

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

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

Plaintiff,

v.

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

Defendants,

and

TEENS TAKE CHARGE, et al.,

Defendant-Intervenors.

Case No. 1:26-cv-03355-ER

**REPLY MEMORANDUM OF LAW IN RESPONSE TO DEFENDANT-INTERVENORS'
OPPOSITION TO PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

The resolution of this motion boils down to a fundamental question: what counts as discriminatory intent under modern equal protection jurisprudence?

Intervenors, like Defendants, posit the view that discriminatory intent requires proof of hostility toward the individuals harmed by a race-motivated policy. Because City officials did not explicitly express disdain for Asian-American students, Intervenors argue, Plaintiff Yi Fang Chen cannot show intentional discrimination against Asian-American students like her son.

But Plaintiff need not prove that the Mayor, Chancellor, or anyone at the Department of Education (DOE) harbored hostility or hatred toward Asian-American families attending the specialized high schools. To the contrary, Chen understands that Defendants could have been well-intentioned in their efforts to help constituents they viewed as underserved, and that Defendants' actions might not *seem* overtly discriminatory against Asian students. But that was true as well for the school administrators at Harvard and the University of North Carolina who sought to increase racial diversity at their schools. Yet the Supreme Court made clear in *Students for Fair Admission v. President and Fellow of Harvard College (SFFA)* that even sincerely held beliefs and arguably laudable goals cannot justify government decision-making that distributes zero-sum educational opportunities by race.

Here, like the administrators in *SFFA*, government officials categorized New York City children by race and implemented an admissions policy designed to prioritize some children over others based on the color of their skin. To achieve their racial balancing goals, Defendants went so far as to exclude from the Discovery program economically disadvantaged children who happened to attend schools with more economically prosperous classmates. And while the changes may not have impacted Asian-Americans as broadly as Defendants projected, the changes did ultimately deny M.P. a spot at his dream school.

Intervenors offer nothing in their Opposition that changes the preliminary-injunction calculus. In fact, their arguments confirm that M.P. missed admission to Stuyvesant by three points because the admissions program was altered for the very purpose of changing the racial composition of the SHSs. Preliminary relief would not require this Court to remake the City’s admissions system or displace any broad class of students. It would simply preserve M.P.’s opportunity to attend the school he would have been attending (absent Defendants’ unconstitutional use of race) while this case proceeds.

ARGUMENT

I. Chen Is Likely to Succeed on the Merits Because the Discovery Program Revisions Were Racially Motivated and the ENI Threshold Was Used as a Racial Proxy

A. Modern Equal Protection Precedent Does Not Support Intervenors’ Arguments

As Intervenors recognize, *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252 (1977), requires courts assessing discriminatory purpose under the Equal Protection Clause to review direct and circumstantial evidence, including the historical background of the decision, departures from normal process, the administrative record, and contemporaneous statements by the decisionmakers. Chen’s opening brief already sets forth in detail how Defendants made clear that their Discovery program revisions were a racially focused effort intended to reduce Asian-American enrollment at the Specialized High Schools. *See* Pl.’s Br. Background § 4.

Intervenors attempt to rehabilitate these statements, reframing them as having a “central message of . . . geographic diversity” rather than race,¹ or acknowledging the explicit racial focus but suggesting that that Defendants did “not express any preference for that projected outcome, let

¹ Intervenors’ reframing of Mayor de Blasio’s *Chalkbeat* op-ed (Intervenors’ Opp’n Br. at 14) is not facially credible—he led the argument with references to racial demographics, ultimately touting his desire to “almost double” the admissions of certain racial minorities (inevitably at the exclusion of others). Any references to geographic diversity are secondary.

alone an intent to diminish opportunity for Asian American students or otherwise to discriminate based on race.” Intervenor’s Opp’n Br. at 14–15. That is not credible. The whole point of publicly touting the projected racial effects of the policy was to express approval of those effects. But more fundamentally, it does not matter whether Defendants expressly said they wanted to diminish opportunity for Asian-American students because that was known to be a consequence of racially balancing admissions in a zero-sum system. As the Second Circuit recognized, “SHS admission is a zero-sum game in that admitting more students from a particular demographic means admitting fewer from other demographics. Thus, the City’s modeling also projected that the changes to the Discovery Program would decrease the number of Asian Americans at the SHSs.” *Chinese Am. Citizens All. of Greater N.Y. v. Adams*, 116 F.4th 161, 167 (2d Cir. 2024) (CACAGNY).

That is the core point. The demographic projections used by Defendants—both publicly and privately—most clearly illustrate their discriminatory purpose. Defendants wanted fewer seats to go to Asian-American students in order to make more room for students of other races. They planned for it. They projected it in charts. And for an Asian-American mother like Ms. Chen, the message was clear: Defendants wanted fewer children like hers attending the SHSs.

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

Roper Decl. Ex. 5 at ChMc_E_075252

This highlights a fundamental problem with Intervenor’s and Defendants’ argument: they fail to grapple with what discriminatory intent means under modern equal protection law. The Supreme Court’s recent decision in *Louisiana v. Callais* leaves no ambiguity: “if race play[s] a

role in a decision made by a government actor, strict scrutiny applie[s].” 146 S. Ct. 1131, 1146 (2026). That is true regardless of whether there is proof of hostility or hatred toward an affected racial group. Like the Second Circuit in *CACAGNY*, the Supreme Court recognized in *SFFA* that in a competitive admissions system, working to benefit some racial groups necessarily comes at the expense of others: “Respondents’ assertion that race is never a negative factor in their admissions programs cannot withstand scrutiny. College admissions are zero-sum, and a benefit provided to some applicants but not to others necessarily advantages the former at the expense of the latter.” 600 U.S. 181, 218–19 (2023). Tellingly, Intervenor’s also fail to address recent decisions in this District underscoring the impact of *SFFA* and *Callais* on Equal Protection jurisprudence.²

Nor can Intervenor’s avoid the record by calling the Discovery revisions race-neutral. It is simply not true that Chen “do[es] not cite any evidence” that the ENI threshold was selected as a proxy to achieve racial balancing. Intervenor’s Opp’n Br. at 18. DOE modeled different ENI thresholds and chose a cutoff designed to yield a “more diverse” pool, projecting that the Asian-American share of Discovery admittees would drop from 64 percent to 38 percent and that three out of four majority-Asian-American middle schools would be excluded. DOE also acknowledged internally the likelihood of “[r]esistance from those who would have received those seats in absence of change,” but nevertheless persisted with Discovery revisions “as a lever to admit more Black and Hispanic students.” Pl.’s Br. at 9, 16–17; Roper Decl. Exs. 2, 4–7. This Court did not have access to that evidence when it decided the preliminary-injunction motion in *Christa McAuliffe*. In fact, the documents that most clearly demonstrate Defendants’ racial purpose—

² See, e.g., *Herrera v. N.Y.C. Dep’t of Educ.*, No. 1:21-CV-7555-MKV, 2024 WL 245960, at *1–2, *7–8 (S.D.N.Y. Jan. 23, 2024) (finding, after *SFFA*, that statements by de Blasio and Carranza indicating a need to make city officials “look like New York City” constitute evidence of unlawful race-based decision-making); *Am. Council of Learned Societies v. Nat’l Endowment for the Humanities*, No. 25-CV-3657 (CM), 2026 WL 1256545, at *55 (S.D.N.Y. May 7, 2026) (“When the government uses race to create a classification for purposes of official action, the government must satisfy strict scrutiny.”).

including the Chadha and Wallack emails, the April 2018 slide deck, and the projection chart (Roper Decl. Exs. 2–5)—were not available to this Court in January 2019 but were produced in discovery months later.

In any event, facial neutrality does not save a policy adopted for a racial purpose. That is the point of *Arlington Heights*. A court must look past form to determine whether race was a motivating factor, at least in part, in the challenged decision. Here, the record shows that it was.

B. Intervenor’s Authorities Are Distinguishable or Superseded by Recent Caselaw

Intervenor’s cited cases do not justify Defendants’ efforts to reengineer zero-sum admissions outcomes by race. As explained in Plaintiff’s Reply to Defendants’ Opp’n Br. (Dkt. No. 47), § III.D, much of the authority Defendants and Intervenor rely on predates *SFFA*, *Callais*, and *CACAGNY*, and cannot overcome the direct force of those decisions here.

For example, *Boston Parent Coalition* conflicts with the Second Circuit’s decision in *CACAGNY*. See *Boston Parent Coal. for Academic Excellence Corp. v. Sch. Comm. for City of Boston*, 89 F.4th 46 (1st Cir. 2023). There, the First Circuit treated Boston’s school admission plan as a facially neutral admissions change that did not inflict material aggregate harm on Asian-American and white students. *Id.* at 60–62. But *CACAGNY* expressly rejected the notion that a plaintiff must show aggregate disparate impact across an entire racial group. Instead, it held that a valid equal protection claim may rest on proof that “any individual has been negatively affected or harmed by that discriminatory law or policy based on race.” 116 F.4th at 173.

The Fifth Circuit decision in *Lewis v. Ascension Parish School Board* is similarly beside the point. 806 F.3d 344 (5th Cir. 2015). *Lewis* explicitly relied on “Supreme Court . . . precedents on electoral redistricting” to conclude that school-zoning plans dividing students by geography are facially race neutral. *Id.* at 355. And even then, the court emphasized that the plaintiffs had shown only awareness of racial demographics, not that the board selected the challenged plan *because of*,

rather than merely in spite of, its racial effects. *Id.* at 358. In contrast, here the evidence shows that the racial effects of the policy were a primary driver of the admissions changes for the SHSs.

Intervenors’ reliance on *Hayden v. County of Nassau*, 180 F.3d 42 (2d Cir. 1999), and *Jana-Rock Construction, Inc. v. New York State Department of Economic Development*, 438 F.3d 195 (2d Cir. 2006), fares no better. *Hayden* did not involve any of the racial-proxy manipulations that Defendants engaged in here with respect to the Discovery program and, in any event, embraced a framing that *SFFA* explicitly rejected: the use of racial preferences “even in the absence of specific and identified discrimination.” *Id.* at 51; *compare with SFFA*, 600 U.S. at 207 (limiting remedial use of race to “specific, identified instances of past discrimination that violated the Constitution or a statute”). *Jana-Rock* is likewise distinguishable. There, the plaintiffs challenged only the underinclusiveness of an affirmative-action definition after conceding the validity of the remedial program as a whole. 438 F.3d at 200–01. Here, Chen challenges Defendants’ use of race to redesign a zero-sum admissions program. And to the extent *Jana-Rock* suggests that a plaintiff must show a separate “intent to harm” the excluded group, *id.* at 211, that framing cannot survive *SFFA*, which makes clear that in competitive admissions, a racial preference for some necessarily disadvantages others. 600 U.S. at 218–19.

Nor does *Alexander v. South Carolina State Conference of the NAACP*, 602 U.S. 1 (2024), undermine Chen’s claims. There, the Court observed that government officials “will almost always be aware of racial demographics” and that such awareness alone is not “nefarious.” *Id.* at 37 (citation modified). But *Alexander* involved a redistricting challenge in which the Court found that the legislature had used race only as a secondary consideration after prioritizing traditional geographic criteria. *Id.* at 23–27. Here, internal DOE documents show precisely the opposite: DOE staff modeled the racial effects of different ENI thresholds, selected the option projected to cut the

Asian-American share of Discovery admittees from 64 percent to 38 percent, and dismissed race-neutral alternatives because they would not produce the desired racial outcome. That is not passive “awareness” of demographics—it is the deliberate use of race as a decisional criterion.

Doe ex rel. Doe v. Lower Merion School District, 665 F.3d 524, 548 (3d Cir. 2011), is no different. There, the Third Circuit held that “[t]he consideration or awareness of race while developing or selecting a policy . . . is not in and of itself a racial classification.” But that is not what happened here. DOE did not merely *consider* or become *aware* of race while developing an otherwise neutral policy. Instead, it modeled the racial effects of competing options and selected the one designed to produce a specific racial result.

Intervenors’ reliance on *Texas Department of Housing & Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015), is also misplaced. *Inclusive Communities* addressed disparate-impact liability under the Fair Housing Act—a statutory framework distinct from the Equal Protection Clause analysis at issue here. The case does not support an argument that the Equal Protection Clause permits the government to use facially neutral proxies to reallocate competitive benefits by race. And even in the context of the Fair Housing Act, the Court cautioned that race-conscious remedial efforts may not devolve into “racial targets or quotas.” *Id.* at 545–46. That is precisely the concern here, where Defendants selected Discovery criteria based on projected racial outcomes in a zero-sum admissions system.³

C. Chen Only Needs to Show a Discriminatory Impact on Her Own Son

Intervenors’ discriminatory-effect argument (Intervenors’ Opp’n Br. at 19–20) only confirms why Chen is entitled to relief. Intervenors acknowledge that, under the Second Circuit

³ Chen’s Title VI claim against the DOE rises or falls with the same intentional-discrimination analysis. A Title VI plaintiff alleging intentional discrimination must show that discrimination was a “substantial” or “motivating factor” in the challenged decision. *Tolbert v. Queens Coll.*, 242 F.3d 58, 69–70 (2d Cir. 2001). Intervenors appear to agree. See Intervenors’ Opp’n Br. at 20. Because Chen is likely to succeed in showing that race was a motivating factor behind the Discovery changes, she is also likely to succeed on her Title VI claim.

decision in *CACAGNY*, once a plaintiff shows that the government adopted a policy with a discriminatory racial purpose, “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.” *CACAGNY*, 116 F.4th at 173. That is precisely the case here. Chen need not show that Asian-American students were harmed in the aggregate, or that any other Asian-American student was affected. She need only show that Defendants adopted the Discovery revisions for a racial purpose and that her son was denied admission to Stuyvesant as a result. Intervenor’s do not dispute that Chen’s score would have qualified him for Stuyvesant but for the Discovery changes, instead arguing that “Plaintiffs do not point to sufficient evidence that the Policy caused M.P. to miss Stuyvesant’s cutoff score.” Intervenor’s Opp’n Br. at 21. But Chen showed that the DOE’s own projections concluded that setting aside twenty percent of seats for Discovery increased the Stuyvesant cutoff score by 10 points, and Defendants’ Opposition tellingly does not dispute that Chen would have been admitted to Stuyvesant but for the Discovery set aside.

II. Intervenor’s Other Duplicative and Underdeveloped Arguments Do Not Alter the Analysis

Intervenor’s brief largely tracks arguments made by Defendants. For example, Intervenor’s cursorily argue that (1) Plaintiff must meet a higher standard for a preliminary injunction (Intervenor’s Opp’n Br. at 12), (2) Plaintiff cannot show sufficient harm to justify a preliminary injunction (Opp’n Br. § II), and (3) the balance of equities and public interest are not in Plaintiff’s favor (Opp’n Br. § III). Those arguments are addressed in Sections I, II, and IV of Plaintiff’s Reply to Defendants’ Opposition Brief, and need not be repeated here.

Intervenor’s also reference threshold arguments in their Preliminary Statement that they do not develop in the body of their brief. For example, Intervenor’s allude to the possibility of a stay pending resolution of the related action, *id.* at 5, but do not press that argument. In any event, a

stay would make no sense here because the related action is not currently addressing the merits of claims like Chen's but is instead focused on standing issues unique to that case.

Likewise, Intervenor's suggest in their Preliminary Statement that Chen cannot pursue a claim on behalf of M.P. because he chose to attend a middle school that is not eligible for the Discovery Program. *Id.* at 6. But a student is not required to organize his middle-school education around an unconstitutional racial proxy in order to challenge the consequences of that proxy later. Moreover, M.P.'s injury is not merely that he attended a middle school ineligible for Discovery. It is that Defendants used a racially motivated Discovery expansion and ENI threshold to raise the non-Discovery cutoff at Stuyvesant, thereby denying admission to a student who would have been admitted absent the challenged policy. That injury exists regardless of which middle school M.P. attended.

Intervenor's also cite several editorials and articles critiquing the SHSAT as an admissions tool for the SHSs. Intervenor's' Opp'n Br. at 7–10. But whether the SHSAT is the best tool for predicting success at the SHSs, or whether some other admissions process would be preferable, is not at issue in this case. Whatever the merits of the broader debate about the SHSAT, that debate is not before this Court. The question is whether the specific policy Defendants adopted in 2018 was motivated by race, not whether some other admissions system might be preferable.⁴

CONCLUSION

For the reasons set forth in the Plaintiff's Opening Brief, this Brief, and Plaintiff's other Reply Brief, the Court should grant the motion for a preliminary injunction and order that M.P. be admitted to Stuyvesant High School for the 2026–2027 school year pending resolution of this case.

⁴ State law plainly requires use of a competitive examination as the sole criterion for admission to the SHSs, and even the Discovery program for disadvantaged students is statutorily tethered to SHSAT performance. N.Y. Educ. Law § 2590-g(12)(b) (1994).

Dated July 10, 2026.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH WORD-COUNT LIMIT

I certify that this memorandum complies with the applicable word-count limitation. I relied on the word count generated by the word-processing program used to prepare this memorandum. According to that program, the memorandum contains 2994 words.

Dated July 10, 2026.

/s/ Dean McGee

Counsel for Plaintiff