

*DRAFT
PRIVILEGED AND
CONFIDENTIAL*

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

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

Plaintiff,

v.

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

Defendants,

and

TEENS TAKE CHARGE, et al.,

Proposed Defendant

Intervenors.

Case No. 1:26-cv-03355

**PROPOSED DEFENDANT INTERVENORS' PROPOSED BRIEF IN
OPPOSITION TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

M.P., Ma.P., and P.P., represented by their mother, Yi Fang Chen (collectively, “Plaintiffs”), are not entitled to the extraordinary relief of a mandatory preliminary injunction. The 2018 revisions to the Discovery Program for admission to the New York City Specialized High Schools (the “Policy”) are constitutional.

At the outset, Plaintiffs’ claims in this matter are duplicative of the pending litigation in *Christa McAuliffe Intermediate School PTO, Inc. v. de Blasio*, No. 18-cv-11657-ER (S.D.N.Y. Dec. 13, 2018) [hereinafter “*McAuliffe*”], and should be dismissed or stayed pending resolution of that case. *See Curtis v. Citibank*, 226 F.3d 133, 138 (2d Cir. 2000) (“As part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit.”) (citing *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976) (“As between federal district courts, . . . though no precise rule has evolved, the general principle is to avoid duplicative litigation.”)).

Further, Ma.P. and P.P. lack standing and therefore are not entitled to any relief. Ma.P. is a fourth grader, and P.P. is a first grader. Dkt. No. 1 ¶ 15. Children who are ineligible to even sit for the admissions exam, let alone enroll in any high school, plainly lack standing to seek an injunction against the Policy. “Their current ‘some day’ intentions to attend a specialized school are . . . insufficient to show the existence of an imminent injury.” *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 272 (S.D.N.Y. 2019), *aff’d*, 788 F. App’x 85 (2d Cir. 2019).

M.P. is a rising ninth grader who was denied admission to Stuyvesant High School. Nonetheless, he was admitted to his second choice Specialized High School (“SHS”), Brooklyn Technical High School. M.P.’s instant motion for a preliminary injunction must fail. First, because

M.P. also lacks standing. To establish Article III standing, a plaintiff must show (1) sufficient likelihood of a future injury that is “concrete,” “particularized,” and “imminent,” (2) that the injury likely will be caused by Defendants, and (3) that the injury likely would be redressed by the requested relief. *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 380–81 (2024). Here, any injury is caused by M.P.’s choice to rank a middle school that is not eligible for the Discovery Program and is thus insufficient to establish standing. *See Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 415–18 (2013) (rejecting a parties’ theory of standing because the harm was not fairly traceable to the government’s action). New York law permitted M.P. to select and rank middle schools to attend. Plaintiffs have made no allegation that M.P. sought to attend any Discovery Program-eligible middle school. Plaintiffs also have made no allegation that M.P. would not meet the individual disadvantage requirements for eligibility for the Discovery Program. Without having done so, Plaintiffs have failed to adequately allege that the DOE caused his alleged injury.

Second, M.P.’s motion must fail because he is unlikely to succeed on the merits of his Equal Protection claim or Title VI claim. There is no evidence that the Policy was motivated by an intent to discriminate or that it had a discriminatory effect on Asian Americans. What Plaintiffs argue is evidence of discriminatory intent is unquestionably evidence of the New York City Department of Education’s (“DOE”) lawful efforts to equalize educational opportunity for students from all socioeconomic, geographic, and racial backgrounds. Plaintiffs’ inability to demonstrate discriminatory intent resolves this motion with respect to the Equal Protection claim. For the same reasons, the Title VI claim is also unsuccessful. Title VI is coextensive with the Equal Protection Clause. *Gratz v. Bollinger*, 539 U.S. 244, 276 n.23 (2003). Thus, M.P.’s failure to prove his Equal Protection claim necessarily means that his Title VI claim also fails. Given M.P. is unlikely to

succeed on the merits of either claim, a preliminary injunction is inappropriate.

Moreover, the equities also weigh heavily in favor of DOE. The Policy does not discriminate against Asian American applicants, including M.P., and so he suffers no harm. Yet Plaintiffs are seeking a mandatory injunction that would order the DOE to admit M.P. to his top high school choice this year. Enjoining this lawful policy would harm the DOE and the constituents they serve, including current students, some of whom themselves are Asian American, who were admitted under the Policy.

Plaintiffs’ motion for a mandatory preliminary injunction should be denied.

BACKGROUND

Since 1971, a single factor has been used to determine access to the Specialized High Schools—a student’s rank-order score on the Specialized High School Admissions Test (“SHSAT”). *See* N.Y. Educ. Law § 2590-g(12)(b) (1997). This statute additionally permits the use of a “[D]iscovery [P]rogram to give disadvantaged students of demonstrated high potential an opportunity” to gain admission into one of the Specialized High Schools (“SHSs”). *Id.* The Discovery Program is open to students who (1) take the SHSAT but narrowly miss the SHSAT score cut-off; (2) are certified by their local schools as “disadvantaged”; (3) are recommended by their middle school “as having high potential for the special high school program”; and (4) attend, and subsequently pass, a summer preparatory program administered by the high school. *Id.* Additionally, to qualify for the Discovery Program, student must attend a middle school with an Economic Need Index (“ENI”) of 0.6 (60%) or higher. Dkt. No. 1 ¶ 41. Students admitted through the Discovery Program have thrived academically at the Specialized High Schools.¹

¹ *See* Jon Taylor, *I’ve Spent Years Studying the Link Between SHSAT Scores and Student Success. The Test Doesn’t Tell You As Much As You Might Think.*, Chalkbeat (June 22, 2018), <https://www.chalkbeat.org/newyork/2018/6/22/21105304/i-ve-spent-years-studying-the-link->

But since 1971, there have been serious concerns that the SHSAT underpredicts the potential of Black and Latinx examinees. At the time the legislature was considering the 1971 Hecht-Calandra Act requiring the SHSAT, opponents raised “serious charges ‘that the examinations discriminate on cultural grounds, against [Black] and Puerto Rican applicants.’”² This single-test admissions process was adopted despite awareness that the SHSAT was “‘screen[ing]’ out [B]lack and Puerto Rican students who could succeed at the schools”³ and over the recommendations of an investigatory committee, which recommended that admissions to the schools “be based on multiple criteria that are objective and equitable in nature.”⁴

In 2012, a multiracial, multiethnic coalition of ten community organizations⁵ filed a complaint with the U.S. Department of Education, Office for Civil Rights (“OCR”), challenging the single-test admissions process for the schools as ineffective and racially discriminatory.⁶ In

between-shsat-scores-and-student-success-the-test-doesn-t-tell-yo/ (performance of thirty-five Discovery Program students at Brooklyn Technical High School “was equal to that of other students” and “[f]reshman year grade point averages for the two groups were essentially identical: 86.6 versus 86.7.”).

² Jim Dwyer, *Decades Ago, New York Dug a Moat Around Its Specialized Schools*, N.Y. Times (June 8, 2018), <https://www.nytimes.com/2018/06/08/nyregion/about-shsat-specialized-high-schools-test.html>.

³ M.S. Handler, *Bronx High School of Science Accused of Bias in Admissions* 44, N.Y. Times (Jan. 22, 1971), <https://www.nytimes.com/1971/01/22/archives/bronx-high-school-of-science-accused-of-bias-in-admissions.html>.

⁴ Leonard Buder, *New Entry Policy at 4 Special Schools Is Urged: Group Appointed by Scribner Against Competitive Tests as the Sole Criterion* 29, N.Y. Times (Nov. 24, 1971), <https://www.nytimes.com/1971/11/24/archives/new-entry-policy-at-4-special-schools-is-urged-group-appointed-by.html>.

⁵ 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 Desis Rising Up and Moving.

⁶ Compl. from NAACP Legal Def. Fund et al. to U.S. Dep’t. of Educ. 18 (Sep. 27, 2012) <https://www.naacpldf.org/wp-content/uploads/Specialized-High-Schools-Complaint.pdf>. The racial disparities at the SHSs at the time the OCR complaint was filed were similar to the current

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. Indeed, despite being authorized by law, until recently, the Discovery Program was not utilized at all at Stuyvesant, *see* Dkt. No. 1 ¶ 36, and was underutilized at the remaining SHSs, *see id.* ("Between 2006 and 2015, only one to three percent of SHS admissions came through Discovery."). 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. *See supra* note 6.

On June 3, 2018, then-Mayor de Blasio and then-Chancellor Carranza and the DOE took a small step towards addressing inequitable access to these schools by expanding the Discovery Program as permitted by state law. First, they announced that each Specialized High School would be required to use the Discovery Program to fill at least 20% of its seats. Second, they adjusted the definition of the term "disadvantaged" to more equitably determine student eligibility for the Discovery Program by focusing on attendance at high-poverty schools. *See* Dkt. No. 15 at 5.

Prior to these changes, 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. *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 267 (S.D.N.Y.), *aff'd*, 788 F. App'x 85 (2d Cir. 2019).

ones. For example, of the 967 eighth-grade students admitted to Stuyvesant for the 2012-13 school year, only 19 (2%) of the students were Black and 32 (3%) were Latinx. *Id.* at 2.

Under the changes to the Discovery Program, in addition to meeting substantially the same requirements, a student must also 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.⁷ *Id.* This measurement is particularly apt because educational research has shown that low-income students who attend high-poverty schools have far less opportunity to develop latent talent than low-income students who attend schools with a lower concentration of poverty, and, consequently, are less likely to be identified as meriting admission by an admissions process that does not consider the concentrations of poverty at the attended school.⁸ High-poverty schools also 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.⁹

In December 2018, the Chinese American Citizens Alliance of Greater New York (“CACAGNY”) filed a lawsuit against de Blasio, Carranza, and the DOE, with nearly identical claims as the instant matter and similarly requested a preliminary injunction. *McAuliffe*, No. 1:18-cv-11657; *see* Dkt. No. 15 at 12. In *McAuliffe*, CACAGNY was joined by two additional organizational plaintiffs and three individual plaintiffs, including the Plaintiff here, M.P. Dkt. No. 15 at 12. The *McAuliffe* court subsequently held that M.P., an elementary school student at the time, did not have standing because he was years away from applying to the Specialized High

⁷ 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.” *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, 364 F. Supp. 3d 253, 269 (S.D.N.Y. 2019).

⁸ *See, e.g.,* Rashea Hamilton et al., *Disentangling the Roles of Institutional and Individual Poverty in the Identification of Gifted Students*, 62 *Gifted Child Q.* 6, 16 (2018).

⁹ Carrie Spector, *70 Years After Brown v. Board Of Education, New Research Shows Rise in School Segregation*, Stanford Graduate Sch. of Educ., (May 6, 2024), <https://ed.stanford.edu/news/70-years-after-brown-v-board-education-new-research-shows-rise-school-segregation>.

Schools, making his alleged injury neither actual nor imminent. Dkt. No. 15 at 12; *McAuliffe*, 364 F. Supp. 3d at 272. This Court ultimately denied Plaintiffs’ motion for a preliminary injunction on the merits. *McAuliffe*, 364 F. Supp. 3d at 276.

In denying the preliminary injunction, this Court found that CACAGNY failed to show that the balance of hardships tipped decidedly in their favor, reasoning that “the expansion of the Discovery program will lead to there being a slightly higher cut-off score for admission based purely on test scores, but this slight change is not a significant hardship.” *Id.* at 275. In its assessment of the merits, this Court found that CACAGNY was unlikely to show discriminatory intent based on the statements it pointed to (many of the same statements relied on Plaintiffs’ complaint in the instant case), *id.* at 278, and “[t]he expansion of the [Discovery] program is rationally related to a legitimate government interest in helping more economically disadvantaged students receive a high-quality education.” *Id.* at 280.

Now, Plaintiffs M.P., Ma.P., and P.P., represented by their parent Yi Fang Chen, filed this lawsuit and motion for a preliminary injunction, challenging the 2018 changes to the Discovery Program after M.P. was denied admission into Stuyvesant, his first-choice SHS. Dkt. No. 15 at 1. Plaintiffs seek an injunction mandating that M.P. be admitted into Stuyvesant for the 2026–27 school year. For many of the same reasons, that injunction, like the one in *McAuliffe* before it, should be denied.

STANDARD OF REVIEW

A preliminary injunction is “an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (citation modified). “A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the

absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Id.* at 20; *see also Moore v. Consol. Edison Co. of N.Y., Inc.*, 409 F.3d 506, 510 (2d. Cir. 2005) (holding that 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.”).

Here, Plaintiffs’ burden is even heavier because they seek a mandatory injunction (here that M.P. be admitted) that would “alter the status quo by commanding some positive act.” *Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 34 (2d Cir. 1995). Plaintiffs seeking a mandatory injunction must show “a clear or substantial likelihood of success on the merits.” *N.Y. C.L. Union v. N.Y.C. Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012) (citation modified). Plaintiffs here do not satisfy the *Winter* factors, let alone meet the standard for a mandatory injunction. Thus, their motion for a preliminary injunction should be denied.

ARGUMENT

I. Plaintiffs Are Unlikely to Succeed on the Merits of Their Claims

To succeed on their motion for a mandatory preliminary injunction, Plaintiffs must show a “a clear or substantial likelihood of success on the merits.” *Id.* Plaintiffs cannot satisfy this requirement for either their Equal Protection or Title VI claim, and for that reason, a preliminary injunction is improper.

A. The Policy at Issue Is a Race-Neutral, Evenly Applied Rule That Complies With the Equal Protection Clause

“Proof of racially discriminatory intent or purpose is required to show a violation of the Equal Protection Clause.” *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 265 (1977). Whether a discriminatory purpose was a motivating factor behind a policy “demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.”

Chinese Am. Citizens All. of Greater N.Y. v. Adams, 116 F.4th 161, 172 (2d Cir. 2024) (quoting *Arlington Heights*, 429 U.S. at 266) [hereinafter “*CACAGNY v. Adams*”]. “‘Discriminatory purpose,’ . . . implies more than intent as volition or intent as awareness of consequences. It 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.” *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (citation modified). Importantly, where (as here) a facially neutral policy is evenly administered in a race-neutral fashion, the policy is presumed to be constitutional. *Hayden v. Cnty. of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999).

Here, DOE’s mere desire to remedy the racially discriminatory effects of the DOE’s prior admissions process is insufficient to prove discriminatory intent. *Id.* (rejecting the argument that an exam designed to minimize the adverse impact on Black students warranted strict scrutiny). Instead, several kinds of circumstantial and direct evidence are used to determine a policy’s purpose, including: (1) whether the action “bears more heavily on one race than another”; (2) the historical background of the decision; (3) substantive and procedural departures from the normal process; and (4) contemporaneous statements from the legislative or administrative record. *Arlington Heights*, 429 U.S. at 266–68.

Plaintiffs cannot establish discriminatory purpose. They fail to identify any facts showing that DOE adopted the Policy for the purpose of discriminating against Asian Americans. In fact, Plaintiffs’ own allegations demonstrate that the goal behind the changes to the Discovery Program were lawful: to equalize educational opportunity for *all students* by mitigating unnecessary obstacles that were artificially depressing the admissions rates of some students, including some Asian Americans. Plaintiffs’ cited documents all confirm that then-Mayor de Blasio and DOE were motivated by a desire to address the longstanding under-identification of qualified students

regardless of race for admission to the Specialized High Schools to increase geographic, socioeconomic and racial diversity of the student population.

First, nothing in then-Mayor de Blasio's 2018 *Chalkbeat* op-ed is evidence of discriminatory intent. Rather, the op-ed is plainly evidence of the opposite: a commitment to mitigating discrimination in the admissions policy and to increase access at these schools. In his op-ed, Mayor de Blasio acknowledged that the Specialized High Schools admissions process had previously under-identified students from certain neighborhoods, which had a racially disparate impact on Black and Latinx students. He wrote, "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 came from just twenty-one of those schools. For a perfect illustration of disparity: Just 14% of students at Bronx Science are from the Bronx."¹⁰ Thus, the central message of this op-ed is that the Policy would increase *geographic* diversity in the Specialized High Schools with some impact on racial diversity. The Mayor's goal in making changes to the Discovery Program was to "give a wider range of excellent students a fair shot at the specialized high schools[.]" including "from a wider number of middle schools."¹¹

Similarly, the June 3, 2018 press release does not evince a discriminatory purpose. Plaintiffs point to the press release's projection that the policy would likely almost double the number of Black and Latinx students admitted to the Specialized High Schools from 9% to 16%. Dkt. No. 15 at 7 n.15. But this statement does not express any preference for that projected outcome, let alone an intent to diminish opportunity for Asian American students or otherwise to

¹⁰ Bill de Blasio, *Our Specialized Schools Have a Diversity Problem. Let's Fix It.*, Chalkbeat (June 2, 2018), <https://www.chalkbeat.org/newyork/2018/6/2/21105076/mayor-bill-de-blasio-our-specialized-schools-have-a-diversity-problem-let-s-fix-it/>.

¹¹ *Id.*

discriminate based on race. *See Lewis v. Ascension Par. Sch. Bd.*, 806 F. 3d 344, 358 (5th Cir. 2015) (concluding that a school board’s mere awareness of the racial projections was not evidence of intentional discrimination). Rather, these projections simply reflect the DOE’s knowledge that the projected result of its decisions was that removal of barriers could result in a group of admittees that is more representative of the City’s eighth-grade population. But “there is nothing nefarious” about DOE officials’ awareness of this racial data insofar as officials “will almost always be aware of racial demographics.” *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 37 (2024) (citation modified). The press release additionally makes clear that an important goal was specifically to increase the geographic diversity of the SHSs. For example, Mayor de Blasio is quoted in the press release saying, “There are talented students all across the five boroughs, but for far too long our specialized high schools have failed to reflect the diversity of our city[.]”¹² That there was a projected increase in Black and Latinx enrollment from underrepresented areas does not itself indicate an intent to discriminate but is the logical outcome of removing a discriminatory barrier.

“When setting their larger goals, local [a]uthorities may choose to foster diversity and combat racial isolation with race-neutral tools, and mere awareness of race in attempting to solve the problems facing inner cities does not doom that endeavor at the outset.” *Tex. Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 545 (2015). Indeed, the Supreme “Court has not questioned a [government’s] affirmative efforts to ensure that all groups have a fair opportunity to apply for [positions] and to participate in the [application] process.” *Id.* (citation modified). “[T]here is nothing constitutionally impermissible about a school district including

¹² Office of the Mayor, *Mayor de Blasio and Chancellor Carranza Announce Plan to Improve Diversity at Specialized High Schools* (June 3, 2018), https://a860-gpp.nyc.gov/concern/nyc_government_publications/nc580q26h?locale=en.

racial diversity as a consideration and goal in the enactment of a facially neutral plan.” *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, 89 F.4th 46, 62 (1st Cir. 2023), *cert. denied*, 145 S. Ct. 15 (2024).

And this remains true after the Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard College*, 600 U.S. 181 (2023) [hereinafter “*SFFA*”]. *SFFA* concerned two universities’ admissions policies that considered individual applicants’ race, and not a PK-12 school system’s race-neutral admissions policy like the one at issue here. As Justice Kavanaugh noted in *SFFA*, “racial discrimination still occurs and the effects of past racial discrimination persist And governments . . . still ‘can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race.’” *SFFA*, 600 U.S. at 317 (Kavanaugh, J., concurring) (citation modified); *see also Bos. Parent Coal.*, 89 F.4th 46 at 61 (“[W]e find no reason to conclude that [*SFFA*] changed the law governing the constitutionality of facially neutral, valid secondary education admissions policies under equal protection principles.”). Plaintiffs’ arguments misconstrue the DOE’s desire to remedy the discrimination faced by certain groups in the admissions process as an intent to exclude Asian Americans. But caselaw in this circuit has long rejected this conflation, maintaining that 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.’” *Jana-Rock Constr., Inc. v. N.Y. State Dep’t of Econ. Dev.*, 438 F.3d 195, 211 (2d Cir. 2006) (quoting *Hayden*, 180 F.3d at 51).

The other contemporaneous statements Plaintiffs offer also miss the mark. Plaintiffs make much of a single statement then-Chancellor Carranza made in an interview that he did not “buy into the narrative that any one ethnic group owns admission to these schools.” Dkt. No. 15 at 15.

But nowhere in this statement does Chancellor Carranza reference Asian Americans or otherwise posit that there are “too many Asian students[,]” *id.* at 1, at the SHSs. Rather, as this Court already recognized when evaluating this exact statement by Chancellor Carranza in *McAuliffe*, context matters. When Chancellor Carranza made this statement, he was replying to a reporter’s question about whether the policy pitted “minority against minority.” *McAuliffe*, 364 F. Supp. 3d at 278.

In *McAuliffe*, this Court determined that “in context, Chancellor Carranza’s response is best understood” not as intent to exclude Asian Americans, but “as a rebuke of what he saw as the idea suggested by *the interviewer*—that minority ethnic groups must compete with each other for their right to specialized school seats.” *Id.* Moreover, Plaintiffs’ reliance on the Second Circuit’s opinion in *McAuliffe* denying summary judgment is misplaced. Dkt. No. 15 at 7. That opinion focused on discriminatory effect. *See CACAGNY v. Adams*, 116 F.4th at 164–65 (acknowledging the lack of discriminatory intent evidence due to the lack of discovery on the issue). Thus, there is no reason for this Court to revisit its discriminatory intent analysis with respect to this statement.

Further, Carranza’s statement endorses the unremarkable premise that students with the potential to excel academically come from all racial, ethnic, cultural, and socioeconomic populations. *See Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. of City of Bos.*, No. 21-cv-10330-WGY, 2021 WL 4489840, at *15 n.20 (D. Mass. Oct. 1, 2021) (concluding that “White and Asian students are not ‘losing’ seats” simply because in prior years they won a “high number of seats without any evidence that this years’ students would have fared the same” and rejecting “the use of stereotypes” that only White and Asian students would have won such seats).

Similarly, the June 2018 press-release statements do not establish a strong likelihood of proving discriminatory intent. The quotes from city officials highlighting the reality that the SHSs “failed to reflect the diversity of” the city, their support for “greater equity,” and desire to ensure

that “the student population reflects the city’s population[.]” Dkt. No. 1 at 7–8, reveal the lawful focus of the challenged Policy.

The prior admissions policy failed to objectively identify qualified students for admission. The new policy removed unfair and arbitrary obstacles that unfairly and artificially depressed the admissions of qualified students across the city. School officials are free to take race-neutral actions to address racial disparities without triggering strict scrutiny. *See, e.g., SFFA*, 600 U.S. at 299–300 (Gorsuch, J., with Thomas, J., concurring); *id.* at 317 (Kavanaugh, J., concurring). Plaintiffs also rely on DOE documents produced in *McAuliffe*. Dkt. No. 15 at 8–10. Plaintiffs argue that read together, these internal documents “show that Defendants knew exactly what racial outcome they wanted, modeled alternatives, and selected the option designed to achieve it.” *Id.* at 10. But these documents are entirely consistent with a lawful desire to remove needless barriers, not race-based discrimination.

For example, the references to race in emails from Nadiya Chadha and Josh Wallack reflect an awareness that the prior admissions process under-identified otherwise qualified Black and Latinx students, and the efforts of those individuals to assess whether changes to the Discovery Program would mitigate this issue. *Id.* at 9. Awareness of that need is appropriate and constitutional. *See Jana-Rock Constr., Inc.*, 438 F.3d at 211. Nothing in the identified emails between Chadha and Wallack evinces that the changes to the Discovery Program were made intentionally to decrease Asian American admittees.

Finally, Plaintiffs argue that the ENI threshold selected can only be explained by an intent to discriminate against Asian Americans. Dkt. No. 15 at 10. But Plaintiffs do not cite any evidence in support of this allegation. Plaintiffs assume, without more, that because the DOE chose an ENI threshold that they predicted could increase the number of Black and Latinx students admitted, the

policy was necessarily motivated by an intent to discriminate against Asian American students. This is not enough. Plaintiffs bear the burden of proving discriminatory intent. *N.Y. C.L. Union*, 684 F.3d at 294. On a preliminary injunction, the Court is not obligated to weigh inferences in favor of the Plaintiffs. Even if it were, Plaintiffs’ intent arguments are nonetheless bare and conclusory. Whether read together or separately, Plaintiffs’ evidence does not support Plaintiffs’ theory. “[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.’” *Jana-Rock Constr., Inc.*, 438 F.3d at 211. For these reasons, Plaintiffs have not met their burden of showing a substantial likelihood of success on their Equal Protection Claim.¹³ On this basis alone, Plaintiffs’ motion for a preliminary injunction must be denied.

i. Plaintiffs Cannot Prove Discriminatory Effect

Although the likelihood-of-success inquiry could end here with lack of intent, Plaintiffs also cannot show that the Policy had a discriminatory effect. In *CACAGNY v. Adams*, the Second Circuit explained that “*if* the government enacts a law or policy with a proven discriminatory motive against a certain race[,]” which it had to assume in that case, *then* “a valid equal protection claim can be based on a showing that any individual has been negatively affected or harmed by that discriminatory law or policy *based on race*[.]” 116 F.4th at 173 (emphasis added). Here, Plaintiffs fail to show that the Policy was motivated by intent to discriminate against Asian

¹³ Also, absent from a showing of discriminatory intent, a race-neutral policy like this one is not subject to strict scrutiny. Thus, Plaintiffs are also unlikely to succeed on their argument that strict scrutiny applies here. *See, e.g., Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011) (“The consideration or awareness of race while developing or selecting a policy . . . is not in and of itself a racial classification.”); *Lewis v. Ascension Par. Sch. Bd.*, 806 F.3d 344, 355 (5th Cir. 2015) (mere “consideration of racial demographics in drawing district boundaries will not alone trigger strict scrutiny”).

American applicants, so this inquiry will fail too. There is no need for the Court to consider impact on these facts.

B. Plaintiffs Are Not Likely to Succeed on the Merits of Their Title VI Claim

Similarly, Plaintiffs have not carried their burden of showing a likelihood of success on their Title VI claim because they have not shown that discrimination was a “substantial” or “motivating” factor in the challenged decision. *Tolbert v. Queens Coll.*, 242 F.3d 58, 69 (2d Cir. 2001). As courts have repeatedly explained, “Title VI’s protections are coextensive with the Equal Protection Clause[.]” *Faculty v. N.Y. Univ.*, 11 F.4th 68, 79 n.1 (2d Cir. 2021) (Menashi, J., concurring); *see also Gratz*, 539 U.S. at 276 n.23 (“We have explained that discrimination that violates the Equal Protection Clause of the Fourteenth Amendment committed by an institution that accepts federal funds also constitutes a violation of Title VI”). As described above, Plaintiffs fail to identify any evidence that the Discovery Revisions were motivated by an intent to discriminate against Asian American students. *See supra*, Argument Section I.A. Instead, the evidence Plaintiffs point to merely reflects an intent to address inequity in the Specialized High Schools and to promote diversity, which are lawful motives. *See Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 783 (2007) (Kennedy, J., concurring).

Because Plaintiffs are unlikely to succeed on the merits of either their Equal Protection claim or their Title VI claim, they do not satisfy this factor required for a preliminary injunction. For that reason, Plaintiffs’ motion must fail. And although the inquiry could end here, Plaintiffs also do not meet the other required *Winter* factors.

II. Plaintiff M.P. Does Not Face Irreparable Harm

Where, as here, Plaintiffs allege constitutional violations, the irreparable-harm inquiry is tied to likelihood of success on the merits. *Seventh Regiment Armory Conservancy, Inc. v. Knight*, 811 F. Supp. 3d 467, 478 (S.D.N.Y. 2025). The alleged constitutional deprivation must be

“convincingly shown.” *Donohue v. Mangano*, 886 F. Supp. 2d 126, 150, 152 (E.D.N.Y. 2012). For the reasons discussed *supra*, Plaintiffs are unlikely to succeed on the merits of their claims. The Discovery Program is not unconstitutional. Thus, M.P.’s rejection by Stuyvesant flows from a non-discriminatory process, and Plaintiffs cannot demonstrate irreparable harm.

Further, the cause of alleged harm is speculative. Plaintiffs do not point to sufficient evidence that the Policy caused M.P. to miss Stuyvesant’s cutoff score. Plaintiffs allege that the Policy caused Stuyvesant’s cutoff score for non-Discovery Program students to increase, thereby causing M.P. to be denied admission to Stuyvesant. Plaintiffs do not provide evidence that the 2025 SHSAT data shows that the Policy raised the cutoff score by at least three points, and thus negatively affected M.P.’s admissions outcome. Stuyvesant’s cutoff score varies year to year and is impacted by a variety of factors, including the number of students who apply, the overall strength of the applicant pool with respect to test scores, and how students decide to rank schools. Thus, Plaintiffs do not show that any harm to M.P. was the but-for consequence of the challenged policy.

III. The Balance of Equities Weighs in Favor of Maintaining the Status Quo

Finally, the balance of equities and the public interest overwhelmingly weigh in favor of denying the preliminary injunction. Plaintiffs are seeking a mandatory injunction that would order the DOE to admit M.P. to his top high school choice this upcoming school year, yet he suffers no harm for the purpose of a mandatory injunction in this case because the Policy does not discriminate against Asian American applicants, including him. Enjoining this lawful policy would harm the DOE and the constituents it serves, including current students, some of whom themselves are Asian American, who were admitted under the current Discovery Program.

CONCLUSION

For the reasons set forth above, Proposed Defendant-Intervenors respectfully request that

the Court deny Plaintiffs' motion for a preliminary injunction.

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**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 5,587 words, excluding the portions specified in Local Rule 7.1.

s/ Rachel M. Kleinman

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