

**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.,

Plaintiffs,

Case No. 1:26-cv-03355

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,

and

TEENS TAKE CHARGE; DESIS RISING UP AND
MOVING; COALITION FOR ASIAN AMERICAN
CHILDREN AND FAMILIES; A.C., a minor by and
through her mother and next friend, Veronica
Carrasquillo; A.Z., a minor by and through her mother
and next friend, Wang Jin Hua; K.D., a minor by and
through her mother and next friend, Halimatou Diallo;
and G.R., a minor by and through her mother and next
friend, Jennifer Velez.

Proposed Defendant-Intervenors.

**PROPOSED MEMORANDUM OF LAW IN SUPPORT OF
PROPOSED MOTION TO INTERVENE AS DEFENDANTS**

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PRELIMINARY STATEMENT

Proposed Defendant-Intervenors—Teens Take Charge (“TTC”), Coalition for Asian American Children and Families (“CACF”), Desis Rising Up & Moving (“DRUM”), Halimatou Diallo on behalf of her minor child K.D., Veronica Carrasquillo on behalf of her minor child A.C., Wang Jin Hua on behalf of her minor child A.Z., and Jennifer Velez on behalf of her minor child G.R—file this Memorandum of Law in support of their Motion to Intervene.

The New York City Public Schools (“DOE”) operates eight selective public high schools, known as the Specialized High Schools (“SHSs”).¹ *See* N.Y. Educ. Law § 2590-g(12)(b) (McKinney 1997). Since 1971, a single factor has been used to determine access to the SHSs—a student’s rank-order score on the Specialized High School Admissions Test (“SHSAT”). *Id.* But research has shown that the SHSAT is a poor predictor of academic readiness and potential to succeed.² In fact, the SHSAT creates a barrier to admission for many qualified Black, Latinx and low-income students.

Qualified Black and Latinx students who take the SHSAT are far less likely to be admitted than peers from other racial groups. During the 2024-2025 school year, Black and Latinx students

¹ These eight schools are Stuyvesant High School (“Stuyvesant”), The Bronx High School of Science (“Bronx Science”), Brooklyn Technical High School (“Brooklyn Tech”), Staten Island Technical High School, Queens High School for the Sciences at York College, High School for Mathematics, Science, and Engineering at City College, High School for American Studies at Lehman College, and Brooklyn Latin School. A ninth high school, Fiorello H. LaGuardia High School of Music & Art and Performing Arts, is also a Specialized High School; however, it does not participate in the Discovery Program since its admission is not based on the SHSAT. Thus, it is not part of this dispute. *See Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253 (S.D.N.Y. 2019), *aff’d*, 788 F. App’x 85 (2d Cir. 2019).

² Jonathan Taylor, *Policy Implications of a Predictive Validity Study of the Specialized High School Admissions Test at Three Elite New York City High Schools* (2015) (Ph.D. dissertation, Graduate Center, CUNY) (ProQuest) (evaluating the SHSAT’s predictive value by comparing test performance to subsequent academic achievement); Jonathan Taylor, *Fairness to Gifted Girls: Admissions to New York City’s Elite Public High Schools*, 25 J. Women & Minorities Sci. & Eng’g 1, 88–89 (2019).

made up nearly 62% of the over 900,000 students in NYCPS, while Asian³ and white students made up nearly 18% and 16% respectively.⁴ Black and Latinx students were nearly 45% of about 26,000 eighth-graders who took the Fall 2024 SHSAT but were less than 10% of the 4,023 eighth-graders who received admissions offers to SHSs for the 2025-2026 academic year.⁵ Of these admittees, 760 students were approved to participate in the Discovery Program for the 2025-2026 school year, including 210 Black and Latinx students and 560 white and Asian American students. *Id.* For the 2025-2026 academic year, only 8 Black students and 27 Latinx students were admitted to Stuyvesant without participation in the Discovery Program.⁶ In addition to racial diversity, these schools lack geographic diversity. While most public middle schools in New York City send no students to the SHSs, 55% of all offers for the 2025-2026 school year went to students from 54 of 676 middle schools, none of which are in the Bronx or Staten Island.⁷

In apparent recognition of the unjustifiable exclusion of qualified Black, Latinx, and other underserved students from admission to the SHSs, the DOE took modest steps to equalize access. On June 3, 2018, then-Mayor de Blasio, then-Chancellor Carranza, and the DOE announced two

³ Currently, the DOE does not disaggregate the “Asian” student race category despite the numerous ethnicities and nationalities that make up this group. Not all Asian American student subgroups attend the SHSs at high rates. Local Law 166 (2025), passed with support from Proposed Intervenor CACF, will mandate that all City agencies include additional race and ethnicity options based on U.S. Census data. N.Y.C. Local Law No. 106 Int. No. 1134-A (2025).

⁴ *NYCPS Data at a Glance*, N.Y.C. Pub. Schs., <https://www.schools.nyc.gov/about-us/reports/nycps-data-at-a-glance> (last visited June 23, 2026).

⁵ *Fall 2025 New York City Public Schools Admissions Outcomes*, N.Y.C. Pub. Schs., <https://infohub.nyced.org/docs/default-source/default-document-library/osc/fall-2025-new-york-city-public-schools-admissions-outcomes.pdf> (last visited June 23, 2026).

⁶ Troy Closson, *Elite New York High School Admits 8 Black Students in a Class of 781*, N.Y. Times (July 31, 2025), <https://www.nytimes.com/2025/07/31/nyregion/specialized-high-schools-black-students-stuyvesant.html>.

⁷ *Specialized High Schools Admissions Test Results 2025*, NYC Open Data, https://data.cityofnewyork.us/Education/Specialized-High-Schools-Admissions-Tests-Results/k8ah-28f4/about_data (last updated Dec. 4, 2025).

reforms to the Discovery Program. First, the DOE announced that each SHS would be required to use the program to fill at least 20% of its seats. Second, the definition of the term “disadvantaged” was adjusted to more equitably determine student eligibility for the program by focusing on attendance at high-poverty schools (collectively, “the Policy”). *See* Pls.’ Mem. of L. in Supp. of Mot. for Prelim. Inj. at 5, Dkt. No. 15.

In 2018, organizations and individuals challenged this race-neutral, evenly applied Policy alleging that it constituted intentional discrimination against Asian American students. *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253 (S.D.N.Y. 2019), *aff’d*, 788 F. App’x 85 (2d Cir. 2019) [hereinafter *McAuliffe* PI Order]. Several organizations, including three of the organizations seeking intervention here, TTC, CACF, and DRUM, as well as several individuals⁸ who would have been harmed by changes to the Policy intervened. This lawsuit is ongoing.

Now, eight years later, one of the original plaintiffs from *McAuliffe* who was dismissed for lack of standing, Ms. Chen, brings the instant lawsuit on behalf of her three children. Proposed Intervenor, who represent the communities who stand to lose the most if the Discovery Program is invalidated, seek to intervene in this lawsuit to defend the constitutionality of the Policy.

FACTUAL BACKGROUND

The 1971 Hecht-Calandra Act (“Act”) provides that the sole determinant of admission to the SHSs is a student’s rank-order score on the SHSAT. *See* N.Y. Educ. Law § 2590-g(12)(b). The Act permits the use of a “[D]iscovery [P]rogram to give disadvantaged students of demonstrated high potential an opportunity” to earn admission into one of the SHSs. *Id.* § 2590-g(12)(d). The

⁸ The individual defendant-intervenors in *McAuliffe* are not amongst the Proposed Intervenor, who represent the communities who stand to lose the most if the Discovery Program is invalidated, seek to intervene in this lawsuit to defend the constitutionality of the Policy.

Discovery Program is open to students who (1) take the SHSAT but score just below the 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 high school. *Id.*

In 2012, a multiracial, multiethnic coalition of ten community organizations⁹ filed a complaint with the U.S. Department of Education’s Office for Civil Rights (“OCR”) challenging the single-test admissions process for the SHSs as ineffective and racially discriminatory.¹⁰ In addition to challenging the method of admissions mandated by state law, the complainants raised the DOE’s failure to take measures that are permissible under the same state law that would help break down unjust barriers to admission and ensure equality of access for students of all races and backgrounds. Indeed, until 2019, the Discovery Program was not utilized at all at Stuyvesant and was underutilized at the remaining SHSs.¹¹ In addition to other reforms to the single-test admissions policy, advocates called for full utilization of the Discovery Program to increase fairness in admissions at the SHSs.

On June 3, 2018, then-Mayor de Blasio and then-Chancellor Carranza announced the reforms to the Discovery Program that are now being challenged in this litigation. First, the definition of “disadvantaged” was revised to focus on attendance at high-poverty schools, and

⁹ Those organizations are the NYC Coalition for Educational Justice, La Fuente, the Alliance for Quality Education, New York Communities for Change, Black New Yorkers for Educational Excellence, the Community Service Society of New York, the Garifuna Coalition USA, Inc., Make the Road New York, the Brooklyn Movement Center, UPROSE, and DRUM-Desis Rising Up and Moving.

¹⁰ The racial disparities at the SHSs at the time the OCR complaint was filed were similar to the current ones. For example, of the 967 eighth-grade students admitted to Stuyvesant for the 2012-13 school year, only nineteen (2%) of the students were Black and thirty-two (3%) were Latinx. *See* Letter from NAACP Legal Def. & Educ. Fund, Inc. to OCR (Sept. 27, 2012), <https://www.naacpldf.org/wp-content/uploads/Specialized-High-Schools-Complaint.pdf>.

¹¹ *See* Compl. ¶ 36, Dkt. No. 1.

second, the number of seats available under the Discovery Program was increased to 20 percent of admissions offers. *See* Compl. ¶¶ 40–41, Dkt. No. 1.

Prior to 2018, the DOE considered a student disadvantaged if one of the following five factors was satisfied: (1) eligibility for free lunch; (2) eligibility for reduced-price lunch and attendance at a Title I school; (3) receipt of New York City public assistance; (4) status as a foster child, ward of the state, or residency in temporary housing; or (5) residency in the United States for under four years in a home with a primary language other than English. *McAuliffe* PI Order, 364 F. Supp. 3d at 267. After the new Policy was adopted, in addition to meeting substantially the same requirements, a student also needed to attend a high-poverty middle school according to the DOE’s Economic Need Index (“ENI”)—a school with an ENI of 60% or above—to be eligible for the program.¹² This measurement is particularly apt because educational research has shown that educational achievement gaps can be explained, at least in part, by the degree to which students attend schools with other low-income students. High-poverty schools educate greater percentages of students who need greater support and services and yet are persistently underfunded. In addition, high poverty schools tend to be racially segregated.¹³

In December 2018, Ms. Chen, on behalf of her child M.P., along with the Christa McAuliffe Intermediate School Parent Teacher Organization, the Asian American Coalition for

¹² 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 at 267–268.

¹³ *See, e.g.*, Sean F. Reardon et al., *Is Separate Still Unequal? New Evidence on School Segregation* (Stanford Ctr. for Educ. Policy Analysis, Working Paper No. 19-06, 2022); Motoko Rich et al., *Money, Race and Success: How Your School District Compares*, N.Y. Times (Apr. 29, 2016), <https://www.nytimes.com/interactive/2016/04/29/upshot/money-race-and-success-how-your-school-district-compares.html>.

Education, the Chinese American Citizens Alliance of Greater New York (“CACAGNY”), and two additional individuals, filed a lawsuit under 42 U.S.C. § 1983, alleging that the revisions to the Discovery Program violated the Equal Protection Clause. Compl. ¶¶ 58–69, *Christa McAuliffe Intermediate Sch. PTO, Inc. v. De Blasio*, 627 F. Supp. 3d 253, 256 (S.D.N.Y. 2022), *vacated and remanded sub nom. Chinese Am. Citizens All. of Greater New York v. Adams*, 116 F.4th 161 (2d Cir. 2024), Dkt. No. 1. The *McAuliffe* plaintiffs also filed a motion for a preliminary injunction which was denied by this Court on February 25, 2019. *McAuliffe* PI Order, 364 F. Supp. 3d at 262. As part of this Court’s denial of the plaintiffs’ request for a preliminary injunction, M.P. was dismissed for lack of standing because, at the time, he was years away from applying to the SHSs, making his alleged injury neither actual nor imminent. *See* Compl. ¶ 67 (citing *McAuliffe*). Now, Ms. Chen brings this almost identical case on behalf of her three children, M.P., Ma.P., and P.P. (collectively, “Plaintiffs”), arguing that the 2018 changes to the Discovery Program were adopted with the discriminatory purpose of disadvantaging Asian American students and the Policy is thus unconstitutional. Through this lawsuit, Plaintiffs seek to “prevent Defendants from continuing to enforce the Discovery changes.” Compl. ¶ 84. Proposed Intervenors have multiple significant interests in the outcome of this litigation and intervention is necessary to protect those interests. *See infra* § I.C.

PROPOSED DEFENDANT-INTERVENORS

Proposed Intervenors are: (1) Teens Take Charge, a student-led coalition of high school students, including Black and Latinx students, from across New York City that advocates for educational equity through oral and written testimony, discussion with policy makers, and interactive events, *see* Jordan Decl. (attached as Ex. A); (2) Desis Rising Up and Moving, a membership-led organization of South Asian and Indo-Caribbean low-wage immigrant workers and youth, *see* Ahmed Decl. (attached as Ex. B); (3) the nation’s only pan-Asian policy advocacy

member organization for children and families, *see* Gundanna Decl. (attached as Ex. C);¹⁴ (4) Veronica Carrasquillo, on behalf of her minor child A.C., a Latina student in the 10th grade at Brooklyn Latin, *see* A.C. Decl. (attached as Ex. D); (5) Wang Jin Hua, on behalf of her minor child A.Z., a Chinese American sophomore at Brooklyn Tech, *see* A.Z. Decl. (attached as Ex. E); (6) Halimatou Diallo, on behalf of her minor child K.D., a Senegalese American junior at Bronx Science, *see* K.D. Decl. (attached as Ex. F); and (7) Jennifer Velez, on behalf of her minor child G.R., a Hispanic sophomore at Bronx Science, *see* G.R. Decl. (attached as Ex. G).

TTC is a student-led group that advocates for educational equity, including fairer admission policies that lead to diversity and equity for all New York City high schools. Jordan Decl. ¶¶ 3, 10. TTC believes that all students benefit from racially diverse classrooms because the current environment at the SHSs is isolating and unwelcoming to the Black and Latinx students who are admitted, and because the system breeds a culture of division and elitism that harms all New York City students. Jordan Decl. ¶ 12.

DRUM is a nonprofit organization with individual members focused on empowering low income, South Asian and Indo-Caribbean immigrant workers, youth, and families in New York City through civil rights and immigrants' rights advocacy. Ahmed Decl. ¶¶ 3–5. DRUM's programs include YouthPower!, a youth-led program that lifts up, *inter alia*, low-income youth in New York City's public schools. *Id.* ¶¶ 6–7. As part of its education work, DRUM and YouthPower! have advocated for equitable access to New York City's SHSs for many years, particularly for students of working class, immigrant, and South Asian and Indo-Caribbean backgrounds, who are underrepresented in the SHSs and face significant barriers to access because of their ethnic backgrounds, and their economic and immigration status. *Id.* ¶¶ 7–8. DRUM has

¹⁴ TTC, DRUM, and CACF are collectively the "Organizational Intervenors."

middle school members who are interested in applying to the SHSs with the current Discovery Program in the near future.

CACF is a nonprofit membership organization that advocates for equity and opportunity for marginalized Asian American Pacific Islander (“AAPI”) children and families. Gundanna Decl. ¶ 3. CACF’s membership includes over ninety-seven dues-paying member organizations representing the AAPI community, including both New York City public middle school and high school students. CACF and its member organizations work with and stand in support of other marginalized communities, including those historically under-identified for admission to the SHSs, Black and Latinx students. CACF believes reducing racial isolation and increasing equity at the SHSs benefits all students, including AAPI individuals—and that environments lacking diversity can harm all students, including by fostering implicit biases. *Id.* ¶¶ 6–8. CACF staff and the youth CACF serves frequently testify on equity in education at the New York City Council. CACF has also published multiple reports on equity and diversity in education and the impact on and perspective of AAPI individuals, including *A Diverse City Needs Integrated Schools* (2022). *Id.* ¶ 10. Some of the members of CACF’s youth engagement program, the Asian American Student Advocacy Project, currently attend Specialized High Schools or participated in the Specialized High School admissions process. Several of CACF’s member organizations have members who are middle schoolers and/or serve middle schoolers who are interested in applying for the SHSs in the near future and will benefit from the Discovery Program. *Id.* ¶ 12.

A.C. is a Latina 10th grade student at Brooklyn Latin. A.C. Decl. ¶ 3. While Brooklyn Latin is “less diverse than [her] middle school,” the “diversity at the school is a big part of why” she likes the school so much. *Id.* ¶ 16. She is planning to join the Latino Association next year and

currently serves as a peer tutor. She believes that “[i]f the school wasn’t as diverse as it is now, [] it wouldn’t have the same community feeling.” *Id.* ¶ 18.

A.Z. is a Chinese American student at Brooklyn Tech in the 10th grade. A.Z. Decl. ¶ 3. She grew up in an East Asian community in Sunset Park, Brooklyn and attended elementary and middle school in her neighborhood. *Id.* ¶¶ 4–6. When she started at Brooklyn Tech, it was the most racially and socioeconomically diverse school she had ever attended. Despite this, “it is clear that Black and Latino students are underrepresented.” *Id.* ¶ 16. She believes that if her school “would be less diverse, it would be a lot more constrained and not as bright and welcoming.” *Id.* ¶ 25.

K.D. is a Senegalese American junior at Bronx Science who participated in the Discovery Program. K.D. Decl. ¶ 3. She grew up in the Bronx and speaks Fulani and French at home. *Id.* ¶¶ 4–5. She went to J.H.S. 127 for middle school, which has a Gifted and Talented Program and an ENI of 82.8%. *Id.* ¶ 8. She took an SHSAT prep program at her middle school that was specifically for the students in the Gifted and Talented Program. K.D. did not score high enough to be admitted outright to Bronx Science but found out she was eligible for the Discovery Program. *Id.* ¶ 11. She is performing very well academically but “the lack of diversity is horrible and takes a toll.” *Id.* ¶ 18. She is usually the only Black person in her classes, and she is “made to feel like [she is] representing all Black people” so that the other students “grow up knowing that there are smart Black people out there in the world.” *Id.* ¶ 19. There is a lot of racism at the school and people use racial slurs including the “n word.” She believes that the students who would be most impacted if the Discovery Program did not exist would be low-income students and it “would widen the gap between low-income students and high-income students even more.” *Id.* ¶ 25.

G.R. is a Hispanic sophomore student at Bronx Science. G.R. Decl. ¶ 3. G.R. grew up in the Bronx and participated in the Discovery Program. *Id.* ¶ 12. G.R. believes if the Discovery

Program was invalidated, she would lose the small community she has at Bronx Science and that it would negatively impact the kinds of academic opportunities students like herself would have access to. *Id.* ¶ 21. She believes she is given significantly more opportunities to prepare for college because she attends a SHS and her brother, who attended Bronx Science and is now in college, similarly benefited from participating in the Discovery Program. *Id.* ¶ 19.

ARGUMENT

I. Proposed Intervenors Should Be Granted Intervention as of Right Pursuant to Federal Rule of Civil Procedure 24(a).

At the outset, Proposed Intervenors should be granted intervention here for many of the same reasons the Court allowed intervenors in *Christa McAuliffe Intermediate School PTO, Inc. v. de Blasio*, No. 18-CV-11657 (ER), 2020 WL 1432213, at *4 (S.D.N.Y. Mar. 24, 2020) [hereinafter *McAuliffe* Intervention Order]. Not only are the claims almost identical, but three of the instant Proposed Intervenors, TTC, DRUM, and CACF, are already intervenors in defense of the same Policy in *McAuliffe*. Additionally, counsel for Proposed Intervenors here represent the *McAuliffe* intervenors as well. This court has held that where a proposed intervenor has already intervened in similar litigation, that fact counsels in favor of granting permissive intervention in the new case. *See 335-7 LLC v. City of New York*, No. 20 CIV. 1053 (ER), 2020 WL 3100085, at *3 (S.D.N.Y. June 11, 2020) (granting permissive intervention because, among other reasons, the proposed intervenors “are already providing such assistance in” two similar actions).

Moreover, Proposed Intervenors satisfy all requirements for intervention as of right. Federal Rule of Civil Procedure 24 requires that a party be granted intervention as of right in ongoing litigation if the party “claims an interest relating to the . . . subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant’s ability to protect its interest, unless existing parties adequately represent that interest.” Fed. R. Civ. P.

24(a)(2). To determine whether a party is entitled to intervene as of right under Rule 24(a)(2), courts in the Second Circuit consider four factors and “must permit” a party to intervene if the movant has “(1) timely file[d] an application, (2) show[ed] an interest in the action, (3) demonstrate[d] that the interest may be impaired by the disposition of the action, and (4) showed that the interest is not protected adequately by the parties to the action.” *Brennan v. N.Y.C. Bd. of Educ.*, 260 F.3d 123, 128–29 (2d Cir. 2001) (quotation marks and internal citation omitted); *see also Sherman v. Town of Chester*, 339 F. Supp. 3d 346, 358 (S.D.N.Y. 2018).

A. Proposed Intervenors’ Motion Is Timely.

First, Proposed Intervenors’ motion is timely. When considering whether intervention is timely, Courts in the Second Circuit “have not imposed a hard and fast rule,” *Dow Jones & Co. v. United States Department of Justice*, 161 F.R.D. 247, 251 (S.D.N.Y. 1995), but instead consider the specific circumstances of that case. Such circumstances include: “(a) the length of time the applicant knew or should have known of its interest before making the motion; (b) prejudice to existing parties resulting from the applicant’s delay; (c) prejudice to the applicant if the motion is denied; and (d) the presence of unusual circumstances militating for or against a finding of timeliness.” *Floyd v. City of New York*, 770 F.3d 1051, 1058 (2d Cir. 2014) (quoting *MasterCard Int’l Inc. v. Visa Int’l Serv. Ass’n*, 471 F.3d 377, 390 (2d Cir. 2006)).

Here, all four timeliness factors counsel in favor of intervention as of right. This case is in its early stages. Plaintiffs filed their complaint on April 23, 2026, and only one week has passed since Defendants filed their answer and opposition to Plaintiffs’ motion for preliminary injunction. Briefing has not yet concluded on Plaintiffs’ motion for preliminary injunction, a hearing has not yet been scheduled, and discovery has not yet begun. Given the early stage of this litigation, this motion is timely. In fact, intervention has been granted in this Court in much later stages of a case. *See, e.g., Sherman*, 339 F. Supp. 3d at 359 (noting that the Second Circuit recognized that

intervention was timely where “the parties had not even begun discovery” (citing *Laroe Ests., Inc. v. Town of Chester*, 828 F.3d 60, 67 (2d Cir. 2016))); *Bldg. & Realty Inst. of Westchester & Putnam Cntys., Inc. v. New York*, No. 19-CV-11285, 2020 WL 5658703, at *7 (S.D.N.Y. Sep. 23, 2020) (finding motion to intervene timely when “three months elapsed” before motion filed and collecting cases in which courts have recognized motions to intervene as timely).

Moreover, because the case is in its earliest stages and Proposed Intervenors do not seek a delay of the proceedings, intervention will not prejudice the existing parties. *CIFI Latam, S.A. v. Tauch*, No. 19-CV-05607, 2020 WL 1164687, at *2 (S.D.N.Y. Mar. 11, 2020) (internal citations omitted). Proposed Intervenors plan to abide by any forthcoming scheduling orders issued in this matter, as intervenors have in *McAuliffe*. *See id.* (finding no prejudice where intervention would not “significantly affect the case’s manageability”). Further, even though Defendants filed an answer only, Proposed Intervenors’ decision to file a motion to dismiss has no bearing on the timeliness of their motion to intervene. The parties will not experience prejudice if the Court were to grant Proposed Intervenors’ intervention and permit briefing on the accompanying motion to dismiss. *See, e.g., Bldg. & Realty Inst. of Westchester & Putnam Cntys.,* , 2020 WL 5658703, at *7 (finding that, because the action was in its infancy, no prejudicial delay would result from allowing intervention, even where intervenors raised a myriad of additional issues that required further discovery and motion practice). Here, discovery has not yet begun, and no substantive briefing has been completed. Additionally, Proposed Intervenors would consent to the parties starting discovery while their motion to dismiss is pending.

Conversely, Proposed Intervenors will be prejudiced if intervention is not granted. Full participation in this litigation is the only avenue by which Proposed Intervenors may defend their interests.

B. Proposed Intervenors Have Substantial Interests that May Be Impaired by the Disposition of the Litigation.

Proposed Intervenors have substantial and concrete interests in the preservation of the Policy that will be impaired if the Discovery Program is invalidated. In *McAuliffe*, the proposed intervenors raised two interests in the litigation: “an interest in increased access to educational opportunity” and an interest “in preserving any amount of increased racial diversity and decreased racial isolation” that the Policy would bring to the SHSs. *McAuliffe* Intervention Order, 2020 WL 1432213, at *4. This Court agreed and held that “these interests are ‘direct, substantial, and legally protectable’” and therefore the first requirement for intervention as of right was met. *Id.* Proposed Intervenors have multiple categories of significant and protectable interests that are identical to those of intervenors in *McAuliffe* and warrant intervention.

First, CACF has multiple member organizations that have middle school members and/or serve middle schoolers who are soon applying to the SHSs and have an interest in doing so through a fairer process that maintains the challenged Policy. DRUM similarly has middle school members and members who are parents of middle schoolers who seek to apply to the SHSs and would benefit from the Discovery Program. These students also have an interest in attending SHSs that benefit from the kind of socioeconomic, geographic, and racial diversity the Policy was designed to increase.

Further, the Organizational Intervenors advocate for educational equity for New York City youth and thus have a concrete interest for purposes of intervention in defending an existing educational policy that tangibly and directly affects them, which this Court found sufficient under Rule 24(a) in *McAuliffe*. *McAuliffe* Intervention Order, 2020 WL 1432213, at *4 (granting intervention where proposed intervenors’ “interests in educational equity and school diversity would be impacted”). Other courts have repeatedly found similar interests sufficient under Rule

24(a)(2). *See, e.g., Grutter v. Bollinger*, 188 F.3d 394, 398 (6th Cir. 1999) (proposed intervenors had “a substantial legal interest in educational opportunity, which requires preserving access to the University for African-American and Latino/a students and preventing a decline in the enrollment of African-American and Latino/a students”); *cf. Podberesky v. Kirwan*, 38 F.3d 147 (4th Cir. 1994) (discussing students allowed to intervene to defend scholarship program for African Americans at University of Maryland); *Students for Fair Admissions, Inc. v. Univ. of Tex. at Aus.*, 338 F.R.D. 364, 370 (W.D. Tex. 2021) (granted intervention as of right to “students intending to apply” and related organizations who were “beneficiaries of” a challenged admissions policy).

Second, all Proposed Intervenors have an interest in preserving any amount of increased racial diversity and decreased racial isolation that the Policy brings to the SHSs, and in continuing to advocate for the DOE to take further race-neutral measures to equalize access to the SHSs. Several of the Proposed Intervenors who are currently students at the SHSs explicitly shared that they benefited from diversity in their school. *See* A.C. Decl. ¶¶ 15–16; A.Z. Decl. ¶¶ 24–25. *Third*, all Proposed Intervenors have an interest in preventing the harm that would flow to their constituents’ children who applied or were admitted under the Policy, in the event it was invalidated.¹⁵ Compl. ¶ 38. If the Policy was deemed unconstitutional, that would harm many families, including current SHS students, some of whom themselves are Asian American. *Fourth*, the Organizational Intervenors have an interest in preserving their ability to continue advocating for reforms that provide equal educational opportunity to all students, including Black, Latinx, and underserved Asian American students who the DOE has historically disadvantaged through the

¹⁵ Current Stuyvesant students have noted related concerns (“I don’t like to tell people that I’m from Discovery because I’m scared they will think I’m stupid, even though I’m here and doing okay in my classes.”). Ed. Bd., *Dissecting the Discovery Program*, 3 Spectator 115, <https://stuyspec.com/article/dissecting-the-discovery-program>; *see also* K.D. Decl. ¶ 19.

prior unfair admissions process. This includes the ability to advocate for the DOE to take further race-neutral measures to equalize all students' ability to compete for admissions to the SHSs.

Accordingly, Proposed Intervenorors have significant interests in the instant litigation that are likely to be impaired by an adverse ruling. These interests can only fully be protected through intervention and resulting party status.

C. Proposed Intervenor's Interests Are Not Adequately Represented by Defendants.

Finally, intervention as of right is warranted because Proposed Intervenorors' interests are not "adequately represent[ed]" by "the existing parties." Fed. R. Civ. P. 24(a)(2); *see also Sherman*, 339 F. Supp. 3d at 360 (citing *Laroe*, 828 F.3d at 70).

Like in *McAuliffe*, Defendants do not adequately represent Proposed Intervenorors' interests. Although both Proposed Intervenorors and the Defendants seek to defend the constitutionality of the Policy, they have distinct interests in the case that diverge from one another and necessitate intervention. The Defendants' objectives may be to vindicate the current status quo and decisions that led to it, while preserving their own latitude to enact policies, even ones that roll back the modest efforts at equalizing opportunity challenged in this litigation. In contrast, Proposed Intervenorors are not wedded to the status quo or current admissions policy; rather, they will continue advocating for the removal of obstacles that prevent all students from enjoying equal educational opportunities. As noted, one of the Organizational Intervenorors' objectives is to preserve their ability to continue advocating for reforms that provide equal educational opportunities for all students.

These ultimate objectives differ in part, because Proposed Intervenorors represent the communities who will be most harmed by an adverse outcome in this litigation. In contrast, the Defendants' interests are affected by having to accommodate a much broader range of

constituencies and interests in the school district, including the Plaintiffs and other stakeholders, and are motivated to avoid the costs of litigation. These differing ultimate objectives mean that the Defendants cannot adequately represent the distinct interests of the Black, Latinx, and underserved Asian American students represented by Proposed Intervenors. This is especially so because the Defendants bear some responsibility for placing educational opportunities out of reach, implementing the challenged Policy only after years of advocacy by Proposed Organizational Intervenors and other stakeholders, and are disinclined to make arguments that Proposed Intervenors are prepared to make about the history of discrimination in the SHSs.

Nonetheless, even if Proposed Intervenors are found to have the same ultimate objective as Defendants, Proposed Intervenors overcome the presumption of adequacy. *See Butler, Fitzgerald & Potter v. Sequa Corp.*, 250 F.3d 171, 179 (2d Cir. 2001). The Second Circuit has not precisely defined what is necessary to meet this heightened burden. *See id.* at 180 (holding that, while not an “exhaustive list, . . . evidence of collusion, adversity of interest, nonfeasance, or incompetence may suffice to overcome the presumption of adequacy.”); *see also McAuliffe* Intervention Order, 2020 WL 1432213, at *5. The Supreme Court has recently held that “a presumption of adequate representation in cases where a movant’s interests are identical to those of an existing party” requires that the interests “overla[p] fully.” *Berger v. N.C. State Conf. of the NAACP*, 597 U.S. 179, 196–97 (2022). Here, the Proposed Intervenors’ interests do not overlap fully with those of the Defendants and therefore they overcome any presumption of adequacy.

In *McAuliffe*, the proposed intervenors argued that their interests were adverse to the defendants in at least four ways, including that the defendants were “disincentivized from raising certain factual and legal arguments that may be necessary to defend their position.” *McAuliffe* Intervention Order, 2020 WL 1432213, at *5. This Court agreed and held that intervenors had

made a “strong showing that Proposed Intervenor and Defendants have adverse interests” in the litigation “sufficient . . . to overcome the presumption of adequate representation.” *Id.* at *5–7. The analysis is identical here. For many of the same reasons as in *McAuliffe*, the presumption of adequate representation has similarly been overcome here.

First, Defendants are disincentivized from raising factual and legal arguments that would portray the DOE in an unfavorable light. This includes potential evidence of past intentional discrimination, including the origins of the single-test admissions policy, and legal arguments regarding the DOE’s duty to eradicate discrimination. *See N.Y. Pub. Int. Rsch. Grp., Inc. v. Regents of Univ. of N.Y.*, 516 F.2d 350, 352 (2nd Cir. 1975) (noting that potential intervenors “should have an opportunity to make their own arguments to protect their own interests” and finding it likely that movants would “make a more vigorous presentation” of certain arguments than government defendants); *League of Women Voters of Mich. v. Johnson*, 902 F.3d 572, 580 (6th Cir. 2018) (finding inadequate representation where proposed intervenors had sought to make additional defenses than those presented in government defendant’s motion to dismiss); *see also Cotter v. Mass. Ass’n of Minority L. Enf’t Officers*, 219 F.3d 31, 35–36 (1st Cir. 2000) (holding that proposed intervenors’ desire to discuss defendants’ history of discrimination in advocating for remedial measures is a reason that proposed intervenors’ interests diverged). Differently, Proposed Intervenor is more inclined to present arguments regarding the history of exclusion in the SHSs. In *McAuliffe*, this Court held that this fact suggested Proposed Intervenor’s interests were not adequately represented by the Defendants. This Court reasoned, “Defendants have clearly shown a reticence to any defense . . . that might implicate the DOE’s own purported history of discrimination” and found that intervenors’ interests were not adequately represented. *McAuliffe* Intervention Order, 2020 WL 1432213, at *7. This Court should hold so again.

Second, Proposed Intervenors bring to this litigation the real-life experience of communities and families who will directly benefit from the educational opportunities presented by the Specialized High Schools that have been largely beyond their reach and the enhanced diversity within these schools. By contrast, Defendants bring an institutional and political perspective to this controversy and will likely defend the Policy primarily from that standpoint. *See, e.g., Dorsett v. Cnty. of Nassau*, 283 F.R.D. 85, 93 (E.D.N.Y. 2012) (finding police union's interests inadequately represented even though interests aligned with police department's because department represented the institution as a whole while the union protected the individual officers and specifically safeguarded the officers' interests). Without Proposed Intervenors, there would be an imbalanced presentation of the interests and concerns raised in this case, especially given that Plaintiffs represent only one view from parents and students and that view is not shared by the parents and students represented by Proposed Intervenors. Proposed Intervenors, which includes current SHS students, are uniquely positioned to share about the inequities in the SHSs and the benefits of preserving the Policy, which is designed to mitigate these inequities. Unlike the existing parties in this case, Proposed Intervenors can offer firsthand experience applying to SHSs, experiencing the barriers of being unequipped and uninformed in that process, feeling isolated and tokenized while attending a SHS, benefitting from some diversity in these schools but seeking more, and participating in a school system in which pathways to success are unfairly closed to many.

Third, Mayor Mamdani and the DOE have competing priorities that may ultimately outweigh the interests they share with Proposed Intervenors. Despite years of advocacy from community members on this issue, previous administrations have not done enough to address the continuing diversity crisis in these schools and Defendants have enacted only the modest changes

at issue in this case. Thus, it's plausible that the DOE's position will change during this litigation, and the best way to ensure the interests of the communities served by Proposed Intervenors are fully protected and represented is to allow them to intervene. *See, e.g., N.M. Off-Highway Vehicle All. v. U.S. Forest Serv.*, 540 F. App'x 877, 881 (10th Cir. 2013) (finding that government agency could not adequately represent the intervenors' interests in part because "there is no guarantee that the Forest Service's policy will not shift during litigation"). In fact, Defendant Mamdani has "backed away from previous calls to eliminate the [SHSAT], which serves as the sole basis of entry"¹⁶ to the SHSs despite campaign promises to the contrary.

However the DOE defends its efforts to make admissions practices more fair, it cannot adequately represent the interests of students in accessing diverse and equal educational opportunities when the DOE has some responsibility for the dearth of these opportunities in the first place. Like in *McAuliffe*, Proposed Intervenors' participation is needed, therefore, to "make a more vigorous presentation" of the importance of racial, as well as socio-economic and geographic, diversity in the SHSs. *N.Y. Pub. Int. Rsch. Grp.*, 516 F.2d at 352 (finding pharmacists inadequately represented because they would likely "make a more vigorous presentation of the economic side of the argument than would the Regents."). For all these reasons, the Court should grant the motion to intervene as of right.

II. In the Alternative, Permissive Intervention Is Appropriate.

In the alternative, Proposed Intervenors respectfully request that the Court grant permissive intervention. Permissive intervention pursuant to Rule 24(b) "is to be liberally construed" in favor of intervention. *Olin Corp. v. Lamorak Ins. Co.*, 325 F.R.D. 85, 87 (S.D.N.Y. 2018) (quoting

¹⁶ Amy Zimmer & Alex Zimmerman, *Mamdani Wins Mayoral Election. Here's What It Means for NYC Schools*, Chalkbeat (Nov. 4, 2025), <https://www.chalkbeat.org/newyork/2025/11/04/nyc-mayor-election-mamdani-cuomo-battle-over-schools-mayoral-control/>.

Degrafinreid v. Ricks, 417 F. Supp. 2d 403, 407 (S.D.N.Y. 2006)); *see also McNeill v. N.Y.C. Hous. Auth.*, 719 F. Supp. 233, 250 (S.D.N.Y. 1989).

Under Rule 24(b), this Court may, in its discretion, “permit anyone to intervene” provided that the party: (1) files a “timely motion,” and (2) “has a claim or defense that shares with the main action a common question of law or fact.” Fed. R. Civ. P. 24(b). The “principal consideration” is “whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.” *U.S. Postal Serv. v. Brennan*, 579 F.2d 188, 191 (2d Cir. 1978); *see also Eddystone Rail Co. v. Jamex Transfer Servs.*, 289 F. Supp. 3d 582, 595 (S.D.N.Y. 2018) (citing *U.S. Postal Serv.*, 579 F.2d at 191).

Courts may consider other factors, including “‘the nature and extent of the intervenors’ interests’ . . . and ‘whether parties seeking intervention will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.’” *U.S. Postal Serv.*, 579 F.2d at 191–92 (quoting *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)). Courts may also consider whether their interests are “adequately represented by the other parties,” *id.*, but this “is clearly a minor factor at most.” *United States v. Columbia Pictures Indus., Inc.*, 88 F.R.D. 186, 189 (S.D.N.Y. 1980); *New York v. Pruitt*, No. 18-CV-1030, 2018 WL 1684341, at *1 (S.D.N.Y. Apr. 5, 2018) (considering adequacy just one of several factors to be considered but not required). In fact, “courts in this District routinely grant permissive intervention despite finding that an existing party adequately represents the proposed intervenor’s interest.” *Hum. Servs. Council of N.Y. v. City of New York*, No. 21-CV-11149, 2022 WL 4585815, at *4 (S.D.N.Y. Sep. 29, 2022) (collecting cases).

Permissive intervention is appropriate here. *First*, this motion is timely for the reasons outlined above. *See supra* § I.A. *Second*, the defenses of Proposed Intervenor and those of Defendants share common questions of fact and law. Proposed Intervenor will, at a minimum, defend the constitutionality of the revised eligibility criteria for the Discovery Program. And, as in other cases in which defendant-intervenor have sought to defend the admissions policies of educational institutions, such common questions arise here. *See, e.g., McAuliffe* Intervention Order, 2020 WL 1432213, at *8 n.9 (recognizing that proposed intervenors’ defenses shared common questions of law and fact with the main suit).

Importantly, Proposed Intervenor’s claims would not “unduly delay or prejudice the adjudication of the rights of the original parties.” *U.S. Postal Serv.*, 579 F.2d at 191 (quoting *Spangler*, 552 F.2d at 1329). The litigation remains at an early stage. Preliminary injunction briefing has not concluded, and no other significant substantive motions have been filed. *See supra* § I.A. Proposed Intervenor is also prepared to comply with the schedule set by this Court. And although adequacy of representation is a far less significant consideration for permissive intervention, this Court can consider, as argued above, that the interests of Proposed Intervenor cannot be “adequately represented” by Defendants. *See supra* § I.C.

Finally, Proposed Intervenor and their counsel offer specialized expertise and familiarity with the factual and legal issues that “will significantly contribute to full development of the underlying factual issues in the suit and to the just and equitable adjudication of the legal questions presented.” *U.S. Postal Serv.*, 579 F.2d at 192 (quoting *Spangler*, 552 F.2d at 1329). Proposed Intervenor would be the only parties which include current students in the SHSs who will be harmed by the failure to increase the diversity of those schools. *See supra* § I.B. This unique perspective will be critical in presenting to the court a more complete picture of the factual and

legal issues in the litigation. *See, e.g., Ben & Jerry's Homemade, Inc. v. Conopco, Inc.*, No. 24-CV-8641, 2026 WL 787766, at *2 (S.D.N.Y. Mar. 19, 2026) (finding that proposed intervenor would “contribute to the full development of the underlying factual issues and the just and equitable adjudication of the legal questions presented” and granting permissive intervention); *True Return Sys. LLC v. Compound Protocol*, No. 22-CV-8483, 2023 WL 6211815, at *2 (S.D.N.Y. Sept. 25, 2023) (granting permissive intervention where intervenors were in “a unique position to assist the Court in understanding the functioning and mechanics of the alleged infringing technology.”); *Hum. Servs. Council of N.Y.*, 2022 WL 4585815, at *4 (granting intervention to labor union with “firsthand knowledge of labor peace negotiations and its constituents’ experience” because it “may lead to a more complete factual record” and the court “would benefit from concrete factual submissions from the Proposed Intervenors as to the hardships occasioned” by the law); *335-7 LLC*, 2020 WL 3100085, at *3 (granting permissive intervention because grassroots tenant organizations were “intimately involved” in organizing around the disputed law); *Miller v. Silbermann*, 832 F. Supp. 663, 674 (S.D.N.Y. 1993) (granting intervention to individual tenants and tenant advocacy organization because the proposed defendant-intervenors “in light of their knowledge and concern, will greatly contribute to the Court’s understanding of this case.”); *Commack Self-Serv. Kosher Meats, Inc. v. Rubin*, 170 F.R.D. 93, 106 (E.D.N.Y.) (granting permissive intervention to religious groups, a rabbi, and individual consumers of kosher foods because “the intervenors will bring a different perspective to the case and will contribute relevant factual variations that may assist the court in addressing the constitutional issue raised.”).

Furthermore, Proposed Intervenors are represented by counsel at the NAACP Legal Defense & Educational Fund, the American Civil Liberties Union, the New York Civil Liberties

Union, and LatinoJustice, who will bring their joint expertise litigating similar cases to this Court. *See, e.g., Sargent v. Sch. Dist. of Phila.*, 165 F.4th 727, 732 (3d Cir. 2026); *Ass’n for Educ. Fairness v. Montgomery Cnty. Bd. of Educ.*, No. 23-1068, 2026 WL 281028 (4th Cir. Feb. 3, 2026); *Coal. for Thomas Jefferson v. Fairfax Cnty. Sch. Bd.*, 68 F.4th 864, 867 (4th Cir. 2023). In fact, counsel for the Proposed Intervenor in the instant case also serves as counsel for the Defendant-Intervenor in *McAuliffe* and have provided helpful advocacy to the court in defense of the exact policy challenged here. This Court has held that the fact that a proposed intervenor has already intervened in similar litigation militates towards granting permissive intervention. *See 335-7 LLC*, 2020 WL 3100085, at *3 (granting permissive intervention because, among other reasons, the proposed intervenors “are already providing such assistance in” two similar actions).

Proposed Intervenor, as well as the attorneys and legal organizations representing them, thus bring unique knowledge, experience, and expertise that will aid in the just, effective, and efficient adjudication of this case.

CONCLUSION

For the foregoing reasons, Proposed Defendant-Intervenor respectfully request that this Court grant their Motion to Intervene.

Dated: June 24, 2026

Stefanie D. Coyle
Emma Curran Donnelly Hulse
New York Civil Liberties Union Foundation
125 Broad St. 19th Floor
New York, NY 10004
Tel: (212) 607-3300
scoyle@nyclu.org
ehulse@nyclu.org

Sarah Hinger
American Civil Liberties Union

Respectfully submitted,

/s/ Rachel Kleinman
Rachel Kleinman
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
40 Rector Street, 5th Floor
New York, NY 10004
rkleinman@naacpldf.org

Donya Khadem*
Molly M. Cain*
Michaele N. Turnage Young*
Morgan Elle Humphrey*

125 Broad Street
Ste 18th Floor
New York, NY 10004
Tel: (212) 519-7882
shinger@aclu.org

Francisca D. Fajana
Mariana C. Lopez
LATINOJUSTICE PRLDEF
475 Riverside Drive, Suite 1901
New York, NY 10115
Tel: (212) 319-3360
ffajana@latinojustice.org
mlopez@latinojustice.org

Asja F. Towns**
NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.
700 14th Street NW, Suite 600
Washington, DC 20005
(202) 682-1300
dkhadem@naacpldf.org
mcain@naacpldf.org
mturnageyoung@naacpldf.org

Counsel for Defendant-Intervenors

**Applications pro hac vice forthcoming*

***Ms. Towns is a not-yet-barred legal fellow with the Legal Defense Fund. Permission for her inclusion in this signature block was sought and granted by the chambers of the Honorable Judge Edgardo Ramos on June 24, 2026.*

CERTIFICATE OF COMPLIANCE

Pursuant to Local Civil Rule 7.1, I hereby certify that this brief contains 8,739 words, excluding the portions specified in Local Rule 7.1.

s/ Rachel M. Kleinman

Rachel M. Kleinman

Bar No. RK2141

NAACP LEGAL DEFENSE &
EDUCATIONAL FUND, INC.

40 Rector Street, 5th floor

New York, NY 10006

Tel: (212) 965-2200

Fax: (212) 226-7592

rkleinman@naacpldf.org