether your family plans to stay in NYC public schools.

- If your child has **one offer** and will remain in NYC public schools, this offer is automatically accepted. Check the school's website or contact them to learn about open houses or orientations.
- If your child has **more than one offer, accept one by Monday, April 13, 2026.** Accept an offer online at MySchools.nyc or through your child's current school counselor. Check the school's website or contact them to learn about open houses or orientations.
- **If your child will not be attending a NYC public school in September, contact** your child's current school counselor to opt out.

Note: If your child has permanently moved out of NYC or does not meet eighth grade promotion requirements, their offer is no longer valid. .

Waitlists

Schools use waitlists to fill open seats. On the last page of this letter, you can see any programs where your child has been automatically waitlisted (if applicable).

- To stay on a waitlist, you do not need to do anything.
- To **add** your child to more waitlists, visit **MySchools.nyc**.

Learn more about waitlists at schools.nyc.gov/Waitlists.

Questions?

- Visit schools.nyc.gov/HS and schools.nyc.gov/SHS.
- Speak with your child's school counselor
- Call us at 718-935-2009
- Email us at HSEnrollment@schools.nyc.gov

We are excited to welcome your child to high school this fall!

Thank you,
The High School Admissions Team
Office of Student Enrollment, NYC Public Schools



Student: Michael Pong
Student ID number: 243490836
Grade: 8th Grade
Official Class: 823
Current School: MARK TWAIN I.S. 239 FOR THE GIFTED & TALENTED (21K239)

Screened, Screened with Assessment, and Audition Results

Your child applied to one or more programs that use a **screened**, **screened with assessment**, or **audition** admissions method.

The table below shows how your child was considered for each program. The sections that follow explain what each column in the table means.

School	Program	Admissions Method	Score or Group	Admissions Position
THE CLINTON SCHOOL (02M260)	The Clinton School (M64A)	Screened	Group 1	412
N.Y.C. LAB SCHOOL FOR COLLABORATIVE STUDIES (02M412)	College Prep (M74A)	Screened	Group 1	340
FORT HAMILTON HIGH SCHOOL (20K490)	Honors Academy (K17H)	Screened	Group 1	229
MILLENNIUM HIGH SCHOOL (02M418)	Millennium High School (M25A)	Screened	Group 1	611

Screened Programs

- All applicants are placed into five screened admissions groups based on their grades. Learn more at schools.nyc.gov/ScreenedHS.
- The **group** in the table is your child's screened admissions group.
- The **admissions position** is where your child falls compared to all other applicants based on their group and random number.
 - Example: If a child's position is 744, then 743 applicants are either in a higher group or are in their same group with a stronger random number.
 - Learn about random numbers at schools.nyc.gov/RandomNumbers.

Screened with Assessment Programs

- These programs use both an **admissions assessment** and the **screened admissions group** (described above).
- Your child's assessment score and screened admissions group were combined to create a weighted average score on a 0-100 scale. Learn more at schools.nyc.gov/AssessmentHS.
- The **score** shown in the table is your child's weighted average.
- The **admissions position** is where your child falls compared to all other applicants' weighted averages. For example, if a child's position is 552, there are 551 applicants with a higher weighted average.

Audition Programs

- These programs score each audition on a 0-100 scale.
- If a program did not provide a score, it does not appear on the table.
- The **score** shown in the table is your child's audition score. Different schools may score the same

audition differently.

- The **admissions position** is where your child falls compared to all other applicants. For example, if a child's position is 253, there are 252 applicants with a higher audition score.
- LaGuardia High School does not provide admissions positions.

Please note

- The admissions position does not consider a student's General Education (GE) or Students with Disabilities (SWD) status, or admissions priorities. This position only shows the number of students with a higher position overall.
- If your child did not receive an offer to a program listed in the table, it is because:
 - They received an offer to a program listed higher on their application, or
 - All seats in their seat group (GE / SWD) were filled by students in a higher position or a higher priority group.

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26-847

**United States Court of Appeals
for the Second Circuit**

YI FANG CHEN, individually and on behalf of her minor
children M.P., MA.P., AND P.P.,

Plaintiff-Appellant,

against

ZOHRAN MAMDANI, in his official capacity as Mayor of the
City of New York; KAMAR H. SAMUELS, in his official
capacity as Chancellor of the New York City Department of
Education; and NEW YORK CITY DEPARTMENT OF
EDUCATION,

Defendants-Appellees,

(caption continued on next page)

On Appeal from the United States District Court
for the Southern District of New York

**MEMORANDUM OF LAW IN OPPOSITION TO EMERGENCY
MOTION FOR INJUNCTION PENDING APPEAL**

RICHARD DEARING
CLAUDE S. PLATTON
STEPHANIE TEPLIN
of Counsel

August 13, 2026

STEVEN BANKS
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of the City of New York*
Attorney for Defendants-
Appellees
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New York, New York 10007
212-356-3255
steplin@law.nyc.gov

(caption continued from previous page)

TEENS TAKE CHARGE, DESIS RISING UP AND MOVING;
COALITION FOR ASIAN AMERICAN CHILDREN AND
FAMILIES; VERONICA CARRASQUILLO, on behalf of her minor
child, A.C.; WANG JIN HUA, on behalf of her minor child, A.Z.;
HALIMATOU DIALLO, on behalf of her minor child, K.D.;
JENNIFER VELEZ, on behalf of her minor child, G.R.,

Intervenor-Defendants-Appellees.

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PRELIMINARY STATEMENT

Plaintiff Yi Fang Chen brings this motion to have her child M.P. admitted to New York City’s Stuyvesant High School even though he did not score high enough on the admissions test and does not qualify for the Discovery Program, an alternate admission path for high-scoring socioeconomically disadvantaged students who missed the admission cut-off for a Specialized High School (SHS). Chen sued the City’s Department of Education (DOE), Mayor, and Schools Chancellor (together, “the City”), alleging that 2018 changes to the SHS admission process discriminated against Asian-American students. She makes that claim even though Asian-American participation in the SHSs and the Discovery Program increased since the changes took effect.

The U.S. District Court for the Southern District of New York (Ramos, J.) denied Chen’s extraordinary request for a preliminary injunction, and this Court should do the same. First, Chen cannot show irreparable harm to M.P., who was admitted to Brooklyn Tech, one of the most prestigious high schools in the country and his second-choice pick.

Second, Chen cannot show a clear likelihood of success on the merits. She admits that the Discovery Program is facially race-neutral: it depends only on students’ socioeconomic needs and the economic circumstances of their middle school. Under well-settled law, the changes

to the Program would be subject to strict scrutiny only if they were adopted *because* they would disadvantage a racial group. But Chen can only show, at most, that the City was aware that the changes at issue here—which aimed to increase racial, socioeconomic, and geographic diversity at the SHSs—might cause a small decrease in Asian American enrollment (which, as it turned out, did not occur).

The claim suffers from another defect: M.P. would not be eligible for the Discovery Program in its pre-2018 form because he was admitted to Brooklyn Tech based on his test score. Thus, Chen cannot prove her claim by showing that the school-level socioeconomic *eligibility* criteria for the Discovery program are discriminatory. Only the expansion of the *size* of the Program could have affected his admission. So Chen must prove that the decision to expand the Program was motivated by invidious racial animus, and on that point she has no evidence at all.

Chen’s strategy is not hard to grasp. Rather than pursue her claim in a companion lawsuit, where full fact and expert discovery is nearing completion, she prefers to go for a quick win based on limited briefing and a smattering of evidence presented to this Court without context. Admitting M.P. to Stuyvesant on this record is inconsistent with the high burden for emergency relief and is fundamentally unfair to all the other students who, like M.P., did not get into their first-choice high school.

OVERVIEW OF THE CASE

A. 2018 changes to the Discovery Program

New York City has long operated prestigious “specialized” high schools, including Stuyvesant High School and Brooklyn Technical High School (Ex.¹ A ¶ 21; Ex. B ¶ 6). Under state law, students can be admitted to an SHS via two routes. N.Y. Educ. Law §§ 2590-h(1)(b), 2590-g(12) (1996). The first is based solely on a student’s score on the Specialized High School Admissions Test (SHSAT) (Ex. C ¶ 4–6). Students are ranked by SHSAT score and assigned in that order to the highest-ranked school on their application that has an available seat (*id.* ¶ 6). If a student’s first-choice is full, she is considered for her second choice, and so on, until no seats remain (*id.*). The SHSAT score of the last student offered admission to an SHS is known as the cutoff score (*id.*).

The second route is through the Discovery Program, which by law is designed “to give disadvantaged students of demonstrated high potential an opportunity to try the special high school program.” N.Y. Educ. Law § 2590-g(12)(d) (1996). The state statute does not define the

¹ Exhibits A–F are attached to the Declaration of Stephanie Teplin. Exhibits to the Declaration of Glen Roper (ECF 17.3) are cited by exhibit number and Bates number.

term “disadvantaged” or fix the size of the Discovery Program, leaving those decisions to DOE’s discretion. *Id.*

In June 2018, DOE announced two changes to the Discovery Program. First, each SHS would reserve 20% of seats for students admitted through the program, up from approximately 5% (Ex. C ¶ 18; Ex. 4 at ’918). Second, DOE revised the eligibility criteria for the program. Eligibility for students at public middle schools would be limited to those attending schools with an Economic Need Index (ENI)² of 0.60 or greater (Ex. B ¶¶ 20, 22). Discovery Program students must also be individually socioeconomically disadvantaged (for example, receiving free or reduced-price lunch or SNAP benefits) and receive a recommendation from their middle school (*id.* ¶ 20). Students with a SHSAT score above the cutoff are statutorily ineligible for admission through the Discovery Program (*id.*).

The 2018 changes reflect a recognition—by DOE and the public—that the SHSs had become less diverse racially, geographically, and socioeconomically (Ex. B ¶¶ 4, 9–10). In 2017, only 30 middle schools (out of approximately 650) accounted for 50% of SHS admissions (Ex. B

² ENI measures a school’s economic disadvantage taking into account the number of students that individually have economic need (eligibility for public assistance, recent residence in temporary housing, or a home language other than English) and the proportion of families below the poverty line in the census tract (Ex. B ¶ 23).

¶ 17; Ex. C ¶¶ 24–29). And at the three oldest SHSs (Stuyvesant, Brooklyn Tech, and Bronx Science), fewer than 2.5% of students were African American and fewer than 7% were Latino (Ex. B ¶ 17). In considering the changes, DOE conducted studies and modeling to “more precisely target schools where the majority of students are facing economic hardship and the disadvantages that accompany it” (*id.* ¶ 25).

DOE also modeled, to the extent possible, how changes to Discovery Program eligibility would affect the racial demographics of the SHSs and Discovery participants. DOE did not make predictions about future years, which would have required numerous uncertain assumptions (*see* Ex. B ¶¶ 26–29; Ex. C ¶ 15–16). However, it looked at how the then-current class would have differed if the new policies were in effect (Ex. Ex. C ¶ 20). DOE felt it was important to have this information, not least because it had been subject to a civil-rights complaint alleging that the SHS admission policies discriminated against Black and Latino students (Ex. B ¶ 13]). DOE also considered how the changes could affect the gender, racial, and geographic diversity at the SHSs, as well as their effect on the proficiency of incoming students (*see* Ex. 3 at ’812, Ex. 6).

DOE’s 2018 modeling showed that if the changes to the Discovery Program had been in effect for the 2018–19 class, the combined percentage of African-American and Latino students might increase from

approximately 9% to approximately 16%; Asian-American enrollment would decrease from 53% to 50.9%; enrollment of white students would decrease from 27.2% to 24.7%; and enrollment of students whose race or ethnicity was unknown would decline from 9% to 7.8% (Ex. B ¶¶ 31–32).

In reality, the change to ENI resulted in increased Asian-American participation in the Discovery Program and at the SHSs. In 2017, before the changes took effect, Asian-American students made up 41% of Discovery invitations (Ex. E ¶ 3). In each year after the changes, they received between 43% and 53% of invitations (*id.* ¶ 4). Admissions through the SHSAT route have also remained consistent: in 2017, 52% of students receiving an offer based on test score were Asian American; in 2026, the figure was 56% (*id.* ¶ 5).

B. The ongoing CACAGNY litigation

In 2018 a group of plaintiffs filed an equal protection suit challenging the changes to the Discovery Program. *See Chinese Am. Citizens Alliance of Greater N.Y. v. Adams (CACAGNY)*, 116 F.4th 161, 167–68 (2d Cir. 2024). In district court, the CACAGNY plaintiffs sought and were denied a preliminary injunction. *Christa McAuliffe Intermediate Sch. PTO, Inc. v. De Blasio*, 364 F. Supp. 3d 253 (S.D.N.Y.), *aff'd on standing grounds*, 788 F. App'x 85 (2d Cir. 2019). Chen was dismissed

from *CACAGNY* for lack of standing because her oldest child was then in first grade. *Id.* at 272.

The parties agreed to bifurcate discovery, with the first phase addressing the impact of changes to the Discovery Program and the second addressing the City’s motivations for adopting them. *CACAGNY*, 116 F.4th at 168. After phase-one discovery established that Asian-American participation in the Discovery Program had increased, the City moved for summary judgment on the basis that the plaintiffs could not show a discriminatory effect. The district court (Ramos, J.) granted summary judgment, but this Court reversed. *Id.* at 164–65, 169.

In the unusual posture of the case, the Court was required to take all inferences in plaintiffs’ favor and assume they could “prove that the policy changes to the Discovery Program were made with the discriminatory intent to reduce the number of Asian-American students at the SHSs.” *Id.* at 165, 171. Under that assumption, the Court held that the district court erred by insisting on evidence of “an aggregate disparate impact on Asian-American students”—which did not exist—“in order to establish the requisite discriminatory effect for an equal protection claim.” *Id.* at 165. Rather, “if discriminatory intent is proven, a negative effect or harm from that discriminatory policy on individual Asian-

American students applying to the SHSs would be sufficient to trigger strict scrutiny review.” *Id.*

Following remand, the parties began phase-two discovery into the City’s motivation for the 2018 changes (*see* No. 18-cv-11657, ECF 203). Fact and expert discovery have not yet concluded, and motions addressed to standing are being briefed (*id.*; Ex. D at 33).

C. This lawsuit and the motion for a preliminary injunction to admit M.P. to Stuyvesant

While the *CACAGNY* litigation was ongoing, Chen, individually and on behalf of her child M.P., filed a new complaint, represented by the same counsel as the *CACAGNY* plaintiffs (Ex. A). M.P. received a SHSAT score of 558, which was three points below the cutoff for admission to Stuyvesant, his first choice (*id.* ¶ 11). M.P. was admitted to Brooklyn Tech, his second choice (Ex. E ¶ 6).

Chen asserted two causes of action, under the Equal Protection Clause and Title VI (Ex. A ¶¶ 71–96). She then moved for a preliminary injunction directing DOE to admit M.P. to Stuyvesant for the 2026–27 school year, relying on the same evidence and arguments she presents on this motion (S.D.N.Y. ECF 14–17).

Judge Ramos, assigned the new case as related to *CACAGNY*, denied the motion for a preliminary injunction (Ex. D at 48–58), applying

the heightened standard for a mandatory injunction (*id.* 48–49). First, as to both claims (*id.* 55), Chen had not demonstrated that the facially race-neutral changes to the Discovery Program were enacted “at least in part because of and not merely in spite of [their] adverse effects upon an identifiable group” (*id.* 50). None of her evidence demonstrated a strong likelihood of showing that the changes were motivated by a goal of disadvantaging Asian Americans (*id.* 51–53). *See Christa McAuliffe*, 364 F. Supp. 3d at 277–79 (evaluating similar evidence). Thus, the changes should be reviewed for a rational basis, and under that standard they were likely to be upheld (Ex. D at 53–54).

As to the remaining preliminary injunction factors, the court held that Chen could not rely on a constitutional violation to establish irreparable harm because she was unlikely to succeed on the merits (*id.* 55–56). Moreover, there was “insufficient evidence” to conclude that M.P. would have been admitted to Stuyvesant but for the Discovery Program changes, making any harm too remote and speculative to support injunctive relief (*id.* 56). Finally, the court found that the balance of equities and the public interest favored maintaining the status quo, observing that “[w]hile the admission of M.P. alone may not be a large administrative burden for the city, ... such admission could open opportunities

for widespread similar litigation and endanger the orderly administration of decisions to specialized high schools” (*id.*).

ARGUMENT

THE MOTION FOR AN INJUNCTION PENDING APPEAL SHOULD BE DENIED

A preliminary injunction is “an extraordinary remedy never awarded as of right.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 24 (2008). An injunction pending appeal after the district court denied relief is more extraordinary still. *Agudath Isr. of Am. v. Cuomo*, 979 F.3d 177, 180 (2d Cir. 2020). And here, contrary to Chen’s contention (Motion for Injunction Pending Appeal (“Mot.”) 16), she seeks a mandatory injunction that would “alter[] the status quo” by requiring M.P.’s admission to Stuyvesant. *See JTH Tax, LLC v. Agnant*, 62 F.4th 658, 667 (2d Cir. 2023); *Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 34 (2d Cir. 1995). Chen therefore must make “a strong showing of irreparable harm” and show “a clear or substantial likelihood of success on the merits,” in addition to demonstrating that the equities and public interest favor an injunction. *JTH Tax*, 62 F.4th at 667, 669. She cannot meet that burden.

A. Chen has not made a strong showing of irreparable harm.

“[I]rreparable harm is the single most important prerequisite for the issuance of a preliminary injunction,” *JTH Tax*, 62 F.4th at 672 (quotation omitted), and Chen does not come close to making the strong showing required.

No matter the result of this motion—or this lawsuit—M.P. will attend one of the best public high schools in New York City and, indeed, the country. Chen does not attempt to establish that Brooklyn Tech is objectively inferior to Stuyvesant and does not explain the basis for M.P.’s preference (*see* Ex. D at 17) (confirming that the alleged injury was not based on “measur[ing] the difference between Stuyvesant and Brooklyn Tech”). Showing that M.P. will attend a different, but also excellent, school is not enough to establish irreparable harm. *See Pride v. Cmty. Sch. Bd. of Brooklyn, N.Y. Sch. Dist. No. 18*, 488 F.2d 321, 327–28 (2d Cir. 1973); *see also Nat’l Ass’n for Gun Rts. v. Lamont*, 153 F.4th 213, 248 (2d Cir. 2025), *cert. granted sub nom. Grant v. Higgins*, 2026 WL 1871312 (U.S. June 30, 2026) (purpose of a preliminary injunction not to “guarantee the parties suffer no harm during the pendency of

litigation but merely to preserve the relative positions of the parties until a trial on the merits can be held” (quotation omitted)).³

The harm that Chen claims, is, at best “remote” and “speculative,” which would not suffice even for a prohibitory injunction. *See Lamont*, 153 F.4th at 248. For one thing, year-to-year variability means there is no fixed cutoff; in fact, M.P.’s score would have been above the cutoff for Stuyvesant if he’d been in last year’s applicant pool. (Ex. A ¶ 11). And there are dozens of other students who scored the same or higher than M.P. on the SHSAT but were not admitted to Stuyvesant (Ex. F; Ex. D at 19), yet Chen’s argument assumes that if her challenge were successful the automatic remedy would be to admit M.P. She offers no proof on this front and instead tries to improperly shift her burden on a preliminary injunction to the City (Mot. 26).⁴ What’s more, before 2018, DOE allowed each SHS to choose the number of seats set aside for Discovery participants. Chen gives no reason to believe that if the changes were undone, the Discovery Program would shrink back to its pre-2018 size.

³ *Foulke v. Foulke*, 896 F. Supp. 158 (S.D.N.Y. 1995), does not say anything different. There a student would lose her admission to one school if she did not immediately accept. *Id.* at 160. M.P.’s admission to Brooklyn Tech is assured.

⁴ The case Chen cites is about statutory burdens of proof at trial. *Nat’l Commc’ns Ass’n v. AT&T Corp.*, 238 F.3d 124, 130–31 (2d Cir. 2001). It does not excuse Chen from supporting her preliminary injunction application, particularly where she chose to move without discovery.

Rather than marshal evidence of irreparable injury, Chen asserts that a violation of equal protection is *per se* irreparable harm (Mot. 24–25). This assumes likelihood of success on the merits, which, as discussed below, Chen cannot show. And if such presumed harm might support an injunction against an allegedly unconstitutional policy, it would not support a mandatory injunction admitting M.P. to Stuyvesant, which requires Chen to prove that M.P. would have been admitted but for the policy. In any event, the *per se* injury rule “does not obtain universally,” *Care One, LLC v. NLRB*, 166 F.4th 335, 348 (2d Cir. 2026), and this Court has recently declined to extend it, *Lamont*, 153 F.4th at 248. Although in one instance the Court found that likelihood of success on an equal protection claim established irreparable harm, that was not based on a *per se* rule but on the “unique and somewhat outrageous facts.” *Brewer v. W. Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 744–45 (2d Cir. 2000) (elementary-school student’s school offer withdrawn after twice being extended).

B. Chen has not shown a clear likelihood of success on the merits.

The parties agree that DOE’s implementation of the Discovery Program is facially race-neutral (Mot. 18–19; Ex. D at 6). It is therefore subject to rational-basis review unless Chen can show that the changes

were motivated by discriminatory intent and had a discriminatory effect on M.P. *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–65 (1977). Chen does not argue that the changes lack a rational basis, and she has failed to make a strong showing that they should be subject to strict scrutiny.

1. Chen is not likely to prove discriminatory intent.

a. Under *Arlington Heights*, Chen must show that the intent to discriminate against Asian Americans because of their race was a motivating factor for the City’s decisions to increase the size of the Discovery Program and introduce the ENI threshold. 429 U.S. at 265–66. Discriminatory intent requires more than “intent as awareness of consequences.” *Personnel Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979). A plaintiff must show that the decisionmaker acted “at least in part ‘because of,’ not merely ‘in spite of,’ [the] adverse effects upon an identifiable group.” *Id.* This “typically” means the “government actor seeks to disadvantage or negatively impact a group of persons.” *Hayden v. Cnty. of Nassau*, 180 F.3d 42, 50 (2d Cir. 1999). Although she now argues otherwise, Chen acknowledged these principles to the district court, explaining that the claim was based “not [on] mere incidental awareness of race, but making decisions because of race” (Ex. D at 22, 46).

That standard was not changed—or even addressed—by *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College* (*SFFA*), 600 U.S. 181 (2023). There, the Supreme Court reviewed university admissions policies that indisputably were not race-neutral. *Id.* at 195–96 (race was a “determinative tip” or “plus” for non-white applicants); *id.* at 220 (admissions criteria established “an inherent benefit in race *qua* race”). Applying strict scrutiny, the Court held that the generalized goal of a diverse student body was insufficient to justify race-based admissions. *Id.* at 214–15.

SFFA did not consider when a race-neutral policy should be subject to strict scrutiny or how to evaluate the intent factor under *Arlington Heights*, let alone overrule *Arlington Heights*, *Feeney*, or any of this Court’s cases that followed. Chen glibly quotes a phrase from an introductory paragraph of *SFFA* about policies that are “well intentioned” (Mot. 19 (quoting *SFFA*, 600 U.S. at 213)). But the decision did not (and did not need to) evaluate the universities’ motivation because their admission policies were not race-neutral. It noted the universities’ good

intentions only to express that even good-faith use of race-based policies can violate strict scrutiny.⁵

Both the Supreme Court and this Court have recently reaffirmed the viability of *Arlington Heights*. In *Mullin v. Doe*, the Supreme Court assumed that *Arlington Heights*—or perhaps an even more deferential standard—applied to the termination of temporary protected status for Haitians. 609 U.S. ___, 146 S. Ct. 2121, 2138 (2026). It described its task as “determin[ing] whether a ‘discriminatory purpose [was] a motivating factor in the decision.’” *Id.* (quoting *Arlington Heights*, 429 U.S. at 265–66). And in *CACAGNY*—decided after *SFFA*—this Court emphasized that its “holding in no way undermines, or even implicates, the Supreme Court’s guidance in *Feeney*, applied by this Court and other circuits under the *Arlington Heights* standard, namely, that ‘discriminatory purpose implies that the decisionmaker selected or reaffirmed a particular course of action at least in part *because of*, not merely *in spite of*, its adverse effects upon an identifiable group.” 116 F.4th at 175 n.7

⁵ None of the other cases Chen cites dispensed with the requirement to establish discriminatory intent for race-neutral policies (Mot. 17–18). *See Louisiana v. Cal-lais*, ___ U.S. ___, 146 S. Ct. 1131, 1152 (2026) (“intentional use of race” in redistricting); *Am. Council of Learned Societies v. NEH*, ___ F. Supp. 3d ___, 2026 WL 1256545, at *55 (S.D.N.Y. May 7, 2026) (grant awards “expressly employ[ing]” classifications based on race); *Herrera v. N.Y.C. Dep’t of Educ.*, 2024 WL 245960, at *7–8 (S.D.N.Y. Jan. 23, 2024) (material questions of fact about whether DOE used “race-based” hiring policies).

(quoting *Feeney*, 442 U.S. at 279, alterations omitted). The Court quoted approvingly the First Circuit’s reasoning that “‘aware[ness] that race-neutral selection criteria ... are correlated with race’” is insufficient to show discriminatory intent. *Id.* (quoting *Bos. Parents Coal. v. Sch. Comm. for City of Bos.*, 996 F.3d 46, 48 (1st Cir. 2023)).⁶

Chen relies repeatedly on the line that SHS admissions are “zero sum” (*e.g.*, Mot. 11, 19, 20, 23). But she never connects the dots to show why, under these facts, a zero-sum admissions process amounts to “racial balancing” when the policy at issue is race-neutral (*id.* 17). Her position seems to be that any system with a fixed number of seats can never be changed unless racial proportions stay static against some (arbitrary) baseline. But that rule would tie the hands of policymakers and “freeze the status quo of prior discriminatory practices,” “turn[ing] the previous status quo into an immutable quota.” *Bos. Parent Coal.*, 89 F.4th at 57–58 (quotations and alteration omitted). DOE should not be prevented from exercising its discretion under state law and locked into the pre-

⁶ The Third Circuit applied this same intent analysis, and, after a close review of the evidence, found material fact issues about a different city’s motivation. *Sargent v. Sch. Dist. of Phila.*, 165 F.4th 727, 742–43 (3d Cir. 2026). The decision does not help Chen, who has not presented a full record and who must meet the higher standard of a clear likelihood of success.

2018 admissions process for all time just because one plaintiff would prefer the result.

b. Chen cannot make the requisite showing of intent. As an initial matter, in most equal protection cases “circumstantial evidence of disparate impact may be ‘an important starting point’ in determining whether a facially race-neutral policy or decision was motivated by a discriminatory purpose.” *CACAGNY*, 116 F.4th at 172 (quoting *Arlington Heights*, 429 U.S. at 266)). Because there is no evidence of a discriminatory effect on Asian-American students in the aggregate from the Discovery Program changes, *see id.* at 168, Chen does not get an evidentiary boost from that starting point.

Chen agrees that there is no constitutional problem with DOE’s efforts to expand educational opportunities for economically disadvantaged students (Ex. D at 10). *See SFFA*, 600 U.S. at 299–300 (Gorsuch, J., concurring) (observing that institutions “could obtain significant racial diversity without resorting to race-based admissions practices,” such as by favoring “socioeconomically disadvantaged applicants”). Chen’s musing (Mot. 6) that it is “odd” to consider schoolwide economic factors does not undercut DOE’s policy judgment that “[s]tudents who are both from low-income families and attending schools that have students with higher economic hardship face more disadvantages than

students who are from low-income families but attend schools with higher-income students” (Ex. B ¶ 24). And no matter what middle school they attend, only students who are individually disadvantaged qualify for Discovery (*id.* ¶ 20).

The scattered evidence Chen attaches to her motion (at 7–9) is no substitute for the “sensitive inquiry into such circumstantial and direct evidence of intent as may be available” that *Arlington Heights* requires. 429 U.S. at 266. She quotes a handful of emails and documents, devoid of context and without any effort to show their role in the decision-making process. And it’s telling that she selected just seven documents from the thousands exchanged in the *CACAGNY* litigation and ignores statements from DOE decisionmakers about their motivation (*see* Ex. B ¶ 4). Rather than prove her case on a full record, Chen would prefer to highlight snippets in isolation.

In any event, the documents do not show an intent to harm Asian Americans. For example, the DOE slide deck discusses increased diversity at SHSs across multiple characteristics—race, but also geography, middle schools, gender, and socioeconomic status (Ex. 3 at ’812). And it describes several options for SHS admissions that DOE did *not* pursue, noting that expanding and changing eligibility for the Discovery Program was projected to do the least to alter the racial makeup of SHSs

(*id.* at '811). Chen cites a statement that Asian-American leadership would “vociferously oppose” the changes, but—as it says in the same bullet point—that’s because they, as well as “[a]lum communities” and “other stakeholders,” might “allege diminishing of quality/standards” at the SHSs, not claim racial discrimination (Ex. 7).

The chart showing the possible demographics of future Discovery participants was not prepared for decision making, but to respond to a reporter’s question to City Hall (Ex. 5 at '255). In any event, the document shows, at most, that in evaluating race-neutral criteria for SHS admissions, DOE chose the one that increased racial and other measures of diversity. *See Bos. Parent Coal.*, 89 F.4th at 61–62. DOE anticipated that Asian-American participation could decrease, but this “awareness of consequences” is not evidence of discriminatory intent. *Feeney*, 442 U.S. at 279; *see Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 885–86 (4th Cir. 2023). And as to the implications of expanding the size of the Discovery Program (as opposed to adjusting eligibility criteria), the documents Chen cites show that, while increasing socioeconomic and geographic diversity, it would have no material effect on racial demographics (Ex. 4 at '916).

In short, the scattered evidence cited by Chen does not present a full picture of the decision-making process and shows, at most, that

DOE was aware that the changes designed to increase access for the most disadvantaged students could affect the racial demographics of the Discovery Program. That is insufficient to show a clear likelihood of success on her claim.

2. Chen cannot show a clear likelihood that an unconstitutional policy was the but-for cause of an injury to M.P.

Chen assumes away her burden to prove that an unconstitutional policy had a harmful effect on M.P., but her lack of evidence on that point is another reason to deny a preliminary injunction. In *CACAGNY*, the Court reaffirmed that “an equal protection claim challenging a facially neutral policy ... require[s] a showing of discriminatory effect.” 116 F.4th at 173. Chen therefore must show that “the harm [to M.P.] would not have occurred in the absence of—that is, but for—the defendant’s conduct.” *Naumovski v. Norris*, 934 F.3d 200, 213–14 (2d Cir. 2019) (causation standard under § 1983 claim for equal protection violation).

Chen cannot meet that standard. To begin, she cannot rely on changes to *eligibility* for the Discovery Program or the use of the ENI threshold because it is undisputed that M.P. was ineligible for Discovery even under the pre-2018 system. M.P.’s SHSAT score gained him

admission to Brooklyn Tech (Ex. E ¶ 6). By law, students who score above the cutoff for any SHS are not eligible for the Discovery Program (Ex. B ¶ 20; Ex. C ¶ 8). N.Y. Educ. Law § 2590-g(12) (1996).

Chen’s entire claim must therefore rest on the allegation that the *percentage of seats* allocated to Discovery Program participants was an unconstitutional race-based decision that caused M.P. to be admitted to his second-choice school (*see* Ex. A ¶ 1). *See CACAGNY*, 116 F.4th at 171, 174 (equal protection plaintiffs must “demonstrate that they suffered some harm from the law or policy” that was motivated by discriminatory intent). But Chen confirmed to the district court that she has no qualm about the size of the Discovery Program: “the pure expansion[,] if not part of a ... broader racial balancing goal, would not trigger an equal protection claim” (Ex. D at 10). And as noted, the evidence she presents does not suggest a racial motivation for increasing the size of a program designed to give more seats to socioeconomically disadvantaged students. She doesn’t even present evidence that DOE was *aware* of how the 20% set-aside, in isolation, would change the racial makeup of SHS classes.

C. The equities and public interest do not favor an injunction.

Finally, the equities and public interest, which merge in this case, do not favor an injunction. *See New York v. U.S. Dep’t of Homeland Sec.*, 969 F.3d 42, 58–59 (2d Cir. 2020). First, fairness is ill-served by permitting M.P. to leapfrog over the 50-plus students with the same or higher SHSAT scores who similarly picked Stuyvesant as their first choice and did not get in (Ex. F). Admitting M.P. would be contrary to longstanding DOE policy to treat all students with the same SHSAT score as a group (*see* Ex. 4 at ’910), upsetting students’ reasonable expectations about how admissions would be administered. *See Winter*, 555 U.S. at 24 (considering the “public consequences” of an injunction).

Second, while admitting one additional student to Stuyvesant may not in and of itself be an administrative disaster, the prospect of piecemeal SHS admissions through litigation would be. When asked at oral argument if this injunction would open the floodgates, Chen’s counsel responded that no one else had sued—with the “yet” left unspoken (Ex. D at 21). Indeed, the CACAGNY plaintiffs claim to have identified multiple middle-school students who intend to apply to an SHS in the coming years (*see* No. 18-cv-11657, ECF 227, at 13, 15). The impact on

DOE's ability to run SHS admissions in an orderly fashion could snowball quickly.

Third, admitting M.P. via injunction would violate the unchallenged state law requiring that admission to SHSs be based only on SHSAT score or participation in the Discovery Program (*see supra* 3).

Weighed against all this is Chen's conclusory statement of M.P.'s desire to attend Stuyvesant, with no real harm identified if he attends his second-choice school. That personal preference, however sincerely felt, is not enough to tip the equities in his favor.

CONCLUSION

The Court should deny the motion for an injunction pending appeal.

Dated: New York, New York
August 13, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, and according to that software, it contains 5,197 words, not including the table of contents, table of authorities, this certificate, and the cover.

/s/ *Stephanie Teplin*
STEPHANIE TEPLIN

26-847

**United States Court of Appeals
for the Second Circuit**

YI FANG CHEN, individually and on behalf of her minor
children M.P., MA.P., AND P.P.,

Plaintiff-Appellant,

against

ZOHRAN MAMDANI, in his official capacity as Mayor of the
City of New York; KAMAR H. SAMUELS, in his official
capacity as Chancellor of the New York City Department of
Education; and NEW YORK CITY DEPARTMENT OF
EDUCATION,

Defendants-Appellees,

(caption continued on next page)

On Appeal from the United States District Court
for the Southern District of New York

**DECLARATION OF STEPHANIE TEPLIN
IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION
FOR INJUNCTION PENDING APPEAL**

(caption continued from previous page)

TEENS TAKE CHARGE, DESIS RISING UP AND MOVING;
COALITION FOR ASIAN AMERICAN CHILDREN AND
FAMILIES; VERONICA CARRASQUILLO, on behalf of her minor
child, A.C.; WANG JIN HUA, on behalf of her minor child, A.Z.;
HALIMATOU DIALLO, on behalf of her minor child, K.D.;
JENNIFER VELEZ, on behalf of her minor child, G.R.,

Intervenor-Defendants-Appellees.

STEPHANIE TEPLIN declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am a Senior Counsel in the office of Steven Banks, Corporation Counsel of the City of New York, attorney for defendants-appellees in this appeal. I submit this declaration in opposition to plaintiff-appellant's Emergency Motion for Injunction Pending Appeal.

2. Attached as **Exhibit A** is a true and correct copy of the Complaint in this action, filed in the district court as ECF 1.

3. Attached as **Exhibit B** is a true and correct copy of the Declaration of Joshua Wallack dated January 17, 2019, filed in the district court as ECF 31-2.

4. Attached as **Exhibit C** is a true and correct copy of the Declaration of Nadiya Chadha dated January 17, 2019, filed in the district court as ECF 31-3.

5. Attached as **Exhibit D** is a true and correct copy of the complete transcript of proceedings before the district court on July 21, 2026.

6. Attached as **Exhibit E** is a true and correct copy of the Declaration of Lianna Wright dated June 17, 2026, filed in the district court as ECF 31-1.

7. Attached as **Exhibit F** is a true and correct copy of the Declaration of Lianna Wright dated August 13, 2026.

Dated: New York, New York
August 13, 2026

/s/ Stephanie Teplin

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Case: 26-2066, 08/13/2026, DktEntry: 30.1, (59 of 159)

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CHRISTA McAULIFFE INTERMEDIATE SCHOOL
PTO, Inc. et al,

Plaintiffs,

**DECLARATION OF
JOSHUA WALLACK**

18 CV 11657 (ER)(OTW)

-against-

BILL DE BLASIO, in his official capacity as Mayor of
New York, et ano.,

Defendants.
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JOSHUA WALLACK declares, pursuant to 28 U.S.C. §1746, under penalty of perjury,
that the following is true and correct:

1. I am Deputy Chancellor for Early Childhood Education and Student Enrollment in the New York City Department of Education (“DOE”). As such, the DOE Office of Student Enrollment, which among other things is responsible for enrollment in the Specialized High Schools, reports to me. I have overseen the Office of Student Enrollment since 2015, and I have been employed at the DOE since 2014. This declaration is based on my personal knowledge, discussions with DOE employees, and the books and records of DOE.

2. I make this declaration in opposition to the Plaintiffs’ motion for a preliminary injunction in the above-captioned case and to apprise the Court of the history of DOE’s efforts to foster diversity in the eight Specialized High Schools, and the reasons for the changes to the Discovery Program that are being challenged by Plaintiffs. Those changes, namely, the expansion of the program and the adoption of different selection criteria, were announced by the Mayor and the Chancellor on June 3, 2018.

3. I led the decision-making group that decided to expand the Discovery Program and adopt the criteria for eligibility to participate in the Discovery Program that are currently in effect and are being challenged (the “current criteria”). After reviewing data and options developed by the Office of Student Enrollment concerning the expansion of the Discovery Program and the revision of such criteria, the decision-making group recommended to the Chancellor that the Discovery Program be gradually expanded during the 2019-2020 and 2020-2021 school years and that the Chancellor adopt the current criteria. Specifically, the current criteria define how to determine whether a student is “disadvantaged” for the purposes of eligibility for the Discovery Program. The Chancellor adopted these recommendations, and I believe that the decision-making group’s recommendation was decisive in the Chancellor’s decision to expand the Discovery Program and to adopt the revised criteria.

4. The Chancellor, the decision-making group, and I were in no way motivated by a desire to harm Asian-American students or to limit the enrollment of Asian-American students in the eight Specialized High Schools. Instead, the Chancellor, the decision-making group, and I were trying to increase the ethnic, racial, geographic, and socio-economic diversity of the student bodies of those high schools, which we believe will be beneficial to all students enrolled in those schools. The expansion of the Discovery Program and the current Discovery Program criteria, which are race-neutral, should better identify disadvantaged students, account for the impact of attending a school with a high percentage of economically disadvantaged students, and also expand the number of intermediate schools that send students to the eight Specialized High Schools, and thereby motivate other students and their families, as well as teachers and administrators in these intermediate schools, to pursue the entry of more students from these schools to the Specialized High Schools.

History of Efforts to Maintain Diversity in the Specialized High Schools

5. I have learned the facts set forth in the following history from discussions with DOE employees and the books and records of DOE, and I believe them to be true.

6. Specialized High Schools have existed in New York City for more than 100 years. The Specialized High Schools have consistently provided rigorous instruction to academically gifted students in a challenging environment. The three original Specialized High Schools were Stuyvesant High School, Brooklyn Technical High School, and Bronx High School of Science. Stuyvesant opened in 1904, Brooklyn Tech in 1922, and Bronx Science in 1938. In 1934, Stuyvesant began using an entrance exam developed in conjunction with Columbia University. The use of an entrance exam then expanded to Bronx Science and Brooklyn Tech.

7. It is my understanding that in the late 1960s, the Specialized High Schools were offering admission based upon the scores of an entrance examination and a Discovery Program that extended offers of admission to disadvantaged students who showed potential for success at the Specialized High Schools. In 1971, New York enacted legislation, the Hecht-Calandra Act, to codify the requirement that a competitive achievement examination be the main criterion for admission to the Specialized High Schools but expressly provided for a Discovery Program that was unlimited in size to admit disadvantaged students with great potential to the Specialized High Schools. See Laws of 1971, chap. 1212, Roberts Dec. at Ex. 1 (Dkt. no. 48-1)

8. Enactment of the Hecht-Calandra Act did not end debate about the fairness of the use of a single test for admission to the Specialized High Schools. In 1977, the federal Office of Civil Rights opened an investigation into whether the single test as an admission standard constituted a form of discrimination against members of minority groups and females. See Marcia Chambers, *U.S. Inquiry Into Bias Is Opposed At Prestigious New York*

Schools, N.Y. TIMES, November 7, 1977, available at <https://www.nytimes.com/1977/11/07/archives/us-inquiry-into-bias-is-opposed-at-prestigious-new-york-schools-us.html> (last visited January 12, 2019). According to that news article, Board of Education data from the 1975-1976 school year showed that 23 percent of the students then enrolled at the Specialized High Schools were African-American, 9 percent Latino, 12 percent Asian-American, and 56 percent White. The Board of Education and the Office of Civil Rights reached an agreement that did not change the admissions criteria. See Ari Goldman, *On The Right Track*, N.Y. TIMES, June 17, 1978, available at www.nytimes.com/1978/06/17/archives/on-the-right-track.html (last visited January 12, 2019).

9. It appears, however, from newspaper articles that the percentage of African-American and Latino students at Stuyvesant declined significantly from the 1970s. See, Pam Belluck “More Minority Students Enter Elite Schools,” New York Times, May 8, 1997 (percentage of African-American students at Stuyvesant was 12.9% in 1979 but 4.3 % in 1995; and 5.5% in 1997); and Maria Newman, “For Poor but Talented, A Shot at Opportunity; Helping Pupils Qualify for Top Exams,” New York Times, August 4, 1995 (4.8% of students at Stuyvesant are African-American and 4.3% are Latino).

10. There has been concern for decades about the declining and/or low percentages of African-American and Latino students in the Specialized High Schools. This concern was shared by previous DOE Chancellors. In 2002, former Chancellor Joel Klein created additional Specialized High Schools in, I believe, an effort to expand opportunities for admission to the Specialized High Schools and to increase diversity in the student body of those schools. Between the 2002-2003 and 2007-2008 school years, DOE added a new specialized high school in each borough. The High School for Mathematics, Science and Engineering at

City College (“Math, Science and Engineering”) in Manhattan, the High School of American Studies at Lehman College (“American Studies”) in the Bronx, and the Queens High School for the Sciences at York College (“Sciences at York”) opened for the 2002-03 school year. Staten Island Technical High School (“Staten Island Tech”) became a testing Specialized High School in the 2006-2007 school year, and Brooklyn Latin became the eighth testing Specialized High School in the 2007-2008 school year.

11. In addition, in an effort to have greater numbers of disadvantaged students score well on the SHSAT, for more than two decades, DOE has instituted citywide extra-curricular programs to help prepare disadvantaged students for the test. The Citywide programs include the Specialized High School Institute (“SHSI”), which began in the mid-1990s and ended in 2012, and its replacement, Dream-SHSI (“DREAM”), which began during the 2011-12 school year. The purpose of both of these programs was to prepare disadvantaged students for the SHSAT, which among other things would increase diversity at the Specialized High Schools. SHSI was an intensive 15-month program that provided students with a range of supports, including coursework in literature, writing, mathematics, and science, as well as group guidance activities and test preparation skills. SHSI began in June of the sixth-grade year and continued until October of eighth grade, when students took the SHSAT. The structure of DREAM is similar to that of SHSI, except that students begin participating in DREAM in the spring semester of sixth grade. DREAM requires that a student be economically disadvantaged as defined by Title I Free Lunch status. Both SHSI and DREAM were conducted at multiple sites throughout the City. In 2016, DOE added the DREAM Intensive program, which runs during the summer and fall immediately preceding administration of the SHSAT in the fall of eighth grade.

12. Notwithstanding these efforts, the combined percentage of African-American and Latino students enrolled at the Specialized High Schools continued to decline. See Specialized High Schools Demographics from NYC Department of Education, 1995-2015, attached hereto as Exhibit 1.

13. In 2012, the NAACP Legal Defense and Education Fund, Inc., Latino Justice PRLDEF, and the Center for Law and Social Justice at Medgar Evers College filed a complaint with the Office for Civil Rights of the United States Department of Education (OCR) against DOE, alleging that the use of the SHSAT for admission to the Specialized High Schools violated Title VI of the Civil Rights Act of 1964, because the test had a large disparate impact on African-American and Latino students. See *Complaint re The admissions process for New York City's elite public high schools violates Title VI of the Civil Rights Act of 1964 and its implementing regulations*, September 27, 2012, attached to the Declaration of Thomas B. Roberts as Exhibit 4. (Dkt. no. 48-4) Four Asian-American advocacy groups filed letters supporting the NAACP LDF's complaint, which stated that those groups supported the NAACP LDF's efforts to force DOE to further diversify the student bodies at the Specialized High Schools. See, statements attached to the Declaration of Thomas B. Roberts as Exhibits 5-8. (Dkt. no. 48-5, -6, -7, -8) In that complaint, the NAACP LDF asserted that DOE's failure to employ the Discovery Program as a means to increase diversity was evidence of intentional discrimination against minority students. *Complaint* at p. 28, n. 23. (Dkt. no. 48-4) OCR opened an investigation of the complaint, and DOE produced documents and witnesses for interviews in response to OCR's requests. This investigation is ongoing.

14. In 2016, DOE initiated additional efforts to build awareness of the Specialized High Schools, ease the burden of weekend testing, and increase middle school

teachers' capacity to prepare their students for the SHSAT. DOE engaged in targeted outreach to students from underrepresented groups to increase awareness of the Specialized High Schools and the steps that must be taken to prepare and take the SHSAT. See, <https://www.schools.nyc.gov/about-us/news/announcements/contentdetails/2016/06/09/city-announces-new-initiatives-to-increase-diversity-at-specialized-high-schools>. In the fall of 2017, DOE commenced SHSAT testing during the school day in 15 schools serving students from underrepresented groups in an effort to facilitate test-taking for students for whom testing on the weekend might be a burden. DOE expanded this program to 50 schools in 2018. DOE also launched a Capacity Building Initiative in the spring of 2018 to train middle school teachers on the best practices to prepare their students for the SHSAT. In addition to expanding the DREAM program by adding DREAM Intensive as noted above, DOE offered other test preparation opportunities through partnerships with after-school programs and test prep agencies.

15. In addition, DOE took steps to invigorate the Discovery Program, which, by the early years of this decade, was not operating in all of the Specialized High Schools. By the 2011-2012 school year, for example, only four of the eight Specialized High Schools had a Discovery Program, and each Program was small. The schools that then had Discovery Programs were Brooklyn Tech, Brooklyn Latin, Sciences at York, and Math Science and Engineering. In recent years, American Studies, Staten Island Tech, Bronx Science, and Stuyvesant have all launched Discovery Programs. As of the summer of 2018, all eight testing Specialized High Schools participated in the Discovery Program.

16. Consistent with the Hecht-Calandra Act, the Discovery Program, as implemented in recent years up through and including the class admitted in September 2018, required that, in addition to scoring below the cut-off score for admission based solely on the

SHSAT, a student be disadvantaged. The criteria DOE established for this requirement provided that a student either: qualify for free lunch; attend a Title I school and qualify for reduced price lunch; receive assistance from the New York City Human Resources Administration; be a foster child, ward of the state or in temporary housing; or have entered the United States within the last four years and live in a home where the primary language is not English. For the 2017-2018 school year, approximately 70% of DOE students qualified for free lunch under the National School Lunch Program.

17. Despite all these efforts to increase diversity, only 30 of the approximately 650 intermediate schools provided 50% of the students admitted to the Specialized High Schools, and the combined percentage of African-American and Latino students enrolled in the Specialized High Schools continued to decline. The lack of racial and ethnic diversity has become so pronounced that at Stuyvesant High School in the 2017-2018 school year, only 0.7% of the students were African American and 2.8% of the students Latino. Similarly, at the Bronx High School of Science in the 2017-2018 school year, only 2.5 % of the students were African-American and 6.2% of the students Latino. The same is true at Staten Island Technical High School, where in the 2017-2018 school year, 0.8 % of the students were African-American and 2.7 % Latino. See, New York City Demographic Snapshot at http://infohub.nyced.org/docs/default-source/default-document-library/demographicsnapshot201314to201718public_final.xlsx.

18. Increasing equity and excellence for all is a cornerstone of DOE's approach to education and the Chancellor's priorities. Efforts to increase diversity, inclusion, and access have taken many forms, including in admissions. DOE believes that diversity comes in many forms, and that all students benefit from diverse and inclusive schools and classrooms.

In June 2017, DOE released “Equity and Excellence for All: Diversity in New York City Public Schools,” a comprehensive plan for increasing school diversity in the school system across a variety of measures. See, <https://www.schools.nyc.gov/about-us/news/announcements/contentdetails/2017/06/06/chancellor-fari%C3%B1a-releases-equity-and-excellence-for-all-diversity-in-new-york-city-public-schools>. Analyzing and expanding the Specialized High Schools diversity initiatives was one of the proposals in the plan and remains a priority under this Chancellor. See Press Release at: <https://www.schools.nyc.gov/docs/default-source/default-document-library/diversity-in-new-york-city-public-schools-english>.

19. Against this historical backdrop, and with the goal of taking steps to promote racial, ethnic, geographic, and socio-economic diversity in the Specialized High Schools, the above mentioned decision-making group recommended in the spring of 2018 that the Chancellor exercise his discretion to expand the Discovery Program and modify the Discovery Program eligibility criteria. That recommendation was designed to advance the purpose the State Legislature intended when authorizing the Discovery Program – i.e., to ensure that disadvantaged students residing in the City of New York have an opportunity to enroll in, and benefit from, the Specialized High Schools. The Chancellor adopted the recommendation and announced the changes on June 3, 2018.

The Current Criteria for Admission through the Discovery Program

20. The current criteria for admission to a Specialized High School through the Discovery Program are (i) that the student take the SHSAT, score below the cut-off score for admission based only on the SHSAT, and have a score within the range of scores that will be required to fill the available Discovery Program seats, (ii) that the student receive a recommendation from her current school stating that she will benefit from a Specialized High

School education; (iii) that the student currently attend a school with a 2017-18 Economic Need Index (“ENI”) of 60% or more, and (iv) one of the following:

- 1) The student’s family income qualifies the student for free lunch or reduced price lunch based on the student’s meal form (<https://www.myschoolapps.com/>);
- 2) The student’s family receives assistance from the NYC Human Resources Administration (welfare or SNAP benefits);
- 3) The student is in foster care, a ward of the state, or is a Student in Temporary Housing as defined by McKinney-Vento (<http://www.nysteachs.org/info-topic/eligibility.html>); or
- 4) The student is an English Language Learner or a former English Language Learner within the previous 2 school years, and enrolled in a DOE school for the first time within the last four years.

21. A student who receives an offer of admission through the Discovery Program must also successfully complete a summer school program before being admitted to a Specialized High School.

22. The ENI is a measure of economic need that DOE has created and which it utilizes in many contexts to measure economic disadvantage. DOE has found the ENI to be a more effective measure of economic disadvantage in many contexts than other measures of poverty. A school’s ENI estimates the percentage of students facing economic hardship and is based upon the average of the Economic Need Values (“ENV”) of the students attending the school.

23. A student’s ENV is calculated as follows: the ENV is 1.0 if: (i) the student lives in a household that is eligible for public assistance from the NYC Human Resources Administration; (ii) the student lived in temporary housing in the past four years; or (iii) the student has a home language other than English and enrolled in a DOE school for the first time within the last four years. Otherwise, a student’s ENV is based on the percentage of families

with school-age children in the student's census tract whose income is below the poverty level, as estimated by the American Community Survey Five-Year estimate. The student's Economic Need Value equals the decimal value of this percentage (for example, if 62% of families in the census tract have income below the poverty line, the student's Economic Need Value is 0.62). See, New York City Demographic Snapshot at http://infohub.nyced.org/docs/default-source/default-document-library/demographicsnapshot201314to201718public_final.xlsx; see also Equity and Excellence for All: Diversity in New York City Public Schools, p. 4 FN 1, available at <https://www.schools.nyc.gov/docs/default-source/default-document-library/diversity-in-new-york-city-public-schools-english>.

24. The gradual expansion of the Discovery Program and the use of the current criteria are race-neutral policies that make no school assignments based upon race and are designed to more effectively identify disadvantaged students than the old criteria, because the current criteria place an emphasis upon schools with high ENI scores, while also seeking to advance geographic, socio-economic, racial and ethnic diversity. Students who are both from low-income families and attending schools that have students with higher economic hardship face more disadvantages than students who are from low-income families but attend schools with higher-income students. See, <https://www.nytimes.com/roomfordebate/2012/05/20/is-segregation-back-in-us-public-schools/integrating-rich-and-poor-matters-most>.

25. In addition, the ENI factor, more than the previously used Title I measure, allows for a more specific assessment of the level of economic hardship at a school, because the ENI factor is on a scale and because the chosen threshold is 0.60 or greater, which includes approximately 50% of the intermediate schools. (A Title I school is defined by the federal Title I statutory scheme, which provides that at least 40% of families must be low-income for the school

to be eligible for remedial education assistance through Title I. In New York City, more than 50% of the intermediate schools meet the Title I standard.) In other words, using the ENI factor and a 0.60 threshold allows DOE to more precisely target schools where the majority of students are facing economic hardship and the disadvantages that accompany it. The fact that many of the schools with an ENI of 0.60 or above have recently not sent students to the eight Specialized High Schools further speaks to the level of disadvantage these students face. The gradual expansion of the Discovery Program is designed to increase the diversity of the Specialized High School across these dimensions - racial, ethnic, geographic and socio-economic - in an orderly fashion, while ensuring that the scholastic achievement of the student bodies at the Specialized High Schools will remain excellent.

26. I want to emphasize to the Court the lack of certainty as to what the precise effects of the current criteria for eligibility in the Discovery Program will be concerning racial and ethnic diversity. The decision-making group and I believed that the current criteria will expand the geographic and socio-economic diversity of the students attending the Specialized High Schools, because only students attending an intermediate school with an ENI of 0.60 or greater will be considered for the Discovery Program, and many of those schools have sent few or no students to the Specialized High Schools in recent years.

27. However, with regard to race and ethnicity, there are several factors beyond DOE's control that will affect the racial and ethnic composition of the students admitted through the challenged Discovery Program criteria. Based on past experience, many students who may qualify for the Discovery Program will indicate that they are not interested in receiving an offer, because the Discovery Program requires them to attend and successfully complete an intensive summer school program. These students may choose, for example, to instead attend

one of DOE's many excellent, selective screened high schools, which screen applicants based on multiple factors. These screened schools attract academically gifted students and provide a rigorous education, without necessarily requiring summer school preparation. At this time, DOE simply does not know which students are qualified for the Discovery Program or how many of them will be interested in participating in the Discovery Program.

28. Moreover, I note that there are many Asian-American students in the intermediate schools with ENIs of 0.60 or greater. I understand that for the class admitted in September 2018, of the students offered admission to a Specialized High School from an intermediate school with an ENI of 0.60 or greater, 70% were Asian-American, and that this constituted 1,060 Asian-American students. In addition, approximately thirty percent of the students who take the SHSAT and attend an intermediate school with an ENI of 0.60 or greater are Asia-American. Accordingly, I believe there is no basis for the Plaintiffs' assertion that the expansion of the Discovery Program and the use of the current criteria will limit or reduce the enrollment of Asian-American students in the Specialized High Schools. We simply do not know, and the existing data do not suggest that.

Modeling the Challenged Discovery Program

29. With regard to the modeling the Office of Student Enrollment showed me and the other decision-makers in the spring of 2018, I want to emphasize that we knew then that the modeling was a rough prediction and could not precisely predict the future ethnic and racial composition of the students enrolling in the Specialized High Schools through the Discovery Program. Indeed, there was - and is - significant uncertainty about the predictive accuracy of the modeling because it necessarily employed assumptions that may not reflect reality. Specifically, the modeling made the assumption that the students who are potentially eligible to participate in

the Discovery Program would respond to offers of admission to the Discovery Program the same way as students offered admission to a Specialized High School based solely upon their SHSAT score. The model did not account for the higher percentage of students eligible for the Discovery Program who would likely turn it down because of the summer school requirement. Nor did the model attempt to predict which groups of students might be more or less inclined to participate in the Discovery Program and attend summer school. Accordingly, we did not – and do not – believe the modeling can exactly predict the racial composition of the students who will be admitted through the Discovery Program.

30. At any rate, even though there is uncertainty surrounding the predictive validity of the modeling, it did influence our decision to recommend that the current criteria be adopted, and therefore warrants discussion. The Office of Enrollment sent the decision-making group and me statistics predicting the ethnic composition of the combined student bodies of the eight Specialized High Schools if the current criteria had been used to fill 20% of the seats that were filled in the fall of 2017 and comparing those numbers to the demographics of the students actually admitted. A copy of those statistics is attached to the Declaration of Nadiya Chadha as Exhibit 1.

31. The model indicates the possibility of increasing racial and ethnic diversity at the Specialized High Schools. But, the modeling rebuts the Plaintiffs' contention that DOE sought to limit Asian-American enrollment. DOE's April 2018 modeling indicated that in the 2020-2021 school year, when 20% of the enrollment in the eight Specialized High Schools will be reserved for students participating in the Discovery Program, the racial and ethnic diversity of students enrolled in the Specialized High Schools might be somewhat

increased, in that the combined percentage of African-American and Latino students in the eight schools might increase from approximately 9% to approximately 16%.

32. The model further showed that if this occurred it would have limited impact upon students of other ethnicities. Indeed, it was projected that the total enrollment of Asian-American students in the eight Specialized High Schools would decline by approximately 2.1%, from 53% to 50.9%. The total enrollment of students whose race or ethnicity was unknown to DOE would decline by approximately 1.2%, from 9% to 7.8%. And the total enrollment of White students would decline by approximately 2.5%, from 27.2% to 24.7%.

33. Far from seeking to limit the enrollment of Asian-American students, the modeling predicted that the current criteria would result in limited impact upon the enrollment of other groups, including Asian-Americans, while increasing diversity and providing all the students in the Specialized High Schools the advantages of learning and socializing in a more diverse student body.

34. What the impact of the current criteria and expansion of the Discovery Program will be for the class to be enrolled in September 2019 is even more uncertain. There was no modeling performed for the 2019-2020 school year (when approximately 13% of the total enrollment in the eight Specialized High Schools will be reserved for students participating in the Discovery Program). The modeling was based upon 20% of the class receiving admission through the Discovery Program. However, given that the Discovery Program will be smaller in the 2019-2020 school year than in the following year, if any assumption are made, it would be reasonable to assume that the impacts will be smaller in 2019-2020 than in the following year.

35. As stated in paragraph 4 above, in recommending that the current criteria be adopted, one of my goals was to increase the ethnic, racial, geographic, and socio-economic diversity of the student bodies of the Specialized High Schools, which I believe will be beneficial to all students enrolled in those schools. The expanded and revised Discovery Program criteria, which are race-neutral, should expand the number of intermediate schools that send students to the eight Specialized High Schools. I believe that this can have a ripple effect, inspiring and incentivizing other students, families, teachers and administrators from intermediate schools that historically have not sent students to a Specialized High School to apply to the Specialized High Schools. This in turn helps attract a broader range of talented, high performing students from throughout New York City to the Specialized High Schools. This is consistent with DOE's overall goal to expand access and opportunity for all of our students, and promote equity and excellence for all.

Dated: New York, New York
January 17, 2019


JOSHUA WALLACK

Case: 26-2066, 08/13/2026, DktEntry: 30.1, (76 of 159)

Exhibit C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CHRISTA McAULIFFE INTERMEDIATE SCHOOL
PTO, Inc. et al,

Plaintiffs,

-against-

BILL DE BLASIO, in his official capacity as Mayor of
New York, et ano.,

Defendants.

DECLARATION

18 CV 11657 (ER)(OTW)

NADIYA CHADHA, declares under the penalty of perjury, pursuant to 28
U.S.C. § 1746, that the following is true and correct:

1. I am the Director of Research and Policy in the Office of Student Enrollment (“OSE”) of the New York City Department of Education (the “DOE”). My responsibilities include conducting research and data analysis to support and inform the policymaking process as it relates to enrollment and admissions in DOE schools and supporting the overall admissions process for 3K, Pre-K, Kindergarten, middle school and high school through analysis, reporting, and policymaking. I have held this position since July 2015. I have a Bachelor of Arts degree in Economics from Boston College and Master of Public Administration degree from Columbia University.

2. I submit this Declaration in support of Defendants' opposition to Plaintiffs' motion for a preliminary injunction. Its content is based on my personal knowledge, the books and records of DOE and discussions with other DOE employees.

Admission to the Specialized High Schools and the Discovery Program

a. Offers Based on Score on the Specialized High School Admissions Test ("SHSAT")

3. An overview of the process of how students apply to take the SHSAT; the procedures at the test sites, the contents of the test, how the test is scored and the Discovery Program are found in the 2018-2019 Specialized High Schools Student Handbook, which is published by DOE and is available at <https://www.schools.nyc.gov/docs/default-source/default-document-library/specialized-high-schools-student-handbook>.

4. Before the test, students and their families are advised to carefully consider and decide which of the eight testing Specialized High Schools they want to attend and their order of preference. On the test date, students must complete a grid on the answer sheet in which they list their school choices in order of preference. Every student must provide at least one school choice and may provide as many as eight school choices.

5. In accordance with State law, after the test scores are compiled, the scores of all students who took the test are rank-ordered from highest to lowest score.

6. The student with the highest score is placed in her first choice school. The student with the next highest score is then placed in her first choice school. Each student in turn, in order of score, is placed in that student's first choice school as long as there are available seats in that school. If all the seats in a student's first choice school have been filled through this process, then the student is placed in her second choice school, provided there are seats available.

If not, the student is offered a seat in her third choice school if seats are still available, and so on. The process continues until all seats at the eight Specialized High Schools have been filled.

7. Based on prior experience, not all students accept the offers they receive. In September 2019, there will be approximately 4,000 seats available through this process in the eight Specialized High Schools. Accordingly, based on past experience, DOE will make approximately 4,800 offers to fill these seats.

b. Offers for the Discovery Program

8. The process of making offers for the Discovery Program, through which students can also gain admission to the Specialized High Schools, is significantly different, because of legal and practical constraints. Admission to the Discovery Program is also governed by State law. Students must take the SHSAT and score below the cut-off score of those admitted based solely on the SHSAT score. Once the offers based solely on the SHSAT score are determined, the cut-off score is known. The SHSAT score list is then reviewed, and students who are clearly ineligible for the Discovery Program are eliminated. This year, those are the students who do not attend a public school with an Economic Needs Index (“ENI”) of 60% or above.

9. An estimated score range is then established, encompassing far more than enough students, taken in rank order, who may be eligible for and interested in taking the Discovery Program. The score range will depend on the number of seats available through the Discovery Program and the other factors discussed below. For the September 2019 entering class, there are currently a total of 528 seats in the Specialized High Schools reserved for

students who enter through the Discovery Program.¹ It is estimated that to fill these seats, 1,000 to 1,500 students and their schools will need to be contacted to determine whether the students are eligible and interested. (The exact number of students has not yet been determined.)

10. Pursuant to State law, to be eligible for the Discovery Program, the student must be disadvantaged, must be recommended by her current school as having high potential for the Specialized High School program and must take an intensive preparatory summer school program. Upon successful completion of the summer school program the student is admitted to a Specialized High School.

11. For the summer 2019 Discovery Program, the new criteria for determining which students are disadvantaged are being used. The student must attend a school with an ENI of .60 or above, and satisfy one of the following criteria: 1) the student's family income qualifies the student for free lunch or reduced price lunch based on the student's meal form; 2) the student's family receives assistance from the NYC Human Resources Administration (welfare or SNAP benefits); 3) the student is in foster care, a ward of the state, or is a Student in Temporary Housing as defined by McKinney-Vento or 4) the student is an English Language Learner or was an English Language Learner within the previous 2 school years, and enrolled in a DOE school for the first time within the last four years.

¹ In the 2018-2019 Discovery Program there were 252 participants. The 528 seats allocated for the upcoming 2019-2020 Discovery Program constitutes approximately 13% of the available seats in the Specialized High Schools. It is planned that the 2020-2021 Discovery Program will have approximately 800 seats, which is 20% of the available seats in the Specialized High Schools.

12. For the summer 2019 Discovery Program, the planned procedure is that we are planning to either send a letter or call the potentially eligible students and inform them that they may be eligible for the Discovery Program, through which they can gain entry into a Specialized High School, and that if they meet the other eligibility criteria, they will be required to go to the preparatory summer school program. They will be asked to respond by letter stating whether they are interested in participating in the Discovery Program. If the students' records do not show whether they are disadvantaged, they will also be asked to submit documentation establishing that they meet one of the disadvantaged criteria. The students' current schools will subsequently be asked to provide a letter stating whether the student is recommended as having high potential for the Specialized High School program.

13. Once DOE receives the responses, both as to whether students are interested in participating in the Discovery Program, and if so, whether they meet the other eligibility criteria, DOE can prepare a list of students to whom offers can be made, based on the students' scores on the SHSAT and their school choices. State law also requires offers for the Discovery Program to be made in rank order based on each student's score on the exam.

14. Thus, once a list of eligible and interested students is established, offers for the Discovery Program are made based on the students' rank-ordered scores and their school choices. This works in the same manner as for students who are given offers based solely on their SHSAT score.

15. However, as can be seen from the above, not everyone who is eligible for the Discovery Program receives an offer for the Program. Some students who are not interested in participating do not submit the documentation establishing that they are disadvantaged, even though they may satisfy the criteria. A significant number of students who are eligible respond

that they are not interested in the Discovery Program and accordingly are given no offer to participate in the Program.

16. Accordingly, it is not possible to know with precision the population of students who are eligible for the Discovery Program in any given year. Nor will it be possible to know who will be made an offer to participate in the Discovery Program until late April or May 2019, after the student expressions of interest and the verification of eligibility requirements have been received. DOE plans to provide Discovery Program offers in May 2019.

Data Concerning the Changes for the Discovery Program

a. Modeling the Effects of the Changes that were Subsequently Adopted

17. In April 2018, a group of decision makers at DOE were considering whether revisions could be made in the admission procedure for the Specialized High Schools that could result in greater racial/ethnic, geographic and socioeconomic diversity in the student bodies of these schools.

18. The Hecht Calandra Act does not limit the size of the Discovery Program, and does not define the eligibility requirement that a student be “disadvantaged.” Accordingly, I was asked to model the possible results of expanding the Discovery Program to 20% of the seats at the Specialized High Schools, and of revising the criteria for the disadvantaged eligibility requirement.

19. Estimates that I produced, using the proposed changes that were later adopted, are contained in a chart which is annexed hereto as Exhibit “1.” I used the data for students that had taken the SHSAT for admission to the Specialized High Schools in September 2017. The first row of the chart shows the actual number of students who received offers to a

Specialized High School based solely on their SHSAT score. The second row shows the actual total of those students and the number of students who participated in the summer 2017 Discovery Program.

20. These totals are then broken down by race/ethnicity, and provided in percentages. The column headed “Other” refers to students who are multiple race categories not represented.² I then modeled how these actual numbers would have changed if the Discovery Program was expanded to 20% of the seats and the criteria for “disadvantaged” included a requirement that the student attend a school with an of ENI of 60% or above. The resulting estimated numbers are in the third row of the chart.

21. These estimates show a decrease of 2.9% points for Asian-American students, as a percentage of the total student population, a decrease of 2.5% points for White students and a decrease of 1.2% points for the group of “Other” students. The estimates show an increase of 2.4% points for Black students and 3.48% points for Hispanic students. It should be emphasized, that as described above, there are many variables that affect who receives an offer to the Discovery Program. Accordingly, these figures are estimates and the actual result may be different.

22. In April 2018 I provided the data in Exhibit “1” to the DOE decision makers who were considering revisions to the Discovery Program. The modeled changes in Chart “1” were incorporated in the new plan announced by the Mayor and the Chancellor on June 3, 2018. However, the 20% expansion of the Discovery Program is being rolled out over two years. For the 2019-2020 school year, the expansion will be approximately 13% and then will rise to 20% in the following year.

² This category represents students who do not report their race, as well as students reported as Native American or Multi-Racial.

b. Offers by Middle School

23. In addition to the modeling data, I analyzed data about the number of students who received offers based on their SHSAT score, and the number of participants in the Discovery Program, broken down by the middle school attended by the students. This actual data is for the students who entered a Specialized High School in September 2017 and the chart is at Exhibit “2.”

24. The data shows that of the 648 public middle schools in New York City (which includes charter schools), there were 338 schools that had zero students who received a SHSAT offer to a Specialized High School and only 11 of these schools had any participants in the Discovery Program.

25. Of the 648 public middle schools, 96 schools had only 1 student receive a SHSAT offer and of these schools, only 5 had a single participant in the Discovery Program.

26. Thus, the students in 50.5% of the schools, over half of the public middle schools in New York City, received no offers to a Specialized High School, and in 15.6% of all public middle schools, only one student received an offer.

27. Looked at another way, this means that 428 out of the 648 middle schools in New York City had zero or one student receive an offer to a Specialized High School for Fall 2017. At all 428 of these middle schools combined – which comprise approximately two-thirds of all NYC middle schools (66%) – just 101 students—received an offer to a Specialized High School.

28. By comparison, *each* of the 8 middle schools that had the largest number of offers to Specialized High Schools had over 100 students who received offers. The number of offers to students in each of these schools varied between 268 and 108 students.

29. The data also shows that 50% of offers to a Specialized High School were made to students at only 30 (or 4.6%) of all public middle schools in New York City, none of which were in the Bronx. Of the 161 public intermediate schools in the Bronx, only 45 – less than 30% - had students that received an admission offer for fall 2017 to the Specialized High Schools based upon individual SHSAT scores. Of the remaining 116 Bronx intermediate schools that had no students receiving offers based on SHSAT scores, only 4 - approximately 3% - had students that received offers through the Discovery Program.

c. Asian-American Students who Attend a School with an ENI of 60% or Above

30. I also was asked to provide actual data for purposes of this litigation, showing the rate of participation and rate of success in the Specialized High School admission process of Asian-American students who attend schools with an ENI of 60% or above. The charts that show this data are annexed at Exhibit “3” as 3A, 3B and 3C.³

³ Since the purpose of the tables in Exhibit “3” is to contrast high ENI and low ENI middle schools, students attending private schools – for which DOE does not calculate an ENI – are treated as a separate category. The data in the Exhibit “3” tables therefore differs in minor ways from the data in Exhibit “1”, as Exhibit “1” incorporates information about the race of private school students to the extent that this information is available to DOE.

31. Chart 3A shows the data for students who were offered admission to a Specialized High School for September 2018, based on their score on the SHSAT. The data shows the number of students who attended a school with an ENI of 60% or above, the number of students who attended a school with an ENI of less than 60%, and the number of students for whom there is no ENI available.⁴ These totals are then broken down by race/ethnicity. The row headed “other” refers to students who are students of multiple race categories that are not represented and the row headed “private school attendees” refers to students who attend private schools. Chart 3A shows that offers were made to 1,511 students from schools with an ENI of 60% or greater, and of these, 1,060 students (or 70.2 %) were Asian-American.

32. Chart 3B shows the same data for the prior year, students who were offered admission to a Specialized High School for September 2017. The data for Asian-Americans is very similar. Offers were made to 1,540 students from schools with an ENI of 60% or greater, and of these, 1,075 students, or 69.8 %, were Asian-American.

33. Finally, Chart 3C shows the data for test takers -- those who took the SHSAT for admission to the Specialized High Schools in September 2018. The data shows that of the 16,107 students who took the exam and attend schools with an ENI of 60% or above: 4,974, or 30.9 % were Asian-American; 4,361, or 27.1% were African-American; 5,001 or 31% were Hispanic; 1,475 or 9.2% were White; and 296 or 1.8% were “Other.” Chart 3A and Chart 3C, when read together, show that African-American and Hispanic students accounted for approximately 41% of SHSAT test-takers, yet only received approximately 9% of offers to Specialized High Schools.

⁴ No ENI data is available for students who attend a private school or do not attend a DOE district school or a charter school, due to being homeschooled, hospitalized, etc.

Timeline and Process of Determining Specialized High School Offers

34. Offers of admission to the Specialized High Schools must be prepared for mailing at the same time as all First Round offers of admission made to the approximately 80,000 students seeking admission to a New York City public high school.

35. There are 427 high schools operated by DOE that utilize DOE's centralized admissions process, and some high schools offer multiple programs. In total, there are approximately 800 schools and programs to which students can apply. Each student may apply to as many as 12 schools or programs in non-specialized high schools, listing them in order of preference. DOE mails the first round of offers of admission to all high schools, including the Specialized High Schools, at the same time.

36. In the fall of 2018, more than 29,000 students took the SHSAT for admission in September 2019. DOE's test vendor, Pearson, the company that develops the SHSAT, scanned the completed tests and delivered a file with each student's score and list of Specialized High School preferences to DOE on January 4, 2019.

37. It should be noted that in connection with this litigation, I was asked to review the exam score of the child of a Plaintiff in this lawsuit, on whose behalf the Plaintiff is suing. Given the child's score on the exam, she is very likely not affected by the Discovery Program.

38. DOE is still in the process of determining the cut-off scores for each Specialized High School. According to the original schedule, DOE would provide cut-off score information to Pearson this week together with the student identification numbers. Pearson would then run the data to match students and schools and perform spot checks to verify accuracy, a process that takes approximately 8 business days.

39. Pearson next gives DOE the offer information for the students who took the SHSAT. DOE will then analyze the data for those students who scored just below the cut-off score, to identify which students may be eligible for the Discovery Program. As explained above, students who scored below the cut-off on the SHSAT but who may be eligible for the Discovery Program will be so informed and asked to provide information about (i) their interest in the Discovery Program and (ii) in some cases, their economic or linguistic need.

40. As for admission to all other high schools, DOE applies algorithms to the application choices of all 80,000 students; these algorithms are designed to provide each student with his or her highest possible preferred school. Each student is offered admission to one non-specialized high school. Students whose score on the SHSAT exceeds the cut-off for one of their chosen Specialized High Schools will receive offers for two schools: one Specialized High School and one non-specialized high school.⁵

41. DOE was scheduled to finalize and transmit the content of the approximately 80,000 high school offer letters to outside vendors for printing and mailing by February 11, 2019. Pursuant to contract, these vendors have three weeks to complete the printing and mailing process for all offer letters. These offer letters were originally scheduled to be mailed to all 80,000 high school student applicants on March 4, 2019.

42. If the Court were to grant a preliminary injunction, however, the cut-off score DOE developed for each Specialized High School would need to be recalibrated—and those cut-off scores directly impact which students will receive an offer (if any) to a particular Specialized High School. DOE would have to consult again with the eight Specialized High

⁵ There is one exception to these rules. If a student has applied and been accepted for one or more studios at the Fiorello H. LaGuardia High School of Music and Art & the Performing Arts, those offers will be listed on the offer letter in addition to any other offer(s).

School principals to set new seat targets for the Discovery Program at each Specialized High School and then recalibrate the cut-off score for each school based on those targets. The revised data would then have to be sent back to Pearson for verification, re-run through DOE's computer systems to generate new offer letters, and finally sent to the outside vendors to print and mail the letters within the contracted three weeks.

43. A decision was made by officials at DOE, that considering the compressed period in which primarily OSE must complete this complicated Specialized High School offer process; complete the Discovery Program eligibility review; complete the general high school offer process for all 80,000 applications; prepare responses in this litigation; and attempt to provide the Court with sufficient time to rule on the instant motion, it was necessary for DOE to push back the admissions timeline just described to allow for the latest feasible date to mail offer letters: March 18, 2019. To meet that deadline, DOE must provide finalized information to the outside vendors for printing and mailing by February 25, 2019.

44. The New York City high school application process is stressful for students and their families. DOE is mindful that a delay in the mailing of high school offers will increase anxiety for students and families, cause complications for those students considering private school offers, and require Specialized High Schools to reschedule and re-staff Open Houses that have already been planned for the second week in March 2019. Additionally, the School Fair has already been planned for the weekend of March 23 and 24, 2019, where representatives of high schools that still have open seats are available to speak with students and their families who are considering applying in Round 2 of the high school application process. Applications for Round 2 are due by March 29, 2019.

Service of Papers Just Before Winter Recess

45. Finally, I have been advised by counsel that the papers in this lawsuit were served on Thursday, December 20, 2018. The DOE's winter recess began on Monday, December 24, 2018 and continued through January 1, 2019. During this period all schools are closed.

46. While the DOE's main office where I work was not officially closed that entire period (the office was open between December 26 and December 28), I, like most staff in QSE and at the main office, had a preplanned vacation arranged for the winter recess period. I returned to work, as did most of my colleagues, on January 2, 2019.

Dated: New York, New York
January 17, 2019



NADIYA CHADHA

Case: 26-2066, 08/13/2026, DktEntry: 30.1, (150 of 159)

Exhibit E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

YI FANG CHEN, individually and on behalf of her minor
children M.P., Ma. P and P.P.

Plaintiff,

-against-

ZOHRAN MAMDANI, in his official capacity as Mayor of
the City of New York; KAMAR H. SAMUELS, in his
official capacity as Chancellor of the New York City
Department of Education; and the NEW YORK CITY
DEPARTMENT OF EDUCATION.

Defendants.

----- X

**DECLARATION OF
LIANNA WRIGHT**

26 CV 3355 (ER) (OWT)

Lianna Wright, under penalty of perjury, declares pursuant to 28 U.S.C. §1746, that the
following statements are true and correct:

1. I am the Executive Director of Research, Analytics, and Policy in the Office of
Student Enrollment of the New York City Department of Education (“DOE”). My responsibilities
include overseeing the analytical work for admissions processes for 3-K, Pre-K, Kindergarten,
Gifted & Talented, middle school and high school, as well as conducting research and data analysis
to support and inform policy choices as it relates to these processes. I have held this position since
August 2017.

2. As such, based on my current role, I am familiar with the facts and circumstances
set forth below. Its content is based on my personal knowledge, the books and records of DOE,
and discussions with other DOE employees. I submit this Declaration in support of Defendants’
opposition to Plaintiff’s motion for a preliminary injunction.

3. Prior to any changes in the Discovery Program, in 2016, 41% of Discovery Program invitations went to Asian-American students and, in 2017, 42% of Discovery Program invitations went to Asian-American students. Since the changes to the Discovery Program were implemented, the percentage of Discovery Program invitations to Asian-American students has only increased, and has never dipped below 42%.

4. Asian-American students have received the following shares of Discovery Program invitations, and rates of approval to participate, since the changes were made in 2017.

- a. In 2018, they received 43% of Discovery Program invitations, and comprised 62% of students ultimately approved to participate.
- b. In 2019, they received 54% of Discovery Program invitations, and comprised 65% of students ultimately approved to participate.
- c. In 2020, they received 50% of Discovery Program invitations, and comprised 59% of students ultimately approved to participate.
- d. In 2021, they received 53% of Discovery Program invitations, and comprised 63% of students ultimately approved to participate.
- e. In 2022, they received 43% of Discovery Program invitations, and comprised 59% of students ultimately approved to participate.
- f. In 2023, they received 49% of Discovery Program invitations, and comprised 61% of students ultimately approved to participate.
- g. In 2024, they received 47% of Discovery Program invitations, and comprised 56% of students ultimately approved to participate.
- h. In 2025, they received 52% of Discovery Program invitations, and comprised 63% of students ultimately approved to participate.

- i. In 2026, they received 53% of Discovery Program invitations, and comprised 62% of students ultimately approved to participate.

5. Asian-American students have also consistently secured seats to the Specialized High Schools (“SHSs”) by testing only, based on their scores on the Specialized High School Admissions Test (“SHSAT”).

- a. In 2016, 54% of students who received an offer to an SHS based on SHSAT score were Asian-American.
- b. In 2017, 52% of students who received an offer to an SHS based on SHSAT score were Asian-American.
- c. In 2026, 56% of students who received an offer to an SHS based on SHSAT score were Asian-American.

6. I understand that the current litigation concerns student M.P.’s admission to an SHS. M.P. applied to start high school at an SHS in the 2026-2027 year. On M.P.’s application to the SHSs, his first choice was Stuyvesant High School (“Stuyvesant”) and his second choice was Brooklyn Technical High School (“Brooklyn Tech”). M.P. received an offer to Brooklyn Tech.

7. I understand from my colleagues in the Office of Academic Policy and Systems that there is strong parity between the programs offered by Brooklyn Tech and Stuyvesant. Based on data from the 2025-2026 school year, Brooklyn Tech offered 60 unique subjects, while Stuyvesant offered 58 unique subjects, with the schools’ curricula being substantially similar.

8. My team also looked at class information for each school. Despite the fact that enrollment at Brooklyn Tech is greater than at Stuyvesant (approximately 5,700 students at Brooklyn Tech compared to approximately 3,300 at Stuyvesant), Brooklyn Tech has slightly smaller average class sizes. On average, classes at Stuyvesant have 33 students, while classes at Brooklyn Tech have 31.

Dated: June 17, 2026
New York, New York

By: 

Lianna Wright

Case: 26-2066, 08/13/2026, DktEntry: 30.1, (155 of 159)

Exhibit F

26-847

United States Court of Appeals
for the Second Circuit

YI FANG CHEN, individually and on behalf of her minor
children M.P., MA.P., AND P.P.,

Plaintiff-Appellant,

against

ZOHRAN MAMDANI, in his official capacity as Mayor of the
City of New York; KAMAR H. SAMUELS, in his official
capacity as Chancellor of the New York City Department of
Education; and NEW YORK CITY DEPARTMENT OF
EDUCATION,

Defendants-Appellees,

(caption continued on next page)

On Appeal from the United States District Court
for the Southern District of New York

DECLARATION OF LIANNA WRIGHT
IN OPPOSITION TO PLAINTIFF'S EMERGENCY MOTION
FOR INJUNCTION PENDING APPEAL

(caption continued from previous page)

TEENS TAKE CHARGE, DESIS RISING UP AND MOVING;
COALITION FOR ASIAN AMERICAN CHILDREN AND
FAMILIES; VERONICA CARRASQUILLO, on behalf of her minor
child, A.C.; WANG JIN HUA, on behalf of her minor child, A.Z.;
HALIMATOU DIALLO, on behalf of her minor child, K.D.;
JENNIFER VELEZ, on behalf of her minor child, G.R.,

Intervenor-Defendants-Appellees.

LIANNA WRIGHT declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am the Executive Director of Research, Analytics, and Policy in the Office of Student Enrollment of the New York City Department of Education. My responsibilities include overseeing the analytical work for admissions processes for 3-K, Pre-K, Kindergarten, Gifted & Talented, middle school and high school, as well as conducting research and data analysis to support and inform policy choices as it relates to these processes. I have held this position since August 2017.

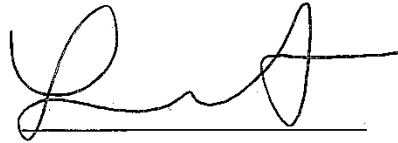
2. Based on my current role, I am familiar with the facts and circumstances set forth below. Its content is based on my personal knowledge, the books and records of DOE, and discussions with other DOE employees. I submit this declaration in opposition to plaintiff-appellant's Emergency Motion for Injunction Pending Appeal.

3. In the administration of the Specialized High School Admissions Test (SHSAT) for 2026 admission:

- a. 54 students scored 558;
- b. 25 students scored 559; and
- c. 21 students scored 560.

4. Of the 100 students who scored 558, 559 or 560 on the SHSAT for 2026 admissions, 54 ranked Stuyvesant High School as their first choice.

Dated: New York, New York
August 13, 2026

A handwritten signature in black ink, appearing to read 'Lianna Wright', is written over a horizontal line.

Lianna Wright

No. 26-2066

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

YI FANG CHEN, individually and on behalf of her minor children M.P., MA.P., and
P.P.,

Plaintiff-Appellant,

v.

ZOHRAN MAMDANI, in his official capacity as Mayor of the City of New York;
KAMAR H. SAMUELS, in his official capacity as Chancellor of the New York City
Department of Education; and NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant-Appellees,

and

TEENS TAKE CHARGE; DESIS RISING UP AND MOVING; COALITION FOR ASIAN
AMERICAN CHILDREN AND FAMILIES; K.D., a minor by and through their parent
and next friend, HALIMATOU DIALLO; G.R., a minor by and through their parent
and next friend, JENNIFER VELEZ; A.C., a minor by and through their parent and
next friend, VERONICA CARRASQUILLO; and A.Z., a minor by and through their
parent and next friend, WANG JIN HUA,

Defendant-Intervenor-Appellees.

On Appeal from the United States District Court
for the Southern District of New York
Honorable Edgardo Ramos, District Judge

DEFENDANT-INTERVENOR-APPELLEES' OPPOSITION TO APPELLANT'S MOTION FOR INJUNCTION PENDING APPEAL

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PRELIMINARY STATEMENT

Appellant Yi Fang Chen is not entitled to a mandatory injunction pending appeal, as she has not provided a “significantly higher justification” than required on her failed motion below. *Agudath Israel of Am. v. Cuomo*, 980 F.3d 222, 226 (2d Cir. 2020). She cannot meet this heightened burden, which requires a clear or substantial likelihood of success on the merits. Chen challenges a facially-neutral, evenly applied policy adopted to mitigate a history of inequities. But she fails to provide any evidence of an intent to discriminate and, instead, attempts to evade the controlling legal standard. She attempts to shift her burden entirely, arguing “modern” equal protection law newly places the burden on the Defendants to justify their facially-neutral policy. This is unsupported by law. Applying the proper standard, she cannot establish a clear or substantial likelihood of success on the merits of either her Equal Protection or Title VI claim. Accordingly, this Court should deny the motion.

BACKGROUND

Access to the Specialized High Schools (“SHSs”) is determined by a student’s rank-order score on the Specialized High School Admissions Test (“SHSAT”). *See* N.Y. Educ. Law § 2590-g(12)(b) (1997). State law also permits the use of a “[D]iscovery [P]rogram,” which is open to students who (1) take the SHSAT and score highly but narrowly miss the SHSAT score cut-off; (2) are certified by their

local schools as “disadvantaged”; (3) are recommended by their middle school “as having high potential for the special high school program”; and (4) attend, and subsequently pass, a summer preparatory program administered by the school. N.Y. Educ. Law § 2590-g(12)(d). The New York City Department of Education (“DOE”) has discretion to determine the capacity allotted to the Discovery Program.

Since its adoption in 1971, serious concerns persist that the SHSAT underpredicts the potential of Black and Latinx examinees. The SHSAT was adopted despite awareness that it was “‘screen[ing]’ out [B]lack and Puerto Rican students who could succeed at the school[s]”.¹ In 2012, a multiracial, multiethnic coalition of community organizations filed a complaint with the U.S. Department of Education, challenging the single-test admissions process as ineffective and racially discriminatory.² The complaint argued that exclusive reliance on the SHSAT does not fully capture the wide range of intellectual capacities and abilities that indicate a student has the potential to thrive in academically rigorous programs, especially for students of color and those from low-income backgrounds.³ Further, in middle

¹ M.S. Handler, *Bronx High School of Science Accused of Bias in Admissions* 44, N.Y. Times (Jan. 22, 1971), <https://www.nytimes.com/1971/01/22/archives/bronx-high-school-of-science-accused-of-bias-in-admissions.html>.

² Compl. from NAACP Legal Def. Fund et al. to U.S. Dep’t. of Educ. 18 (Sep. 27, 2012), <https://www.naacpldf.org/wp-content/uploads/Specialized-High-Schools-Complaint.pdf>.

³ See Carolyn M. Callahan, *Identifying Gifted Students from Underrepresented Populations*, 44 Theory Into Prac. 98, 102–03 (2005), https://doi.org/10.1207/s15430421tip4402_4.

schools with high concentrations of low-income Black and Latinx students, there was no opportunity to learn the material tested on the SHSAT because the requisite courses were not offered.⁴

The current Discovery Program admissions policy (“Policy”) took effect in 2018, to address inequitable access to the SHSs. Under the Policy, each SHS is required to use the program to fill at least 20% of its seats. Second, to qualify as “disadvantaged,” a student must attend a high-poverty middle school according to the City’s Economic Need Index (“ENI”)—a school with an ENI of 60% or above—to be eligible for the program.⁵ This is a particularly apt metric because low-income students who attend high-poverty schools have less opportunities to develop latent talent than even low-income students who attend schools with a lower concentration of poverty.⁶

⁴ See Shirley M. Malcolm, *Equity and Excellence Through Authentic Science Assessment*, in *Science Assessment in the Service of Reform* 313, 318 (Gerald Kulm & Shirley M. Malcolm eds., 1991), <https://files.eric.ed.gov/fulltext/ED342652.pdf>.

⁵ To qualify as disadvantaged under the revised criteria, a student must attend a school with an ENI of 60% or above and “(1) qualify for free or reduced-price lunch; (2) receive assistance from the New York City Human Resources Administration; (3) be a foster child, a ward of the state, or in temporary housing; or (4) have been an English Language Learner within the last two years and have enrolled in a DOE school for the first time within the last four years.” *McAuliffe*, 364 F. Supp. 3d 253, 267 (S.D.N.Y. 2019).

⁶ See, e.g., Rashea Hamilton et al., *Disentangling the Roles of Institutional and Individual Poverty in the Identification of Gifted Students*, 62 *Gifted Child Q.* 6, 16 (2018), <https://files.eric.ed.gov/fulltext/ED580859.pdf>.

Chen also challenged this same Policy in the related case of *Christa McAuliffe Intermediate School PTO v. de Blasio*, No. 1:18-cv-11657 (S.D.N.Y.) [hereinafter *McAuliffe*]. In *McAuliffe*, Chen’s son M.P. was dismissed for lack of standing. 364 F. Supp. 3d 253, 272, 276 (S.D.N.Y. 2019), *aff’d*, 788 F. App’x 85 (2d Cir. 2019). Years later, Chen filed the instant case on April 23, 2026, again challenging the Policy after M.P., now a rising ninth grader, was admitted to his second-choice SHS but failed to qualify for admission to his first-choice, Stuyvesant. Chen sought a mandatory injunction that would order the Defendants to admit M.P. to Stuyvesant for the 2026–27 school year.

On July 21, 2026, the district court heard argument and denied the request, finding that Chen had not shown that the Policy was enacted to discriminate against Asian American students, and thus was unlikely to succeed on the merits. App. Mot., Ex. A at 50:21–51:3; 53:14–55:8 [hereinafter “Tr.”]. On July 24, 2026, the district court denied Chen’s request for injunction pending appeal. On August 3, 2026, Chen filed the present motion.

LEGAL STANDARD

Chen asks this Court to admit M.P. to Stuyvesant, relief already denied by the district court. Such an injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). Where, as here, Chen seeks a

mandatory injunction that “disrupt[s] the status quo, [she] must meet a heightened legal standard by showing ‘a clear or substantial likelihood of success on the merits.’” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018) (quoting *N.Y.C.L. Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012)). She must also show that M.P. is “likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20.

A request to this Court for such relief is “more drastic” than requests for a stay, and “demands a significantly higher justification,” because it “does not simply suspend judicial alteration of the status quo but grants judicial intervention that has been withheld by lower courts.” *Agudath Israel of Am.*, 980 F.3d at 226 (quoting *Respect Me. PAC v. McKee*, 562 U.S. 996, 996 (2010)). Chen failed to justify an injunction below and certainly does not make the heightened showing required here.

ARGUMENT

I. Chen Cannot Show a Clear Likelihood of Success on the Merits

As the district court found, Chen failed to meet her burden to show that the Policy was intended to discriminate against Asian American students.

A. The Policy Is a Race-Neutral, Evenly Applied Rule That Was Not Motivated by Discriminatory Animus

To establish a violation of the Equal Protection Clause, Chen must show that the Defendants intentionally discriminated based on race. *Hayden v. Cnty. of*

Nassau, 180 F.3d 42, 48 (2d Cir. 1999). There are three categories of intentional discrimination claims:

First, a law or policy is discriminatory on its face if it expressly classifies persons on the basis of race or gender. In addition, a law which is facially neutral violates equal protection if it is applied in a discriminatory fashion. Lastly, a facially neutral statute violates equal protection if it was motivated by discriminatory animus and its application results in a discriminatory effect.

Id. (citation modified); *see also Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 213, 227–29 (1995); *Yick Wo v. Hopkins*, 118 U.S. 356, 373–74 (1886); *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 264–66 (1977).

First, Chen’s attempt to cast the Policy as a racial classification fails. “A statute or policy utilizes a ‘racial classification’ when, on its face, it explicitly distinguishes between people on the basis of some protected category.” *Hayden*, 180 F.3d at 48. Race is not a factor for participation in the Discovery Program. Second, this facially-neutral policy is not administered in a discriminatory fashion. *Id.* All students who meet the race-neutral criteria are eligible to participate, regardless of race.

Thus, to prevail, Chen must prove the Policy was motivated by “invidious discriminatory purpose through such circumstantial and direct evidence of intent as may be available.” *Arlington Heights*, 429 U.S. at 266. This is fundamentally distinct from review of facial racial classifications, where the defendant bears the burden of strict scrutiny, even if their intent was “benign.” *Regents of Univ. of Cal. v. Bakke*,

438 U.S. 265, 294–95 (1978); *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 214 (2023) [hereinafter *SFFA*] (finding an equal protection violation despite “commendable goals.”).

Chen must establish not just intent as volition, but an intent to disadvantage a specific group. *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (“‘[D]iscriminatory purpose,’ . . . implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.”). “Discriminatory intent or purpose typically refers to those instances when a government actor seeks to disadvantage or negatively impact a group of persons.” *Hayden*, 180 F.3d at 50. The allegation that intent “to mitigate the negative impact” of an admissions program on certain racial groups “is akin to an intent to discriminate . . . is wholly insufficient” and “does not demonstrate [action] ‘because of’ some desire to adversely affect [plaintiff].” *Id.* at 50–51 (citing *Feeney*, 442 U.S. at 279); see also *Jana-Rock Constr., Inc. v. N.Y. State Dep’t of Econ. Dev.*, 438 F.3d 195, 211 (2d Cir. 2006) (“[I]t is not enough for the plaintiffs to demonstrate that [a government policy] was designed to benefit certain included groups They must show [the government’s] intent to harm the groups . . . that were excluded.”).

Whether discriminatory purpose was a motivating factor behind a policy “demands a sensitive inquiry into such circumstantial and direct evidence of intent

as may be available.” *Chinese Am. Citizens All. of Greater N.Y. v. Adams*, 116 F.4th 161, 172 (2d Cir. 2024) (quoting *Arlington Heights*, 429 U.S. at 266) [hereinafter *CACAGNY*]. On the evidence proffered here, Chen cannot demonstrate a “clear or substantial likelihood of success” on her Equal Protection claim.

B. There is No Evidence of Discriminatory Intent

To determine intent, courts consider circumstantial and direct evidence, including: (1) whether the action “bears more heavily on one race than another”; (2) the historical background of the decision; (3) substantive and procedural departures from the normal process; and (4) contemporaneous statements from the legislative or administrative record in determining whether a facially race-neutral and evenly applied policy evinces discriminatory intent. *Arlington Heights*, 429 U.S. at 266–68. The first three factors are largely not in dispute. With respect to the fourth factor, Chen mischaracterizes the record.

1. The Policy does not bear more heavily on Asian American students

“Sometimes a clear pattern, unexplainable on grounds other than race, emerges from the effect of the state action even when the governing legislation appears neutral on its face.” *Arlington Heights*, 429 U.S. at 266. That is not the case here. After the adoption of the Policy, only 11 majority-Asian American middle schools were deemed ineligible for the Discovery Program, which constituted only

10.4% of the excluded schools.⁷ In comparison, 15 majority-Black middle schools were excluded, constituting 14% of the excluded schools.⁸ Moreover, Asian American students continue to be admitted to the SHSs in high numbers, well above their proportion of the student body. After the adoption of the Policy, the number of Asian American students admitted through the Discovery Program has also remained high. In 2025, Asian American students were 32.4% of SHSAT test takers and received 53.5% of the non-Discovery Program admissions offers and 63.3% of Discovery Program offers.⁹ This year, the number of offers to Asian American students increased to 56.5%, and of this year's 800 Discovery Program participants, 62% are Asian American. In contrast, only 11% of the Discovery Program participants are Black and 16% are Latinx.¹⁰ Chen's allegation that the Policy was motivated by a desire to discriminate against Asian American students by favoring

⁷ See *Demographic Snapshot 2020-21*, <https://infohub.nyced.org/docs/default-source/default-document-library/demographic-snapshot-2016-17-to-2020-21-public.xlsx>; see also App. Mot. 10 n.7.

⁸ See *Demographic Snapshot 2020-21*, *supra* note 7.

⁹ See NYC OpenData, *2025 SHSAT Discovery Overall Summary Website*, https://data.cityofnewyork.us/Education/Specialized-High-Schools-Admissions-Overall-Summar/unse-x4pq/about_data. While these statistics are not included in the record, Defendant-Intervenors-Appellees request that this Court take judicial notice of this information as "relevant matters of public record." See *Giraldo v. Kessler*, 694 F.3d 161, 164 (2d Cir. 2012).

¹⁰ Amy Zimmer & Michael Elsen-Rooney, *Just 1 Black Student Gets into Staten Island Tech as Racial Gaps at Specialized High Schools Persist*, Chalkbeat (July 10, 2026, 5:52 ET), <https://www.chalkbeat.org/newyork/2026/07/10/nyc-specialized-high-admissions-data-racial-disparities-shsat/>.

Black and Latinx students is further belied by the continuing single digit admissions of Black and Latinx students. This year, only 3 of the 777 offers of admission to Stuyvesant went to Black students.¹¹

2. The historical background does not warrant an inference of discriminatory purpose

Here, the historical context also counsels against an inference of intent to discriminate, and Chen does not contend that DOE deviated from normal substantive and procedural processes. The test-only process was adopted despite evidence that it screened out qualified Black and Latinx students. *See supra* Background. In the intervening decades, DOE largely ignored the tools it had to mitigate unfairness in the admissions process. In 2018, the School District was under investigation for civil rights violations because of its SHSs admissions practices. Community members increasingly raised concerns that the single-test admissions policy to the schools was out of step with the best educational practices and led to the under-identification of qualified students. *Id.* Against this backdrop, DOE debated and adopted the Policy.

¹¹ Matthew Haag, *An Elite N.Y.C. Public School Admitted 777 Students. Only 3 Were Black*, N.Y. Times (July 14, 2026), <https://www.nytimes.com/2026/07/14/nyregion/nyc-specialized-schools-black-hispanic.html>.

3. Contemporaneous public statements by decisionmakers do not evince an intent to discriminate

The statements by then-Mayor de Blasio in an op-ed, then-Chancellor Carranza in response to a reporter's questions, and the June 2018 press release, do not show an intent to discriminate against Asian American applicants. *C.f.* App. Mot. 18. Instead, these statements show DOE's intent (and indeed obligation) to mitigate the discriminatory effect of its prior admissions policies. In the op-ed, the Mayor explained that the goal of the changes was to "give a wider range of excellent students a fair shot at the specialized high schools[,]” including “from a wider number of middle schools.”¹² The op-ed recognized that the prior policy failed to objectively identify qualified students from certain neighborhoods, which had a racially disparate impact on Black and Latinx students. Chancellor Carranza's contemporaneous statements in response to a reporter's question about whether the policy pitted “minority against minority,” also reflect a concern with fairness in admissions for students of all races and ethnicities. He said he did not “buy into the narrative that any one ethnic group owns admission to these schools,” App. Mot. 7, rejecting the premise that a policy designed to open opportunities more fairly to students of all races would unfairly disadvantage any minority group. And as the

¹² Bill de Blasio, *Mayor Bill de Blasio: Our Specialized Schools Have a Diversity Problem. Let's Fix It.*, Chalkbeat N.Y. (June 2, 2018) <https://www.chalkbeat.org/newyork/2018/6/2/21105076/mayor-bill-de-blasio-our-specialized-schools-have-a-diversity-problem-let-s-fix-it/>.

district court already recognized when evaluating this exact statement in *McAuliffe*, context matters. 364 F. Supp. 3d at 278. There, the district court determined that “[i]n context, Chancellor Carranza’s response is best understood” not as intent to exclude Asian Americans, but “as a rebuke of what he saw as the idea suggested by *the interviewer*—that minority ethnic groups must compete with each other for their right to specialized school seats.” *Id.* Moreover, an isolated statement like this cannot demonstrate discriminatory intent by the decision-making body, especially given the heightened standard here. Finally, the press release, including a projection by the City that the Policy would likely almost double the number of Black and Latinx students admitted to the SHSs, App Mot. 5 n.3, is not evidence of intent. Instead, it shows an awareness that removing artificial barriers to admission would likely result in improved identification of qualified students.

Chen’s reliance on *Herrera v. New York City Department of Education* does not change the calculus. No. 1:21-CV-7555-MKV, 2024 WL 245960, at *1–2, *7–8 (S.D.N.Y. Jan. 23, 2024). In *Herrera*, the court found that statements by then-Mayor de Blasio and then-Chancellor Carranza expressing a desire for DOE leadership to “reflect the diversity of the city” or “look like New York City,” when combined with concrete evidence of adverse race-based employment actions, were sufficient to create a genuine dispute of material fact, reversing summary judgment against the plaintiff. *Id.* at *8, *14–15. Here, Chen is seeking an extraordinary remedy that can

only be justified by a strong showing of clear or substantial likelihood of success on the merits, and points only to statements demonstrating an interest in addressing inequities on the basis of race, geography, and economic need through modest changes to an admissions process.

American Council of Learned Societies v. National Endowment for the Humanities is likewise distinguishable. No. 25-CV-3657-CM, 2026 WL 1256545, at *55, *57 (S.D.N.Y. May 7, 2026). In that case, “the Government expressly employed . . . classifications,” using the terms “‘BIPOC (Black, Indigenous, People of Color),’ ‘Minorities,’ ‘Native,’ ‘Tribal,’ ‘Indigenous,’ ‘Immigrant,’ ‘LGBTQ,’ ‘Homosexual,’ and ‘Gay’” as the operative criteria for terminating federal grants. *Id.* at *55. No such classifications are part of the challenged Policy.

4. Internal DOE documents do not evince discriminatory intent

Chen also relies on documents reflecting the course of developing changes before the Policy was presented to ultimate decisionmakers: email discussions between DOE employees who did not have ultimate decision-making authority, a 2018 DOE slide deck, chart, and a pro/con document (together, “internal DOE documents”). These do not show the decisionmaker’s intent, nor do they show any discriminatory intent.

Chen relies on a May 30, 2018, email from DOE employee Nadiya Chadha referring to the Discovery program as a “lever to admit more Black and Hispanic

students.” App. Mot. 7 (citing Ex. 2 at ChMc_E_066808). Chen incorrectly argues that this is evidence of “racial balancing,” when this statement only shows that Chadha had a desire to address the under-identification of qualified Black and Latinx students because the prior policy unfairly excluded many. This is not remotely like “racial balancing” the Supreme Court has previously examined in striking down the use of facial racial classifications, which involved the use of “quotas” or “set asides” and the express consideration of an individual’s race as a factor. *See Bakke*, 438 U.S. at 315 (“Nor would the state interest in genuine diversity be served by . . . [a] set aside for each [ethnic group].”) Chen cannot point to any quotas, set asides, or even targets at use in adopting the Policy, and the Policy does not include any consideration of an applicant’s race. Awareness that the prior policy failed to address inequities, and a desire to address those inequities is both appropriate and constitutional. *See Hayden*, 180 F.3d at 50–51. Further, Chen does not provide evidence that Chadha was a decisionmaker in adopting the Policy. Thus, Chadha’s statements are not reflective of the motivation of decisionmakers.

Chen also relies on an April 2018 DOE slide deck titled, “Specialized High Schools Admissions Process,” pointing to the fourth slide, which lists increasing “the diversity of the Specialized High Schools” as a “guiding principle.” App. Mot. 8 (citing Ex. 3 at ChMc_E_114807, 114809) (internal quotations omitted). As noted, “there is nothing constitutionally impermissible about a school district including

racial diversity as a consideration and goal in the enactment of a facially neutral plan.” *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 62 (1st Cir. 2023), *cert. denied*, 145 S. Ct. 15 (2024). Ignoring the fact that the Policy’s methods are themselves race-neutral, Chen also points to slide 5 to argue that DOE “dismiss[ed] alternative race-neutral options—recommendation letters, interviews, writing assessments,” App. Mot. 8. But Chen omits key context that demonstrates DOE rejected these alternatives not because of race, but because research showed these measures “can introduce new types of bias to the process.” *See* App. Mot., Ex. 7 at ChMc_E_114809.

Further, Chen wrongly claims that the chart on App. Mot. 9 shows that the ENI threshold was a “proxy [chosen] to achieve a desired racial result.” App. Mot. 21. Chen mischaracterizes the data, arguing that the chart shows that “under the [Policy] the Asian American share of Discovery admittees would drop from 64 percent to 38 percent.” App. Mot. 9 (emphasis added); *id.* at 21 (arguing the City Defendants projected the ENI measure to “cut the Asian-American share of Discovery offers nearly in half”). Not so. While the left column in the chart shows the demographic breakdown of the Discovery Program admittees in Fall 2018 prior to the implementation of the Policy, the right column shows the projected demographic breakdown of the pool of students who would satisfy the ENI requirement—not the predicted admittees. *See* App. Mot, Ex. 4 at ChMc_E_065914.

To participate in the Discovery Program, a student must not only satisfy the ENI requirement but also individual disadvantage requirements. Chen ignores that the chart states that it does not “reflect income eligibility or student interest in participating,” App. Mot. 9, indicating that the right column is not reflective of the percentage of students who would ultimately be selected to participate in the Discovery Program.

Additionally, internal emails within the same exchange show that DOE expected the percentage of Asian American admittees to drop by just one percentage point—not 26 percentage points—once the Policy was implemented. *See* App. Mot, Ex. 4 at ChMc_E_065911.

Chen misleadingly argues that discriminatory intent should be inferred by the fact that “11 of 24 majority Asian-American middle schools were rendered ineligible” by the revised ENI threshold. App. Mot. 9. But she ignores that, in 2017–2018—the same year that these 11 middle schools were excluded—106 middle schools were ineligible in total.¹³ The 11 majority-Asian American middle schools deemed ineligible constituted only 10.4% of the excluded schools, while 15 majority-Black schools were excluded.¹⁴ Consistent with Mayor de Blasio’s op-ed,

¹³ *See Demographic Snapshot 2020-21, supra* note 7.

¹⁴ *Id.*

this shows the SHSs had a geographic diversity issue that Defendants were trying to mitigate.

Chen also fails to address the emails in Exhibit 4 that provide further context for Defendants’ decision to select the 60% ENI threshold, which discuss that the 60% threshold is “grounded in the citywide average” of students in poverty. *See App. Mot.*, Ex. 4 at ChMc_E_065910. These emails show that DOE employees rejected an 80% threshold—despite it being projected to increase the percent of Black students who were eligible more than the 60% threshold—because the 80% threshold would be “skipping over legitimately resource-challenged students.” *Id.*

Finally, Chen claims an internal “pro/con” list shows that some policy makers were aware of possible “vociferous” opposition to the Policy from Asian Americans. *App. Mot.* 8. She argues that this is evidence that Defendants knew the challenged Policy would harm other racial groups. *Id.* But the “vociferous” opposition from Asian Americans is listed as a “con” of phasing out the SHSAT, which is not at issue in this case. *See App. Mot. Ex.7.* Further, awareness of possible opposition does not equate to discriminatory animus.

Whether read together or separately, the documents Chen relies on show, at most, that DOE was aware of demographics in SHS admissions and took modest steps to mitigate unfair barriers based on race, geography, and income. This evidence

falls far short of “clear or substantial” evidence that the Policy was motivated by a discriminatory purpose.

C. Nothing in *SFFA* Requires a Facially Race-Neutral Policy Devoid of Discriminatory Intent to Satisfy Strict Scrutiny

There is no record evidence of Defendants’ intent to discriminate against Asian American students. And the Supreme Court is clear that a school district’s mere awareness of race in designing its policies is *not* evidence of per se racial discrimination. Indeed, in certain circumstances, a state can use race to address the continuing effects of past discrimination. “When setting their larger goals, local [] authorities may choose to foster diversity and combat racial isolation with race-neutral tools, and mere awareness of race in attempting to solve the problems facing inner cities does not doom that endeavor at the outset.” *Tex. Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 545 (2015).

Despite Chen’s arguments, this remains true after *SFFA* and *Louisiana v. Callais*, 146 S. Ct. 1131 (2026). Neither case casts doubt on the validity of facially-neutral policies designed to improve diversity. Indeed, as Justice Kavanaugh noted in *SFFA*, “racial discrimination still occurs and the effects of past racial discrimination still persist And governments . . . still ‘can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race.’” *SFFA*, 600 U.S. at 317 (Kavanaugh, J., concurring) (citation omitted). And while Chen cites the admonition in *SFFA* that schools should

not attempt to circumvent their order, App. Mot. 19, she ignores the Court’s clear statement that “nothing in this opinion should be construed as prohibiting universities from considering an applicant’s discussion of how race affected his or her life, be it through discrimination, inspiration, or otherwise.” *SFFA*, 600 U.S. at 230. This was meant to ensure that universities did not circumvent *SFFA*’s anti-classification principle, which is inapplicable here, where the Policy does not classify based on race.

Callais similarly did not change the standard for evaluating the constitutionality of facially race-neutral policies. Indeed, the Court in *Callais* repeatedly cited to *Alexander v. South Carolina State Conference of the NAACP*, a case that made clear “there is nothing nefarious” about such an “awareness” of race when making policy decisions. 602 U.S. 1, 37 (2024). *Callais* also reaffirmed that it is lawful to use race to remediate “specific, identified instances of past discrimination that violate[] the Constitution or a statute.” *Callais*, 146 S. Ct. at 1152 (citing *SFFA*, 600 U.S. at 208).

The Third Circuit’s decision in *Sargent* should not guide this Court either. See App. Mot. 20 (discussing *Sargent v. Sch. Dist. of Phila.*, 165 F.4th 727 (3d Cir. 2026)). *Sargent* is both out of circuit and wrongly decided. The court’s analysis with respect to intent was incorrect and inconsistent with Supreme Court precedent. A

school district's commitment to remedying past discrimination and racial equality is not probative of discriminatory intent. *See Alexander*, 602 U.S. at 37.

And in any event, *Sargent* is also distinguishable. *Sargent* dealt with whether there was enough evidence to proceed to trial, not whether plaintiffs were entitled to the extraordinary relief of an injunction pending appeal. Second, the *Sargent* court analyzed the unique circumstantial evidence at issue in that case, which of course cannot substitute for a sensitive inquiry into the facts here. Finally, although the *Sargent* court discussed *SFFA*, Chen points to no support that it altered the applicable equal protection standards based on *SFFA*—something *SFFA* itself did not purport to do. This Court should not depart from its own precedent and the clear body of Supreme Court precedent based on vague assertions regarding a non-controlling case.

Chen has not met her heightened burden of showing a clear or substantial likelihood of success on her Equal Protection Claim, and on that basis alone, the Court must deny the motion.¹⁵ Because she fails to show that the Policy was motivated by intent to discriminate, the discriminatory effect inquiry will fail too. *CACAGNY*, 116 F.4th at 173.

¹⁵ For the same reasons, the Title VI claim is also unsuccessful. Title VI is coextensive with the Equal Protection Clause. *Gratz v. Bollinger*, 539 U.S. 244, 276 n.23 (2003).

II. Chen Failed to Make a Strong Showing of Irreparable Harm

Chen has not demonstrated irreparable harm. Because the irreparable harm inquiry is tied to the likelihood of success on the merits of the constitutional claim, *Seventh Regiment Armory Conservancy, Inc. v. Knight*, 811 F. Supp. 3d 467, 478 (S.D.N.Y. 2025); see Tr. 16:1–4; 55:14–22, and she fails to make the “strong showing” of success on the merits, *New York v. U.S. Dep’t of Homeland Sec.*, 974 F.3d 210, 214 (2d Cir. 2020), she also cannot meet the irreparable harm prong.

As the district court correctly held, Chen’s alleged injury is also “remote or speculative,” Tr. 56:2–3, not “actual and imminent” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002). There is “insufficient evidence” of whether M.P. would have met the Stuyvesant cutoff score but-for the 2018 changes to the Discovery Program. Tr. 56:2–10. Chen points to a 2019 study, App. Mot. 12, which does not establish the effect of the Policy on Stuyvesant’s cutoff score in 2026. Cutoff scores for non-Discovery Program seats vary year to year due to variety of factors, including the number of students who apply, the overall strength of the applicant pool with respect to test scores, and how students decide to rank schools.

Further, in the absence of the challenged Policy, each SHS would have retained the discretion to choose the size of their Discovery Program, and in fact, could have chosen to retain even more seats for Discovery Program participants.

Absent an injunction, the status quo is not a guarantee that M.P. would get into the school of his choice.

III. The Balance of Equities and the Public Interest Weigh Against an Injunction

Because Chen “failed to demonstrate that the Policy is “unconstitutional or contrary to federal law, the balance of equities and public interest favor maintaining the status quo.” Tr. 56:16–19. Admitting M.P. to Stuyvesant would create inequities for other students who likewise missed the cutoff score but will not receive admission to their top choice, while simultaneously casting unwarranted doubt about the qualifications of students admitted through the Discovery Program. The balance of equities and public interest counsel against an injunction.

CONCLUSION

Defendant-Intervenor-Appellees respectfully request that the Court deny Chen’s motion.

Dated: August 13, 2026

Respectfully submitted,

/s/ Donya Khadem

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27, I certify that this brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 27(d)(2)(A), as it contains 5,129 words. This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font, and all footnotes are in 14-point Times New Roman font.

Dated: August 13, 2026

/s/ Donya Khadem
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CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2026, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Second Circuit using the CM/ECF system, which sent notification of such filing to all registered CM/ECF users.

/s/ Donya Khadem
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No. 26-847

In The United States Court Of Appeals
For The Second Circuit

YI FANG CHEN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN
M.P., MA.P., AND P.P.,
Plaintiff – Appellant,

v.

ZOHRAN MAMDANI, IN HIS OFFICIAL CAPACITY AS MAYOR OF THE CITY OF
NEW YORK; KAMAR H. SAMUELS, IN HIS OFFICIAL CAPACITY AS
CHANCELLOR OF THE NEW YORK CITY DEPARTMENT OF EDUCATION; AND
NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendants – Appellees,

TEENS TAKE CHARGE, DESIS RISING UP AND MOVING, COALITION FOR
ASIAN AMERICAN CHILDREN AND FAMILIES, VERONICA CARRASQUILLO, ON
BEHALF OF HER MINOR CHILD, A.C., WANG JIN HUA, ON BEHALF OF HER
MINOR CHILD, A.Z., HALIMATOU DIALLO, ON BEHALF OF HER MINOR CHILD,
K.D., JENNIFER VELEZ, ON BEHALF OF HER MINOR CHILD G.R.,

Intervenor-Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

**APPELLANT’S CONSOLIDATED REPLY TO APPELLEES’ AND
INTERVENOR-APPELLEES’ OPPOSITIONS TO EMERGENCY
MOTION FOR INJUNCTION PENDING APPEAL**

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The City accuses Chen of using this Motion as “strategy” to pursue a “quick win.” But Chen tried to stop these changes eight years ago, only to be told that M.P.’s injury was too speculative. Now, with the school year days away, an injunction pending appeal is the only way to prevent an injury that will become impossible to fully remedy once M.P.’s freshman year begins. Because M.P. clearly satisfies the factors justifying an injunction, the Motion should be granted.

Success on the merits. The SHS admissions changes were adopted not with an incidental awareness of race, but “to use the Discovery program as a lever” to achieve racial goals. Whether referred to as race “playing a role” in a government decision (*Callais*) or outright “racial balancing” (*SFFA*), the result is the same: strict scrutiny—a burden Appellees cannot meet—applies.

Irreparable Injury. Appellees insist that M.P. is unharmed by racial discrimination because he will attend his second-choice school. But an equal protection violation itself establishes irreparable harm. And victims of discrimination are still harmed if they have access to a second-best option; holding otherwise would upend discrimination protections and run counter to this Circuit’s precedent. Nor can the City feign

uncertainty over whether M.P. would have been admitted absent the new policy: its own analysis shows that the revisions raised Stuyvesant's cutoff by ten points. M.P. missed it by three. His harm is actual and imminent, with his freshman year hanging in the balance.

Public interest. The public interest is served by preventing constitutional violations. And M.P. need not suffer racial discrimination just because other hypothetical plaintiffs might file lawsuits, especially where, as here, those other students have seemingly missed their window to obtain equivalent relief. Chen seeks an extraordinarily narrow remedy: only M.P.'s admission, without displacing any others.

ARGUMENT

Whether this Court applies the ordinary standard on an injunction pending appeal (as the Supreme Court did in *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 16 (2020)) or the heightened standard applied in *Agudath Israel of America v. Cuomo*, 980 F.3d 222 (2d Cir. 2020) (per curiam), Chen succeeds: she has established a clear likelihood of success, a strong showing of irreparable harm, and a remedy that serves the public interest.

I. Chen Is Likely to Succeed on the Merits

A. Appellees Obfuscate the Legal Standard

“If race played a role in a decision made by a government actor, strict scrutiny applie[s].” *Louisiana v. Callais*, 146 S. Ct. 1131, 1146 (2026) (citing *Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252 (1977)). And efforts to reengineer school racial demographics to align with some “percentage within the general population” are “outright racial balancing,” which is “patently unconstitutional.” *SFFA v. Harvard*, 600 U.S. 181, 223 (2023) (cleaned up). This applies to facially neutral programs because “the prohibition against racial discrimination is levelled at the thing, not the name.” *Id.* at 231 (cleaned up).

Appellees rely on *Personnel Administrator of Massachusetts v. Feeney*’s statement that the government must have acted “at least in part ‘because of,’ not merely ‘in spite of,’ the adverse effects upon an identifiable group.” 442 U.S. 256, 279 (1979). City Br. 14–17; Int. Br. 7. But when applying the “pathmarking” *SFFA* opinion and this Court’s *CACAGNY* opinion, the Third Circuit recognized that a facially race-neutral admissions program using geographic criteria as “a proxy for race,” or otherwise enacted “to achieve racial proportionality” in “a zero-sum admissions game” triggers strict scrutiny under *Feeney*. *Sargent v.*

Sch. Dist. of Phila., 165 F.4th 727, 740–43 (3d Cir. 2026). Chen has made that showing.¹

Chen does not contend that “any system with a fixed number of seats can never be changed unless racial proportions stay static.” City Br. 17. Policymakers may change admissions policies for any legitimate, nonracial reason, even if racial demographics shift. But when race is a reason for the decision, strict scrutiny applies. Contrary to the City’s argument (*id.* 14), Chen has consistently argued that the City acted *because of* race, not merely with awareness of race. City’s Ex. D 22, 46.

B. Appellees Obfuscate the Facts

This Court already catalogued Appellees’ public statements and concluded, based on the record before it, that (1) the “policy [was] designed to increase the numbers of Black and Latino students at the SHSs”; (2) “City officials arrived at the 0.6 ENI threshold after modeling the effects that various ENI cutoffs would have on the racial composition of students at the SHSs”; and (3) “the City’s modeling also projected that

¹ Rejecting *Sargent* as “wrongly decided” (Int. Br. 19) means rejecting *CACAGNY*, which the Third Circuit relied on as having “taken a sounder approach than the First and Fourth Circuits” by “explaining that . . . excluding [Asian-Americans] from reserved seats was the injury demonstrating discriminatory impact.” *Id.* at 749–50.

the changes to the Discovery Program would decrease the number of Asian-Americans at the SHSs.” *CACAGNY*, 116 F.4th 161, 166–67 (2d Cir. 2024). This is race-based decisionmaking, triggering strict scrutiny. The City ignores these statements, while Intervenors recast them as “isolated statement[s]” about which middle schools feed the SHSs. Int. Br. 11–12. That cannot be squared with the statements themselves.

The internal documents—which were not yet available for the *CACAGNY* decision—remove any doubt about the City’s racial motivation. Mot. 7–10. Appellees concede the documents’ authenticity but dispute their commonsense reading, nitpick who sent them, or act as if they do not present the full picture. City Br. 19–20; Int. Br. 13–17. For example, Intervenors suggest that the DOE Director of Research and Policy’s statement about “us[ing] the Discovery program as a ‘lever to admit more Black and Hispanic students’” should be disregarded because she was not a “decisionmaker.” Int. Br. 13–14. Putting aside the suspect notion that a high-level DOE official was not a decisionmaker, this and the other documents are on-point evidence under *Arlington Heights*, which “contemplates a wide-ranging and penetrating inquiry capable of uncovering hidden forms of discrimination” in order to “smoke out

unconstitutional government conduct.” *Saget v. Trump*, 375 F. Supp. 3d 280, 368, 372 (E.D.N.Y. 2019) (examining internal documents and the “sequence of events” to evaluate the government’s rationale) (cleaned up); *see also Mhany Mgmt. v. Cnty. of Nassau*, 819 F.3d 581, 606 (2d Cir. 2016) (requiring a “sensitive inquiry” into “circumstantial and direct evidence” including “pattern[s] unexplainable on grounds other than race,” the “background of the decision,” and “administrative history”) (citations omitted).

Appellees’ effort to recontextualize individual documents fares no better. Intervenor note DOE had concerns about “new types of bias” from alternative admissions approaches and that the 60% ENI threshold corresponded to a citywide poverty measure; while the City emphasizes that DOE considered geographic, socioeconomic, and gender diversity. Int. Br. 14–17; City Br. 19–20. But all that *Feeney* and *Arlington Heights* require is that race was *one of* the goals, and none of Appellees’ arguments eliminate the overwhelming evidence of racial purpose.

The City insists Discovery expansion alone “would have no material effect on racial demographics.” City Br. 20. But that is why DOE coupled the expansion with an ENI restriction. The “concession” the City invokes

proves the point: Chen acknowledged below only that “pure expansion[,] *if not part of a . . . broader racial balancing goal*, would not trigger an equal protection claim.” City Br. 22 (quoting City’s Ex. D at 10) (emphasis added). Here, the goal was racial balancing, and the ENI screen cannot be detangled from the Discovery expansion.²

The City’s demand for a “full record” rings hollow. City Br. 19–20. The documents were produced through discovery in *CACAGNY*, and while accusing Chen of presenting “snippets,” the City cannot identify any allegedly missing context. A demand for even more discovery cannot overcome the undisputed contemporaneous record here.

Appellees’ reliance on enrollment figures is irrelevant, too. City Br. 6, 18; Int. Br. 8–10. Whether DOE’s racial projections proved accurate does not alter *why* the policy was adopted, and *CACAGNY* clarified that “a valid equal protection claim can be based on a showing that any individual has been negatively affected or harmed by that discriminatory

² It is irrelevant that a chart cited in the Motion projected the Asian-American share of the *ENI-eligible pool*, rather than Discovery admittees. Int. Br. 15–16. The threshold created an eligibility screen, and the chart measures how that screen reshaped eligible students by race.

law or policy based on race, even if there is no disparate impact to members of that racial class in the aggregate.” 116 F.4th at 173.³

The parallels to *Sargent* are striking. There, Philadelphia announced a goal of increasing the percentage of Black and Hispanic applicants from 33.8% to 52%, and adopted facially neutral geographic preferences to try to advance that objective. 165 F.4th at 742–43. The Third Circuit reversed summary judgment, holding that those actions, “taken together in context,” could establish that the policy was adopted “to achieve racial proportionality” and that geography operated as “a proxy for race.” *Id.* at 743. This was true even though “some evidence” supported nonracial “rationales of increasing geographic diversity and decreasing subjectivity,” and even though there was arguably “a neutral effect across racial groups.” *Id.* at 743–44. The record here is stronger, as

³ Intervenor’s emphasize that 62% of current Discovery participants are Asian American and that only 10.4% of excluded schools were majority-Asian. Int. Br. 8–9, 16. The first figure ignores the students excluded from Discovery by the ENI screen; the second uses the wrong denominator. Nearly half of majority-Asian schools were excluded, compared with 8% of majority-Black schools and 3% of majority-Hispanic schools. And even assuming the Court may take judicial notice of Intervenor’s extra-record statistics, *see id.* 9–10, its newspaper articles may not be noticed for their truth. *Staeher v. Hartford Fin. Servs. Grp., Inc.*, 547 F.3d 406, 425–26 (2d Cir. 2008).

DOE modelled policies by their projected racial output, then selected one calibrated to deliver it. With *Sargent* providing the appropriate framework for *SFFA* and *CACAGNY*, Chen is clearly likely to prevail on the merits.⁴

II. Chen Will Be Irreparably Harmed Without Relief

A. The Loss of M.P.’s Freshman Year Is Irreparable

Appellees tacitly concede that if Chen makes a “strong showing” of success on the merits, a finding of irreparable harm should follow. Int. Br. 21; *see also* City Br. 13 (citing *Brewer v. W. Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 744 (2d Cir. 2000) (adopting a *per se* irreparable injury standard for an Equal Protection violation in a school admission case, and finding irreparable harm even though the student would receive a public education without relief)). But the harm here is actual and imminent regardless, as M.P.’s freshman year, only days away, hangs in the balance.

The Appellees ignore the irreparable harm arguments in Chen’s motion (Mot. 25), which include this Court’s observation in *CACAGNY*

⁴ Intervenors seek a referendum on the SHSAT itself. Int. Br 2, 9–10. But the SHSAT is required by state law, and the New York Court of Appeals recently rejected a claim that Hecht-Calandra was discriminatory. *IntegrateNYC, Inc. v. State*, 45 N.Y.3d 176, 193 (2025).

that Stuyvesant is the more prestigious school. 116 F.4th at 169. The City distinguishes *Foulke v. Foulke* by saying that M.P.’s admission to Brooklyn Tech is “assured” (City Br. 12 n.3); but admission to an excellent Westchester public school in *Foulke* was also assured. 896 F. Supp. 158, 160–61 (S.D.N.Y. 1995). The First Circuit likewise recognized that a student discriminatorily denied entry into the prestigious Boston Latin School must be admitted “without delay” because she did “not have the luxury of time.” *Wessmann v. Gittens*, 160 F.3d 790, 809 (1st Cir. 1998); *see also McLaughlin v. Bos. Sch. Comm.*, 938 F. Supp. 1001, 1011–12 (D. Mass. 1996) (granting preliminary injunction requiring admission to school the student would have attended but-for discrimination even though she was otherwise receiving “a fine education”).⁵

These cases support the common-sense proposition that a student suffers harm when excluded from a preferred school, even if there is a good alternative, and that every day of that exclusion is irreparable.

⁵ *Pride v. Community School Board*, 488 F.2d 321 (2d Cir. 1973) (City Br. 11) is distinguishable as it found no irreparable harm after concluding that a challenged school assignment plan was nondiscriminatory and the claimed injury was stigma arising from reassignment. *Id.* at 327–28.

B. M.P.’s Harm Is Not Speculative

The City does not dispute that its own 2019 analysis found that the revised policy raised the cutoff by ten points. (Mot. 16; Roper Dec. Ex. 8). Nor does it dispute that M.P. missed the cutoff by only three points. The observation that cutoffs vary from year to year—including that M.P. would have scored above the cutoff “if he’d been in last year’s applicant pool” (City Br. 12)—only buttresses the argument: M.P. sits at the razor’s edge where a ten-point effect is decisive.

The City already calculated the number of students who scored 558–560 on the SHSAT, and how many ranked Stuyvesant first. City Ex. F. Yet it avoids providing the one calculation that matters: what the cutoff would have been without the 20% reservation. This Court is clear that “the party with easier access to relevant information” should provide it. *Nat’l Commc’ns Ass’n v. AT&T Corp.*, 238 F.3d 124, 130–31 (2d Cir. 2001). The City tacitly concedes it could provide the calculation.⁶

Lastly, Intervenors speculate that, absent the challenged policy, individual SHSs *could have* voluntarily reserved as many or more seats

⁶ Rather than disputing the principle, it quibbles that *Nat’l Commc’ns* addressed burdens at trial. City Br. 12.

for Discovery. Int. Br. 21–22. But that has never happened: as this Court recognized, historically “only approximately 1 percent to 3 percent of students admitted at the SHSs came through the Discovery Program.” *CACAGNY*, 116 F.4th at 166.

III. The Public Interest Will Be Unharmful

Chen seeks an exceptionally narrow remedy: admission to Stuyvesant for one student—something the City concedes is not an “administrative disaster” (in other words, is eminently doable). City Br. 23.

Appellees argue such relief would be unfair to other students who missed Stuyvesant’s cutoff. City Br. 23–24; Int. Br. 22. But those students are not before this Court. The requested injunction does not “leapfrog” anyone; it simply “restore[s M.P.] to the position [he] would have occupied in the absence of such conduct.” *United States v. City of Yonkers*, 197 F.3d 41, 55 (2d Cir. 1999) (cleaned up); *see also Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 271–72, 320 (1978) (ordering an individual applicant’s admission after a finding of discrimination). And this Court has previously rejected concerns that relief would benefit only one plaintiff while similarly situated nonparties remained subject to a

challenged law. *See N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488–89 (2d Cir. 2013).

The possibility that others might seek injunctions—something that seems virtually impossible given the imminent start of this school year—does not prevent relief. And admitting M.P. would not “cast[] unwarranted doubt” on the qualifications of Discovery students (Int. Br. 22); it would say nothing about others’ qualifications. Nor would relief circumvent Hecht-Calandra (City Br. 24), which mandates the system that M.P. followed—admission by SHSAT. Regardless, in the school admissions context, state laws “are not sacrosanct” when they conflict with the Constitution, and courts have a duty to provide an appropriate remedy. *Milliken v. Bradley*, 418 U.S. 717, 744 (1974).

CONCLUSION

The Motion should be granted.

DATED: August 20, 2026.

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CERTIFICATE OF COMPLIANCE

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DATED: August 20, 2026.

s/ Dean McGee
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CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Second Circuit by using the appellate CM/ECF system.

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