

26 CV 03355 (ER) (OTW)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

YI FENG 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 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.

**DEFENDANTS' MEMORANDUM OF LAW IN
OPPOSITION TO PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

New York City operates eight Specialized High Schools (“SHSs”)¹ for which State law mandates that admission be determined exclusively by taking a single test called the Specialized High School Admissions Test (“SHSAT”). Indeed, under State law, the New York City Department of Education (“DOE”) may only admit students into SHSs who qualify through their SHSAT score alone or through the Discovery Program—a statutorily permitted pathway for disadvantaged students who also take the SHSAT. Stuyvesant High School (“Stuyvesant”), Brooklyn Technical High School (“Brooklyn Tech”), and the Bronx High School of Science are the oldest and most sought after of these specialized schools.

Plaintiff has moved for a preliminary injunction seeking an order directing Defendants to admit her son, M.P., to Stuyvesant for the 2026-2027 school year, notwithstanding State law requirements, pending resolution of this action. M.P. received an offer of admission to Brooklyn Tech, his second ranked choice. Plaintiff claims that, but for the racially motivated expansion of the Discovery Program eight years ago, M.P.’s SHSAT score would have gained him an offer of admission to Stuyvesant, his first choice.

Defendants oppose the motion. Plaintiff has not shown that she is entitled to the extraordinary remedy of a preliminary injunction, particularly under the heightened standard that applies where, as here, the injunction would alter the status quo and provide the Plaintiff with substantially all the relief she seeks. As a threshold matter, Plaintiff will not suffer irreparable harm

¹ The eight SHSs that use the SHSAT for admission are Stuyvesant High School; The Bronx High School of Science; Brooklyn Technical High School; High School for Mathematics, Science and Engineering at City College of New York; High School of American Studies at Lehman College; The Brooklyn Latin School; Queens High School for the Sciences at York College; and Staten Island Technical High School. *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 264 (S.D.N.Y.) (quoting Wallack Decl. ¶¶ 6, 10), *aff’d*, 788 F. App’x 85 (2d Cir. 2019).

if, for a limited time, M.P. attends Brooklyn Tech, one of the most prestigious high schools in the country. Plaintiff is also not likely to succeed on the merits, the balance of the equities does not favor her, and an injunction is not in the public interest. The Discovery Program reforms challenged here are unequivocally race-neutral, and Plaintiff fails to show evidence of intent to disadvantage Asian American students. Moreover, if the Court finds that Defendants' changes to the Discovery Program were unlawful, the appropriate remedy for the alleged constitutional and statutory violation is not admitting M.P. to Stuyvesant in violation of State law—it would be to allow him to compete in a modified application process.

STATEMENT OF FACTS

For a complete and accurate statement of the relevant facts, the Court is respectfully referred to the Declaration of Joshua Wallack, dated January 17, 2019, the Declaration of Nadiya Chadha, dated January 17, 2019, and the Declaration of Lianna Wright dated June 17, 2026, all submitted in support of Defendants' Opposition to the Motion for a Preliminary Injunction.

In 2018, Black and Latino students, who made up 66.1% of New York City's public school population, accounted for only 10.2% of the students at SHSs. More specifically, Black students accounted for approximately 3.9% of the SHS student population, and Latino students accounted for 6.3%. Asian and White students overwhelmingly make up the remaining 89.8% of the student population.² Moreover, students from just 30 of New York City's approximately 650 middle schools received half of all SHS admissions offers.³ Just 14% of students at the Bronx High School of Science came from the Bronx.⁴

² See NYC City Council Data Team, *School Diversity in NYC*, New York City Council, <https://council.nyc.gov/data/school-diversity-in-nyc/#tech-appendix>.

³ (Wallack ¶ 17).

⁴ See Bill de Blasio, *Mayor Bill de Blasio: Our specialized schools have a diversity problem. Let's fix it.*, Chalkbeat (June 2, 2018, at 12:00pm ET), <https://www.chalkbeat.org/newyork/2018/>

In June 2018, then Mayor Bill de Blasio announced several initiatives “to give a wider range of excellent students a fair shot at the specialized high schools.”⁵ The Mayor stated that his goal was to ensure that Black and Latino children have “an equal chance to get into one of their city’s best high schools[.]”⁶ The Mayor also sought to broaden SHSs’ geographic, socioeconomic and gender diversity.⁷ Following extensive research, modeling and consultation among Mayor de Blasio, DOE, and various stakeholders, Defendants announced two changes to the Discovery Program—an alternative pathway for admission to the SHSs for “disadvantaged students of demonstrated high potential,” as authorized by the Hecht-Calandra Act of 1971 (“Hecht-Calandra”), the State law that established the SHSs. Laws of 1971, Chapter 1212; *see* N.Y. Educ. Law §§ 2590-g(12)(b) (1997), 2590-h(1)(b).

First, Defendants gradually expanded the Discovery Program to 20% of the seats at all eight SHSs. Second, Defendants revised the eligibility criteria for the Discovery Program in an effort to identify and offer SHS access to New York City’s most disadvantaged students. The revision included a requirement that a student either attend a high-poverty public school—as captured by its Economic Need Index (“ENI”) which measures the economic disadvantage of its student body—or live in a high-poverty area if the student attends a non-public school or is homeschooled. The ENI threshold of 60% or greater was selected to represent schools that have

6/2/21105076/mayor-bill-de-blasio-our-specialized-schools-have-a-diversity-problem-let-s-fix-it (“There’s also a geographic problem. There are almost 600 middle schools citywide. Yet, half the students admitted to the specialized high schools last year from just 21 schools. For a perfect illustration of disparity: Just 14 percent of students at Bronx Science come from the Bronx.”). *Christa McAuliffe*, 364 F. Supp. 3d at 263 (taking “judicial notice of the fact that Mayor de Blasio made the statements published under his name in a June 2, 2018 Chalk Beat article”).

⁵ *Id.*

⁶ *Id.*

⁷ (Dkt. No. 16 (“Roper Decl.”) Exs. 6–7).

greater than average economic needs. Both changes complied with Hecht-Calandra, which neither limits the size of the Discovery Program, nor defines the word “disadvantaged.” *See Chinese Am. Citizens All. of Greater N.Y. v. Adams, et. al.*, 116 F.4th 161, 166 (2d. Cir. 2024) (“CACAGNY”) (citing N.Y. Educ. L. § 2590-g(12(d)) (“[T]he DOE determines the parameters of the ‘disadvantaged’ eligibility requirement, as well as the number of seats at the SHSs that are reserved for the program.”)).

Mayor de Blasio stated that the changes would “immediately bring a wider variety of high performing students, from a wider number of middle schools, to the specialized high schools.”⁸ The percentage of Black and Latino students receiving SHS offers were predicted to almost double from 9% to 16%.⁹ The number of middle schools sending eighth graders to SHSs were projected to almost double.¹⁰ The statistical model prepared for the decision makers predicted that, under the new Discovery Program eligibility criteria, Asian-American students would receive 51% of all SHSAT admission offers, a higher percentage of offers than White (25%), Black (6%) and Latino (10%) students combined.¹¹

Plaintiff claims that the 2018 reforms to the Discovery Program were adopted with intent to racially discriminate against Asian-American students. Her child, M.P., is an eighth grader at

⁸ de Blasio, *supra* note 4. In addition to expanding the Discovery Program to increase diversity and access to SHSs, Mayor de Blasio also announced that the administration would enhance and expand the DREAM program, a free multi-month SHSAT tutoring and test preparation program designed to help economically disadvantaged and underrepresented students gain access to the SHS; increase recruiting efforts to high-performing students from historically underrepresented neighborhoods; and administer the SHSAT at public middle schools during the school day. (Wallack Decl. ¶¶ 11, 14).

⁹ (Wallack Decl. ¶ 31).

¹⁰ (Roper Decl. Ex. 7 at ChMc_E_115049, Ex 6 at ChMc_E_015823).

¹¹ (Roper Decl. Ex. 4 at ChMc_E_065911–13 (Model based on SHSAT offers + 20% of seats reserved for Discovery with 60% ENI floor)).

Mark Twain Intermediate School for the Gifted and Talented who took the SHSAT in October 2025.¹² When M.P. signed up to take the SHSAT, he ranked Stuyvesant and Brooklyn Tech as his top two choices. (Wright Decl. ¶6). Based on a score of 558,¹³ M.P. received an offer of admission to Brooklyn Tech, his second choice. Plaintiff claims that, but for the racially motivated expansion of the Discovery Program eight years ago, M.P. would have received an offer of admission to Stuyvesant, his first choice. She commenced this action pursuant to 42 U.S.C. § 1983, claiming that the 2018 reforms to the Discovery Program violate 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.

According to Plaintiff, the expansion of the Discovery Program was discriminatory against Asian-American students because Defendants knew it would reduce the number of seats for students admitted solely on the basis of SHSAT scores. As to Discovery Program seats, Plaintiff further contends that the expansion, coupled with the school-based ENI requirement, operates as a racial proxy against Asian-American students, in part because the ENI requirement allegedly excludes students at middle schools with large Asian populations.¹⁴ Based on these allegations, Plaintiff seeks the extraordinary remedy of a preliminary injunction admitting M.P. to Stuyvesant High School for the 2026-2027 school year. However, Plaintiff cannot meet the standard for securing this injunction.

¹² (See Dkt. No. 15 (“P. MOL”) at 10–11).

¹³ For admission for the 2026-2027 school year, any student who scored a 495 or above was not eligible for the Discovery Program as they would have been eligible for admission to an SHS through the SHSAT. (See P. MOL at 11).

¹⁴ Since adoption of the 2018 reforms, Asian-American students have consistently received a majority of offers to the Discovery Program. In 2025 and 2026, Asian-American students received more than 50% of offers to the Discovery Program and comprised more than 60% of students ultimately approved to participate. (Wright Decl. ¶ 4).

ARGUMENT**POINT I****PLAINTIFF HAS FAILED TO SATISFY THE
REQUIREMENTS FOR THE
EXTRAORDINARY AND DRASTIC REMEDY
OF A PRELIMINARY INJUNCTION**

“A preliminary injunction ‘is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.’” *Students for Fair Admissions v. U.S. Mil. Acad. at W. Point*, 709 F. Supp. 3d 118, 129 (S.D.N.Y. 2024) (quoting *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 66 (2d Cir. 2007)), *appeal withdrawn*, No. 24-40, 2024 WL 1494896 (2d Cir. Feb. 13, 2024). “‘A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest.’” *JTH Tax, LLC v. Agnant*, 62 F.4th 658, 667 (2d Cir. 2023) (quoting *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008)).

A. The heightened standard for a mandatory injunction applies.

Contrary to Plaintiff’s assertion in her motion, the mandatory injunction standard applies here. “Prohibitory injunctions maintain the status quo pending resolution of the case; mandatory injunctions alter it.” *N. Am. Soccer League, LLC v. U.S. Soccer Fed’n, Inc.*, 883 F.3d 32, 36–37 (2d Cir. 2018) (citing *Tom Doherty Assocs., Inc. v. Saban Entm’t, Inc.*, 60 F.3d 27, 34 (2d Cir. 1995)). Where, as here, “the moving party seeks a ‘mandatory’ preliminary injunction that ‘alters the status quo by commanding some positive act’ as opposed to a ‘prohibitory’ injunction seeking ‘to maintain the status quo,’ the district court should grant the injunction ‘only upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from the denial of preliminary relief.’” *Christa McAuliffe Intermediate Sch.*

PTO, Inc. v. de Blasio, 364 F. Supp. 3d 253, 274 (S.D.N.Y.) (quoting *Tom Doherty Assocs.*, 60 F.3d at 34), *aff'd*, 788 F. App'x 85 (2d Cir. 2019). The “[s]tatus quo’ to be preserved by a preliminary injunction is the last actual, peaceable uncontested status which preceded the pending controversy.” *Id.* (quoting *LaRouche v. Kezer*, 20 F.3d 68, 74 n.7 (2d Cir. 1994)).

Although this Court previously found that the 2018 changes to the Discovery Program disturbed the status quo rather than maintained it, the instant action requires a different analysis. *See id.* at 275. Directing Defendants to admit a student to a specific SHS—out of order of ranked SHSAT scores in violation of State law—would indeed disrupt the status quo, thus constituting a mandatory injunction. *See, e.g., Weiss v. City Univ. of N.Y.*, No. 17 Civ. 3557 (VSB), 2019 WL 5891894, at *4 (S.D.N.Y. Nov. 10, 2019) (“Even if Plaintiff had established irreparable harm, the status quo here is that Plaintiff does not currently attend the Silberman School as an MSW student, and so awarding the relief she requests would amount to issuing a mandatory injunction, and the ultimate relief she seeks in her lawsuit.”); *Doe ex rel Roe v. Oceanside Union Free Sch. Dist.*, No. 25 Civ. 06214 (JS)(SIL), 2025 WL 3706756, at *4 (E.D.N.Y. Dec. 22, 2025) (finding that the mandatory injunction heightened standard applied where plaintiff sought an injunction that would require the positive act of the school district admitting an unvaccinated student); *Caviezel v. Great Neck Pub. Schs.*, 701 F. Supp. 2d 414, 426 (E.D.N.Y. 2010) (finding that a preliminary injunction seeking to admit an unvaccinated student would “alter the status quo” and thus the “clear or substantial likelihood” of success on the merits standard applied), *aff'd*, 500 F. App'x 16 (2d Cir. 2012).

The Hecht-Calandra Act, N.Y. Education Law § 2590-h(1)(b), incorporating N.Y. Educ. Law § 2590-g(12), as in effect on March 29, 1997, was enacted in 1971 and establishes the parameters for admission to SHSs. The Act provides that admission to SHSs is determined “solely

and exclusively by taking a competitive, objective and scholastic achievement examination,” which is the SHSAT. N.Y. Educ. Law § 2590-g(12)(b) (1997). “The Hecht-Calandra Act provides only one other means of admission—the Discovery program.” *Christa McAuliffe*, 364 F. Supp. 3d at 265. The Act “expressly provided for a Discovery Program that was unlimited in size to admit disadvantaged students with great potential” (Wallack Decl. ¶ 7); *see also*, *Christa McAuliffe*, 364 F. Supp. 3d at 265 (citation omitted). As these have remained the only methods of admissions to SHSs since the 1970s, admission outside of these two means is incompatible with State law and a disruption to the status quo.

Plaintiff here seeks to disrupt what has been the status quo since Hecht-Calandra was enacted in 1971, and asks the Court to compel Defendants to admit a student who has not met the statutory requirements to attend Stuyvesant. This would require Defendants to take the affirmative step of allowing M.P. to leapfrog over many other students who earned higher SHSAT scores, effectively granting him admission outside of the process that has existed by law for more than fifty years. *See, e.g., Doe #1 v. Syracuse Univ.*, No. 518 Civ. 496 (FJS) (DEP), 2018 WL 3193199, at *2 (N.D.N.Y. June 28, 2018) (determining that a preliminary injunction asking a university to alter its “policy and regular procedure” “undeniably [] alter[s] the status quo” and thus constitutes a mandatory injunction). Thus, the heightened legal standard applies and Plaintiff must establish not only irreparable harm, but a ““a clear or substantial likelihood of success on the merits.”” *N. Am. Soccer League*, 883 F.3d at 37 (quoting *N.Y. Civil Liberties Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012)).

B. Plaintiff fails to satisfy any element required for a preliminary injunction.

Plaintiff cannot meet the standard for an injunction, much less for a mandatory injunction. First, Plaintiff has not demonstrated that she is likely to suffer irreparable injury in the absence of injunctive relief. The alleged harm of attending Brooklyn Tech instead of Stuyvesant—two of the

three most highly sought after SHSs—is simply not an irreparable harm. Moreover, Plaintiff’s alleged injury (that M.P. will lose the educational opportunity to attend Stuyvesant) is not imminent as Plaintiff has not established why the alleged harm cannot be remedied after her claims are resolved on the merits. (P. MOL at 24). Second, as fully discussed in Section 2 below, Plaintiff has not shown a likelihood, much less a heightened substantial likelihood, of success on the merits.

Third, the balance of the equities and public interest tips decidedly in favor of Defendants. Admitting M.P. to Stuyvesant despite his failure to make the SHSAT cutoff score would violate Hecht-Calandra and would be decidedly unfair to the thousands of other students who took the SHSAT and have accepted SHS results in accordance with their test scores. Indeed, granting Plaintiff’s proposed remedy could have an extremely disruptive and cascading impact on Defendants’ school placement system more broadly, as DOE could be required to extend the same relief to a multitude of Asian-American SHSAT takers who were not admitted to their top school choice. Thus, Plaintiff has failed to satisfy any of the prerequisites for a preliminary injunction and the motion should be denied.

1. Plaintiff cannot establish that she or M.P. will be irreparably harmed absent a preliminary injunction.

The Second Circuit has “long recognized” that “‘irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction.’” *Care One, LLC v. Nat’l Lab. Rels. Bd.*, 166 F.4th 335, 343 (2d Cir. 2026) (quoting *JTH Tax, LLC*, 62 F.4th at 672 (citations omitted)). “The burden of proof and persuasion rests squarely on the party moving for a preliminary injunction to show that irreparable harm is likely.” *Students for Fair Admissions*, 709 F. Supp. 3d at 136 (quoting *JBR, Inc. v. Keurig Green Mountain, Inc.*, 618 F. App’x 31, 34 (2d Cir. 2015)). For plaintiff “to satisfy the irreparable harm requirement, [she] ‘must demonstrate that absent a preliminary injunction [she and her child] will suffer an injury that is neither remote nor

speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm.” *Nat’l Ass’n for Gun Rts. v. Lamont*, 153 F.4th 213, 248 (2d Cir. 2025) (quoting *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009)) (citations omitted). “This requirement stems from the fundamental purpose of a preliminary injunction, which is 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.’” *Id.* (quoting *Starbucks Corp. v. McKinney*, 602 U.S. 339, 346 (2024) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981))).

Plaintiff argues that the deprivation of a constitutional right “alone establishes irreparable harm here.” (P MOL. at 24). However, “[t]he Second Circuit has rejected the notion that allegations of constitutional deprivations *per se* necessarily represent constitutional injury.” *Mercado v. Noem*, 800 F. Supp. 3d 526, 565 (S.D.N.Y. 2025), *appeal dismissed sub nom. Barco Mercado v. Noem*, No. 25-2922, 2026 WL 1382401 (2d Cir. Mar. 3, 2026). While the Second Circuit has “presumed irreparable harm for alleged deprivations of certain constitutional rights,” *Nat’l Ass’n for Gun Rts.*, 153 F.4th at 248 (citing *Brewer v. W. Irondequoit Cent. Sch. Dist.*, 212 F.3d 738, 744 (2d Cir. 2000)), “[t]hat conclusion . . . does not obtain universally,” *Care One, LLC*, 166 F.4th at 348. The Second Circuit has held that irreparable harm for certain alleged deprivations of constitutional rights, such as violations pertaining to the First, Fourth, and Eighth Amendment, may be presumed, but it has rejected the argument that any alleged constitutional injury satisfies the standard. *See id.* (“‘[W]e have presumed irreparable harm for alleged deprivations of certain constitutional rights,’ namely in First, Fourth, and Eighth Amendment contexts, but reject[ed the] argument that ‘violation of constitutional rights per se constitutes irreparable injury’” (quoting *Nat’l Ass’n for Gun Rts.*, 153 F.4th at 248)); *id.* at 348 (“We are not persuaded that a

presumption of irreparable harm necessarily attaches to all separation-of-powers claims so as to warrant injunctive relief.”).

In *Nat’l Ass’n for Gun Rts.*, the Second Circuit declined to extend the irreparable harm presumption to the Second Amendment, noting that the “general assertion” that “violation of constitutional rights per se constitutes irreparable harm” “is incorrect.” 153 F.4th at 248; *see id.* (“Plaintiffs offer little argument as to why we should extend the presumption of irreparable harm [to the Second Amendment]. And the Supreme Court’s recent emphasis on the limits of our equitable powers caution against extending the presumption to new contexts.”). The Second Circuit noted that “the Supreme Court has never applied this presumption outside the First Amendment context,” *id.* (citing *Elrod v. Burns*, 427 U.S. 347, 373 (1976)), and that the high Court recently made clear that plaintiffs “must do more” than “argue that each of the injunction factors depends upon the merits of their constitutional claims . . . to warrant the extraordinary remedy of preliminary injunctive relief.” *Id.* at 247; *e.g.*, *Starbucks Corp.*, 602 U.S. at 345–46; *Trump v. CASA, Inc.*, 606 U.S. 831, 841 (2025).). In short, Plaintiff cannot meet her burden merely by alleging a constitutional deprivation of her Fourteenth Amendment right to equal protection, as that is insufficient to satisfy the irreparable harm requirement.

Plaintiff next asserts that absent an injunction, M.P. will be irreparably harmed by “los[ing] an irreplaceable educational opportunity” should he attend Brooklyn Tech, his second choice SHS, and spend “[a] year—or more—excluded from Stuyvesant” (P. MOL at 24). She argues that “the coursework, the teachers, the peer cohort, the extracurricular offerings, the college-counseling relationships, and the friendships formed in the critical ninth-grade year cannot be constructed after the fact.” (*Id.*). But these alleged harms are speculative and lack a factual basis.¹⁵

¹⁵ While Plaintiff alleges that there are material differences between these schools, the curricula at Stuyvesant and Brooklyn Tech are substantially similar. Both schools offer a broad range of course

Plaintiff does not argue that Brooklyn Tech is an inferior school, nor could she given the school's prestigious reputation. Attending Brooklyn Tech will not disrupt M.P.'s education. The programs at all SHSs, Brooklyn Tech included, are some of the best in the country and offer "rigorous instruction to academically gifted students in a challenging environment." (Wallack Decl. ¶ 6); *see also*, *Christa McAuliffe*, 364 F. Supp. 3d at 264 (noting that "Bronx Science, Stuyvesant, and Brooklyn Tech [] are widely and historically regarded as amongst the finest public high schools in the country"); Dkt. No. 1 ("Compl.") at 2 ("New York City's specialized high schools are among the most academically rigorous public secondary schools in the United States."). Stuyvesant and Brooklyn Tech are two of the top three high schools in the City. (Comp. at 2 ("The 'Big Three'—Stuyvesant, Bronx Science, and Brooklyn Tech—are especially distinguished." (citing *CACAGNY*, 116 F.4th at 165)). Plaintiff herself acknowledges that "Stuyvesant and Brooklyn Tech are both excellent schools." (Roper Decl. Ex. B ("Chen Decl.") ¶ 17). She attests both "are among the most academically rigorous public secondary schools in the United States." (*Id.*). Indeed, Brooklyn Tech must have satisfied her academic standards, as it was second out the seven SHSs that M.P. ranked on his high school application. (Wright Decl. ¶ 6). Moreover, as discussed above, Brooklyn Tech and Stuyvesant schools offer substantially similar curricula and course offerings. The alleged differences between the schools that Plaintiff alleges will irreparably harm M.P. are entirely speculative and an insufficient basis for the disruptive mandatory injunction sought here.

offerings (with 58 course offerings at Stuyvesant and 60 at Brooklyn Tech) and have similar class sizes (Stuyvesant has an average of 33 students per class while Brooklyn Tech averages 31.). (Wright Decl. ¶ 7). Any "specific courses," that M.P. identified at Stuyvesant are likely available at Brooklyn Tech. (*See* Chen Decl. ¶ 17).

Even if Plaintiff could credibly show that M.P. would be irreparably harmed by attending Brooklyn Tech rather than Stuyvesant, she has not met her burden to show that such harm is imminent. Plaintiff offers no explanation beyond conclusory assertions as to why this alleged harm cannot be remedied following resolution of this case on the merits. Indeed, “there is no actual imminent harm as th[e] Court is not precluded from issuing an effective remedy at the end of a final trial on the merits with the benefit of a full trial record before it.” *Students for Fair Admissions*, 709 F. Supp. 3d at 137. Further, not only is the 2026-2027 school year several months away, but DOE offers the opportunity for ninth-graders to take the SHSAT so that they may enter a SHS in their tenth grade year. And admission for tenth grade is based solely on SHSAT score—there is no Discovery Program. In fact, M.P. intends to seek admission to Stuyvesant for tenth grade. (Chen Decl. ¶ 19).

Plaintiff cites *Foulke by Foulke v. Foulke* for the proposition that “the loss of an opportunity to attend a particular school is irreparable injury.” 896 F. Supp. 158, 161 (S.D.N.Y. 1995)). But *Foulke* is readily distinguishable from the instant action. *Foulke* involved a contentious divorce action in which the parents disagreed over whether to send their five-year-old daughter to private or public school. *Id.* at 159–60. The child had been admitted to the private school—the status quo—and was at risk of losing her spot if she did not immediately enroll. *Id.* at 160.

By contrast, M.P. does not have an offer to Stuyvesant and is not at risk of losing his offer to Brooklyn Tech. Nor is he at risk of losing an educational opportunity if the Court does not order his immediate admission to Stuyvesant. That was not the case in *Foulke*, where the private school was not a party to the action and thus not subject to the court’s directive. While it is not clear that admission to Stuyvesant would be the appropriate remedy if Plaintiff prevailed in this action (and Defendants argue in Section C it is not given the alleged constitutional harm), given that DOE is

a party, such a remedy would not be foreclosed if the Court so ordered it following argument on a full record. That said, Defendants submit that, if the Court find in Plaintiff's favor, the appropriate remedy would be to allow M.P. to compete in a modified application process, not to admit him to Stuyvesant in violation of State law.

Finally, courts in this circuit have consistently held that denial of a student's first choice school is not the denial of the right to an education. *See Johnpoll v. Elias*, 513 F. Supp. 430, 431–32 (E.D.N.Y. 1980) (“Merely because Joseph is not being permitted to attend the school of his choice is not tantamount to a denial of a right to an education. The plaintiff's essential objection to Joseph's placement arises from a subjective belief that John Jay would not provide Joseph with as quality an education as Murrow or Midwood.”); *Jones on Behalf of Michele v. Bd. of Educ. of City Sch. Dist. of City of New York*, 632 F. Supp. 1319, 1323 (E.D.N.Y. 1986) (“That plaintiffs are ‘not being permitted to attend the school of [their] choice is not tantamount to a denial of a right to an education.’” (quoting *Johnpoll*, 513 F. Supp. at 431–32)). Plaintiff's argument that M.P. would be irreparably harmed by attending one of the most distinguished SHSs over the other is entirely speculative and fails to support the extraordinary remedy of a mandatory injunction.

2. Plaintiff cannot demonstrate a likelihood of success on the merits because the revised criteria for the Discovery Program do not violate the Equal Protection Clause or Title VI.

The “central purpose” of the Equal Protection Clause “is to prevent the States from purposely discriminating between individuals on the basis of race.” *CACAGNY*, 116 F.4th at 170 (quoting *Shaw v. Reno*, 509 U.S. 630, 642 (1993)). However, “[a] government action does not necessarily purposely discriminate merely because it is race-related.” *Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 543 (3d Cir. 2011) (citing *Crawford v. Bd. of Educ.*, 458 US 527, 538 (1982)). Because “[i]t is undisputed that the revised Discovery Program neither expressly classifies students on the basis of race, nor is enforced in a discriminatory manner. . . . in order to subject the revised

Discovery Program to strict scrutiny review, Plaintiff[] [is] required to show that, in addition to having a discriminatory effect, the policy ‘was adopted with a discriminatory intent.’” *CACAGNY*, 116 F.4th at 170–71 (quoting *Chabad Lubavitch of Litchfield Cnty., Inc. v. Litchfield Historic Dist. Comm’n*, 768 F.3d 183, 199 (2d Cir. 2014)). “To meet h[er] burden of establishing discriminatory intent, [Plaintiff] must show that the [decisionmaker] must have ‘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.’” *United States v. Suquilanda*, 116 F.4th 129, 141 (2d Cir. 2024) (quoting *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979)); *Christa McAuliffe*, 364 F. Supp. 3d at 277 (“A plaintiff must show ‘[p]roof of racially discriminatory intent or purpose’ to establish that a facially neutral government action violates equal protection.” (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977))).

For decades, Defendants have faced public outcry—as well as an investigation by the U.S. Department of Education Office for Civil Rights¹⁶—regarding concerns that admission to the SHSs is unattainable for a range of otherwise qualified students who fall short of the SHSAT cut-off score, and about a lack of racial, socioeconomic and geographic diversity in SHSs’ student bodies.¹⁷ For the ninth-grade class entering in the fall of 2017, for example, 50% of offers for seats at SHSs were made to students at only 30 DOE middle schools (4.6%), meaning that students at a small number of middle schools received half of all SHS offers. (Wallack Dec. ¶ 17; Chadha Decl. ¶ 29). At that time, DOE middle schools with a high proportion of disadvantaged students were

¹⁶ (Wallack ¶ 13).

¹⁷ In 2017, of the 161 public middle schools in the Bronx, only 45, or less than 30%, had students that received an admission offer based on the SHSAT to a SHS. (Chadha Decl. ¶ 29). Only 3% of the remaining 116 schools had students that received offers through the Discovery Program. (*Id.*). This means that the vast majority of Bronx middle schools had no students receive any offer to a SHS. (*See id.*).

even underrepresented in the Discovery Program, a program authorized for the specific purpose of providing opportunities for “disadvantaged students of demonstrated high potential” *Christa McAuliffe*, 364 F. Supp. 3d at 265, 280 (citation omitted).

To address the troubling lack of racial, socioeconomic, and geographic diversity, as well as the Discovery Program’s shortfalls in achieving its statutory goals, Defendants reasonably exercised their discretion under Hecht-Calandra to refine the criteria for participation in the Program. Defendants achieved those goals by expanding eligibility to students attending public middle schools with an ENI of at least 60% and increasing the size of Discovery Program to 20% of SHSs’ available seats. (See Wallack Decl. ¶¶ 20–26, 30–34). Because Defendant’s actions rationally relate to the legitimate governmental interest in diversity in secondary schools and providing opportunity to disadvantaged students, Plaintiff’s claim under the Equal Protection Clause will fail, and she cannot demonstrate a likelihood of success on the merits.

(a) The Revisions to the Discovery Program Eligibility Criteria are Facially Neutral and Lack a Discriminatory Intent and are thus Subject to Rational Basis Review.

“If a court concludes that the government used a racial classification or was motivated by racial discrimination, then the court must review the government action under strict scrutiny.” *Christa McAuliffe*, 364 F. Supp. 3d at 276 (citing *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999)). “Absent either conditions, the government action is subject to rational basis review.” *Id.* (citing *Feeney*, 442 U.S. at 271–72). Given the facially neutral action here, which was employed to foster diversity without any racially discriminatory intent, rational basis review is the appropriate standard of review.

The crux of Plaintiff’s argument is that Defendants revised the Discovery Program with the intent to exclude Asian-American students from SHSs, and that M.P. would have been admitted to Stuyvesant, his first choice school, but for the alleged racially discriminatory expansion of the

Discovery Program eight years ago because more seats would have been available for students admitted solely on the basis of the SHSAT score. (P. MOL at 11).

But Plaintiff's argument is foreclosed by the public record and the documents submitted in support of her motion, all of which establish that Defendants adopted race neutral criteria to provide equal access to economically disadvantaged students of all races and to address the historic underrepresentation of Black and Latino students at SHSs. Indeed, no aspect of the challenged reforms considers race as a factor. The Discovery Program's eligibility criteria—both before and after the 2018 reforms—is based solely on SHSAT score, academic performance and socio-economic status. Moreover, in planning these changes, Defendants were informed by statistical modeling indicating that, under the revised criteria, Asian-American students would receive 51% of total SHS admission offers, a higher percentage of offers than White (25%), Black (6%) and Latino (10%) students combined.¹⁸ Defendants' decision to adopt reforms with this predicted outcome flatly contradicts Plaintiff's claim of intentional race discrimination towards Asian-Americans. Quite the contrary, Defendants adopted reforms intended to benefit talented, economically disadvantaged students of all races consistent with Hecht-Calandra. And Asian-American students have been the principal beneficiaries of the 2018 reforms.

In 2017, prior to the challenged reforms, 42% of Discovery Program invites went to Asian-American students; that number has only *increased* since the 2018 changes. Asian-American students have received the following shares of Discovery Program invitations following implementation of the 2018 reforms:

¹⁸ (Roper Decl. Ex. 4 at ChMc_E_065911–13 (Model based on SHSAT offers + 20% of seats reserved for Discovery with 60% ENI floor)).

- 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.¹⁹

Moreover, the percentage of SHSAT offers to Asian-American students also increased. In 2017, 52% of students who received an offer based on SHSAT score were Asian-American. In 2026, 56% of students who received SHSAT offers were Asian-Americans. (Wright Decl. ¶5).

¹⁹ (Wright. Decl. ¶ 4). Documents produced in the *Christa McAuliffe* action establish that, in 2016, before any Discovery Program changes were implemented, Asian-American students made up only 41% of invitees; 42% in 2017 and 43% in 2018.

i. Facially neutral changes to the Discovery Program were not adopted with discriminatory intent or purpose.

Plaintiff alleges that Defendants' purpose for the race-neutral changes to Discovery Program eligibility was and continues to be "to reduce Asian-American access to the specialized high schools" and "racial balancing." (P. MOL at 1, 19). This allegation is wholly unsupported by Plaintiff's cited evidence, which instead demonstrates that Defendants' motivation was to increase geographic, racial, and socioeconomic diversity at these schools and expand opportunity to disadvantaged students. Records relied upon by Plaintiff in support of her motion establish that Defendants were not motivated by discriminatory animus towards Asian-American students.

In the related *Christa McAuliffe* action, of which Plaintiff was a party, this Court denied plaintiff's motion for a preliminary injunction based on the same arguments she advances here. 364 F. Supp. 3d at 261. This Court determined that the very statements made by former Mayor de Blasio and School Chancellor Carranza now offered by Plaintiff as proof of intent to discriminate, "d[id] not constitute evidence of their intent to discriminate against Asian-Americans." *Id.* at 277. The Court also found that "[t]he only statement that either made that could be construed to concern Asian-Americans specifically was Chancellor Carranza's statement that he does not 'buy into the narrative that any one ethnic group owns admission to these schools.'" *Id.* Despite the Court's holding that that statement did not refer to "Asian American admittees," Plaintiff again argues that it is proof of Defendants' discriminatory animus towards Asian-American students here. (Compl. ¶ 54; P. MOL at 1, 7, 15). Plaintiff offers no basis to change the Court's finding that the statement was "best understood as a rebuke of what [the Chancellor] saw as the idea suggested by *the interviewer*—that minority ethnic groups must compete with each other for their right to specialized school seats." *Christa McAuliffe*, 364 F. Supp. 3d at 278 (emphasis in original). Plaintiff's claim that the "Second Circuit treated [this statement] as notable evidence of racial

focus,” is not supported by the Circuit Court’s decision. (P. MOL at 7). Rather, the cited section of that decision was merely a recitation of changes to the Discovery Program and of statements made by the former mayor and chancellor. (*Id.* (citing *CACAGNY*, 116 F. 4th at 167)). The Court did not hold that those statements proved that Defendants acted with discriminatory intent towards Asian Americans. In fact, the Second Circuit made no determination on intent whatsoever; indeed, that is why it remanded the case back to this Court for discovery on the question of discriminatory intent. *CACAGNY*, 116 F. 4th at 171, 175 & n.7.

Plaintiff also relies upon Defendants’ documents produced in the *Christa McAuliffe* action to show intent to discriminate against Asian-American students. (*See* Roper Decl. Exs. 1–8). But those documents show only that Defendants were aware that the proposed changes could increase SHS admission offers to Black and Latino students from 9% to 16% and could result in an overall reduction of offers to Asian-American students from 52% to 51%. *Justin v. Tingling*, No. 22 Civ. 10370 (NRB), 2026 WL 407860, at *10 (S.D.N.Y. Feb. 13, 2026) (“[I]t is well settled that in order to show discriminatory animus, it is not enough to allege that the statute’s enactors were aware of a potentially disproportionate impact.”); *see also*, *CACAGNY*, 116 F. 4th at 175 & n.7

To the extent that Defendants adopted the challenged policy to improve racial diversity and inclusion by way of race-neutral measures—Defendants utilized a practice that the Supreme Court has consistently found constitutionally permissible. *See, e.g., Tex. Dep’t of Hous. & Cmty Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 545 (2015) (“When setting their larger goals, local housing 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.”); (*Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 789 (2007) (Kennedy, J. concurring in part and concurring in the judgment)).

Defendants’ goal is, under *Feeney*, a wholly insufficient basis from which to infer constitutionally impermissible intent. 442 U.S. at 260. To show discriminatory intent, Plaintiff must show “more than intent as volition or intent as awareness of consequences.” *Id.* at 279. Rather, Plaintiff must prove that the decisionmaker acted “at least in part because of, not merely in spite of, its adverse effects upon an identifiable group.” *Id.* (citation omitted). “An Equal Protection plaintiff alleging purposeful racial discrimination must show at least some specific intent to target a certain racial group and to inflict adverse effects upon that group.” *Coal. for TJ v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 886 (4th Cir. 2023); *see also Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos.*, No. CV 21-10330-WGY, 2021 WL 4489840, at *15 (D. Mass. Oct. 1, 2021) (“While the increase of a zero-sum resource to one group necessitates the reduction of that resource to others, the case law is clear—the concern is action taken because of animus towards a group, not in spite of an action’s necessary effect on a group or groups.” (citing *Feeney*, 442 U.S. at 256, 258)), *aff’d sub nom. Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46 (1st Cir. 2023). As in *Feeney*, nothing in the public record or documents relied upon by Plaintiff in support of this motion shows that the 2018 changes to the Discovery Program were devised to “accomplish the collateral goal” of excluding Asian-American students from SHSs. *Feeney*, 442 U.S. at 279.

Despite Plaintiff’s repeated mischaracterizations,²⁰ Defendants’ internal documents clearly establish that DOE sought to address the underrepresentation of Black and Latino students at SHSs

²⁰ Plaintiff alleges that “two-thirds of the Discovery participants in the 2017-2018 and 2018-19 school years” were Asian-American students. (P. MOL at 4; Compl. ¶ 39). However, this assertion is contradicted by Defendants’ data produced in the related *McAuliffe* case. In 2016, before any Discovery Program changes were implemented, Asian-American students made up only 41% of invitees; 42% in 2017; 43% in 2018; 54% in 2019; 50% in 2020; 53% in 2021; 43% in 2022; 49% in 2023; 47% in 2024; 52% in 2025; and 53% in 2026. (Wright Decl. ¶ 3–4). The data shows offers to Asian-American students increased after the 2018 changes were implemented.

and to achieve greater racial, geographic, socioeconomic, and gender diversity.²¹ To achieve those ends, Defendants adopted race-neutral changes to the Discovery Program that evinced no intent to discriminate against Asian-American students or any racial group.²² (See Wallack Decl. ¶ 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, [we] were trying to increase the ethnic, racial, geographic, and socioeconomic diversity of the student bodies of those high schools”). Defendants responsibly considered the impact that various proposed policies would have on a number of demographics. An awareness of potential minimal racial impacts does not establish an intent to discriminate on the basis of race.

Moreover, to argue that Defendants cannot adopt race-neutral reforms that might alter racial demographics “would turn ‘the previous status quo into an immutable quota’ and risk subjecting any new policy that ‘might impact a public institution’s racial demographics—even if

²¹ Plaintiff often mischaracterizes the emails produced in *McAuliffe* and cited in support of her motion. For example, Plaintiff provides a chart from internal City emails that she alleges “projected that under the chosen policy, the Asian share of Discovery admittees would drop from 64% to 38%” (P. MOL at 9 (citing Roper Decl. Ex 5 at ChMc_E_075252)). To the contrary, the email makes clear that this preliminary chart was a “very rough estimate[] of what new Discovery composition could look like” and “d[id] not account for student interest in the program” or the fact that additional invitations likely would be extended given the expansion of the program.” (Roper Decl. Ex. 5 at ChMc_E_075252).

²² The internal documents cited emphasize that Defendants’ goal was to achieve greater racial, geographic and socio-economic diversity, not to exclude Asian students. (See, e.g., Roper Decl. Ex. 7 at ChMc_E_115049 (proposing “[e]xpand[ing] Discovery program at all 8 specialized schools to 20% of the incoming class over two years and target[ing] students in schools with higher ‘economic need’”); *id.* at Ex. 3 at ChMc_E_114812 (noting that proposed “Option 1” would “[i]ncrease the geographic diversity of SHS offers[,]” “[i]ncrease the number of distinct middle schools sending students to Specialized HS by over 250 schools[,]” and “[b]etter reflect the diversity of New York City” regarding “[r]ace”, “[g]ender”, and “[e]conomic status”); *id.* at Ex. 3 at ChMc_E_114815 (noting that proposed “Option 4” “target[s] high-needs students,” by “adjust[ing] to include [ENI]”).

by wholly neutral means—to a constitutional attack.” *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 58 (1st Cir. 2023) (quoting *Coal. for TJ*, 68 F.4th at 881). Government action does not discriminate on the basis of race simply because it chooses a path that creates less racial disparity. *See id.* (“[E]ven assuming the Coalition’s statistics show non-random demographic changes in the pool of Exam School invitees between 2020–2021 and 2021–2022 as a result of the Plan’s implementation, those changes simply show that as between equally valid, facially neutral selection criteria, the School Committee chose an alternative that created less disparate impact, not more.”).

This understanding of equal protection jurisprudence has been reiterated time and time again. *See Parents Involved in Cmty. Sch.*, 551 U.S. at 788–89 (Kennedy, J., concurring in part and concurring in the judgment) (“In the administration of public schools by the state and local authorities it is permissible to consider the racial makeup of schools and to adopt general policies to encourage a diverse student body, one aspect of which is racial composition. . . . [T]hey are free to devise race-conscious measures to address the problem . . .”). In denying the motion for a preliminary injunction in *Christa McAuliffe*, this Court emphasized that the Second Circuit in *Hayden v. Cnty. of Nassau*, 180 F.3d 42 (2d Cir. 1999), not only “affirmed the use of racial preferences to remedy past racial discrimination,” but also “added that ‘[e]ven in the absence of specific and identified discrimination, nothing in our jurisprudence precludes the use of race-neutral means to improve racial and gender representation.’” *Christa McAuliffe*, 364 F. Supp. 3d at 278 (quoting *Hayden*, 180 F.3d at 50–51).

Plaintiff argues that after *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181 (2023) (“*SFFA*”), “reliance on *Hayden*’s broader framing” is now “foreclose[d].” (P. MOL at 22). But *SFFA* has not changed the meaning of *Hayden*. In *SFFA*, the

Supreme Court upheld its prior precedent that “remediating specific, identified instances of past discrimination that violated the Constitution or a statute” remains a “compelling interest[] that permit[s] resort to race-based government action” *SFFA*, 600 U.S. at 207 (first quoting *Parents Involved in Cmty. Schs.*, 551 U.S. at 720; then *Shaw v. Hunt*, 517 U.S. 899, 909–10 (1996)). And, critically, *SFFA* is distinguishable because it concerned race-based admissions policies, while the Discovery Program reforms challenged here are unequivocally race-neutral. *See id.* at 213. Plaintiff attempts to argue alternatively that “*Hayden* is factually inapposite” because “[h]ere . . . Defendants did not administer a neutral process identically to all applicants.” (P. MOL at 22). But the record establishes that this is simply not true. The Discovery Program and the SHSAT policies apply equally to all students systemwide.

Ultimately, Plaintiff asks this Court, for a second time, to find “that a facially neutral policy seeking to improve racial diversity necessarily carries with it a discriminatory intent.” *Christa McAuliffe*, 364 F. Supp. 3d at 278. But as this Court previously made clear, “[t]hat is not the law.” *Id.*; *see Hayden*, 180 F.3d at 51 (citing *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 509–10 (1989)). “[T]o equate a “desire to eliminate the discriminatory impact” on some disadvantaged groups with “an intent to discriminate against” other groups “could seriously stifle attempts to remedy discrimination.” *Christa McAuliffe*, 364 F. Supp. 3d at 278–79 (quoting *Jana-Rock Constr., Inc. v. N.Y. State Dep’t of Econ. Dev.*, 438 F.3d 195, 211 (2d Cir. 2006)) (cleaned up).

Simply put, the mere fact that Defendants aimed to improve racial, ethnic, geographic, and socioeconomic diversity, and were aware of possible effects on identifiable groups, is not enough to show that Defendants intended to discriminate against Asian-American students. Discriminatory intent “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.” *CACAGNY*, 116 F.4th at 175 n.7 (cleaned up). Because the Discovery Program is facially-neutral and Plaintiff cannot show that Defendants intended to discriminate against Asian-American students, the 2018 reforms are subject to rational basis review and not strict scrutiny.

(b) The Discovery Program Reforms Satisfy Rational Basis Review Because They Are Rationally Related to the Legitimate Government Interest of Fostering Diversity in Secondary Schools and Expanding Opportunity to Disadvantaged Students.

Absent an explicit or inferable racially discriminatory purpose by Defendants, the revised criteria for the Discovery Program are subject to rational basis review. *See Feeney*, 442 U.S. at 271–72. “Rational basis review requires the City to have chosen a means for addressing a legitimate goal that is rationally related to achieving that goal.” *Kane v. De Blasio*, 19 F.4th 152, 166 (2d Cir. 2021). “‘This form of review is highly deferential.’” *DoorDash, Inc. v. City of New York*, 692 F. Supp. 3d 268, 300 (S.D.N.Y. 2023) (quoting *Winston v. City of Syracuse*, 887 F.3d 553, 560 (2d Cir. 2018)). Courts “are required to uphold the classification ‘if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.’” *Sensational Smiles, LLC v. Mullen*, 793 F.3d 281, 284 (2d Cir. 2015) (quoting *Heller v. Doe by Doe*, 509 U.S. 312, 320 (1993)). “Plaintiffs therefore carry a ‘heavy burden to negate every conceivable basis which might support’ the policy.” *Cnty. of Rockland v. Triborough Bridge & Tunnel Auth.*, 791 F. Supp.3d 433, 450 (S.D.N.Y. 2025) (quoting *Winston*, 887 F.3d at 560).

Plaintiff offers no evidence that the 2018 reforms to the Discovery Program that provide more opportunities to academically talented, economically disadvantaged students from underrepresented middle schools without regard to race, “were in any way unreasonable or invalid selection criteria for public-school admissions programs” pursuant to Hecht-Calandra or the Equal Protection Clause. *See, Bos. Parent Coal. for Acad. Excellence Corp.*, 89 F.4th at 58. To the contrary, Defendants exercised their discretion to further the government’s legitimate interest in increasing socioeconomic, geographic, racial, and ethnic diversity across SHS student bodies.

For example, in 2017, approximately 70% of all DOE students were eligible to receive free lunch and therefore potentially eligible for Discovery. (Wallack Decl. ¶ 16). Attempting to focus on those most in need, Defendants reasonably concluded 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.” (*Id.* ¶ 24). Accordingly, Defendants incorporated middle school ENI into the criteria for determining disadvantaged status, rather than individual economic status alone. Expanding opportunity for the most disadvantaged students of all races and fostering diversity at SHSs are legitimate government interests.

(c) Plaintiff Cannot Demonstrate a Likelihood of Success on the Merits under Title VI because Plaintiff Cannot Establish that Defendants Intentionally Discriminated on the Basis of Race.

“Title VI provides that ‘[n]o 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.’” *Weiss v. City Univ. of New York*, No. 17 Civ. 3557 (VSB) (VF), 2025 WL 1735429, at *5 (S.D.N.Y. June 23, 2025) (quoting 42 U.S.C. § 2000d). “The Supreme Court has held that Title VI creates a private right of action to sue for intentional discrimination.” *Bibliotechnical Athenaeum v. Am. Univ. of Beirut*, 527 F. Supp. 3d 625, 632 (S.D.N.Y. 2021) (quoting *Alexander v. Sandoval*, 532 U.S. 275, 279 (2001)), *aff’d*, No. 21-1642, 2022 WL 710896 (2d Cir. Mar. 10, 2022). “In order to establish a Title VI violation, a plaintiff must show, through specific factual allegations, that ‘(1) the defendant discriminated on a prohibited basis; (2) the discrimination was intentional; and (3) the discrimination was a substantial or motivating factor for the defendant’s action.’” *Id.* (quoting *HB v. Monroe Woodbury Cent. School Dist.*, 2012 WL 4477552, at *14 (S.D.N.Y. Sept. 27, 2012)). “[T]he reach of Title VI’s protection extends no further than the Fourteenth Amendment,” but it

extends just as far.” *Davis v. City of New York*, 959 F. Supp. 2d 324, 366 (S.D.N.Y. 2013) (quoting *United States v. Fordice*, 505 U.S. 717, 732 n.27 (1992)).

Both Plaintiff’s equal protection and Title VI claim require a showing of intentional discrimination on the basis of race. Both claims are based on the same underlying events, and both claims fail for the same reason: Plaintiff cannot show likelihood of success on the merits and cannot show that Defendants intentionally discriminated against Asian-American students on the basis of race.

3. The balance of equities and the public’s interest weigh against granting the preliminary injunction.

“When the government is a party to the suit, [the Court’s] inquiries into the public interest and the balance of the equities merge.” *We The Patriots USA, Inc. v. Hochul*, 17 F.4th 266, 295 (2d Cir.), *opinion clarified*, 17 F.4th 368 (2d Cir. 2021) (citing *New York v. U.S. Dep’t of Homeland Sec.*, 969 F.3d 42, 58–59 (2d Cir. 2020)). Courts “must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief[.]” *Students for Fair Admissions*, 709 F. Supp. 3d at 137–38 (quoting *Yang v. Kosinski*, 960 F.3d 119 (2d Cir. 2020)). ““To establish that the balance of hardships tips in their favor, [Plaintiff] must demonstrate that the harm [she] would suffer absent the relief sought is substantially greater than the harm the defendants would suffer if the injunction were granted.”” *New York v. U.S. Dep’t of Educ.*, 477 F. Supp. 3d 279, 305 (S.D.N.Y. 2020) (quoting *Greylock Glob. Opportunity Master Fund Ltd. v. Province of Mendoza*, No. 04 Civ. 7643, 2004 WL 2290900, at *4 (S.D.N.Y. Oct. 12, 2004)). In addition to balancing the equities, courts must “pay particular regard for the public consequences in employing the extraordinary remedy of injunction.” *Nat’l Ass’n for Gun Rts.*, 153 F.4th at 248–49 (quoting *Winter*, 555 U.S. at 24)).

The balance of equities weighs in favor of Defendants and against granting injunctive relief. Plaintiff argues that “[a]dmitting one additional student will not disrupt the operation of the school or the DOE,” and thus, “any suggested harm to Defendants . . . is minimal.” (P. MOL at 25). But that is not so. Ensuring a fair and transparent process to protect New York City’s parents and students, as well as complying with the State law that controls the admissions process are unquestionably strong public interests. *Nat’l Ass’n for Gun Rts.*, 153 F.4th at 249 (“In balancing the equities, we first acknowledge the harm the government Defendants would suffer if ‘enjoined . . . from effectuating statutes enacted by representatives of its people.’” (quoting *CASA*, 606 U.S. at 835)).

As noted, Plaintiff’s request that the Court so order M.P.’s admission to Stuyvesant ahead of students with higher SHSAT scores would be inconsistent with State law, be fundamentally unfair to other students abiding by determinations made based on their SHSAT scores, open the floodgates to litigation from other similarly situated families, and result in unmanageable chaos. The SHSs are highly coveted and Defendants’ resources are finite; the DOE relies on its orderly and fair process to ensure admissions runs smoothly. To order Defendants to override this admissions process that they are obliged to follow by State law would greatly disrupt the status quo, causing a ripple effect systemwide to the detriment of New York City students. In contrast, Plaintiff cannot show that sufficient remedies would be unavailable to her if the Court ultimately decides in her favor, particularly where M.P. has a seat at Brooklyn Tech and indicates that he plans to take the SHSAT as a ninth-grader for admission to Stuyvesant in tenth grade. The balance of equities strongly weighs in favor of Defendants.

C. The remedy sought is not suited to the scope and nature of the alleged constitutional violation and should not be granted.

Finally, granting M.P. admission to Stuyvesant is not an appropriate remedy. “As both the Supreme Court and [the Second Circuit] have recognized, ‘the nature of the . . . remedy’ available to claimants ‘is to be determined by the nature and scope of the constitutional violation’ that they have sustained.” *Care One, LLC*, 166 F.4th at 348 (quoting *United States v. City of Yonkers*, 197 F.3d 41, 55 (2d Cir. 1999)); see *Milliken v. Bradley*, 433 U.S. 267, 280 (1977) (noting that “equitable remedies” are “determined by the nature and scope of the constitutional violation.”)). “That reasoning applies whether the relief sought is final or preliminary.” *Care One, LLC*, 166 F.4th at 348.

Plaintiff alleges that M.P.’s constitutional rights were violated because he “lost the opportunity to compete for all available seats” because of an allegedly “racially discriminatory policy” intended to “reduce the number of Asian-American students” at SHSs. (Compl. ¶ 4–3). But the appropriate remedy for the alleged constitutional and statutory violation is not admitting M.P. to Stuyvesant in violation of State law—it would be to allow him to compete in a modified application process if the Court finds that the Defendants’ changes to the Discovery Program were tainted by discriminatory animus. See *Tyson-Phipps v. Rubio*, No. 23 Civ. 2316 (LAK) (GWG), 2026 WL 859636, at *4 (S.D.N.Y. Mar. 30, 2026) (“[I]f a preliminary injunction would not remedy the alleged irreparable harm, then injunctive relief would be inappropriate.” (quoting *Sweigert v. Goodman*, 2021 WL 2678621, at *5 n.8 (S.D.N.Y. June 30, 2021)), *R&R adopted*, 2026 WL 1082560 (S.D.N.Y. Apr. 21, 2026). A preliminary injunction is not a shortcut to the merits and should not be used to avoid statutory prerequisites to admission at Stuyvesant. See *Nat’l Ass’n for Gun Rts.*, 153 F.4th at 247 (quoting *Del. State Sportsmen’s Ass’n, Inc. v. Del. Dep’t of Safety & Homeland Sec.*, 108 F.4th 194, 197 (3d Cir. 2024)).

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's motion for a preliminary injunction and grant such other and further relief as to the Court may seem just and proper.

Dated: New York, New York
June 17, 2026

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