

**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 MEMORANDUM OF LAW IN SUPPORT OF  
PROPOSED DEFENDANT-INTERVENORS' PROPOSED MOTION TO DISMISS**

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## PRELIMINARY STATEMENT

For more than five decades, the sole determinant of admission to New York City’s Specialized High Schools was a standardized test that under-identified qualified Black and Latinx students. For just as long, students, families, and education experts raised concerns about the test’s shortcomings and about the discriminatory nature of the admissions system. On June 3, 2018, to address inequity in the admissions process, then-Mayor de Blasio, then-Chancellor Carranza, and the New York City Public Schools (“NYCPS” or “DOE”) took modest, race-neutral, and lawful steps to ensure that all students had an equal opportunity to compete for admissions. They expanded the Discovery Program—a pathway permitted by state law to admit disadvantaged students of high academic potential—in two ways. 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. Plaintiff Yi Fang Chen, on behalf of her three children (collectively, “Plaintiffs”), challenges the 2018 revisions to the Discovery Program (“the Policy”) seeking to dismantle it and restore the previous discriminatory admissions process.

At the outset, Plaintiffs’ claims in this matter are duplicative of the pending litigation in *Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, No. 1:18-cv-11657-ER (S.D.N.Y. Dec. 13, 2018) [hereinafter “*McAuliffe*”], and should be dismissed or stayed pending resolution of that case, which Proposed Intervenors, three of which are Defendant-Intervenors in *McAuliffe*, argue should also be dismissed. *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.”)).

Beyond that, the Complaint should be dismissed for three reasons: (1) two of Plaintiff Yi Fang Chen’s minor children lack standing because they are presently elementary school children, years away from being eligible to apply for the Specialized High Schools; (2) M.P. lacks standing because Plaintiffs fail to sufficiently plead that he tried to attend a middle school eligible for the Discovery Program in the first place, or that he would not meet the individual disadvantage requirements for eligibility for the Discovery Program.; and (3) the challenged Policy is lawful and was not motivated by discriminatory intent.

## **BACKGROUND**

### **I. Factual Background**

#### **A. The Specialized High Schools Admissions Process Has Long Under-Identified Talented Black and Latinx Students.**

Since 1971, under the Hecht-Calandra Act (the “Act”), the sole determinant of admission to New York City’s elite Specialized High Schools (“SHSs”) is a student’s rank-order score on the Specialized High Schools Admissions Test (“SHSAT”). *See* Dkt. No. 1 ¶ 28 (citing N.Y. Educ. Law § 2590-g(12)(b) (1997)). But education experts have long agreed that single-test admissions systems, like this one, are flawed because a single test cannot offer a definitive measure of a student’s knowledge.<sup>1</sup> In fact, research has shown that the predictive validity of the SHSAT is low.<sup>2</sup> Moreover, at the time the legislature was considering the Act, opponents raised “serious

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<sup>1</sup> *See* U.S. Dep’t of Educ., Office for Civil Rights, *The Use of Tests as Part of High Stakes Decision-Making for Students: A Resource Guide for Educators and Policymakers* 4 (2000) (quoting National Research Council, *High Stakes: Testing for Tracking, Promotion, and Graduation* 3 (Jay P. Heubert & Robert M. Hauser eds., 1999)); *see also* Arthur L. Coleman, *Excellence and Equity in Education: High Standards for High Stakes Tests*, 6 Va. J. of Soc. Pol’y & Law 81, 103 (1998); Compl. from NAACP Legal Def. Fund et al. to U.S. Dep’t of Educ. 18 (Sept. 27, 2012) <https://www.naacpldf.org/wp-content/uploads/Specialized-High-Schools-Complaint.pdf>.

<sup>2</sup> Jonathan Taylor, *Policy Implications of a Predictive Validity Study of the Specialized High School Admissions Test at Three Elite New York City High Schools* iii (2015) (Ph.D dissertation, City Univ. of N.Y.),



charges ‘that the examinations discriminate on cultural grounds, against [Black] and Puerto Rican applicants.’”<sup>3</sup> Yet, the Act was adopted despite evidence that the SHSAT was “‘screen[ing]’ out [B]lack and Puerto Rican students who could succeed at the schools,”<sup>4</sup> and over the recommendations of an investigatory committee, which recommended that that admissions to the SHSs “be based on multiple criteria that are objective and equitable in nature.”<sup>5</sup> Despite the fact that the SHSAT is not an accurate measure of merit, it remains the sole determinant of admission to the SHSs.

In the 2024-2025 school year, while Black students were approximately 19% of the New York City public school system student body, they were only around 2% of Stuyvesant High School’s students (“Stuyvesant”), 5% of Bronx High School of Science’s (“Bronx Science”) students, 5% of Brooklyn Technical High School’s (“Brooklyn Tech”) students, and less than 5% of students at the SHSs as a whole.<sup>6</sup> Further, in that same school year, Latinx students made up 42% of the NYC public school student body, but only around 4% of Stuyvesant’s students, 10% of Bronx Science’s students, 7% of Brooklyn Tech’s students, and less than 8% of the students at

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<https://www.proquest.com/openview/5d238f2ba4f286786a68f29be59b4159/1?pqorigsite=gscholar&cbl=18750> (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 75, 89 (2019).

<sup>3</sup> 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>.

<sup>4</sup> 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>;

<sup>5</sup> 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>.

<sup>6</sup> See Dkt. No. 1 ¶ 25 & n.1 (citing NYC Public Schools, *Demographic Snapshot 2024-25: Visual Guide* 5, <https://infohub.nyced.org/docs/default-source/default-document-library/2024-25-demographic-snapshot-summary.pdf>). Demographics from the specific SHSs come from the *Demographic Snapshot*, which is a “document[] incorporated by reference in the complaint” that this Court can consider. *United States ex rel. Foreman v. AECOM*, 19 F.4th 85, 106 (2d Cir. 2021).

the SHSs as a whole.<sup>7</sup> In contrast, Asian American students comprised nearly 19% of the NYC public school student body, but 72% of Stuyvesant’s students, 61% of Bronx Science’s students, 59% of Brooklyn Tech’s students, and 61% of the students at the SHSs as a whole.<sup>8</sup> And white students made up approximately 16% of NYC’s public school students, but 17% of Stuyvesant’s students, 20% of Bronx Science’s students, 24% of Brooklyn Tech’s students, and 22% of the SHSs overall student body.<sup>9</sup>

Given these disparities and the flawed predictive value and the discriminatory origins of the test-based admissions policy, the Discovery Program provides a critical alternative admissions pathway to the SHSs by permitting disadvantaged students of all races, to compete for admission to a small percentage of the seats offered at the SHSs against peers who, like them, attend under-resourced schools. *See* Dkt. No. 1 ¶¶ 35, 41–42. The Discovery Program is open to students who (1) take the SHSAT and receive a high score, but one that is just below the test-only cutoff score; (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”; (4) attend, and subsequently pass, a summer preparatory program administered by the high school; and (5) attend a middle school with an “Economic Need Index” (ENI) of 0.6 (60%) or higher. *Id.* ¶¶ 35, 41.

#### **B. The SHSs’ Admissions Process Prompts Public Scrutiny and Changes to the Discovery Program.**

The chronic under-identification of Black and Latinx students by the SHSs admissions process has attracted scrutiny from students, parents, education experts, civil rights groups and government agencies for decades.<sup>10</sup>

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<sup>7</sup> *See* Dkt. No. 1 ¶ 25 & n.1

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *See, e.g.,* Compl. from NAACP Legal Def. Fund et al., *supra* note 1.

In 2012, a multiracial, multiethnic coalition of ten community organizations<sup>11</sup> filed a complaint with the U.S. Department of Education, Office for Civil Rights (“OCR”), challenging the single-test admissions process for the SHSs as ineffective and racially discriminatory.<sup>12</sup> 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. Indeed, despite being authorized by law, until 2019, 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. *See supra* note 1 at 26.

Faced with such scrutiny in spring 2018, the DOE working group began considering measures to address under-identification of talented Black and Latinx students capable of success at the SHSs and to increase their geographic and socioeconomic diversity. To advance the DOE’s lawful objective of redressing an unfair process that created a barrier to educational opportunity, they rolled out two race-neutral, and evenly applied changes to the Discovery Program in June 2018. First, the DOE revised the Discovery Program’s definition of “disadvantaged” to focus on attendance at high-poverty schools, and second, they increased the allocation of available seats at all SHSs to Discovery Program students to 20%. *See id.* ¶¶ 40–41.

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<sup>11</sup> 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.

<sup>12</sup> 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 19 (2%) of the students were Black and 32 (3%) were Latinx.” *See* Compl. from NAACP Legal Def. Fund, Inc. et al., *supra* note 1.

Following the adoption of the Policy, Asian American students continued to receive admissions offers at rates substantially higher than their share of the applicant pool. *See* Decl. of Lianna Wright in Supp. re: 144 Mot. for Summ. J. ¶ 59, *McAuliffe*, No. 18-cv-11657-ER (S.D.N.Y. Oct. 1, 2021), Dkt. No. 146. In 2018, prior to the implementation of the Policy, Asian American students were 31.1% of the applicant pool yet received 52.2% of offers. *Id.* In 2020, after the full implementation of the Policy, Asian American students were 31.4% of the applicant pool and received 54.8% of offers—meaning that after the full implementation of the Policy, the percentage of offers Asian Americans received rose. *Id.* In each year, Asian American students were admitted at rates far exceeding their representation among the applicant pool. *Id.* White students, too, continue to be admitted at rates higher than their population in the applicant pool. *Id.* In 2018, prior to the implementation of the Policy, white students were 18.1% of the applicant pool and received 26.4% of the offers; in 2020, white students were 17.1% of the applicant pool and received 22.2% of the offers. *Id.* In comparison, Black students, in 2018, were 20.2% of the applicant pool, but received 4.4% of the offers, and, in 2020, were 19.9% of the applicant pool, but only received 5.9% of the offers. *Id.* Latinx students in 2018 were around 22.9% of the applicant pool but received 6.7% of the offers; and in 2020, Latinx students were 24.7% of the applicant pool but received 8.7% of the offers. *Id.*

And, in 2025, these admission trends continue. That year, Black students were 18.4% of the applicant pool but received only 3% of the offers to the test-only seats and 11.5% of the Discovery Program offers.<sup>13</sup> And, only 8 Black students received offers to Stuyvesant based on

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<sup>13</sup> *See* NYC OpenData, 2025 SHSAT Discovery Overall Summary Website, [https://data.cityofnewyork.us/Education/Specialized-High-Schools-Admissions-Overall-Summary/unse-x4pq/about\\_data](https://data.cityofnewyork.us/Education/Specialized-High-Schools-Admissions-Overall-Summary/unse-x4pq/about_data). While these statistics are not included in the Complaint, Defendant Intervenor request that this Court take judicial notice of this information as “relevant matters of public record.” *See Giraldo v. Kessler*, 694 F.3d 161, 164 (2d Cir. 2012).

the SHSAT, out of 781 offers. *Id.* Latinx students were 26.1% of the SHSAT test takers but received only 6.9% of the offers based on the SHSAT and were only 15.3% of the Discovery Program offers. *Id.* White students were 17.3% of the applicant pool, but 25.9% of the SHSAT offers and 8% of the Discovery Program offers. *Id.* And Asian American students were 32.4% of the SHSAT test takers, but received 53.5% of the SHSAT offers and 63.3% of the Discovery Program offers. *Id.*

Consistent with the objectives of the DOE working group, the Policy would “increase enrollment of low-income students at Specialized High Schools.” Office of the Mayor, *Mayor de Blasio and Chancellor Carranza Announce Plan to Improve Diversity at Specialized High Schools* (June 3, 2018).<sup>14</sup> Statements by then-Mayor de Blasio and then-Chancellor Carranza, *id.* ¶¶ 52–54, to which Plaintiffs take exception, confirm that Mayor de Blasio and the DOE’s objectives were to expand educational opportunity for disadvantaged students and increase socioeconomic, racial, and geographic diversity. These statements have already been properly contextualized by this Court. *McAuliffe*, 364 F. Supp. 3d 253, 269–70 (S.D.N.Y. 2019), *aff’d*, 788 F. App’x 85 (2d Cir. 2019). And, these statements, especially read in context, do not support the conclusion that the Policy was adopted to exclude Asian American middle-schoolers from admission to the SHSs.

## II. Procedural History

Prior to this lawsuit, a group of organizations and individuals—including M.P. through his mother, Yi Fang Chen—filed a lawsuit against Mayor de Blasio and Chancellor Carranza, with nearly identical claims as the instant matter, alleging that the Policy violates the Equal Protection Clause. Dkt. No. 1 ¶ 66. As part of this Court’s denial of the plaintiffs’ request for a preliminary

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<sup>14</sup> This press release is cited in the complaint, *see* Dkt. No. 1 ¶ 55, and thus is a “document[] incorporated by reference in the complaint” that this Court can consider. *United States ex rel. Foreman*, 19 F.4th at 106.

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* Dkt. No. 1 ¶ 67 (citing *McAuliffe*, 364 F. Supp. 3d at 253).

On April 23, 2026, Plaintiffs M.P., Ma.P., and P.P., through their parent, Yi Fang Chen, filed this action alleging that the Policy violates the Equal Protection Clause and Title VI. Dkt. No. 1 ¶ 5. Plaintiffs argue that requiring the SHSs to fill at least 20% of their seats through the Discovery Program resulted in M.P.’s denial of admission to his first-choice school, Stuyvesant. *Id.* ¶ 12. On April 27, 2026, Plaintiffs filed a motion for a preliminary injunction. Dkt. No. 15 at 25.

Plaintiffs M.P., Ma.P., and P.P. fail to establish Article III standing, and their claims must be dismissed. And all Plaintiffs fail to state a claim for relief under the Fourteenth Amendment or Title VI. Accordingly, all claims must be dismissed.

## STANDARDS OF REVIEW

### III. Motion to Dismiss Under Rule 12(b)(1)

A district court must dismiss a case for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) “when [it] lacks the statutory or constitutional power to adjudicate it.” *Makarova v. United States*, 201 F. 3d 110, 113 (2d Cir. 2000). The plaintiff “has the burden of proving by a preponderance of the evidence” that standing exists. *Id.* The plaintiff must provide evidence “‘controvert[ing] that presented by the defendant’ if the defendant’s evidence ‘reveal[s] the existence of factual problems’ regarding standing.” *Lugo v. City of Troy*, 114 F.4th 80, 87 (2d Cir. 2024) (quoting *Carter v. HealthPort Techs. LLC*, 822 F.3d 47, 56 (2d Cir. 2016)).

#### **IV. Motion to Dismiss Under Rule 12(b)(6)**

A court should dismiss for failure to state a claim if the complaint fails to set forth “sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face.” *Tanvir v. Tanzin*, 894 F.3d 449, 458 (2d Cir. 2018) (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). The court “must accept as true all allegations in the complaint and draw all reasonable inferences in favor of the non-moving party.” *Matson v. Bd. of Educ. of City Sch. Dist. of N.Y.*, 631 F.3d 57, 63 (2d Cir. 2011) (citation modified). But the court is “not bound to accept as true a legal conclusion couched as a factual allegation,” or required to credit “mere conclusory statements” or “[t]hreadbare recitals of the elements of a cause of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 663 (2009) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A court may also consider “documents incorporated by reference in the complaint.” *United States ex rel. Foreman v. AECOM*, 19 F.4th at 106 (citation modified).

### **ARGUMENT**

At the outset, Plaintiffs’ claims in this matter are duplicative of the pending litigation in *McAuliffe*, and should be dismissed or stayed pending resolution of that case, which Proposed Intervenor, three of which are Defendant-Intervenor in *McAuliffe*, argue should also be dismissed. *See also Curtis*, 226 F.3d at 138 (“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.”)

Moreover, Plaintiffs’ claims must be dismissed for lack of standing, and for failure to state a claim for all claims.

#### **A. Plaintiffs’ Claims Must be Dismissed for Lack of Standing**

Plaintiffs Ma.P. and P.P.’s claims must be dismissed for lack of standing because they cannot establish that their alleged injury is actual or imminent as they are “years away from applying to high school.” *McAuliffe*, 364 F. Supp. 3d at 272.

To establish standing, a plaintiff must establish that they have suffered an injury that is “concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling.” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 409 (2013); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). The injury must be “*certainly* impending” and mere “allegations of *possible* future injury are not sufficient.” *Clapper*, 568 U.S. at 409 (citation modified).

Ma.P. is in the fourth grade and P.P. is in the first grade. Dkt. No. 1 ¶ 15. This Court in *McAuliffe* previously held that a fourth grader and a first grader do not have standing to challenge this policy because “[t]heir current ‘some day’ intentions to attend a specialized school are . . . insufficient to show the existence of an imminent injury.” 364 F. Supp. 3d at 272. The same holding and reasoning applies here, and this Court should dismiss Ma.P. and P.P.’s claims for lack of standing.

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*, 568 U.S. at 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, Plaintiff has failed to adequately allege that the DOE caused his alleged injury.

## **B. The Complaint Must be Dismissed for Failure to State a Claim**

### **1. The Complaint Fails to State an Equal Protection Claim**

Because Plaintiffs are challenging a facially race-neutral, evenly applied policy, they must plausibly plead that the Policy was motivated by an intent to discriminate against Asian American students, *see* Dkt. No. 1 ¶ 95, and had a discriminatory effect on Asian American students. *See Hayden v. Cnty. of Nassau*, 180 F.3d 42, 48 (2d Cir. 1999). The Complaint fails to plausibly plead either prong, and thus, Plaintiffs' Equal Protection claim must be dismissed.

#### **a. The Complaint Fails to Plausibly Allege that the Policy Was Motivated by Discriminatory Intent**

“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). And at the motion-to-dismiss stage, Plaintiffs must allege enough facts to “raise a reasonable expectation that discovery will reveal evidence of illegal” conduct. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). 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). “‘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). Importantly, where (as here) a facially neutral policy evenly administered, it is presumed to be constitutional. *Hayden*, 180 F.3d at 48.

Several kinds of circumstantial and direct evidence are used to determine a policy's purpose, including but not limited to: (1) whether the action "bears more heavily on one race than another"; (2) the historical background of the decision; (3) specific sequence of events leading up to the decision; (4) substantive and procedural departures from the normal process; and (5) contemporaneous statements from the legislative or administrative record. *Arlington Heights*, 429 U.S. at 266–68.

Consideration or awareness of race while developing or selecting a policy is not in and of itself discriminatory. *North Carolina v. Covington*, 585 U.S. 969, 977–78 (2018). The DOE's desire to remedy the racially discriminatory effect of the DOE's prior admissions process does not plausibly indicate discriminatory intent. *Id.* If anything, it reflects a recognition of the DOE's prior discrimination against these same students and a long overdue admission of the need to repair a tainted system.

Here, Plaintiffs fail to allege any facts plausibly showing that DOE adopted the Policy for the purpose of discriminating against Asian American students. Plaintiffs' cited documents, the historical background of the decision, and the impact of the change in policy, together confirm that the DOE's objectives were lawful: to address the longstanding under-identification of qualified students *regardless of race* for admission to the SHSs to increase various measures of geographic, socioeconomic, and racial diversity of the student population.

First, nothing in then-Mayor de Blasio's 2018 *Chalkbeat* op-ed, *see* Dkt. No. 1 ¶ 52 & n.5, 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 21 of those schools. For a perfect illustration of disparity: Just 14 percent of students at Bronx Science from the Bronx.”

*See id.*; Bill de Blasio, *Our Specialized Schools Have a Diversity Problem. Let’s Fix It.*, Chalkbeat (June 2, 2018), <https://chalkbeat.org/newyork/2018/6/2/21105076/mayor-bill-de-blasio-our-specialized-schools-have-a-diversity-problem-let-s-fix-it/>. Thus, the central message of this op-ed is that the Policy would increase *geographic* diversity in the SHSs with some impact on racial diversity. The Mayor’s goal in making the 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[.]” *Id.*

Similarly, the June 3, 2018 press release does not show that Mayor de Blasio or the DOE acted with a discriminatory purpose. Plaintiffs point to the press release’s projection that the Policy would increase the number of Black and Latinx students admitted to the SHSs from 9% to 16%. Dkt. No. 1 ¶ 55. But this does not express any preference for that projected outcome, let alone an intent to diminish opportunity for Asian American students or otherwise to 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 larger applicant pool 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 Specialized High Schools as well. 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[.]” 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](https://a860-gpp.nyc.gov/concern/nyc_government_publications/nc580q26h?locale=en). 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 Communities 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 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).

This remains true after the Supreme Court’s decision in *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 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 still persist . . . and governments . . . still 'can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race.'" *Id.* 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 incorrectly point to facts showing the DOE's desire to remedy the unfair obstacles faced by certain groups in the admissions process as evidence of an intent to exclude Asian Americans. But courts simply cannot equate the mere "desire to eliminate the discriminatory impact' on some disadvantaged groups with 'an intent to discriminate against' other groups" since doing so "could seriously stifle attempts to remedy discrimination." *See 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 include in their Complaint also miss the mark. Contrary to Plaintiffs' suggestion otherwise, nowhere in this statement does Carranza reference the number of Asian American students at the SHSs, Dkt. No. 1 ¶ 54, or otherwise posit that there are "too many Asians", *id.* ¶ 83, at the SHSs. Rather, as this Court already recognized when evaluating this exact statement by Carranza in *McAuliffe*, context matters. When 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.* Read in the correct context, Chancellor 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 allegations regarding the June 2018 press release statements do not plausibly establish discriminatory intent. The quotes from City officials highlighting the reality that for “far too long” the SHSs “failed to reflect the diversity of” the City, *see* Dkt. No. 1 ¶ 56; their support for “greater equity at New York City’s specialized high schools,” *see id.*; and desire to ensure “the student population reflects the city’s population,” *id.*, reveal the lawful focus of the Policy and not, as Plaintiffs call it, an impermissible “racial focus,” *id.*

The prior admissions policy failed to objectively identify qualified students for admission. The new policy removed unfair and arbitrary obstacles that artificially depressed the admissions of 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 include in their complaint allegations about internal DOE documents produced by the DOE in discovery in *McAuliffe*. *See generally* Dkt. No. 1 ¶¶ 58–65. But these documents are entirely consistent with a lawful desire to remove needless barriers, not race-based discrimination. The references to race in emails from Nadiya Chadha, *see* Dkt. No. 1 ¶¶ 61–63, 65, and Josh Wallack, *id.* ¶ 61, 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. Awareness of that need is appropriate and constitutional. *See Jana-Rock*, 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.

Further, Plaintiffs allege that the ENI threshold selected is a “proxy for race” that was chosen to “reduce Asian-American admissions,” *see id.* ¶ 83, without alleging any facts in support. Given the lack of factual allegations that could give rise to such an inference, it appears that Plaintiffs assume 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 does not evince discriminatory intent. *See Hayden*, 180 F.3d at 51 (“[W]here an [application process] that discriminates against a group or groups of persons is reviewed, studied and changed in order to eliminate, or at the very least, alleviate such discrimination, there is a complete absence of intentional discrimination.”).

Additionally, the historical background leading up to the Policy enactment further underscores that the Policy was not a result of discriminatory intent but instead was enacted after decades of advocacy from students, parents, experts, community groups, and more calling for reforms to the discriminatory admissions policy. *See supra* Background § I.A. In response to this

history of discrimination and passive continuation of an unfair process, the DOE formed a working group that assessed the best way to reduce barriers that have long prevented Black, Latinx, and low-income students from having an equal opportunity to compete for admissions at the SHSs. *Id.* The complaint includes no allegations that show that the events leading up to the Policy “reveal a series of official actions taken for invidious purposes” to discriminate against Asian Americans. *Mhany Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 606 (2d. Cir. 2016) (quoting *Arlington Heights*, 429 U.S. at 267).

Finally, Plaintiffs have not demonstrated that the Policy “bears more heavily on one race than another[.]” *Arlington Heights*, 429 U.S. at 265–66. They have alleged no facts evincing that the Policy has a disparate impact on Asian American students. In fact, under the Policy, Asian American students continue to fair better than other New York City students, as they continue to receive SHSAT-based offers at a rate that far outpaces their application rate and receive the majority of the Discovery Program offers. *See supra* Background § I.B. That the Policy continues to favor Asian American students, while Black and Latinx students are perhaps, in some years, slightly less disfavored than before the Policy was adopted again demonstrates the implausibility of Plaintiffs’ allegations.

Whether read together or separately, and within the broader context of the process of crafting a policy for the largest school system in the United States, Plaintiffs’ allegations do not plausibly evince discriminatory intent. “[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*, 438 F.3d at 211 (quoting *Hayden*,



180 F.3d at 50). For these reasons, Plaintiffs cannot carry their burden of plausibly showing discriminatory intent. Their Equal Protection claim must be dismissed.<sup>15</sup>

**b. The Complaint Fails to Sufficiently Allege that the Challenged Policy Has a Disparate Impact**

Although the Plaintiffs’ claims could be dismissed here with lack of intent, Plaintiffs likewise fail to plausibly allege that the Policy had a disparate impact on Asian American students. In *Chinese American Citizens Alliance of Greater New York 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 the Second Circuit 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 161, 173 (2d Cir. 2024) (emphasis added). That principle has no application here.

First, the complaint lacks sufficient allegations to show 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. *See* Dkt. No. 1 ¶¶ 13–14. Plaintiffs point to a DOE analysis that used “2019 SHSAT data [which] concluded that setting aside 20 percent of seats for the Discovery program increased the cutoff score for Stuyvesant by ten points” *Id.* ¶ 13. Plaintiffs then state that the Policy “had a similar effect for the 2025 SHSAT.” *Id.* But, this statement is conclusory as there are no allegations that the 2025 SHSAT data shows that the Policy raised the cutoff score by at least three points,

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<sup>15</sup> Where Plaintiffs have not plausibly alleged discriminatory intent, a race-neutral policy like this one is subject to rational basis review, not strict scrutiny. *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”).

and thus negatively affected M.P. 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's test scores, and how students decide to rank schools. Thus, the complaint fails to sufficiently allege that, but for the Policy, Stuyvesant's 2025 cutoff score would have fallen by three points.

Plaintiffs additionally allege that "Chen's children are excluded from competing for 20 percent of the seats at each high school." *Id.* ¶ 16. But even if this Court were to accept the allegation that the Policy raised Stuyvesant's cutoff score, thereby negatively impacting M.P., Plaintiffs have failed to plausibly plead that the Policy was enacted based on race. Plaintiffs have not alleged facts showing that Stuyvesant's cutoff score impacted Asian American students more or differently than students of other races. Nor have they shown that the cutoff score specifically impacted M.P. differently than any other student.

Instead, as discussed above, *supra* Argument § B.1.a, the Policy applies to all students evenly, regardless of race, and the complaint fails to sufficiently allege the Policy was enacted with an intent to discriminate against Asian American students.

Accordingly, Plaintiffs have failed to sufficiently plead that the Policy had a discriminatory effect on Asian American students.

## **2. The Complaint Must be Dismissed Because Plaintiffs Failed to State a Title VI Claim**

For the same reasons as the Equal Protection claim, Plaintiffs also fail to state a Title VI claim, and thus that claim must also be dismissed. As courts have repeatedly explained, "Title VI's protections are coextensive with the Equal Protection Clause." *Faculty v. New York Univ.*, 11 F.4th 68, 79 n.1 (2d Cir. 2021) (Menashi, J., concurring) (citation modified); *see also Gratz v. Bollinger*, 539 U.S. 244, 276 n.23 (2003) ("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.”). Thus, as Plaintiffs have failed to state an Equal Protection claim for intentional discrimination against Asian Americans, they also have failed to plausibly plead that the Policy was intentionally discriminatory under Title VI. *See Clyburn v. Shields*, 33 F. App’x 552, 555 (2d Cir. 2002) (dismissing plaintiffs’ Equal Protection claims and Title VI claim for the same reasons).

### CONCLUSION

For these reasons, the Court should grant Proposed Defendant-Intervenors’ Motion to Dismiss for lack of standing and failure to state a claim.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Local Civil Rule 7.1, I hereby certify that this brief contains 6,643 words, excluding the portions specified in Local Rule 7.1.

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