TEENS TAKE CHARGE,

Complainants

vs. 

NEW YORK CITY DEPARTMENT OF EDUCATION;

Respondents.

COMPLAINT PURSUANT TO TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
The New York City school system is one of the most racially segregated school systems in the country.\(^1\) It is also the most heavily screened school system in the country.\(^2\)

This is no coincidence. New York City uses middle and high school admissions screens to partition one of the nation’s most diverse public school populations into highly segregated schools by siphoning off white students into a few well-resourced schools while packing Black and Latinx students, as well as students from under-represented Asian ethnicities, into poorly-resourced schools. New York City allows a select group of schools to use admissions screens to consolidate and hoard wealth, educational resources, prestige, and reputation. These schools open doors to top colleges and careers for their disproportionately white student bodies, while slamming these doors shut for the Black, Latinx,\(^3\) and under-represented Asian\(^4\) students screened out of such schools. This dual school system provides a high-quality public education to a minority of students. But it does so at the cost of utterly failing the vast majority of the nearly 927,000 Black, and Latinx, and Asian children who attend New York City public schools.

The New York City public school system is 66% Black and Latinx.\(^5\) Despite being an overwhelming majority of the overall public school population, Black and Latinx students are almost entirely shut out of programs with selective admissions screens. The same is true of most Asian students.\(^6\) While some heavily screened schools accept a disproportionately high number of Asian students, by combining Asian students across a huge range of ethnicities and national origins—the average life circumstances, income, and immigrant status of which differ tremendously—those numbers obscure the reality that the system also fails the vast majority of Asian students, most of whom are low-income and/or first or second generation immigrants.\(^7\)

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\(^1\) For example, 75% of Black and Latinx students attend schools where less than 10% of the student body is white, and 33% of white students attend schools where more than half of the student body is white. NEW YORK CITY COUNCIL, SCHOOL DIVERSITY IN NYC, https://council.nyc.gov/data/school-diversity-in-nyc. See also John Kucsera & Gary Orfield, New York State’s Extreme School Segregation, UCLA’S THE CIVIL RIGHTS PROJECT (Mar. 2014).


\(^3\) This complaint uses the term “Latinx” as a gender-neutral way to refer to people of Latin American origin or descent. For purposes of referring to the admissions data provided by the NYCDOE, discussed infra Section V.A, the complaint treats this term as interchangeable with the term “Hispanic.”

\(^4\) This complaint uses the term “Asian” to refer to a broad demographic of students encompassing a wide range of ethnicities.

\(^5\) NEW YORK CITY COUNCIL, SCHOOL DIVERSITY IN NYC, supra note 1.

\(^6\) Asian students constitute 16% of New York City’s public school student population. Id.

\(^7\) See Alia Wong, 4 Myths Fueling the Fight Over NYC’s Exclusive High Schools, ATLANTIC (Mar. 21, 2019) https://www.theatlantic.com/education/archive/2019/03/stuyvesant-admissions-controversy-fact-or-fiction/585460/ (attributing high Asian rates of admission to top public schools to disparities in economic and immigrant status.
Through the use of screens, New York City has heavily stacked the deck against Black, Latinx, and under-represented Asian high school applicants who are equally entitled to but denied the same quality public education as their white peers. Though a number of individual screens—described herein—demonstrate a clear discriminatory impact on students of color, no single screen is responsible for the discriminatory impact of the system overall. It is the system-wide arrangement of screens that leads to such a stark result. Rather than building a public school system that tackles inequality and is, in the words of the city’s Chancellor of Education Richard A. Carranza, “actively anti-racist,” New York City has built a system that compounds racial inequality from the moment students enter it, and, as Chancellor Carranza has described, has “created a permanent underclass in New York City.” This interlocking system of admissions screens has a disparate impact on students of color and provides prima facie evidence of a Title VI violation.

Public school students in New York City first confront discriminatory screening at the start of elementary school, with testing for gifted-and-talented programs. Since former Mayor Michael Bloomberg’s tenure in office, admission to these programs in elementary schools has been exclusively based on a standardized test taken by four-year-olds for entry in kindergarten. The statistics are clear about what this had led to: Gifted-and-talented programs are hypersegregated.

Students face segregating screens again in fourth grade when they apply for middle school. At the age of ten or eleven, the vast majority of Black, Latinx, and under-represented Asian elementary students are screened out of the best-resourced public middle schools. According to one report, at least 37% of middle schools in New York City use competitive screens in their admissions. Factors used to screen at the middle school level also vary according to the school among those identifying as Asian and noting that Asian-majority neighborhoods are more economically depressed than other non-white-majority neighborhoods).

11 Id. (“In a system where 65% of kindergartners are Black or Latinx, only 18% of gifted and talented kindergarten seats are offered to Black or Latinx students.”)
and the program, but some typical factors considered include academic and personal behaviors, fourth-grade report card, reading and math standardized test scores, attendance and punctuality records, auditions, writing samples, or other assessments.

Middle school screens compound the injustice of high school screens. Black, Latinx and under-represented Asian children locked out of well-resourced middle schools are even less likely to get the education they need to be competitive when jumping through hoops required to apply to screened public schools. By the time these students apply to high school, they face a confounding admissions process that sorts students based on varying combinations of test scores, grades, attendance, punctuality, zip code, interviews, specialty exams, and other discriminatory factors.

The result is the same year after year: these screens disproportionately funnel Black and Latinx students, and under-represented Asian students, into low-performing schools, as white students secure a disproportionately high number of seats at the schools that provide the greatest resources and support for students. For example, 92% of students at the heavily-screened and disproportionately white NYC iSchool\(^{13}\) said that the school’s wide variety of programs, classes, and activities keeps them engaged. Meanwhile, only 53% of students at Chelsea Career and Technical Education High School (Chelsea CTE), a disproportionately Black and Latinx school\(^ {14}\) in the same building reported the same.\(^ {15}\) Teens Take Charge member and Chelsea CTE student Chris Gonzales noted that NYC iSchool has a wider variety of extracurricular activities, bigger classrooms, and more resources. “We see the achievement gap, wealth gap, and opportunity gap every single day,” Gonzales said. “The staircase separating our schools is a visual reminder of these gaps.”\(^ {16}\) The experience of Teens Take Charge member Gerardo Hernandez is also illustrative. Without guidance from his middle school about high school admissions, he landed at an unscreened high school in the Bronx. “[W]hat I’d read about the school sounded great,” recalled Hernandez, “but in reality I entered a high school that was performing below standards—where

\(^{13}\) During the 2020 admissions cycle, 34% of offers to NYC iSchool went to white students, while white students comprise only 15% of public school students in New York City. See Appendix A.

\(^{14}\) During the 2020 admissions cycle, 56% of offers went to Latinx students, and 21% of offers went to Black students, while just 6% of offers went to white students. See Appendix A.


just 1 in 7 students enters the school performing on grade level. I knew there were better schools, but I couldn't transfer. I was trapped . . . I tried striving for better with little to no guidance.”

No other public school system in the country subjects children to such a burdensome and discriminatory screening process. And for good reason: these are children simply seeking access to a quality and integrated public education to which they are entitled. Structuring the nation’s largest public school system’s admissions practices in the manner of private colleges mocks the ideals of universal public education and fails thousands of Black, Latinx, and under-represented Asian children every year. Teens Take Charge member Lennox Thomas put it plainly: New York City’s admissions policies determine whether students “enter a free academic heaven where opportunities [are] endless, funding [is] abundant, and the number of classes [are] in the hundreds, or an academic abyss, where there [are] finite resources, rushed curricula, and short staffing.”

Administering a public school system in a manner which has a severe disparate racial impact not only fails thousands of students every year, but also undermines our democracy. The Supreme Court has recognized that public education is a core element of democratic citizenship, underscoring that education is “perhaps the most important function of state and local governments.” Importantly, in striking down segregation in public schools, the Court has said: “[I]t is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.”

Teens Take Charge files this complaint to redress this ongoing pattern and practice of unjustifiable school segregation of Black, Latinx, and under-represented Asian students into low-performing schools by way of screening. Federal law prohibits recipients of federal funds from utilizing admissions policies which have the effect of subjecting individuals to discrimination on the basis of race. While New York City public school students confront discriminatory screening in elementary school, middle school, and high school, this complaint specifically targets discriminatory admissions screens in public high schools. As laid out below, admissions screens in New York City public high schools have a disparate impact on Black, Latinx, and under-

20 Id.
represented Asian students, excluding thousands of them from admission to New York City’s best-resourced and highest performing schools without legitimate justification. Because there are equally effective, less discriminatory alternatives available, the New York City Department of Education should not be permitted to maintain this system of screening that perpetually and disparately disadvantages students of color. New York City should replace its current system with one that fulfills the purpose and promise of the New York City Department of Education: to provide every student with equal access to a high-quality public education.

I. Parties

The organizational complainant brings this complaint on behalf of Black, Latinx, and under-represented Asian students who have been, and who will continue to be, disparately disadvantaged by the discriminatory means through which New York City public schools screen students for admission.

The Complainant is Teens Take Charge (TTC), a coalition of New York City high school students dedicated to amplifying the voices and experiences of underserved, often low-income students of color impacted by the city’s inequitable educational regime. TTC passionately combats academic segregation by analyzing present-day inequity, tracing its historical roots, and subsequently developing policy proposals and public advocacy campaigns aimed at persuading city and school officials into enacting tangible change.

The respondent is the New York City Department of Education (NYCDOE). NYCDOE receives federal financial assistance from the U.S. Department of Education.

II. New York City’s System of Racially Segregated Public High Schools Is the Product of the City’s Decision to Screen Public School Students and Is Not Required to Deliver High-Quality Public Education

The maintenance of racial segregation in New York City’s public school system is a direct product of the City’s decision to begin allowing public high schools to screen students on the basis of metrics ostensibly measuring academic merit, but which in reality measure racial inequality.

The prevalence of screened public schools is a relatively recent phenomenon in New York City. Prior to the 1970s, most New York City public schools were geographically zoned, requiring
students to attend schools in their neighborhood.\textsuperscript{21} During the 1980s and 1990s, some high schools began shifting to an “Educational Option” (“Ed Opt”) model, under which schools would “admit students of varying academic abilities along a bell curve.”\textsuperscript{22} Under such models, admissions were determined by a mix of randomized selection and review of applicants from a pool of students testing at, above, and below grade level. Some of the best-resourced and highest performing schools in New York City—Beacon High School and Baruch College Campus High School, for example—adopted an Ed Opt model during this time and retained their status as high-performing public high schools. This alone should dispel the myth that screened public high schools are necessary to create high-quality public schools.\textsuperscript{23}

Yet during this period of time, other high schools were screening students using a variety of metrics. The goal was not to improve the quality of education for New York City public students, but rather to cater to the city’s white elite and reverse the flow of white flight.\textsuperscript{24}

The end result was the creation of a highly selective, primarily white public school system within the broader public school system. As one member of the New York City Board of Education commented at the time, it was “harder to get into . . . a screened program than into Harvard, Yale

\begin{itemize}
  \item \textsuperscript{21} See Hu & Harris, supra note 2.
  \item \textsuperscript{22} Id.
  \item \textsuperscript{23} See Valerie Strauss, \textit{Why School Integration Works}, WASH. POST (May 16, 2019), https://www.washingtonpost.com/education/2019/05/16/why-school-integration-works (documenting the enormous benefits afforded to students that attend racially integrated schools and the inherently harmful effects on students attending racially segregated public schools).
  \item \textsuperscript{24} Around this time, accommodations for white families unwilling to participate in school integration were built into the admissions criteria for New York’s elite Specialized High Schools. When the Hecht-Calandra Act was passed in 1971, the Specialized High Schools (Stuyvesant, Bronx Science, and Brooklyn Tech) were 90% white. See Jim Dwyer, \textit{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. When the admissions exams to New York City’s Specialized High Schools were attacked for “discriminat[ing] on cultural grounds” against Black and Latinx students, the New York State Legislature sought to protect the exam rather than reexamine it. The Hecht-Calandra Act mandated that Stuyvesant, Bronx Science, and Brooklyn use the Specialized High School Admissions Test (the “SHSAT”) as their sole admissions criterion. Eliza Shapiro, \textit{De Blasio Has Means, If Not Will, to Reform Specialized School Admissions}, POLITICO (Mar. 15, 2018), https://www.politico.com/states/new-york/albany/story/2018/03/15/de-blasio-has-means-if-not-will-to-reform-specialized-school-admissions-317675. The schools had already used an admissions exam for decades, but Hecht-Calandra was passed to curtail efforts to expand access to Black and Latinx students and maintain the status quo. The chancellor of the New York City school system at the time, Harvey Scribner, was expected to begin investigating claims that the SHSAT was discriminatory. Mayor John Lindsay was also exploring methods to expand access to Black and Latinx students. The bill’s co-sponsors, Burton G. Hecht and John D. Calandra, were clear about their intent. They declared Chancellor Scribner’s “attempt to destroy these schools must be stopped immediately” and rushed the bill’s passage. Id. Today, Black and Latinx students comprise just 11% of the student bodies at New York City’s specialized high schools. See Eliza Shapiro, \textit{This Year, Only 10 Black Students Got Into N.Y.C.’s Top High School}, N.Y. TIMES (Mar. 19, 2020) https://www.nytimes.com/2020/03/19/nyregion/nyc-schools-numbers-black-students-diversity-specialized.html.
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or Stanford.”

This remains true today. Last year, for example, the acceptance rate at Yale University was 6.2%. the acceptance rate at the affluent, majority-white Eleanor Roosevelt High School on the Upper East Side, a heavily screened public high school, was just 6.0%. In 1986, the New York City Board of Education took a commendable step forward and voted to ban what it termed “unfair screening devices.” These ranged from interviews to entrance exams and assessments of parental involvement. The plan eased entrance requirements at a number of schools that used screens and shifted to a model that included random selection for half of the entering class. Many Board Members expressed hope that this step would expand learning opportunities for students with limited English or learning disabilities. As experts explained at the time, it made sense to do away with screening devices because it was “unfair” to judge whether a student was capable of coping with a rigorous high school, arguing instead to give “kid[s] . . . a chance.” In short, the Board realized that the use of screens was antithetical to their efforts to increase educational access in New York’s public schools, and it moved swiftly to remove them.

By the time Michael Bloomberg took office in 2002, however, these priorities had shifted dramatically. He gained centralized mayoral control over the school system through state legislation passed in 2003, which brought the public school system under the sole control of City Hall for the first time since 1871. The result was an “under-the-radar explosion” of admissions screens: In 2002, 15.8% of school programs screened students for academic achievement; by 2009, it was 28.4% of schools. Over the same time period, schools using an Ed Opt model dropped from 55.4% to 27.7% of all public schools. Between 1997 and 2017, the number of high schools that admitted students only through academic screening, including the Specialized High School Admissions Test (SHSAT), other exams, grades, or auditions, more than tripled from 29 to 112 schools. A researcher who helped advocate for the elimination of screens in 1986 termed the new

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26 See Appendix A.
27 Perlez, supra note 25.
28 Id.
29 Id.
32 See Hu & Harris, supra note 2.
landscape of public school admissions “a bad flashback”—a “game that [students have] got to figure out how to play.”

By the time Mayor Bill de Blasio took office in 2014, New York State had the most segregated schools in the nation. Research pointed specifically to the state’s school choice model, which underlies New York City’s current screening system, as a policy that promoted racial isolation. More generally, they observed that desegregation had receded as an explicit goal of school districts and city governments across the country, adding that if “you don’t have an intention to create diverse schools, they rarely happen.”

Mayor de Blasio is aware that the racial segregation of NYC public schools is a problem. As a candidate, he ran on closing the inequities that burgeoned during the Bloomberg era, declaring “I simply cannot accept the status quo of our school system today” during a forum on education for mayoral candidates. Yet, screening and racial segregation have continued to flourish under de Blasio’s leadership. As of June 2018, 190 middle schools and high schools in New York City screen all of their students, and few if any New York City public high schools are as racially diverse as the city itself.

Despite an explicit commitment to “anti-racis[m],” Mayor de Blasio and NYCDOE have not taken any meaningful steps towards desegregation across the entire New York City public school system. Both de Blasio and his school chancellors have supported piecemeal initiatives to improve diversity at individual schools but have said little about changes they would implement to overall enrollment policies. De Blasio has maintained a relatively narrow focus on the city’s Specialized High Schools. Carmen Fariña, who served as de Blasio’s Chancellor until 2018, expressed support for individual schools’ diversity plans but was quiet on NYCDOE-wide changes. Her successor, Richard Carranza, has criticized the role screens play in creating and further entrenching segregation, but has not done anything meaningful to address them.
at the close of his mayoralty, de Blasio has yet to deliver on his promise of a “large scale desegregation plan” to address racial inequality throughout the school system.\footnote{Cassi Feldman, \textit{New York City Officials: Large-Scale School Desegregation Plan Likely Coming By June}, CHALKBEAT N.Y. (Dec. 2, 2016), https://ny.chalkbeat.org/2016/12/2/21099354/new-york-city-officials-large-scale-school-desegregation-plan-likely-coming-by-june.}

The city’s political leaders are well aware that they are presiding over a discriminatory and illegal school system. While they have showed support for initiatives like the District 15 Diversity Plan and promised funding to similar community-driven plans,\footnote{NYC.GOV, \textit{Mayor de Blasio and Chancellor Carranza Announce District 15 Middle School Diversity Plan and Launch $2M School Diversity Grant Program} (Sept. 20, 2018), https://www1.nyc.gov/office-of-the-mayor/news/478-18/mayor-de-blasio-chancellor-carranza-district-15-middle-school-diversity-plan-and/#/.} they have not directly addressed the role screens play in admissions and failed to take measures within their control to remedy the disparate impact the screening system has. The 307,000 public high school students in New York City, of which approximately 123,665 are Latinx, 83,070 are Black, and 51,068 are Asian, cannot wait any longer for the Mayor and the City to fulfill their promises.\footnote{NEW YORK STATE EDUCATION DEPARTMENT, \textit{NYC PUBLIC SCHOOLS ENROLLMENT} (2018 - 19), https://data.nysed.gov/enrollment.php?year=2019&instid=7889678368.} Their inaction has failed New York City’s legal obligations to its children, thereby violating Title VI.

\section*{III. Facts}

\begin{enumerate}
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\item \textbf{High School Application Process}

Every December, the 80,000 eighth graders in New York City public schools apply for high school. There are more than 700 high school options\footnote{Some high school buildings house multiple programs, each with their own admissions method.} for eighth graders to consider, and they can apply for up to 12, ranking their choices in order of preference.

High school programs use various factors to consider their ranking order for students. Some programs may give priority to specific groups of applicants before others, and all programs use one of eight admissions methods to compose their first-year class. Some methods are based on random selection, and others evaluate applicants based on a program’s selection criteria (which can include screens). Finally, an algorithm similar to the one used for medical residency programs matches students’ preferences with schools’ preferences. In March, most eighth graders learn where they will begin high school in the fall.\footnote{2021 NYC HIGH SCHOOL AND SPECIALIZED HIGH SCHOOLS ADMISSIONS GUIDE, NYC DEP’T OF EDUCATION (2020) [hereinafter NYC HIGH SCHOOL ADMISSIONS GUIDE], https://www.schools.nyc.gov/docs/default-source/default-document-library/2021-high-school-and-specialized-high-schools-admissions-guide----guide-to-the-shsat.}
b. **Screened Programs**

A high school program can use one of eight admissions methods to extend offers to students.\(^4\) One of these methods is screens. Every screened program uses its own set of selection criteria to create an admissions rubric. Student applications are evaluated according to the rubric, and programs rank the students they choose to admit accordingly.

Admissions rubrics are maintained at the individual school level. They are not standardized by the Department of Education, and they are not provided to students in the 492-page High School Admissions Guide. Students must visit each school’s individual website to access the rubric, and many are not publicly available. In 2019, the Feerick Center for Social Justice at Fordham Law School attempted to study these rubrics. After three months of outreach and FOIL requests to 157 programs, they received only 20 rubrics.\(^4\)

Given the lack of standardization and transparency, it is impossible to know every factor that a screened school might include in its admissions rubric. The following are common criteria. Each of them, as laid out below, correlates with racial inequality.

i. **Attendance and Punctuality**

Approximately 20% of New York City middle and high schools use attendance records to make admissions decisions. For example, Eleanor Roosevelt High School imposes a strict floor, requiring that students have fewer than 10 days in which the student was late or absent during their seventh-grade year in order to be admitted. NYC Museum School, which awards a quarter of an applicant’s total admission points on the basis of attendance and punctuality alone, takes an alternative approach, docking points for every day an applicant is tardy or absent during their seventh-grade year.

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\(^4\) The methods are: (1) SHSAT test, for specialized high schools only; (2) audition; (3) screened; (4) educational option, in which programs make some offers based on randomly assigned numbers and others based on ranking numbers, while maintaining a bell curve of academic diversity, with 16% of admitted students receiving top scores on 7th grade state tests, 68% middle scorers, and 16% low scorers; (5) screened: language, which consider a student’s English Language Learner services entitlement; (6) transfer; (7) zoned; and (8) open enrollment.

Although these measures seem race neutral, they are not. Indeed, a School Diversity Advisory Group convened by the Department of Education found that Black and Latinx applicants are less likely to meet an attendance screen than white applicants.48

Several structural factors help to explain why. First, Black students travel significantly further to school than students from other racial and ethnic backgrounds, meaning their attendance rate is more likely to be affected by unpredictable disruptions to public transportation.49 Second, rates of asthma, one of the leading causes of school absenteeism,50 are higher among Black and Latinx students.51 The most recent New York state report on asthma revealed that 26% of Black and 30% of Latinx middle schoolers suffer from asthma, compared with 20% of white middle schoolers.52 Asthmatic episodes are triggered by a variety of environmental factors, and can require at-home breathing treatments, and in severe cases, trips to the emergency room. While asthma and other health-related absences can be excused with a doctor’s note, this too advantages white families who are more likely to have access to responsive healthcare providers who can supply the appropriate documentation.53

Attendance and punctuality screens penalize Black and Latinx students for circumstances entirely out of their control and unrelated to academic merit. This is antithetical to New York City’s mission to “create[e] and support[e] learning environments that reflect the diversity of New York City” and instead reinforces the very racial inequality the public school system is meant to remedy.54

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51 CDC, CDC HEALTHY SCHOOLS, ASTHMA, https://www.cdc.gov/healthyschools/asthma/index.htm.
ii. Grade Point Average and Standardized Test Scores

Many screened schools set cut-offs for student grade point averages (GPAs) as well as scores on seventh-grade Math and English Language Arts New York state exams. For example, Eleanor Roosevelt High School requires a GPA of 90 or above in any core subject and 85 or above in all other classes, as well as a score of 3 or 4 on both the English Language Arts and Math state standardized tests.55

Racial disparities in GPAs and standardized test scores are dramatic. For example, on the 2019 state Math exam, 45% of white seventh-grade students scored Level 3 or 4, 28% of Latinx students, and 24% of Black students. On the English Language Arts exam, 64% of Asian and white seventh grade students scored Level 3 or 4, compared with 31% of Latinx students and 29% of Black students.56 Public schools that screen on the basis of state test scores thus screen out a disproportionately high number of Black and Latinx students from consideration.

Although Black and Latinx students, on average, score lower on standardized test scores than Asian and white students, this is not because Black and Latinx students have less academic potential to thrive at a rigorous public high school. As voluminous social research makes clear, grades and test scores are not accurate predictors of student potential. Stereotype threat and cultural bias in test construction cast doubt on the results of standardized testing, and research illustrates that standardized tests are not accurate measures of intelligence or predictor of future success. Rather, studies have shown that standardized test scores correlate more strongly with racial identity and socioeconomic status than with academic performance.57

Grades are similarly affected by stereotype threat and tainted by teachers’ implicit and explicit racial biases.58 Like attendance and punctuality, they also tend to reflect factors outside of

57 Stereotype threat, a term coined by researchers Claude M. Steele and Joshua Aronson, refers to the fear of being perceived as conforming to negative stereotypes about one’s social group. Studies by Steele, Aronson, and others demonstrate that stereotype threat contributes race-based “achievement gaps” and has a particularly strong effect on high-stakes exams. See CLAUDE STEELE, WHISTLING VIVALDI: HOW STEREOTYPES AFFECT US AND WHAT WE CAN DO (2010).
students’ control. Students are more likely to complete homework if they have a quiet, well-lit space to work, high-speed internet access, and access to a family member or tutor with the knowledge and availability to help them. Including homework performance in GPA inflates the grades of students with resources, while denying points to students without them, translating socioeconomic inequality into academic disparity.

New York City’s decision to allow public schools to screen on the basis of standardized test scores and GPAs compounds inequality from elementary through middle and high school. These measures benefit students who already made their way into gifted and talented programs starting as early as kindergarten or screened middle schools. Students attending those schools, referred to colloquially as “feeder” schools, receive an education that prepares them to perform better than their peers at non-screened schools on standardized tests, which in turn allows those students to gain access to the city’s top public schools.

Thus, as with attendance and punctuality screens, the use of GPA and test scores cut-offs work to exclude students of color from top schools across the city on the basis of metrics that measure racial and socioeconomic inequality. It is precisely these students that public schools should be focusing on supporting. Instead, NYCDOE allows the city’s top schools to screen them out entirely, even as top public schools in other cities, as well as public and private colleges and universities, have begun to reduce or eliminate the role of standardized test scores in admissions.

iii. Program-Specific Tasks

Many high school programs require essays, interviews, or assessments unique to the program. For example, Bard High School Early College (District 1) also requires students to take its unique admissions assessment, and, if they pass the assessment, to interview on campus. NYC iSchool (District 2) requires an “online admissions activity” that is scored by two readers and

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61 Id.


63 This is in addition to a GPA screen (85% or above) and attendance screen (fewer than 10 absences or tardies).

constitutes 33% of an applicant's overall score. Frank McCourt High School (District 3) also requires applicants submit an online written task which is weighted as 60% of the applicant’s overall score. Beacon High School requires applicants to submit a portfolio that includes test scores, a seventh-grade report card, an essay, and a student work sample with teacher comments.

As with attendance, punctuality, grades, and state test scores, program-specific tasks reward students who have access to the most economic and technological resources, as well as those with access to guidance counselors with expertise and teachers with insider-knowledge, able to help prepare students for the program tasks. Although the performance-specific tasks are school specific, a wide variety of resources are available to prepare students for them if the student’s family can afford it. Private companies offer tutoring for school specific tests, as well as school-specific interview preparation, as wealthy students leverage their resources into preparation for the program-specific task.

c. Admissions Priority

Programs have discretion to give priority to certain groups of students, such as to eighth graders continuing from the program’s middle schools or to students and residents of a particular district or borough. Although NYCDoe does not formally categorize admissions priority based on residency as a screen, in reality it functions as a de facto screen, erecting walls between different boroughs and neighborhoods that even the brightest students cannot penetrate. This de facto second screen compounds the racial inequality of New York City’s public school system by injecting racial disparities in housing into the already racially unequal screening system.

The District 2 priority is particularly inequitable. It was established in the 1990s as part of an effort to keep middle-class parents invested in the public school system by ensuring their children could attend a school close to home. While most other, less wealthy, districts give a most a borough-wide priority, District 2 snakes through wealthy, disproportionately white neighborhoods from upper to lower Manhattan and gives priority only to students living in those neighborhoods. NYCDoe’s policy of allowing schools to grant admissions priority based on

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residency permits white parents in District 2, which is predominately white, to hoard spots at the City’s top schools, many of which are located in District 2, preventing Black and Latinx applicants from even competing for the vast majority of spots.\(^6^9\) In 2018-2019, 76\% of schools in District 2 were found to be unrepresentative, meaning that those schools’ enrollment rates by race/ethnicity were more than twenty percentage points off from the local district’s student demographics for at least one racial group.\(^7^0\)

In 2020, there were seven programs that filled more than 97\% of their first-year class with students from priority groups. Three of those programs, Baruch College Campus High School, Eleanor Roosevelt High School, and NYC Lab School, give priority only to students and residents in District 2.\(^7^1\) Unsurprisingly, during last year’s admissions cycle, Black and Latinx students combined received only 9\% of offers from Baruch College and only 5\% of offers from Eleanor Roosevelt. Thus, New York City has effectively racially gerrymandered the educational district with many of its best schools. Top students in Queens and Brooklyn, which have large Black, Latinx, and Asian student populations, are denied an equal opportunity simply because of where their parents reside.

d. Screens and Admissions Priority Working in Concert

Even more problematic than the use of screens with individually disparate impacts is the way in which that they are administered in concert. The system of screens is distributed in a strikingly unequal way that both mirrors and exacerbates racial disparities. Most of the schools that heavily screen students are clustered in Manhattan and Brooklyn, and their student bodies are whiter than the overall school population.\(^7^2\) Screened high schools contain disproportionately high

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\(^7^0\) Taylor Swaak, As Calls for Integration Mount, Analysis Finds 41\% of New York City Schools Don’t Represent Their District’s Student Demographics, 74 MILLION (Jan. 12, 2020), https://www.the74million.org/article/as-calls-for-integration-mount-analysis-finds-41-of-new-york-city-schools-dont-represent-their-districts-student-demographics.

\(^7^1\) The others were: Maspeth High School, priority to District 24 students or residents (100\% of offers went to this group); Middle College High School at LaGuardia Community College - Priority to Districts 24 and 30 students or residents (100\% of offers went to this group); CSI High School for International Studies - Priority to Districts 20, 21, and 31 students or residents (100\% of offers went to this group) and Benjamin Banneker Academy - Priority to Districts 13, 14, 15 and 16 students or residents (100\% of offers went to this group).

\(^7^2\) See Hu & Harris, supra note 2.
populations of white students, while unscreened schools contain disproportionately high populations of Black and Latinx students.73

In districts with high-performing schools, academic, attendance, punctuality, and geographic screens work together to exclude Black and Latinx children, an exclusionary trend that has alarmingly increased over time in tandem with the performance of the school.74 Across the city, screened programs that set their threshold for English or math grades at 85 or higher or require a 2.9 on state tests, exist in schools that are primarily white.75 By contrast, the rest of the screened programs, which may set their threshold as low as 55, are in schools that are primarily Black and Latinx.76 In other words, the more intensely that public high schools screen applicants, the whiter those schools become.

The result of this complex network of screens is clear: the highest-performing schools are disproportionately white, while Black and Latinx students are funneled to underperforming schools. This racial seggregation has enormous impacts on the students experiencing it. The city’s overwhelming use of screens serves to perpetuate historical segregationist policies. In brief, in the words of Chancellor Carranza, “[t]he system of screens . . . it’s segregating our schools.”77 Beyond the profound dignitary harms of attending a racially segregated public school, students caught in this unequal system also have disparate educational outcomes. Co-located schools Chelsea CTE and NYC iSchool provide an illustrative example. NYC iSchool’s performance score, a composite measure of all student achievement metrics, is more than 30 points higher than Chelsea CTE’s. This disparity is reflected city-wide in graduation rates.78 While 86% of students in screened high schools graduate in four years, only 68% of students in unscreened schools graduate on time.79 As

76 Id.
77 Gronewold & Touré, supra note 9.
laid out below, the disparate racial impact of screens without legitimate justification is in clear violation of Title VI.

IV. Legal Argument

A. Legal Standard

Under Title VI of the Civil Rights Act of 1964, recipients of federal financial assistance are prohibited from excluding students from participating in their programs or activities on the basis of race, color, or national origin. Title VI’s implementing regulations explicitly prohibit a recipient of federal funds from “utiliz[ing] criteria or methods of administration which have the effect of subjecting individuals to discrimination.” Thus, the U.S. Department of Education’s Office for Civil Rights (OCR) is empowered to bring enforcement actions against such recipients who implement policies that disparately impact individuals, even absent a finding that the relevant policy was motivated by a discriminatory intent. Upon a finding of a violative disparate impact, OCR may seek the offending institution’s voluntary compliance with federal law, initiate fund termination proceedings, or “refer the matter to the Department of Justice for judicial enforcement.” Pursuant to this authority, OCR has jurisdiction to investigate TTC’s complaint that the New York City public school system’s use of academic screens violates the aforementioned disparate impact regulation and can bring enforcement actions against NYCDOE that remedies the racial discrimination.

Disparate impact claims are constructed using a three-pronged framework:

First, a prima facie case of a Title VI disparate-impact violation is established if a recipient of federal funds uses selection criteria that disproportionately exclude students of a particular racial or ethnic group or have the effect of subjecting individuals to discrimination because of their race, color, or national origin. There exists “no rigid mathematical threshold” for demonstrating a prima facie case of disparate impact; federal courts employ “one of several forms of statistical

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80 See 42 U.S.C. § 2000d; 34 C.F.R. § 100.3.
81 34 C.F.R. § 100.3(b)(2) (emphasis added).
83 See 34 C.F.R. § 100.7.
84 See Larry P. ex rel. Lucille P. v. Riles, 793 F.2d 969, 982 (9th Cir. 1984); 28 C.F.R. § 42.104(b)(2) (DOJ).
analysis to reach reliable inferences about racial disparities in a population based on the performance of a particular sample.”

Second, if a prima facie case is established, the recipient of federal assistance must have a “substantial legitimate justification” for the challenged practice, proof of which generally involves a showing that the challenged policy was “necessary to meeting a goal that was legitimate, important, and integral to the [recipient's] institutional mission.” Justifications that either do not advance or contradict the educational ethos of the federal funds-recipient thus prove insufficient to satisfy this standard. In the context of federally-assisted education, defendants must demonstrate that a given practice bears a “manifest relationship to the education in question.” Ultimately, school policy decisions that produce a disparate impact must serve an “educational necessity.”

Determining whether the recipient has evinced a legitimate justification for implementing a policy that produces a racially disparate effect involves a “delicate balancing of” the recipient’s incentives for enacting such policies with the “substantial public interest in preventing discrimination.” This balancing test thus necessitates that OCR’s investigative inquiry be highly fact-specific and sensitive to the myriad differences presented by each case. Moreover, the evidentiary requirement for a legitimate justification emphasizes objectivity: for example, a demonstration that the recipient actually considered various alternatives and ultimately selected the least harmful means of achieving the desired policy benefit would suffice as a legitimate justification. Relatedly, then, judicial precedent indicates a healthy skepticism towards subjective, or potentially biased, rationales proffered by recipients. Only where the recipient can successfully provide objective evidence to support their assertions as to a legitimate justification, will the court be “less wary of subjective explanations.”

86 Georgia State Conference of Branches of NAACP v. Georgia, 775 F.2d 1403, 1417 (11th Cir. 1985); Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1413 (11th Cir. 1993).
87 Larry P., 793 F.2d at 982; see also Georgia State Conference, 775 F.2d at 1418; Elston, 997 F.2d at 1413.
88 Larry P., 793 F.2d at 982.
89 Title VI Legal Manual, supra note 82 at 33.
90 Id.
91 See, e.g., New York City Env’tl Justice All. v. Giuliani, 214 F.3d 65, 72 (2d Cir. 2000).
93 Gashi v. Grubb & Ellis Prop. Mgmt. Servs., Inc., 801 F. Supp. 2d 12, 16 (D. Conn. 2011); see also Sandoval (1999) (affirming that none of the relevant facts supported the recipient state agency’s subjective justification for limiting driver’s license examinations to English-speaking individuals).
Third, even if the respondent can successfully demonstrate that its selection criteria are justified by educational necessity, they may still be held liable under Title VI if equally effective, yet less discriminatory, alternatives exist, so long as such alternatives properly serve the institution’s educational mission.\(^{94}\) In agency Title VI administrative investigations, the agency itself bears the evidentiary burden for both interrogating allegations of discrimination and uncovering less discriminatory alternatives, where applicable.\(^{95}\) Thus, although complainants are encouraged to suggest less discriminatory alternatives, no requirement obligates them to do so.\(^{96}\) Moreover, because federal funding agencies, like OCR, are tasked with explicit Title VI enforcement obligations, they have the institutional authority and means to thoroughly evaluate any prospective alternatives, whether offered by complainants or not.\(^{97}\)

V. Application

As described in Section III, above, public schools across the city, especially in Manhattan, admit students on the basis of criteria, including GPA, state test scores, attendance records, punctuality, and performance on an exam and/or during an interview, that disproportionately exclude Black and Latinx students from the city’s best-resourced schools. NYCDOE permits public schools to erect these discriminatory barriers through the use of admissions screens in direct violation of Title VI and its own educational mission to “provid[e] every single child, in every classroom, in every New York City public school, with a rigorous, inspiring, and nurturing learning experience. . . regardless of family income, race, nationality, disability, language spoken at home, sexual orientation, or gender identification” (emphasis added) and “to creat[e] and support[] learning environments that reflect the diversity of New York City.”\(^{98}\) By allowing high schools to use screens that disproportionately exclude Black and Latinx applicants, New York City has utterly failed to fulfill its mission.

\(^{94}\) See Young ex rel. Young v. Montgomery County Bd. of Educ., 922 F. Supp. 544, 550 (M.D. Ala. 1996); African Am. Legal Def. Fund, Inc. v. New York State Dep’t of Educ., 8 F. Supp. 2d 330, 338 (S.D.N.Y. 1998) (plaintiff’s proposed alternative formula for computing school funding, determined by enrollment numbers instead of attendance, was legally insufficient because it did not satisfy the purpose served by the prevailing formula).

\(^{95}\) Title VI Legal Manual, supra note 82 at 40.

\(^{96}\) Id.

\(^{97}\) Id.

\(^{98}\) NYC DEPARTMENT OF EDUCATION, supra note 54.
A. 2020 Admissions Data

Below is a sample of fourteen public high schools in New York City whose screens disproportionately excluded thousands of Black and Latinx students from admission during the most recent admissions cycle. These statistics clearly illustrate that the first prong of the Title VI framework is satisfied because Black and Latinx students are disparately impacted by NYCDOE’s policy of allowing public high schools to screen students on the basis of a variety of discriminatory criteria.

1. Bard High School Early College

Bard High School Early College (“BHSEC”) in District 1 uses selection criteria that disproportionately exclude Black and Latinx students. BHSEC screens for GPA, test scores, attendance, and punctuality. The school’s website states that “[w]hen reviewing applicants who apply to 9th grade to BHSEC Manhattan, we generally look for: a grade point average of 85% or above” and “no more than 10 unexcused absences or 10 tardies for the school year.”

Applicants must also take an examination (“assessment”) administered on site. According to the schools’ website, “[t]he BHSEC Assessment was created and developed by the BHSEC faculty and administration to assess applicants writing, thinking, and mathematical skills.” The test consists of “a math section which assesses the student’s current math level, and an essay writing section based on a selected reading.” Applicants “are given one and a half hours to complete the entire assessment.” Applicants may take the exam once per academic year, on one of eight days in the months of September and October. After taking the exam, applicants “who seem most likely to flourish at BHSEC are invited for an interview.” The school only extends offers to applicants who have completed the assessment and interview.

The school maintains that “[t]here are no test preparation materials for this assessment.” However, several private companies in New York City offer test preparation, giving those who can afford it a leg up against those who cannot.

Last admissions cycle, 3,971 applicants applied for admission to Bard High School Early College. 784 applicants were Asian (20%), 769 applicants were Black (19%), 957 applicants were

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99 All data referred to in this Section and throughout the complaint was produced by NYCDOE in response to a FOIL request by Teens Take Charge. The data is attached to this complaint as Appendix A.


Latinx (24%), 838 applicants were white (21%), 147 applicants identified as “Other” (4%). Out of the 279 students admitted, approximately 65 students were Asian (23%), 28 students were Black (10%), 42 students were Latinx (15%), 85 students were white (30%), and 15 students identified as Other.

2. **Baruch College Campus High School**

Baruch College Campus High School (BCCHS) in District 2 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. The BCCHS admissions rubric is based on 7th grade attendance and tardiness, class grades, and standardized test scores. According to the school’s publicly available admissions rubric, the school uses a point system, awarding 1.5 points each for 7th class grades of 85-100, 0.75 points each for 7th class grades of 80-84, 2 points each for ELA and Math test scores of 3 or 4, and 1 point each for ELA and Math test scores of 2. Students who have a rubric score of 10 are ranked “1,” while those who have a score of 8.75-9 are ranked “2,” and those who have a score below 8.75 are ranked “3.”

In its admissions, BCCHS gives priority to District 2 students or residents, then to Manhattan students or residents, and then to New York City residents. BCCHS participates in the New York City Diversity In Admissions (DIA) Pilot Program. As part of the DIA program, priority is given to District 2 students or District 2 residents who are eligible for Free- or Reduced-Priced Lunch status for 34% of seats.

Last admissions cycle, 6,152 applicants applied for admission to BCCHS. Approximately 1,493 applicants were Asian (24%), 922 applicants were Black (15%), 1,592 applicants were Latinx (26%), 1,273 applicants were white (21%), and 209 self-identified as “Other.” Out of the 173 students admitted, approximately 51 students were Asian (29%), 69 students were white (40%), 13 students identified as “Other” (8%), and 9% were either Black or Latinx. 98% of offers went to District 2 students or residents.

3. **The Clinton School**

The Clinton School in District 2 uses selection criteria that disproportionately exclude Asian, Black, and Latinx students from gaining admission. The Clinton School screens using standardized
test scores, grades, and attendance. Priority is given first to continuing eighth graders, then to Manhattan students or residents, and then to New York City residents.

Last admissions cycle, 2,830 applicants applied for admission to The Clinton School. Approximately 406 applicants were Asian (14%), 211 applicants were Black (7%), 458 applicants were Latinx (16%), 1,203 applicants were white (43%), and 153 self-identified as “Other.” Out of the 163 students admitted, approximately 17 students were Asian (10%), 6 students were Black (4%), 19 students were Latinx (12%), 105 students were white (64%), and 8 students identified as “Other” (5%). 53% of offers went to continuing eighth graders.

4. **Eleanor Roosevelt High School**

Eleanor Roosevelt High School in District 2 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. Applications are reviewed and ranked by 7th grade attendance and tardiness, class grades, and standardized test scores. Eleanor Roosevelt requires that students have less than 10 days late or absent in order to be ranked. Priority is given first to District 2 students or residents, then to Manhattan students or residents, and then to New York City residents.

Last admissions cycle, 5,796 applicants applied for admission to Eleanor Roosevelt High School. Approximately 1,310 applicants were Asian (23%), 758 applicants were Black (13%), 1,505 applicants were Latinx (26%), 1,239 applicants were white (21%), and 206 self-identified as “Other.” Out of the 345 students admitted, approximately 82 students were Asian (24%), 155 students were white (45%), 24 students identified as “Other” (7%), and 9% were Black or Latinx. Strikingly, 100% of offers went to District 2 students or residents.

5. **Institute for Collaborative Education**

The Institute for Collaborative Education in District 2 uses selection criteria that disproportionately exclude Latinx students from gaining admission. The Institute for Collaborative Education screens applicants on the basis of grades, a demonstrated interest in the school, an interview, and a writing sample.

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The high school gives priority to continuing eighth graders. According to the school’s website, “I.C.E. is an intentionally small 6 – 12 Grade school; most of our Middle School students matriculate with us to our High School. There are typically a very small number of spots available for 9th grade admission to I.C.E. In order to be considered you must indicate I.C.E. as your first choice for high school.” Last admissions cycle, 83% of total offers went to students attending Institute for Collaborative Education’s middle school.\footnote{NYC HIGH SCHOOL ADMISSIONS GUIDE, supra note 45.}

Last admissions cycle, 972 applicants applied for admission to The Institute for Collaborative Education. 116 applicants were Asian (12%), 182 applicants were Black (19%), 293 applicants were Latinx (30%), 218 applicants were white (22%), and 37 students identified as Other (4%). Of the 86 students who were admitted, 9 were Asian (10%), 23 students were Black (27%), 13 students were Latinx (15%), 36 students were white (42%), and five or fewer students identified as Other (0-6%).

6. \textit{NYC Lab School for Collaborative Studies}

NYC Lab School for Collaborative Studies in District 2 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. The Lab School screens based on the following: seventh grade core content classes grades, New York State standardized test scores, and attendance and punctuality. Priority is given to District 2 students or residents first, then to Manhattan students or residents, and then to New York City residents. Within those priority categories, priority goes to applicants for Free or Reduced Price Lunch (based on family income) for up to 34% of seats.

Last admissions cycle, 3,172 applicants applied for admission to the Lab School. Approximately 724 applicants were Asian (23%), 263 applicants were Black (8%), 505 applicants were Latinx (16%), 1,088 applicants were white (34%), and 153 self-identified as “Other.” Out of the 176 students admitted, approximately 44 students were Asian (25%), 72 students were white (41%), 11 students identified as “Other” (6%), and 6% were Black or Latinx. 98% of offers went to District 2 students or residents. The school’s use of screens and geographic priorities disproportionately excludes Black and Latinx applicants.

7. \textit{NYC Millennium School}

NYC Millennium School in District 2 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. The school screens applicants on the basis of
GPA, test scores, attendance, and punctuality. In order to qualify for admission, applicants must have a 90% average across academic courses, “10 or fewer combined absences and latenesses [sic] for the school year,” and receive “Level 3 or 4 on standardized exams.” The school gives priority to “students who live or attend school south of East or West Houston Street in Manhattan.”

Last admissions cycle, 6,395 students applied for admission to NYC Millennium School. 1,652 applicants were Asian (26%), 837 applicants were Black (13%), 1,409 applicants were Latinx (22%), 1,547 applicants were White (24%), and 249 applicants identified as “Other” (4%). Of the 270 students who offered admission, 137 students were Asian (51%), 9 students were Black (3%), 30 students were Latinx (11%), 63 students were White (23%), and 6 students identified as “Other.” (2%).

8. NYC Museum School

NYC Museum School in District 2 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. The school screens applicants on the basis of core courses GPA (English Language Arts, Math, Social Studies, and Science), state test scores, attendance, and punctuality. The school allocates up to 50 points for an applicant’s GPA in each core course, up to 50 points for an applicant’s ELA state test score, up to 50 points for an applicant’s Math state test score, up to 50 points for attendance, and up to 50 points for punctuality. Applicants lose points for every day during seventh grade on which they were absent or tardy.

The school also gives priority to current District 2 students, but maintains that “typically in each incoming class, only about ¼ of the students are from District 2 and the remaining seats are filled by students from the rest of New York City.”

Last admissions cycle, 3,416 students applied for admission to NYC Museum School. 579 applicants were Asian (17%), 356 applicants were Black (10%), 862 applicants were Latinx (25%), 1,118 applicants were white (33%), and 140 applicants identified as “Other.” Of the incoming class of 252 students, 34 students were Asian (13%), 16 students were Black (6%), 22 students were Latinx (9%), 134 students were white (53%), and 9 students identified as “Other.”

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110 Id.
112 Id.
School of the Future High School ("SOF") in District 2 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. SOF screens for grades in core courses (ELA, Math, Science, and Social Studies), state test scores, attendance, punctuality, and the submission of a portfolio. According to the school’s publicly available admissions rubric, the school uses a point system, awarding up to 20 points for attendance, 20 points for punctuality, 40 points for core subject area grades (10 points each for ELA, Math, Science, and Social Studies), and 20 points for state test scores.\textsuperscript{113} Students who had five or fewer unexcused absences during their seventh grade year receive the full 20 points for attendance. Students who had between 6 and 10 unexcused absences during seventh grade receive 7.5 points. Students who were late seven or fewer times during seventh grade receive the full 20 points for punctuality. Students who were late between 8 and 12 times receive 7.5 points for punctuality.

The school also offers an “extra 5 points for submitting [a] portfolio,”\textsuperscript{114} consisting of a “[s]tudent work sample” or “[o]ne graded paper or project written for humanities in 7th or 8th grade,” which “should include the teacher’s comments and or be graded,” “[a] transcript or most recent report card which should show attendance,” and “[a] piece [the student is] proud of which may consist of an original essay, math project, science lab, original artwork, etc.”\textsuperscript{115} SOF gives priority to continuing middle school students, then to students or residents of District 2, then to residents of Manhattan and students attending middle school in Manhattan, and then to New York City residents.\textsuperscript{116}

Last admissions cycle, 2,455 applicants applied for admission to SOF. 406 applicants were Asian (17%), 303 applicants were Black (12%), 622 applicants were Latinx (25%), 756 applicants were white (31%), and 122 applicants identified as “Other.” Out of the 145 admissions offers extended last cycle, 21 Asian students (14%), 14 Black students (10%), 21 Latinx students (14%), 63 white students (43%) and 17 students identifying as “Other” received an offer of admission. 55% of offers went to continuing eighth graders.\textsuperscript{117}

\textsuperscript{114} Id.
\textsuperscript{115} SCHOOL OF THE FUTURE, Admissions: Entering 9th Grade, https://www.sof.edu/admissions/entering-9th-grade.
\textsuperscript{116} NYC HIGH SCHOOL ADMISSIONS GUIDE, supra note 45.
\textsuperscript{117} NYC HIGH SCHOOL ADMISSIONS GUIDE, supra note 45.
10. **Frank McCourt High School**

Frank McCourt High School (FMHS) in District 3 uses selection criteria that disproportionately exclude Black, Latinx, and Asian students from gaining admission. FMHS evaluates applicants based on performance on an online written task (weighted 60%), New York State standardized test scores (weighted 10%), seventh grade GPA (weighted 10%), and attendance and punctuality (weighted 20%). The school does not prioritize applicants from any particular geographic area.

Last admissions cycle, 1,912 applicants applied for admission to FMHS. Approximately 106 applicants were Asian (6%), 333 applicants were Black (17%), 777 applicants were Latinx (41%), 472 applicants were white (25%), and 69 self-identified as “Other.” Out of the 156 students admitted, approximately 10 students were Asian (6%), 11 students were Black (7%), 41 students were Latinx (26%), 71 students were white (46%), and 6 students identified as “Other.”

11. **West End Secondary School**

West End Secondary School in District 3 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. West End Secondary School screens for GPA in core courses, standardized test scores, attendance, and punctuality. According to the school’s publicly available rubric, the school employs a point system, allocating 180 points for grades in Math, ELA, Social Studies, and Science courses (45%), 180 points for New York State standardized test scores, 30 points for absences (7.5%), and 10 points for punctuality (2.5%). The school also gives priority to continuing eighth graders.

Last admissions cycle, 1,056 applicants applied for admission to West End Secondary School. Approximately 64 applicants were Asian (6%), 88 applicants were Black (8%), 210 applicants were Latinx (20%), 480 applicants were white (45%), and 52 self-identified as “Other.” Out of the 108 students admitted, approximately 11 students were Asian (10%), 16 students were Latinx (15%), 67 students were white (62%), and 5% of students were Black or identified as “Other.” 79% of offers went to continuing eighth graders.

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119 WEST END SECONDARY SCHOOL, High School Admissions Rubric 2018-2019, https://5e84d042-1ff9-4355-95ec-89ca4a2a666c.filesusr.com/ugd/77a0bf_896fd053d6034b4c9943248416a3b212.pdf.
120 NYC HIGH SCHOOL ADMISSIONS GUIDE, supra note 45, at 153.
121 Id.
12. **Millennium Brooklyn High School**

Millennium Brooklyn High School (MBHS) in District 15 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. MBHS screens based on the following: grades in seventh grade core content classes (weighted 40%), New York State standardized test scores (weighted 40%), and attendance & punctuality (weighted 20%). Students with ten or more absences or ten or more late marks are ineligible for admission. Priority is given first to Brooklyn students or residents, then to New York City residents. Priority is also given to students who are eligible for Free or Reduced Price Lunch (based on family income) for up to 50% of seats.

Last admissions cycle, 5,753 applicants applied for admission to MBHS. Approximately 1,277 applicants were Asian (22%), 1,385 applicants were Black (24%), 1,146 applicants were Latinx (20%), 1,321 applicants were white (23%), and 141 self-identified as “Other.” Out of the 312 students admitted, approximately 106 students were Asian (34%), 31 students were Latinx (10%), 107 students were white (34%), and 28 students were Black or identified as “Other” (9%). 100% of offers went to Brooklyn students or residents.

13. **Townsend Harris High School**

Townsend Harris High School in District 25 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. The school screens students on the basis of GPA in core courses, state test scores, attendance, and punctuality. To be eligible to apply, students must have a GPA of 90 or more in seventh grade core academic courses. GPA counts for 45% of a student applicant’s total admissions score; standardized tests account for 40%; and attendance counts for 15% of an applicant’s total score. Applicants with ten or more absences during their seventh grade year are disqualified, though “[e]xtenuating [c]ircumstances will be taken into consideration.”

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123 Id.
124 Id.
125 Id.
127 Id.
128 [Townsend Harris High School, 2019 THHS Admission Rubric](https://4.files.edl.io/1aef/10/30/19/173330-5d3cb9c8-af32-4551-8377-ead5d979688e.pdf).
129 Id.
Last admissions cycle 8,123 applicants applied for admission to Townsend Harris High School. Approximately 3,563 applicants were Asian (44%), 827 applicants were Black (10%), 1,709 applicants were Latinx (21%), 1,056 applicants were White (13%), and 187 applicants identified as “Other.” Of the 577 students offered admission, 336 were Asian (58%), 23 were Black (4%), 43 were Latinx (7%), 84 were White (15%), and 16 identified as “Other” (3%).

14. Baccalaureate School for Global Education

The Baccalaureate School for Global Education (BSGE) in District 30 uses selection criteria that disproportionately exclude Black and Latinx students from gaining admission. The school screens students based on seventh grade class grades, standardized test scores, and attendance. In its admissions, BSGE gives priority to continuing 8th graders, then to Queens students or residents, and then to New York City residents.

Last admissions cycle, 3,586 applicants applied for admission to BSGE. Approximately 1,505 applicants were Asian (42%), 219 applicants were Black (6%), 790 applicants were Latinx (22%), 611 applicants were white (17%), and 103 self-identified as “Other.” Out of the 209 students admitted, approximately 110 students were Asian (53%), 27 students were Latinx (13%), 58 students were white (28%), and 14 students were either Black or were applicants from outside NYCDOE (7%). 26% of offers went to continuing eighth graders.

B. Application of Title VI Framework to 2020 Admissions Data

As laid out above, NYCDOE’s policy of allowing public high schools to set admissions rubrics that screen applicants on the basis of GPA, test scores, attendance, punctuality, and program-specific tasks, as well as the priority that some schools give to their own middle school students and to students attending middle school or residing in the same district or borough in which the school is located, operate jointly to disproportionately exclude Black and Latinx students from admission to the city’s best-resourced schools. This satisfies the first prong of Title VI. Although we base our Title VI claim on the disproportionate impact that screens have on Black and Latinx students, this does not mean that the system does not also discriminate against Asian students. The admissions data we received from NYCDOE and on which we have based our claims groups all Asian ethnicities together under the racial category, “Asian.” Had we been given more fine-grained data from NYCDOE, we suspect that the data would show similarly disproportionate impacts on many Asian ethnicities. Similarly, had we received data on ELL status, we believe that the data would be sufficient to satisfy prong one of a Title VI claim based on national origin.


131 NYC HIGH SCHOOL ADMISSIONS GUIDE, supra note 45, at 159.

132 Although we base our Title VI claim on the disproportionate impact that screens have on Black and Latinx students, this does not mean that the system does not also discriminate against Asian students. The admissions data we received from NYCDOE and on which we have based our claims groups all Asian ethnicities together under the racial category, “Asian.” Had we been given more fine-grained data from NYCDOE, we suspect that the data would show similarly disproportionate impacts on many Asian ethnicities. Similarly, had we received data on ELL status, we believe that the data would be sufficient to satisfy prong one of a Title VI claim based on national origin.
tethered to nor supports NYCDOE's educational mission. The screening system has no “substantial legitimate justification” for the challenged practice, because the screens are not necessary to further either the schools’ “institutional mission[s]” or NYCDOE’s “institutional mission.”

The NYCDOE states that its mission is to “provide[e] every single child, in every classroom, in every New York City public school, with a rigorous, inspiring, and nurturing learning experience . . . regardless of family income, race, nationality, disability, language spoken at home, sexual orientation, or gender identification.” While NYCDOE has not explicitly stated why screens are necessary to accomplishing this mission, Chancellor Carranza has stated that screened schools have a limited and “very specific” role to play in a large public school system, providing an option for students who want an “intense academic environment” and can excel in one.

However, it is clear that NYCDOE’s decision to allow the use of screens by public schools is not necessary to fulfill NYCDOE's educational mission. The screening system has no “substantial legitimate justification” for the challenged practice, because the screens are not necessary to further the schools’ “institutional mission[s].” Providing a rigorous course of instruction does not require screening for only the most academically gifted students. While the research on academic tracking is varied, a systematic review of fifteen studies found that students in de-tracked groups performed better than their equivalent-ability peers in tracked groups. Significantly, the research shows that de-tracking is most critical for low-achieving students, who perform better academically in mixed-ability settings. Average and high-achieving students perform no worse academically in mixed-ability groups than in tracked groups. The result of screens is to segregate low-performing students in under-resourced schools, while skimming off the highest performing students into screened schools: in 2015, for example, students who passed the eighth-grade state math and English exams were concentrated in fewer than 8% of the city high schools, while 165 high schools were left with five or fewer ninth-graders who passed the state math test.

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133 Georgia State Conference of Branches of NAACP v. Georgia, 775 F.2d 1403, 1417 (11th Cir. 1985); Elston v. Talladega County Bd. of Educ., 997 F.2d, 1394, 1413 (11th Cir. 1993).
134 NYC DEPARTMENT OF EDUCATION, supra note 54.
135 See Hu & Harris, supra note 2.
136 Georgia State Conference of Branches of NAACP v. Georgia, 775 F.2d 1403, 1417 (11th Cir. 1985); Elston v. Talladega County Bd. of Educ., 997 F.2d 1394, 1413 (11th Cir. 1993).
138 See Disare, supra note 31.
Furthermore, both NYCDOE and individual schools state that their mission is not only to provide an academically rigorous curriculum, but also to provide nurturing and inspiring environments where children can learn to work together.\(^{139}\) Any screening method that systematically excludes Black and Latinx students from school communities cannot be said to further the goals of collaboration and critical thinking. Attending a segregated public school is inherently harmful, as the Supreme Court made clear in \textit{Brown}, and therefore fails to provide students attending such schools with a nurturing environment.

Finally, NYCDOE may ask schools to adopt alternate admissions methods that are both less discriminatory and may better achieve their stated mission. These already exist within the system. Edward R. Murrow High School, a school in Midwood, Brooklyn, is one of the most diverse schools in the state.\(^{140}\) It maintains a reputation for trusting and challenging its students. From its founding, it has been praised for course offerings that “read like a college catalog” and are meant to encourage grade-conscious students to explore academically. Honors and AP courses are open to all interested students on a lottery basis regardless of their previous academic records.\(^{141}\)

The high school was forced to adopt the academic bell curve “Ed Opt” model that the Board of Education instituted in 1986. The school was resistant at first: Saul Bruckner, Murrow’s founder and the principal at the time, actually advocated against the changes. His primary worry was that public perception of the school would get worse. Murrow served a student body that was just over 50\% students of color. “This school can be a dominant minority school and continue to be a strong school,” he said. "Unfortunately, the public may not see it that way."\(^{142}\)

Principal Bruckner’s fears did not materialize: Murrow’s strong reputation has remained intact, and it has consistently been academically, ethnically, and racially diverse.\(^{143}\) The year after

\(^{139}\) \textit{NYC DEPARTMENT OF EDUCATION, supra} note 54.

\(^{140}\) According to the data gathered by NYCDOE from the 2020 admissions cycle, the racial breakdown of students who received offers from Murrow High School was as follows: Of 1,180 offers extended, 24\% went to Asian students, 15\% to Black students, 20\% to Latinx students, 34\% to white students and 3\% to students who identified as “other.”


\(^{142}\) See Perlez, \textit{supra} note 25.

the new admissions policy was enacted, more than 8,000 students applied for 1,100 seats in the school, an applicant-to-admittance ratio approaching that of Bronx Science in the same year. The year before Mayor Bloomberg took office, Murrow was still considered “one of the jewels the Board of Education has been able to point to” in an otherwise underperforming school system. Murrow remains one of New York’s most popular high schools with an admittance rate of about 10%, and it continues to send most of its students to college.

Through the years, Murrow has used the same “Ed Opt” admissions criteria. Under this system, 50% of general admissions offers go to students that the school selects based on its criteria and 50% go to remaining applicants. Like all Ed Opt schools in New York City, 16% of seats go to students who read above the grade level, 68% go to students who read at the grade level, and another 16% go to students reading below the grade level. This is exactly the same seat distribution the Board of Education prescribed in 1986.

An additional example that NYCDOE could follow has already been implemented in District 15, where a Working Group was assembled in 2017 to interrogate the district’s racially segregated middle schools and subsequently put forward recommendations for making progress towards integration. The Working Group’s primary recommendation for how to achieve more equitable admissions was the removal of all screens. Additionally, the D15 Diversity Plan recommended establishing “an admissions priority for students who qualify as low-income, are English Language Learners (ELLs) and/or are Students in Temporary Housing for 52% of all seats at all D15 middle schools,” a solution the Working Group found particularly well-suited to the local context of District 15, where there are and have historically been vibrant immigrant

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144 Lewis, supra note 143.
145 Bahrampour, supra note 143.
148 See Perlez, supra note 25.
150 Id. at 8.
151 Id.
Functionally, this means D15 middle schools now use a two-part lottery: First, those students who meet the priority criteria are eligible for the priority seats and then any remaining priority students are entered into a general lottery for admission along with all other students. The results of the implementation of these recommendations have been impressive. In 2019-20, the first year in which incoming middle schoolers were admitted through the new admissions process, “economic segregation in sixth grade decreased by 55% and racial segregation decreased by 38% compared to the prior year, results that were both meaningful and statistically significant.”

VI. REMEDY AND PRAYER FOR RELIEF

The COVID-19 pandemic has rendered any sort of incremental approach to the elimination of racially discriminatory screens untenable. The pandemic has hit families of color much harder than white families. People of color experienced and continue to experience higher rates of COVID-19 infection, higher rates of serious medical complications stemming from the virus, and higher death rates. They are also more likely to have experienced significant financial hardship.

All of this has enormous direct and trickle-down effects on students of color, making it even more difficult for them to run the gauntlet, comparable to that of Ivy League college admissions, to earn a spot at a high-quality public high school. The current system is unfair to parents and students of color, antithetical to both the mission of NYCDOE and the principles of public education more broadly, and, importantly, a violation of Title VI. All of this was true before the pandemic, but by bringing the injustice of this system into sharp relief, the pandemic has increased the urgency to change it.

As noted above, elimination of screens is not a new concept. The Board of Education already did so in 1986, and the “top” public schools continued to provide high-quality education.

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152 Id. at 22–23.
155 See U.S. BUREAU OF LABOR STATISTICS, Economic News Release (Sept. 24, 2019), https://www.bls.gov/news.release/flex2.t01.htm (documenting that Black and Latinx workers are less likely to be employed in jobs that can be done from home than white workers).
This history is consistent with the enormous amount of social science evidence that racially diverse public schools are good for all students and, in fact, lead to better short-and long-term life outcomes for all students than racially homogenous public schools. In the face of such studies, there is simply no rational educational reason to insist upon a screening system that produces racially homogenous public schools.

In the early days of the pandemic, in a few respects, New York City’s school system had already begun this process. In light of the recent COVID-19 pandemic, New York City schools have suspended the attendance and punctuality requirements for middle and high schools. Schools will no longer be able to consider attendance or punctuality records in making admissions decisions for the upcoming school year. Although the suspension of this requirement was in response to public concerns over student absences during COVID-19, the quick elimination of the screens indicates the ease with which NYCDOE can rid the school system of discriminatory screens and seamlessly continue to make admissions decisions. Further, as outlined above, this requirement has a discriminatory impact for students of color, making its permanent elimination essential to an equitable and integrated school system. As Brooklyn City Council Member and Education Committee Chair Mark Treyger has noted, “This should be the case, even without the coronavirus.”

In addition to suspending the attendance and punctuality requirements, New York City cancelled the annual state ELA and math standardized tests last spring, meaning state test scores will not be a factor in upcoming admissions decisions. As with the attendance screens, the city was able to make this decision relatively quickly and seamlessly, demonstrating that these conditional requirements of admissions are not actually necessary in making admission decisions. Many advocates are asking that these requirements not be reinstated after the pandemic.

156 See Strauss, supra note 23 (referencing studies finding that Black students who attended racially integrated schools “experienced dramatic improvements in educational attainment, earnings and health status” and that “this improvement that did not come at the expense of whites.”)
158 Id.
Teens Take Charge asks of OCR the following:

First, OCR should make a finding that: (a) NYCDOE’s pervasive and interconnecting system of screens, utilized for admission to New York City’s public high schools is in violation of Title VI and its implementing regulations; and (b) so long as NYCDOE does not devise and implement less discriminatory alternatives for admissions into public high schools, they will remain in violation of Title VI and its implementing regulations.

Second, OCR should require that New York City public schools remain prohibited from considering attendance records, punctuality records, program-specific tasks, GPA, standardized test scores, or any other form of discriminatory criteria as a threshold admissions screen.

Third, OCR should require that NYCDOE adopt inclusive admissions policies at all public schools. For example, NYCDOE could make universal its popular Ed Opt model that establishes minimum academic diversity thresholds for the public high school matching process, whereby 16% of students offered admission perform below-average on state standardized tests, 68% receive average scores on state standardized tests, and 16% score above average on state standardized tests. Although standardized test scores often reflect and can compound racial inequality, structuring public high school admissions on a bell curve would mitigate the worst effects of using standardized test scores in public school admissions, while providing a positive first step towards integrating New York City’s public high schools.

Fourth, OCR should require that NYCDOE provide all students with equal access to the high-quality resources and opportunities that students at the top public high schools currently receive, including but not limited to, AP and Honors courses, guidance and career counselors, extracurricular activities, technology, and a wide range of elective courses.

Fifth, to ensure continued compliance by NYCDOE with the requirements of Title VI, OCR should require that, no greater than sixty days following the release of public school admissions offers, NYCDOE release data for each middle and high school program, describing the demographic characteristics of students who applied and students who were admitted, including race, ethnicity, free-and-reduced-price lunch eligibility, Individual Education Plan and English Language Learner status, as well as the average position students in each demographic category ranked each program.
Submitted by:
Emily Chang
Nina Loshkajian
Michael Milov-Cordoba
Allison Scharfstein
Jeremy Burton
   Law Student Advocates

Deborah Archer
   Supervising Attorney
Johanna Miller
   Supervising Attorney

Civil Rights Clinic
Washington Square Legal Services
New York University School of Law
245 Sullivan Street
New York, NY 10012
Tel: (212) 998-6528
Email: nina.loshkajian@law.nyu.edu;
deborah.archer@nyu.edu