SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

INTEGRATENYC, INC.; A.C.; H.D. ex rel. W.D.; M.G. ex rel. M.G.; L.S. ex rel. S.G.; C.H. ex rel. C.H.; Y.C. ex rel. Y.J.; A.M.; V.M. ex rel. J.M.; M.A. ex rel. F.P.; S.S. ex rel. M.S.; S.D. ex rel. S.S.; K.T. ex rel. F.T.; and S.W. ex rel. B.W., Plaintiffs, vs. THE STATE OF NEW YORK; ANDREW M. CUOMO, as Governor of the State of New York; NEW YORK STATE BOARD OF REGENTS; NEW YORK STATE EDUCATION DEPARTMENT; BETTY A. ROSA, as New York State Commissioner of Education; BILL DE BLASIO, as Chief Executive Officer of New York City; NEW YORK CITY DEPARTMENT OF EDUCATION; and MEISHA PORTER, as Chancellor of the New York City Department of Education, Defendants.	Index No. **SUMMONS** **Plaintiff designates NEW YORK County as the place of trial** **The basis of venue is CPLR §503 and §504**

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on plaintiff's attorneys within 20 days after service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons, is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

DATED: March 9, 2021

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INTEGRATENYC, INC.; A.C.; H.D. ex rel. W.D.; M.G. ex rel. M.G.; L.S. ex rel. S.G.; C.H. ex rel. C.H.; Y.C. ex rel. Y.J.; A.M.; V.M. ex rel. J.M.; M.A. ex rel. F.P.; S.S. ex rel. M.S.; S.D. ex rel. S.S.; K.T. ex rel. F.T.; and S.W. ex rel. B.W.,

Plaintiffs,

vs.

THE STATE OF NEW YORK; ANDREW M. CUOMO, as Governor of the State of New York; NEW YORK STATE BOARD OF REGENTS; NEW YORK STATE EDUCATION DEPARTMENT; BETTY A. ROSA, as New York State Commissioner of Education; BILL DE BLASIO, as Chief Executive Officer of New York City; NEW YORK CITY DEPARTMENT OF EDUCATION; and MEISHA PORTER, as Chancellor of the New York City Department of Education,

Defendants.

Index No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

1. No child is born with an understanding, much less acceptance, of any racial hierarchy. Rather, racial identity and hierarchy are artificially constructed, and must be taught and learned.[1] The U.S. Supreme Court has emphasized that "the public schools" are "the primary vehicle for transmitting the values on which our society rests."[2] The schoolhouse is the site where the State inculcates in children the society's democratic and cultural values, with the purpose of preparing them for eventual participation in common life. But it is also the site of transmission of concepts of racial hierarchy and racism, in all of its forms. Children encode social meanings as they move through the world, and nowhere more so than at school. Children of color, in particular, experience and internalize the racism that is inherent in their educational experiences, which in turn hinders their educational achievement.

2. The Education Article of the New York State Constitution guarantees all schoolchildren the right to "a sound basic education": one that "conveys not merely skills, but skills fashioned" to prepare students for "meaningful civic participation in contemporary society."[3] Pursuant to this mandate, a sound basic education necessitates that students acquire a set of substantive capabilities, including "basic literacy, calculating, and verbal skills," not merely for their own sake,[4] but in service of a foundational purpose: to equip New York schoolchildren with the knowledge and abilities they need to meaningfully engage in current civic and economic life. This "purposive orientation for schooling" lies "at the core" of the Education Article's requirement that all students receive a sound basic education.[5]

3. An education system that reproduces, validates, and even exacerbates the artificial

[1] Isabel Wilkerson, *Caste: The Origins of Our Discontents* 17–18 (2020).
[2] *Plyler v. Doe*, 457 U.S. 202, 221 (1982) (internal quotation marks and citations omitted).
[3] *Campaign for Fiscal Equity, Inc. v. State*, 100 N.Y.2d 893, 905 (2003) [hereinafter *CFE II*] (construing Article XI, section 1 of the New York State Constitution (the Education Article)).
[4] *Campaign for Fiscal Equity, Inc. v. State*, 86 N.Y.2d 307, 316 (1995) [hereinafter *CFE I*].
[5] *CFE II*, 100 N.Y.2d at 905.

racial hierarchies that have long structured civic, commercial, and social life in the United States cannot prepare its students for meaningful democratic and economic participation in today's diverse society. As the State recognizes in its Culturally Responsive-Sustaining Education Framework,[6] such engagement requires education to recognize and honor the dignity of all racial and ethnic groups, rather than privilege white status, values, language, and norms. It requires that students develop the ability to critically assess their own biases and place in society, and to work empathically and collaboratively with individuals whose backgrounds and circumstances differ from their own. As Plaintiffs' expert Dr. Amy Stuart Wells explains, "diverse classrooms," in which such learning across difference takes place, benefit "all students, including middle-class white students, because they promote creativity, motivation, deeper learning, critical thinking, and problem-solving skills."[7] By failing to furnish such environments as well as the culturally responsive curriculum, diverse teaching corps, and mental health supports necessary to prepare students to redress the immensely complex "public problems confronting the rising generation,"[8] the State and City deny all New York City schoolchildren a sound basic education in violation of the Education Article.

4. Although the State pays lip service to the role of public education in challenging racial hierarchies—acknowledging, for example, the need for its educators to disrupt the "complex system of biases and structural inequities" that "routinely confers advantage and disadvantage" on the basis of race and other characteristics[9]—it has permitted New York City to

[6] N.Y. State Educ. Dep't, *Culturally Responsive-Sustaining Education Framework* 6 (2019), http://www.nysed.gov/common/nysed/files/programs/crs/culturally-responsive-sustaining-education-framework.pdf ("New York State understands that the responsibility of education is not only to prevent the exclusion of historically silenced, erased, and disenfranchised groups, but also to assist in the promotion and perpetuation of cultures, languages and ways of knowing that have been devalued, suppressed, and imperiled by years of educational, social, political, [and] economic neglect and other forms of oppression.") [hereinafter CRSE Framework].
[7] Amy Stuart Wells et al., *How Racially Diverse Schools and Classrooms Can Benefit All Students*, The Century Foundation 14 (Feb. 2016), https://production-tcf.imgix.net/app/uploads/2016/02/09142501/HowRaciallyDiverse_AmyStuartWells-11.pdf.
[8] *CFE II*, 100 N.Y.2d at 905.
[9] CRSE Framework, *supra* note 6, at 6.

preserve an education system that reinforces and even strengthens the very architecture of inequities that both the State and City profess the desire to dismantle. Nearly every facet of the New York City public education system operates not only to prop up, but also to affirmatively reproduce, the artificial racial hierarchies that have subordinated people of color for centuries in the United States. Indeed, if government's goal were to create a system of education that would replicate and in fact exacerbate pernicious racial inequality in the City, it would be challenging to design a more effective system than that which currently exists.

5. In this complaint, Plaintiffs use the term "racism" to capture the four categories of racism defined by the State in its Culturally Responsive-Sustaining Education Framework:

> **Internalized racism** describes the private racial beliefs held by and within individuals. The way we absorb social messages about race and adopt them as personal beliefs, biases, and prejudices are all within the realm of internalized racism. For people of color, internalized oppression can involve believing in negative messages about oneself or one's racial group. For Whites, internalized privilege can involve feeling a sense of superiority and entitlement or holding negative beliefs about people of color.
>
> **Interpersonal racism** is how our private beliefs about race become public when we interact with others. When we act upon our prejudices or unconscious bias — whether intentionally, visibly, verbally — we engage in interpersonal racism. Interpersonal racism also can be willful and overt, taking the form of bigotry, hate speech or racial violence.
>
> **Institutional racism** is racial inequity baked into our institutions, connoting a system of power that produces racial disparities in domains such as law, health, employment, education, and so on. It can take the form of unfair policies and practices, discriminatory treatment and inequitable opportunities and outcomes. A school system that concentrates people of color in the most overcrowded and under-resourced schools with the least qualified teachers, compared to the educational opportunities of more advantaged students, is an example of institutional racism. . . .
>
> **Structural racism** (or structural racialization) is the operation of racial bias across institutions and society. It describes the cumulative and compounding effects of an array of factors that systematically privilege one group over another. Since the word "racism" often is understood as a conscious belief, "racialization" may be a better way to describe a process that does not require intentionality. Race equity expert [j]ohn [a]. [p]owell writes: "'Racialization' connotes a process

> rather than a static event. It underscores the fluid and dynamic nature of race… 'Structural racialization' is a set of processes that may generate disparities or depress life outcomes without any racist actors." [10]

New York City's public education system is suffused with and perpetuates these various forms of racism, in ways blatant or subtle, intended or willfully ignored and tolerated, through means including:

- Maintaining a racialized pipeline to the City's prime educational opportunities, including its Gifted & Talented (G&T) programs and screened middle and high schools, that excludes many students of color, who are instead condemned to neglected schools that deliver inferior and unacceptable outcomes;
- Allowing schools to teach a Eurocentric curriculum that centers white experience, marginalizing the experiences and contributions of people of color;
- Failing to recruit, retain, and support a racially diverse educator workforce to provide challenging and empathic instruction to all students; and
- Failing to provide sufficient training, support, and resources to enable administrators, teachers, and students to identify and dismantle racism, such that students of color regularly experience racialized harms at school, and failing to provide adequate mental health supports to redress those harms.

Individually and collectively, these policies and practices, detailed *infra*, cause the denial of a sound basic education to New York City schoolchildren. Their outcomes—the systematic exclusion of students of color from adequate, much less prime, educational opportunities and the resulting denial of social and economic mobility;[11] the state-sanctioned demeaning of children based on their race, manifested in disproportionate rates of discipline and pushout; and the

[10] CRSE Framework, *supra* note 6, at 60–61.

[11] *Cf. Plyler*, 457 U.S. at 222 ("[B]y depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority."); *Gary B. v. Whitmer*, 957 F.3d 616, 648 (6th Cir. 2020) ("[T]he history of education in the United States . . . demonstrates a substantial relationship between access to education and access to economic and political power, one in which race-based restrictions on education have been used to subjugate African Americans and other people of color."); *id.* at 662 ("Education has long been viewed as a great equalizer, giving all children a chance to meet or outperform society's expectations, even when faced with substantial disparities in wealth and with past and ongoing racial inequality."), *reh'g en banc granted, opinion vacated*, 958 F.3d 1216 (6th Cir. 2020).

continued subordination of racially marginalized communities—contravene New York law and subvert the core principles of American democracy and the purposes of the State educational system.

6. As the City Council acknowledges, New York City's public schools are among "the most segregated in the country": in 2018–19, close to 75 percent of Black and Latinx students attended schools with less than 10 percent white students, and over 34 percent of white students attended schools with majority white populations, notwithstanding that only 15 percent of City students are white.[12] Students of color are denied meaningful access to social and economic mobility by an elementary and middle school pipeline that rewards families' affluence and ability to navigate a rigged system in which individuals with superior access to test preparation, information, and other resources are almost invariably the most successful.[13] They

[12] N.Y. City Council, *School Diversity in NYC*, https://council.nyc.gov/data/school-diversity-in-nyc/ (accessed Mar. 7, 2021), *archived at* https://perma.cc/NPQ9-SNMH. A number of these schools are even more segregated in 2021 than they were in the 1960s, when parents and students advocated for more robust integration measures following the City's piecemeal efforts to desegregate its schools after *Brown v. Board of Education*. Eliza Shapiro, *Segregation Has Been the Story of New York City's Schools for 50 Years*, N.Y. Times (Mar. 26, 2019), https://www.nytimes.com/2019/03/26/nyregion/school-segregation-new-york.html.

[13] Although some students of color make it through the system and ultimately gain admission to prestigious universities, they do so in spite of, not because of, its structure, and with the support of their families, teachers, and student and community groups. In 2020, two students of color created a website called "The Outsiders Guide," designed to help Black and Latinx students adjust to social and academic life at the specialized high schools and prepare for college. Ashleigh Garrison, *Meet 'The Outsiders': New website aims to support students of color at NYC's elite public high schools*, Chalkbeat (July 9, 2020), https://ny.chalkbeat.org/2020/7/9/21319297/the-outsiders-website-to-support-black-and-hispanic-students-nyc-elite-public-high-schools. As the website explains:

> Along with being extremely challenging and competitive, New York City's high schools are extremely segregated. One of the effects of this segregation is that students of color at any given competitive high school in the city have a very unique experience and face a very specific set of challenges and obstacles. This unique experience is made harder because of the limited resources offered specifically for us and the very small community for support and guidance. That is one of the reasons that the majority of the authors of this website are students of color.

are consistently disproportionately relegated to neglected schools—some of which are former factories, others of which are situated above or near major highways—in which the overcrowded classrooms, the battered textbooks, the unsanitary bathrooms, and the presence of vermin all bear witness to the (lack of) value ascribed by the City and State to their occupants. And, because the City and State have failed to recruit and support a diverse educator workforce and to implement adequate training and curriculum guidance, they have created educational environments in which students of color repeatedly experience racial animosity and rank racial insensitivity that their schools neither prevent nor redress, including:

- Teachers directing Black students to write the pros and cons of slavery on the board;
- Teachers assigning Black students to research the origins of the n-word, while assigning white students other research topics;
- Teachers requiring students to say the n-word aloud in class, over the objections of Black students;
- Teachers professing their inability to distinguish among Asian students;
- Teachers and students mocking students of color for their names and modes of speaking;
- White students calling Black students "monkeys" and "apes"; Muslim students "terrorists"; and Latinx students "illegal";
- White students asking, when classroom lights are turned off, "Where is [Black student]?";
- Students scrawling racial slurs and swastikas in textbooks and school buildings; and
- Teachers demeaning the achievements of students of color, as when a teacher told a Latinx senior: "You may have gotten into Yale, but you can still go to jail."

These are not isolated incidents or examples of schools' tolerating "kids being kids." They are the foreseeable manifestations of a public education system that creates, validates, and perpetuates a racialized hierarchy.

7. The system reproduced by the New York City public schools is fundamentally

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The Outsiders Guide, https://www.outsidersguide.net/ (accessed Mar. 7, 2021), *archived at* https://perma.cc/BS8C-3L3P.

one of caste: an artificial, graded "ranking of human value that sets the presumed supremacy of one group against the presumed inferiority of other groups on the basis of," in the United States, race.[14] At base, caste divisions are "about power—which groups have it and which do not."[15] Caste and, by extension, race, also determines which groups' members are "seen as worthy of [societal resources]" and as deserving of "respect, authority, and assumptions of competence."[16] The way individuals can expect to be treated by others is profoundly shaped by where they are situated within the caste system—by the value society affords to them according to their race.

8. A caste system is dependent on distinguishing and separating groups, and New York City accomplishes this early, sorting students into Gifted & Talented (G&T) versus general education programs when they are as young as age four. Both access to the G&T test and its outcomes have been determined by economic and navigational capital that is disproportionately held by white families, including awareness of the existence of the test, which has not been administered to all children but only to those whose parents signed them up; ability to pay for test preparation, sometimes starting as early as 18 months; and ability of the child to answer questions that privilege wealth.[17] Consequently, the demographics of the City's G&T programs reflect disparate familial resources, enrolling predominantly white and certain Asian students.[18] Although the City scrambled to adopt a last ditch, one-year change in its G&T admissions

[14] Wilkerson, *supra* note 1, at 17.
[15] *Id.*
[16] *Id.* at 17–18.
[17] Eliza Shapiro, *Should a Single Test Decide a 4-Year-Old's Educational Future?*, N.Y. Times (Sept. 4, 2019), https://www.nytimes.com/2019/09/04/nyregion/nyc-gifted-talented-test.html.
[18] Both the State and the City largely report data on "Asian" students monolithically, obscuring the demographic diversity of Asian American and Pacific Islander (AAPI) populations. *See, e.g.*, N.Y. State Educ. Dep't, *District Enrollment – Race and Ethnic Origin 2020-21*, http://www.p12.nysed.gov/irs/statistics/enroll-n-staff/District2021Race.xlsx (accessed Mar. 7, 2021), *archived at* https://perma.cc/SL3E-2WSF; N.Y. City Dep't of Educ., *Demographic Snapshot – Citywide, Borough, District, and School, SY 2015-16 to 2019-20*, https://infohub.nyced.org/docs/default-source/default-document-library/demographic-snapshot-2015-16-to-2019-20-(public).xlsx (accessed Mar. 7, 2021), *archived at* https://perma.cc/GD7C-3YD8.

process following a City panel's refusal to renew its testing contract,[19] the new, ad hoc process—which still grants in-the-know parents a gatekeeping role in nominating their children for G&T, and which relies on subjective and nontransparent evaluations by pre-K teachers and City Department of Education staffers[20]—does nothing to cure the previous test's pernicious impacts on students already in the system, and merely replaces one discriminatory evaluation mechanism with another.[21]

9. Having identified so-called "gifted" students, the City has set them apart from their classmates in general education, who are predominantly Black and Latinx. (Although "Asian" students, treated monolithically by the State and City, *supra* note 18, are well-represented in G&T and other screened programs, this treatment obscures severe economic stratification and diverse English language acquisition needs within Asian American and Pacific Islander communities.)[22] This segregation largely occurs within the same schools, which

[19] Christina Veiga, *Here's how NYC will admit students to 'gifted' programs for 2021*, Chalkbeat (Feb. 17, 2021), https://ny.chalkbeat.org/2021/2/17/22288448/nyc-gifted-admissions-2021.
[20] N.Y. City Dep't of Educ., *Gifted & Talented*, https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/gifted-and-talented (accessed Mar. 7, 2021), *archived at* https://perma.cc/439J-JGJS.
[21] This last-minute decision, which was not adopted in accordance with City rulemaking procedures, contravenes the National Association for Gifted Children's recommendation that identification of giftedness occur over time, rather than in a single evaluation, *infra* note 72. Relying on parent nominations and subjective evaluations, it also has a foreseeable disparate impact on Black and Latinx schoolchildren, as the Department of Education contemporaneously recognized: commenting on the decision, a Department spokesperson stated: "We remain committed to finding a fairer and more equitable way forward to identify and meet the needs of students who would benefit from accelerated learning and enrichment, informed by a citywide engagement plan[.] . . . *We believe deeply that wide scale changes are needed to address the racial disparities in who has access to [G&T] programs*." Veiga, *supra* note 19 (emphasis added) (quoting N.Y. City Dep't of Educ. spokesperson Katie O'Hanlon). *See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266–68 (1977) (setting forth a non-exhaustive list of factors relevant to ascertaining discriminatory purpose, including evidence of disparate adverse impact, the decision's "historical background," the "sequence of events leading up to" the decision, including departures from normal procedures or substantive conclusions, and the decision's "legislative or administrative history").
[22] *See, e.g.*, Rakesh Kochhar & Anthony Cilluffo, *Income Inequality in the U.S. Is Rising Most Rapidly Among Asians*, Pew Research Ctr. (July 12, 2018), https://www.pewresearch.org/social-trends/2018/07/12/income-inequality-in-the-u-s-is-rising-most-rapidly-among-asians/. *See*

communicates plainly to the students their position within the academic hierarchy. The message to Black and Latinx students is emphatic and unequivocal: "You are less intelligent, and thus deserve fewer resources, than your white and Asian peers." So too is the message to white and certain Asian students: "You have been chosen for this program based on your superior abilities. You are smarter than your classmates in general education, and you deserve the extra benefits we have provided you." As Plaintiffs' expert Dr. Pedro Noguera observes, such sorting tends to be self-reinforcing as students "internalize the labels assigned to them."[23] Researchers have found that both white students and students of color "keenly observe[] the unspoken messages of ability tracking," understand "social and academic privileges" as "primarily the property of White students," and "create[] their own versions of segregation" in school spaces.[24]

10. The discriminatory gatekeeping mechanism of G&T evaluation is the entry point into an exclusive pipeline to the City's prime schools and educational programs—a pipeline that is inaccessible to large swaths of Black and Latinx students and their families.[25] As predominantly white and Asian students progress through elementary school G&T programs, they acquire the academic and soft skills, credentials, and insider knowledge needed to hurdle the City's subsequent gatekeeping mechanisms: the highly competitive admissions screens for its elite middle and high schools.[26] In fifth grade, the system sorts students again, with selective

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generally John Beam et al., *"We're Not Even Allowed to Ask for Help": Debunking the Myth of the Model Minority*, Coal. for Asian Am. Children & Families (2011), https://www.cacf.org/s/Were-Not-Even-Allowed-to-Ask-for-Help-1.pdf.

[23] Pedro Noguera, *The Trouble With Black Boys* xx (2008).

[24] Joy Howard, *The White Kid Can Do Whatever He Wants: The Racial Socialization of a Gifted Education Program*, 54 Educ. Studies 553, 563 (2018).

[25] *E.g.*, Elizabeth A. Harris & Ford Fessenden, *The Broken Promises of Choice in New York City Schools*, N.Y. Times (May 5, 2017), https://www.nytimes.com/2017/05/05/nyregion/school-choice-new-york-city-high-school-admissions.html.

[26] In a blunt acknowledgment of the inequities of the middle school screening process, Mayor de Blasio announced in December 2020 that the City would pause the use of middle school screens for one year. Christina Veiga, *NYC announces sweeping changes to middle, high school application process*, Chalkbeat (Dec. 18, 2020), https://ny.chalkbeat.org/2020/12/18/22188384/changes-nyc-school-application-process ("[W]hat is clear is that our past involves too much exclusion. Our past includes too much inequality," [Mayor de Blasio] said. "We need to move to

middle schools choosing among 10- and 11-year-olds based primarily on their fourth grade report cards and State standardized test scores. Some schools rely on other factors that cater to and reward wealth and proximity to dominant cultural norms, as when members of predominantly white parent-teacher associations assess fifth graders' capacity to thrive at a given middle school. Just as affluent families can, and do, pay handsomely for fourth grade State standardized test preparation, they also pay admissions consultants to prepare their children for middle (and later, high school) interviews.[27] In-the-know parents may also choose to prep their children directly, using sample interview questions posted in online parent networks.[28] Interview questions themselves frequently privilege affluence, as when students are asked to describe their out-of-school interests and extracurricular activities—questions that disadvantage, for example, students who must care for their siblings after school or whose families lack the disposable income to pay for such activities.

11. The predictable culmination of this system of tracking and filtering is the City's high school admissions process, in which students may ostensibly choose from among more than 700 programs at 400 high schools.[29] However—as the City knows well after decades of disparate outcomes that have grown starker in recent years—for many Black and Latinx eighth graders, entire swaths of high schools and programs are functionally off-limits. This is because these programs' admission requirements reward precisely the same economic and navigational capital

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a different place."). The City did not, however, commit to a permanent cessation of middle school screening. Nor did it stop, even temporarily, the use of high school admissions screens. *Id.*

[27] *E.g.*, Admit NY, *Middle School*, https://admitny.com/our-services/middle-school/ (accessed Mar. 7, 2021), *archived at* https://perma.cc/W9B4-GC7V (listing middle school admissions services including "Parents and Student Interview Prep"; "Overview of School Landscape"; "Individualized Action Plan & Timeline"; and "Essay Guidance and Feedback").

[28] *E.g.*, Park Slope Parents, *Middle School Interview Questions*, https://www.parkslopeparents.com/Education-Advice/middle-school-interview-questions.html (accessed Mar. 7, 2021), *archived at* https://perma.cc/R653-BPGY (sample questions include: "What interests you about our curriculum?"; "What are your goals for the end of the 5th grade school year?"; "Have you ever done community service?").

[29] N.Y. City Dep't of Educ., *High School*, https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/high-school (accessed Mar. 7, 2021), *archived at* https://perma.cc/U7QM-Z8T8.

that has accrued to the benefit of more privileged students and their families throughout their elementary and middle school years. A student in a G&T program, for example, or a student whose parents can afford to pay for test preparation, is significantly more likely to score better on the seventh grade State standardized tests that many selective high schools use as admissions criteria. Schools may also grant priority to continuing eighth graders, privileging the students who gained admission through the middle school screening process. Because of these dynamics, a student of color may well select 12 programs and be rejected from every single one, without any justifiable reason. Plaintiff F.P., for example, applied to several high schools and was rejected by all of them. She explained: "My parents did not complete high school because they immigrated to the United States. I didn't know what the high school application process was like. Nobody told me I was unlikely to get accepted to high schools like Bard and Baruch." A 2017 New York Times article captured the pathos of this system. Describing eighth graders from the Bronx who had arrived early to secure a place at the front of the line for a high school admissions fair, the article noted: "But for many of the students from Pelham Gardens, and others like them, it was already too late. The sorting of students to top schools—by race, by class, by opportunity—begins years earlier, and these children were planted at the back of the line."[30]

12. The starkest manifestation of New York City's segregated school system is its test-based specialized high schools—eight elite schools for which admission is based on a score on a single standardized test, the Specialized High Schools Admissions Test (SHSAT). As discussed *infra*, the State legislature in 1971 enacted the Hecht-Calandra Act—the statute underpinning the test—to prevent an assessment of whether the test was culturally biased, leading to public criticism that the legislation sought "to guard against increased numbers of blacks and Puerto Ricans" in the specialized high schools.[31] In the intervening 50 years, neither

[30] Harris & Fessenden, *supra* note 25.
[31] Francis X. Clines, *Assembly Votes High School Curb*, N.Y. Times (May 20, 1971), https://www.nytimes.com/1971/05/20/archives/assembly-votes-high-school-curb-limits-city-

the State nor the City has assessed whether the test is culturally biased, nor has either entity publicly released comprehensive validity studies that comport with professional standards, if indeed any such studies have taken place. And despite widespread consensus among psychometricians, including Plaintiffs' experts Dr. Ezekiel Dixon-Román and Dr. Howard Everson, that a standardized test score should not be the sole factor in allocating admissions offers to elite schools, that is precisely the way the City uses the SHSAT. Even programs intended to compensate partially for disparities in access to the specialized high schools—which are themselves an admission of the biased selection process—revolve around the test. For example, candidates are identified for the Discovery program—which allows a limited number of low-socioeconomic status students to gain admission after enrolling in a "summer enrichment program"[32]—based on their proximity to the SHSAT cutoff scores.[33] As with the City's other gatekeeping mechanisms, performance on the SHSAT largely reflects affluence and access to resources, including social capital, such as parent networks that share information about the test and admissions process; high-quality K–8 education; and expensive and time-consuming test preparation, which can cost families $3,000 for 18 hours of "SHSAT Comprehensive Tutoring."[34] The SHSAT is thus a contest of access to coaching and extracurricular resources, not an evaluation of a student's capacity to succeed in the specialized high schools.

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boards-power-to-ease.html; *see also*, *e.g.*, Jim Dwyer, *Decades Ago, New York Dug a Moat Around its Specialized Schools*, N.Y. Times (June 8, 2018), https://www.nytimes.com/2018/06/08/nyregion/about-shsat-specialized-high-schools-test.html ("The unambiguous purpose [of Hecht-Calandra] was to cut off a study of whether the test should be changed. Another effect was to stop an effort to expand the admission of black and Latino students that was underway during the administration of John V. Lindsay, the liberal mayor.").

[32] N.Y. City Dep't of Educ., *Diversity in Admissions*, https://www.schools.nyc.gov/enrollment/enrollment-help/meeting-student-needs/diversity-in-admissions (accessed Mar. 7, 2021), *archived at* https://perma.cc/3XTB-YV97.

[33] *Id.* ("To be eligible for the Discovery program, a Specialized High Schools applicant must: . . . Have scored within a certain range below the cutoff score on the SHSAT . . . .").

[34] Princeton Review, *SHSAT Test Prep in Your Area – Tutoring*, https://www.princetonreview.com/product-search/shsat?x=1#s=&e=&td=&page=1&len=5&dow=127&m=3&pg=1&pt=274&r=25&t=SHSAT&v=list&z=60666&cmpid=0&dpl= (accessed Mar. 7, 2021).

13. Unsurprisingly, the specialized high schools' admissions outcomes constitute the most extreme examples of the results of a sorting process that systematically advantages members of groups with the greatest social and economic resources. Every year, the City releases these numbers, and the acceptance of just a handful of Black and Latinx students to the City's elite high schools reliably sends shock waves through the City and country, prompting expressions of outrage and calls for reform. In March 2019, for example, the New York Times published an article entitled "Only 7 Black Students Got Into Stuyvesant, N.Y.'s Most Selective High School, Out of 895 Spots."[35] One year later, the paper published an article with nearly identical statistics, headlined "This Year, Only 10 Black Students Got into N.Y.C.'s Top High School."[36] The ritual repeats year after year, but the SHSAT remains in place.

14. In an interview about school integration, former New York City Schools Chancellor Richard Carranza called the specialized high schools "the elephant in the room."[37] But the real elephant in the room—the obvious issue that no one wants to name, much less talk about—is racism. Racism, which takes various forms, is the reason that, although policymakers and members of the public decry the SHSAT's outcomes every year in March, the State has failed to take action to eliminate it. Racism is the reason that the State and City countenance a system that at every stage screens out Black, Latinx, and other children of color from the City's

[35] Eliza Shapiro, *Only 7 Black Students Got Into Stuyvesant, N.Y.'s Most Selective High School, Out of 895 Spots*, N.Y. Times (Mar. 18, 2019), https://www.nytimes.com/2019/03/18/nyregion/black-students-nyc-high-schools.html.

[36] Eliza Shapiro, *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.

[37] Christina Veiga et al., *Ahead of his first anniversary in office, Carranza talks SHSAT, a pre-K strike and his turnaround strategy* (Mar. 26, 2019), https://ny.chalkbeat.org/2019/3/26/21107217/ahead-of-first-anniversary-in-office-carranza-talks-shsat-a-pre-k-strike-and-his-turnaround-strategy. Carranza resigned as Chancellor in February 2021, following "repeated clashes with Mayor Bill de Blasio over" New York City school desegregation. Eliza Shapiro, *N.Y.C. Schools Chief to Resign After Clashes Over Desegregation*, N.Y. Times (Feb. 26, 2021), https://www.nytimes.com/2021/02/26/nyregion/richard-carranza-nyc-schools.html.

high-quality public educational programs. And racism—manifested in an unwillingness to forgo racial privilege despite its harms to historically marginalized groups—is the reason that, with few exceptions,[38] State and City officials refuse to support and implement real change.

15. Racism in various forms pervades the New York City school system. City public schools impress on Black and Latinx students their limited worth within the societal caste structure. Every day, students of color in City schools suffer racialized harms inflicted by certain administrators, teachers, and peers—traumatic incidents that their schools fail to prevent through proper professional development and support and lack the mental health resources to redress.[39] Students of color are taught a curriculum in which civilization is equated with whiteness, and coursework is dominated by white authors and Eurocentric portrayals of history. Teachers who seek instead to deliver a racially equitable education receive little to no support or guidance from the City and State; must design their own curriculum or even expend their own resources to purchase culturally responsive learning materials; and are evaluated narrowly by their students' performance on culturally destructive standardized tests, *e.g.*, *infra* note 121. Unsurprisingly, therefore, many courses, including in core subjects, largely exclude or include only superficially the histories, achievements, and voices of historically marginalized people of color, such that students of color rarely, if ever, recognize themselves in their curriculum. Nor do they see themselves in their instructors or school leaders: New York City teachers and administrators are predominantly white,[40] and it is these white authority figures that students of color learn to

[38] *E.g.*, Eliza Shapiro, *De Blasio Is Stalled on School Integration, but Brooklyn Parents Have a Plan* (Aug. 23, 2018), https://www.nytimes.com/2018/08/23/nyregion/brooklyn-district-15-schools-diversity-lottery.html.

[39] In 2017, New York City reported an average of approximately one social worker for every 900 students, which falls abysmally short of the recommended ratio of one social worker for every 250 students. Gale A. Brewer, *Who's Caring: The State of School-Based Mental Health Care in NYC Schools* 4–5 (2017), https://www.manhattanbp.nyc.gov/wp-content/uploads/2018/06/School-Mental-Health-Report-2017-Final.pdf; Nat'l Ass'n of Soc. Workers, *NASW Standards for School Social Work Services* 18 (2012), https://www.socialworkers.org/LinkClick.aspx?fileticket=1Ze4-9-Os7E%3d&portalid=0.

[40] *Infra* para. 55.

associate with the dispensation of knowledge and discipline. At the same time, students of color are well aware of the positions occupied by adults of color within their schools, as janitors, cafeteria workers, security guards, and paraprofessionals.

16. One of the many cruelties of the New York City school system is that students of color frequently share the same buildings with more privileged students enrolled in separate, screened schools or programs, and thus witness firsthand the disparities between their own educational experiences and those of their predominantly white and Asian peers. At the John Jay Educational Campus in Brooklyn, for example, students at three predominantly Black and Latinx high schools, including Park Slope Collegiate, long had access to only a fraction of the sports programs available to the mostly white and Asian students enrolled at Brooklyn Millennium High School.[41] Similarly, students in predominantly Black and Latinx schools often lack access to the high-quality art and music programs and extracurricular activities that their more privileged peers take for granted. Although the clear message to Black and Latinx students—"you don't matter"—may be the most jarring when different groups of students share the same campus, it is equally plain in the ramshackle school buildings, dilapidated learning materials, and scant extracurricular opportunities that are functionally reserved for students of color alone.[42]

17. When students of color demand attention to these inequities, the system sometimes makes minor adjustments: affinity groups at specialized high schools, for example, are permitted to hold attendance-optional town hall meetings where a self-selected group of students can discuss the racist incidents that occur in these schools on a regular basis. Other

[41] In 2016, whereas Brooklyn Millennium and Millennium High School in Manhattan had 17 Public School Athletic League teams, the three predominantly Black and Latinx schools had only four. *See* Susan Edelman, *DOE schools in shared building are 'separate and unequal': suit*, N.Y. Post (July 9, 2017), https://nypost.com/2017/07/09/elite-school-has-better-athletics-than-schools-in-shared-building-suit/. In an acknowledgment of the system's inequity, then-Chancellor Carranza announced a pilot program that added only 19 teams across 26 City high schools. N.Y. City Dep't of Educ., *Chancellor Carranza Announces Shared Teams Public Schools Athletic League Pilot* (Mar. 15, 2019), https://www.schools.nyc.gov/about-us/news/announcements/contentdetails/2019/03/15/shared-teams-public-schools-athletic-league-pilot.

[42] *Infra* paras. 75–78.

schools make space for students to discuss racialized current events, although these discussions are rarely incorporated into classroom hours, making clear that school leaders view such events—regardless of how significant they are to students—as beyond the scope of the curriculum. And while individual school leaders or teachers may expend their own time and resources to attempt to deliver a racially equitable and culturally responsive education, these efforts are not systematized, much less mandated and monitored, by the City or State. There is simply no government accountability system for the eradication of racism from New York City classrooms and school corridors.

18. The end result of these practices is a system of education that not only mirrors but in fact actively reproduces the pernicious racial hierarchies of the New York City caste system. The City and State intentionally maintain and sanction this system despite their knowledge—acquired through decades of experience and reflected in their own admissions—of its racist character and outcomes.[43] Such a system contravenes New York law and flies in the face of *Brown v. Board of Education*, which nearly 67 years ago envisioned the elimination of public education that isolates students by race. For schoolchildren in New York City, *Brown*'s promise—of integrated public education serving as a gateway to social and economic mobility—has long been extinguished. While nodding in the direction of racial equity, the State and City have failed to provide what they themselves define as a sound basic education: one that identifies and dismantles racism, root and branch.

PARTIES

I. Defendants

19. **Defendant State of New York** is the legal and political entity with plenary responsibility for educating all New York public school students, including the responsibility to

[43] Even if not intentional and, therefore, not in violation of the New York Constitution's Equal Protection Clause, the City's and State's policies and practices contravene the Education Article, by denying New York City schoolchildren a sound basic education, and the New York State Human Rights Law, by denying New York City schoolchildren the opportunity to obtain an education free from racial discrimination.

maintain and support the system of free common schools and ensure that all New York public school students receive a sound basic education under the Education Article.

20. **Defendant Andrew M. Cuomo**, sued in his official capacity, is the Governor of the State of New York. Defendant Cuomo is the chief executive officer of the State of New York, the legal and political entity with plenary responsibility for educating all New York public school students. As the State's chief executive officer, Defendant Cuomo has the ultimate obligation to ensure that all New York public school students receive a sound basic education under the Education Article.

21. **Defendant New York State Board of Regents** (Board of Regents) and its members are responsible for determining the policies governing New York's schools and for adopting rules and regulations to effectuate State education laws and policies. Education policies set by the Board of Regents govern State learning and promotion standards, State examinations, teacher licensing, and educational accountability. The Board of Regents elects the New York State Commissioner of Education.

22. **Defendant New York State Education Department** is the department of State government responsible for the general management and supervision of all public schools and all of the educational work of the State.

23. **Defendant Betty A. Rosa**, sued in her official capacity, is the New York State Commissioner of Education and President of the University of the State of New York. She is the chief executive officer of the State education system and of the Board of Regents. Pursuant to New York Education Law section 305, she "shall enforce all general and special laws relating to the educational system of the state and execute all educational policies determined" by the Board of Regents. Defendant Rosa also oversees the operation of the New York State Education Department. She has general supervision over New York schools and is responsible for guiding district and city school officers with respect to their duties and school management. Defendant Rosa also has general supervision over State teachers' colleges.

24. **Defendant Mayor Bill de Blasio**, sued in his official capacity, is the chief

executive officer of New York City. He is responsible for exercising all powers vested in the City and ensuring the effectiveness of City government operations.

25. **Defendant New York City Department of Education** is the department of City government responsible for the management of the New York City School District and the administration of New York City's public schools. Through the issuance of Chancellor's Regulations, the Department of Education sets policies in New York City's public schools.

26. **Defendant Meisha Porter**, sued in her official capacity, serves as Chancellor of the New York City Department of Education. She is responsible for the operation of the Department, which sets policies in New York City's public schools.

II. Plaintiffs

A. Individual Plaintiffs

27. **Plaintiff A.C.** is an 18-year-old who immigrated to New York City from the Dominican Republic during elementary school. A.C. is a resident of Bronx, New York City, and graduated in January 2021 from Renaissance High School for Musical Theater and Technology in District 11, Bronx. A.C. attended Soundview Academy for Culture and Scholarship for middle school and P.S. 69 Journey Prep School for elementary school in District 8, Bronx.

28. **Plaintiff W.D.** is a 17-year-old high school student of Vietnamese descent. W.D. is a resident of Queens, New York City, and attends Brooklyn Latin High School in District 14, Brooklyn. W.D. attended I.S. Walter Crowley for middle school and P.S. 229 for elementary school in District 24, Queens.

29. **Plaintiff M.G.** is a 16-year-old high school student of Puerto Rican descent. M.G. is a resident of Bronx, New York City, and attends Brooklyn Technical High School in District 13, Brooklyn. M.G. attended M.S. 101 Edward R. Byrne in District 8, Bronx for middle school. In elementary school, M.G. attended P.S. 14 Senator John Calandra in District 8, Bronx before transferring to P.S. 182 in the same district.

30. **Plaintiff S.G.** is a 17-year-old high school student who immigrated to New York City from Turkey during middle school. S.G. is a resident of Brooklyn, New York City, and

attends Franklin Delano Roosevelt High School in District 20, Brooklyn. S.G. attended P.S. 121 in District 21, Brooklyn for middle school.

31. **Plaintiff C.H.** is a 17-year-old Black high school student. C.H. is a resident of Brooklyn, New York City, and attends Brooklyn Technical High School in District 13, Brooklyn. C.H. attended Achievement First Brownsville Charter School in District 23, Brooklyn for middle and elementary school.

32. **Plaintiff Y.J.** is a 17-year-old high school student who immigrated to New York City from the Dominican Republic in middle school. Y.J. is a resident of Bronx, New York City, and attends the Urban Assembly Bronx Academy of Letters in District 7, Bronx. Y.J. attended M.S. 302 Luisa Dessus Cruz in District 8, Bronx for middle school.

33. **Plaintiff A.M.** is an 18-year-old high school student of Bengali descent. A.M. is a resident of Queens, New York City, and attends Stuyvesant High School in District 2, Manhattan. A.M. attended P.S.I.S. 119 The Glendale for middle school and P.S. 13 for elementary school in District 24, Queens.

34. **Plaintiff J.M.** is a 17-year-old high school student of Mexican descent. J.M. is a resident of Brooklyn, New York City, and attends Leadership and Public Service Academy in District 2, Manhattan. J.M. attended I.S. 347 School of Humanities for middle school and P.S. 274 The Kosciusko School for elementary school in District 32, Brooklyn.

35. **Plaintiff F.P.** is a 16-year-old high school student of Bengali descent. F.P. is a resident of Brooklyn, New York City, and attends Boerum Hill School for International Studies in District 15, Brooklyn. F.P. attended a private Muslim school before transferring to Brooklyn Excelsior Charter School in District 16, Brooklyn for middle school. F.P. attended elementary school at P.S. 67 Charles A. Dorsey in District 13, Brooklyn.

36. **Plaintiff M.S.** is a 16-year-old high school student of Bengali descent. M.S. is a resident of Brooklyn, New York City, and attends Brooklyn Technical High School in District 13, Brooklyn. M.S. attended Cunningham Junior High School in District 22, Brooklyn for middle school. M.S. attended P.S. 251 Paerdegat School from pre-K to second grade before

transferring to P.S. 207 Elizabeth G. Leary in District 22, Brooklyn for the remainder of elementary school.

37. **Plaintiff S.S.** is a 16-year-old high school student of Bengali descent. S.S. is a resident of Queens, New York City, and attends Civic Leadership Academy in District 24, Queens. S.S. attended I.S. 5 Walter H. Crowley for middle school and P.S. 89 for elementary school in District 24, Queens.

38. **Plaintiff F.T.** is a 17-year-old Black high school student. F.T. is a resident of Bronx, New York City, and attends Brooklyn Latin High School in District 14, Brooklyn. F.T. attended Icahn Charter School 1 in District 9, Bronx for middle and elementary school.

39. **Plaintiff B.W.** is a 14-year-old white middle school student. B.W. is a resident of Brooklyn, New York City, and attends Brooklyn Collaborative Studies in District 15, Brooklyn. B.W. attended P.S. 10 Magnet School of Math, Science & Design Technology in District 15, Brooklyn for elementary school.

B. Organizational Plaintiff

40. **Plaintiff IntegrateNYC Inc.** (IntegrateNYC) is a youth-led nonprofit membership organization founded in 2014 and incorporated in New York in 2018. IntegrateNYC's mission is to join and develop youth leaders to work for racial integration and equity in New York City schools. IntegrateNYC works with students to become engaged leaders in education reform, to investigate school segregation, and to pursue solutions leading to school integration and racial equity. IntegrateNYC has approximately 516 members. These members include Black, Latinx, Asian, white, and mixed-race students between the ages of nine and 21, residing in New York State and attending schools in the New York City Department of Education. Members join IntegrateNYC by participating in its citywide Youth Council program. They are invited by their peers who serve as directors and student leaders in the organization.

41. IntegrateNYC regularly reaches more than 2,000 students across New York City. Approximately 80 percent of its members are Black and Latinx. Most of its members are current New York City public middle and high school students who experience the harms of the City

education system. Community programs at IntegrateNYC encompass leadership development, advocacy, and civic engagement programs that prioritize the needs and aspirations of student members. IntegrateNYC is funded by foundation grants, community fundraising events, and individual donations.

42. IntegrateNYC is governed by an executive team and team of youth directors and coaches with advisory power, as well as a board of directors. All of the individuals who serve as youth directors are either current or former New York City Department of Education students. Directors are nominated and elected based on their connection to IntegrateNYC's mission and affiliation with IntegrateNYC's community and values. IntegrateNYC consistently revisits and adapts its programming based on direct feedback from its student member leaders. Members who participate in the organization's leadership development programming identify priority issues and shape what policies the organization addresses through outreach and advocacy.

43. IntegrateNYC has identified the New York City school system as one of the most racially segregated school systems in the country, in which students are consistently subjected to racism in all of its forms. IntegrateNYC's members have concentrated their work to remedy the harms of racial segregation on five areas of action: (i) enrollment; (ii) resource allocation; (iii) culturally responsive curriculum and relationships; (iv) restorative practices; and (v) teacher diversity.

44. IntegrateNYC invests in the power of young people to lead and shape the future through several programming structures intended to support students in developing their personal, professional, and civic leadership skills to advocate for racial justice. One such structure is the Leadership Council, comprised of IntegrateNYC's student member leaders. These member leaders guide the strategy and action of IntegrateNYC's work. Another programming structure is the New York City Youth Council, comprised of student allies and delegates from across the City. Led by student member leaders, City young people meet monthly to learn about issues, share their experiences, build projects, take action, and advocate for solutions together.

45. IntegrateNYC has diverted significant organizational resources to counteract racial inequities resulting from the State's and City's policies and practices. IntegrateNYC has had to designate approximately 80 percent of its operating budget and 75 percent of its staff time to counteracting these discriminatory policies through a series of policy campaigns, including:

- "Still Not Equal" campaign, addressing segregation in New York City schools and calling, *inter alia*, for the New York City Department of Education to design curriculum reflecting the backgrounds of students of color and to establish a teaching fellowship for New York City students to become educators serving New York City public schools;
- "Retire Segregation" campaign, publishing IntegrateNYC's proposed policies to combat racial segregation in New York City public schools;
- "Segregation Kills" campaign, addressing the disparate harms suffered by New York City students of color in segregated public schools during the COVID-19 pandemic; and
- "End Discriminatory Screens" campaign, calling on the New York City Department of Education to eliminate racially discriminatory admissions screens.

46. If the State and City were to end their discriminatory policies and practices described herein, IntegrateNYC would allocate its staff time to other youth development and educational equity priority areas, including supporting youth to become more engaged with their Community Education Councils and developing additional youth civic leadership programming. Reallocating this time would allow the organization to better address the pressing educational needs of its members.

47. For the foregoing reasons, the rights and interests of IntegrateNYC's members are adversely affected by the State's and City's actions and inactions as alleged in this complaint. Neither the claims asserted nor the relief requested in this complaint require the participation of individual IntegrateNYC members.

JURISDICTION AND VENUE

48. This Court has jurisdiction over Defendants pursuant to CPLR 301 and 302 because they reside in, have their principal place of business in, and/or regularly transact

business in the State of New York and in this county.

49. This Court, as a court of general jurisdiction, has jurisdiction over and is competent to adjudicate the causes of action set forth herein.

50. This Court has jurisdiction to grant a declaratory judgment and appropriate injunctive relief pursuant to CPLR 3001 and 3017(b).

51. Venue is proper in this county pursuant to CPLR 503(a) and (c) as one or more of the parties primarily resides in New York County.

52. Venue is proper in this county pursuant to CPLR 504(2) as against the New York City Department of Education because it is situated in New York County.

FACTUAL ALLEGATIONS

I. New York City's Educational Caste System

A. Racial Segregation and Its Outcomes

53. New York City remains highly segregated, both racially and economically,[44] and its public schools—which, as its City Council recognizes, are among the most segregated in the nation[45]—perpetuate and enhance that segregation. The majority of the City's Black and Latinx students attend a school in which more than 75 percent of students are in poverty.[46] Students are separated by race and socioeconomic status even upon entry to the City school system. Recent data show that in one of every six pre-K classrooms and one of every eight kindergarten classrooms, more than 90 percent of students are from the same racial or ethnic group.[47] Pre-K

[44] Sally Goldenberg, *50 years after Fair Housing Act, New York City still struggles with residential segregation*, Politico (Apr. 23, 2018), https://www.politico.com/states/new-york/albany/story/2018/04/23/50-years-after-fair-housing-act-new-york-city-still-struggles-with-residential-segregation-376170.
[45] *Supra* para. 6.
[46] N.Y. City Council, *supra* note 12.
[47] *See*, *e.g.*, Elizabeth A. Harris, *Racial Segregation in New York Schools Starts With Pre-K, Report Finds*, N.Y. Times (Sept. 21, 2016), https://www.nytimes.com/2016/09/21/nyregion/racial-segregation-in-new-york-schools-begins-in-pre-k-report-finds.html; Halley Potter, *Diversity in New York City's Universal Pre-K Classrooms*, The Century Foundation (Sept. 20, 2016), https://tcf.org/content/report/diversity-new-york-citys-universal-pre-k-classrooms/.

programs at many schools have not had a single white student in years of existence, and numerous others have percentages of white students in the single digits.[48] Moreover, public schools compound the segregation that exists in the City: they are consistently less diverse than the neighborhoods in which they are located, notwithstanding that most City elementary schools are zoned schools, which give priority to students who live in the particular neighborhood and administrative district.[49] These overall disparities are exacerbated in G&T classrooms, which are often more homogenous than general education classrooms and more likely to exclude altogether Black and Latinx students and the economically disadvantaged.[50] The extreme inequality of this segregation has predictably pernicious effects: whereas students in integrated settings benefit

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[48] N.Y. City Dep't of Educ., *Demographic Snapshot—Citywide, Borough, District, and School, SY 2014-15 to 2018-19*, https://infohub.nyced.org/docs/default-source/default-document-library/demographic-snapshot-2014-15-to-2018-19-(public).xlsx (accessed Mar. 8, 2021), *archived at* https://perma.cc/4RH5-46ZW (Full Day Pre-K for All tab) (*e.g.*, P.S. 15 Roberto Clemente: no white students from 2015–19; P.S. 140 Nathan Straus: same).

[49] *See*, *e.g.*, Citizens' Comm. for Children, *Back to School Part 2: Do NYC Schools Represent their Districts?* (Jan. 7, 2000), https://cccnewyork.org/back-to-school-part-2-do-nyc-schools-represent-their-districts/ (finding that 41 percent of schools in the City did not reflect their administrative district's demographics, and 55 percent of unrepresentative schools are elementary schools); *id.* (illustrating point with, *inter alia*, P.S. 87, a school with a 65 percent white, 4 percent Black, and 14 percent Latinx population while its district's student population is 27 percent white, 28 percent Black, and 32 percent Latinx); Sch. Diversity Advisory Grp., *Making the Grade: The Path to Real Integration and Equity for NYC Public School Students* 68–69 (Feb. 2019), *available at* https://docs.wixstatic.com/ugd/1c478c_4de7a85cae884c53a8d48750e0858172.pdf (discussing how school choice makes schools less diverse than they would be under a system of strict neighborhood assignment, and noting that "lower-income families are less likely to opt out of their neighborhood school. This suggests that while school choice may create greater access for families, not all families have the resources to make different choices."); N.Y. Appleseed, *Within Our Reach: Segregation in NYC District Elementary Schools and What We Can Do About It* 26 (2013), https://nyappleseed.org/wp-content/uploads/First-Briefing-FINAL-with-Essential-Strategies-8_5_13.pdf (discussing school choice, and quoting one scholar who has summarized, "If you have choice without civil rights policies, it stratifies the system. . . . People who have the most power and information get the best choices.").

[50] *Infra* para. 61; *see generally* N.Y. City Dep't of Educ., *Report on Demographic Data in New York City Public Schools, 2017-18, In Response to Local Law No. 59*, https://infohub.nyced.org/docs/default-source/default-document-library/report-on-demographic-data-in-nyc-public-schools.xlsx?sfvrsn=2b7837cc_2 (accessed Mar. 8, 2021), *archived at* https://perma.cc/9RM2-SLT5 (Grades K-8 Special Programs tab).

educationally and socially,[51] students of color in highly segregated schools and classrooms both understand themselves to be marked as inferior and experience worse behavioral and academic outcomes.

54. The City's longstanding school segregation, with its attendant foreseeable unequal opportunities and outcomes, continues and compounds as children grow up in the school system. Middle schools and high schools, especially screened ones, continue to suffer from being unrepresentative of the populations in their districts.[52] And the most selective high schools are not remotely representative of the City's children, but increasingly have come to resemble an apartheid state.[53]

55. Not only do most Black and Latinx students occupy classrooms segregated from white and certain Asian peers, but they also see a stratified corps of teachers and leadership staff. Departing from the make-up of the City's student body and overall City demographics, over 56 percent of City teachers in the 2019–20 school year were white[54]—notwithstanding that the State recognizes that "[a] diverse teacher workforce benefits all students," credits of the "[r]ole model effect [whereby] students see people of color in professional roles and positions of authority,"

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[51] *See*, *e.g.*, Sch. Diversity Advisory Grp., *supra* note 49, at 26–31.
[52] Citizens' Comm. for Children, *supra* note 49 (reporting that 58 percent of screened middle schools, 53 percent of screened high schools, 33 percent of unscreened high schools, and 27 percent of unscreened middle schools were unrepresentative).
[53] *See supra* para. 13.
[54] *See* Michael Elsen-Rooney, *NY teaching force has grown less white—but still doesn't match student body, city data shows*, N.Y. Daily News (Dec. 11, 2020), https://www.nydailynews.com/new-york/education/ny-teaching-force-demographic-data-20201211-5btmez5dkng6bbnzvpaktsyl2e-story.html; N.Y. City Dep't of Educ., *2019-2020 School Year Local Law 226 Report for the Demographics of School Staff—Ethnicity*, https://data.cityofnewyork.us/api/views/2jg5-6hqv/files/0f42eddb-b939-4ebd-91b0-905f4c3af524?download=true&filename=2019%20-%202020%20School%20Year%20Local%20Law%20226%20Report%20for%20the%20Demographics%20of%20School%20Staff%20-%20Ethnicity.xlsx (accessed Mar. 8, 2021), *archived at* https://perma.cc/7UBY-MQHW (Ethnicity x Boro + Citywide tab) (74,310 teachers citywide, 42,007 of whom are white); *see also* N.Y. State Educ. Dep't, *NYSED Educator Diversity Briefing on Draft Report* 8 (Nov. 5, 2019), https://www.regents.nysed.gov/common/regents/files/HE%20-%20NYSED%20Educator%20Diversity%20.pdf (accessed Mar. 8, 2021), *archived at* https://perma.cc/GA9W-G36J.

and acknowledges that educational disparities are linked to students' "[n]egative perceptions of school due to . . . [the] absence of teachers from similar backgrounds."[55] Similarly, the leadership staff in City schools is 52 percent white.[56]

56. These segregated existences predictably lead to unequal, unjust, and intolerable outcomes, evidencing the State and City's failure to provide a sound basic education for even a majority of City students. These outcomes have long been publicly documented and decried, including by Defendants themselves. Yet despite years of increasingly urgent alarms, the State and City have intentionally failed to take sufficient action—or often any action—to address the egregious inequities in the schools or to reduce their discriminatory harms to communities of color and the economically disadvantaged. Indeed, even if these failures were not intentional, and therefore not in violation of the New York Constitution's Equal Protection Clause, they nevertheless deny all New York City public school students a sound basic education, in contravention of the Education Article, and the opportunity to receive an education free from racial discrimination, in contravention of the New York State Human Rights Law.

57. For example, school discipline is not fairly applied across all racial groups in New York City schools, as students who bear the brunt of unequal treatment are well aware.[57] During the 2016–17 school year, Black students were suspended at a rate more than five times that of white students.[58] In the 2018–19 school year, Black and Latinx students represented 66 percent

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[55] N.Y. State Educ. Dep't, *supra* note 54, at 5, 16; *see id.* at 21 (noting challenges faced by educators of color with non-diverse peer environments); *see also*, *e.g.*, N.Y. Educ. L. § 305(58) (requiring the commissioner of education to study and improve teacher diversity throughout the State); Hua-Yu Sebastian Cherng & Peter F. Halpin, *The Importance of Minority Teachers: Student Perceptions of Minority Versus White Teachers*, 45 Educ. Researcher 407, 407–20 (2016).

[56] *See* N.Y. City Dep't of Educ., *supra* note 54 (Ethnicity x Boro + Citywide tab) (4,783 leadership staff, 2521 are white).

[57] Alex Zimmerman et al., *Students at mostly Black NYC schools are more likely to have negative feelings about school police*, Chalkbeat (June 18, 2020), https://ny.chalkbeat.org/2020/6/18/21296233/black-students-school-police-nyc.

[58] The Educ. Trust – N.Y., *Our Annual Report 2019: Growing* 3 (Aug. 2019), https://edtrustmain.s3.us-east-2.amazonaws.com/wp-content/uploads/sites/5/2019/09/20084508/Annual-

of the City's public school students, but were involved in 88.9 percent of police interventions in schools.[59] During this time, Black students also accounted for 92 percent of summonses in schools and were more likely to be handcuffed for misbehaving than their white peers. Despite the implementation of a new police intervention policy in summer 2019,[60] the percentage of police-involved incidents involving Black and Latinx students in schools increased to 89.4 percent.[61]

58. Racial disparities are also reflected in the City's graduation rates: in 2020, the graduation rate for Black students was 75.9 percent, nearly eight percentage points lower than that of white students.[62] The City's Latinx students graduated at an even lower rate—74.1 percent, or close to 10 percentage points below white students.[63] These disparities are even more pronounced when considering advanced Regents diplomas, a "virtual key" to the top colleges and universities:[64] 50 percent of Asian students and 35 percent of white students earned advanced Regents diplomas in 2018, as compared to only eight percent of Black students and 12 percent of Hispanic students.[65] And although Mayor de Blasio has touted a higher citywide

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Report-August-2019.pdf.

[59] NYCLU, *Student Safety Act Reporting* (2019), https://www.nyclu.org/sites/default/files/ssa_2019_full_year.pdf.

[60] In June 2019, the De Blasio administration signed a Memorandum of Understanding with the New York City Police Department that limited the responsibilities of police officers in New York City public schools. NYCLU, *supra* note 59, at 1.

[61] *Id.* ("Unfortunately, the benefits of the city's efforts seem to flow first to the students who are the least impacted.").

[62] Christina Veiga, *NYC graduation rates tick upwards in 2020*, Chalkbeat (Jan. 14, 2021), https://ny.chalkbeat.org/2021/1/14/22230843/nyc-graduation-rates-up-2020 ("That is the largest gap between Black and white students among the state's top five biggest school districts.").

[63] *Id.*

[64] Susan Edelman, *Black, Hispanic students still struggling despite rising graduation rates*, N.Y. Post (Feb. 2, 2019), https://nypost.com/2019/02/02/black-hispanic-students-still-struggling-despite-rising-graduation-rates/. According to the New York City Department of Education's website, an advanced Regents diploma "lets students show additional skills in math, science, and languages other than English." N.Y. City Dep't of Educ., *Graduation Requirements*, https://www.schools.nyc.gov/learning/student-journey/graduation-requirements (accessed Mar. 7, 2021), *archived at* https://perma.cc/4CYS-TW3D.

[65] *Id.*

graduation rate, this may well reflect the adjustment or elimination, due to the COVID-19 pandemic, of typical markers of graduation readiness and college preparedness.[66]

B. Racialized Pipeline to Elite Academic Programs

59. The State permits New York City not only to begin segregating students before they enter kindergarten, but also to mark them with badges of inferiority and superiority that correlate highly with race and income while having little to do with ability. Between 2008 and 2020, the City allocated places in its G&T programs based on a student's score on a single standardized test, available to students entering kindergarten—*i.e.*, four-year-olds—through third grade.[67] Although the systemwide test was adopted with the announced intent to increase access to G&T programs by eliminating metrics that were ostensibly more subjective,[68] it in fact exacerbated racial segregation in the City schools. As with later gatekeeping mechanisms, the children most likely to score highly on the exam were those whose families had the greatest navigational and economic capital: parents with the resources to understand the requirements and nuances of the G&T admissions system, sign their children up for the test, and pay for test preparation materials or courses.[69] Some children began test preparation programs as early as 18

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[66] Veiga, *supra* note 62.

[67] The City also offers priority admissions to siblings of children already in a G&T program. N.Y. City Dep't of Educ., *supra* note 20 ("Some of these applicants (such as siblings of current students) will be prioritized for offers, consistent with previous policies."). Many privileged families will thus retest their oldest children until they earn a high enough score to gain access to their program of choice, simultaneously cementing a higher future chance of admission for younger siblings in the same family. Allison Roda, *Inequality in Gifted and Talented Programs* 39–40 (2015).

[68] Elissa Gootman & Robert Gebeloff, *Gifted Programs in the City Are Less Diverse*, N.Y. Times (June 19, 2008), https://www.nytimes.com/2008/06/19/nyregion/19gifted.html.

[69] Shapiro, *supra* note 17. Researchers have demonstrated that "almost exclusive dependence on test scores for recruitment disparately impacts the demographics of gifted programs by keeping them disproportionately White and middle class." Donna Y. Ford et al., *Culturally and Linguistically Diverse Students in Gifted Education: Recruitment and Retention Issues*, 74 Exceptional Children 289, 294 (2008). In particular, relying on tests that require vocabulary and quantitative skills yields results that reflect a student's exposure to educational experiences prior to the test, mirroring and reproducing existing societal inequities. *Id.* at 300. Using these tests as a measure of "giftedness" creates a self-fulfilling feedback loop for privileged families where "students coming from high [socioeconomic status] homes are likely to have [meaningful

months old, with more intensive preparation for the G&T test beginning at age three.[70]

60. As discussed *supra* para. 8, following a City panel's refusal to renew the City's G&T testing contract, the City Department of Education scrambled to set up a temporary alternative assessment system, which it announced in February 2021. Under this system, parents will continue to nominate their children for identification as "gifted," after which the children will be evaluated either by their pre-K teacher or, if not enrolled in pre-K, "the DOE's Early Childhood Education Team."[71] As Plaintiffs' expert Dr. Allison Roda explains, the City has never demonstrated that either its previous or current evaluation system—or, more generally, its early tracking of students into G&T versus general education programs—is pedagogically sound:[72] "The Department of Education has not articulated any basis for making judgments about 'giftedness' in the first place. There is no transparency: no one knows what the criteria for ascertaining 'giftedness' are, or what they relate to." Moreover, the City's eleventh-hour adoption of a subjective evaluation process does nothing to remedy the segregative harms experienced by students of color who have already been categorized or who have aged out of

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educational] opportunities, which are likely to contribute to the fruition of their giftedness." *Id.* at 298.

[70] Shapiro, *supra* note 17; Leslie Brody, *Some Parents Pay Up to $400 an Hour to Prep 4-Year-Olds for NYC's Gifted Test* (Oct. 3, 2018), https://www.wsj.com/articles/some-parents-pay-up-to-400-an-hour-to-prep-4-year-olds-for-nycs-gifted-test-1538568001. An insidious side effect of the City's highly competitive early G&T admission process is that many white, socially and economically advantaged parents express anxiety that the only way to be a "good parent" is to prepare their children for G&T evaluations before they even enter the New York City school system. This generates a cycle of similarly advantaged parents competing to secure the "best" education for their children in a system of vast segregation and inequities. Allison Roda, *Parenting in the Age of High-Stakes Testing: Gifted and Talented Admissions and the Meaning of Parenthood*, 119 Tchrs. C. Rec. 1, 20 (2017).

[71] N.Y. City Dep't of Educ., *supra* note 20.

[72] *Cf.* Shapiro, *supra* note 17 ("Experts say the single-exam admissions process for such young children is an extremely unusual practice that may be the only one of its kind nationwide."). The National Association for Gifted Children states expressly: "Identification needs to occur over time, with multiple opportunities to exhibit gifts. One test at a specific point in time should not dictate whether someone is identified as gifted." Nat'l Assoc. for Gifted Children, *Identification*, https://www.nagc.org/resources-publications/gifted-education-practices/identification (accessed Mar. 7, 2021), *archived* at https://perma.cc/XGW8-6MEW.

G&T program eligibility. For these students, either relegated to the predominantly Black and Latinx schools long ignored by the City and State or isolated within the City's predominantly white and Asian screened schools, the system's racialized injuries have been inflicted, and they continue to cause harm.

61. Access disparities are starkly reflected in the socioeconomic composition of the City's G&T programs: in 2016, only 43 percent of enrolled students were living in poverty, as compared to 77 percent of students living in poverty citywide.[73] Differential access to resources has also resulted in the significant underrepresentation of Black and Latinx students: in the 2017–18 school year, although Black and Latinx students comprised 65 percent of kindergarteners, they received only 18 percent of G&T program offers.[74] By contrast, Asian and white students comprised 18 and 17 percent of the kindergarten population, respectively, but received 42 and 39 percent of G&T program offers.[75] Among kindergarteners attending schools outside of their zone, those that were white and Asian were also more likely than their Black and Latinx counterparts to enroll in an out-of-zone school with a G&T program.[76]

62. In New York City, unlike in suburban school districts, most G&T programs are full-time and are embedded within schools that enroll both G&T and general education students.[77] Although they occupy the same building, G&T and general education students take separate classes, creating an in-school hierarchy between predominantly white and Asian

[73] Christina Veiga, *Among New York City's deeply segregated gifted programs, one Brooklyn school aims for greater diversity*, Chalkbeat (Nov. 18, 2016), https://ny.chalkbeat.org/2016/11/18/21099346/among-new-york-city-s-deeply-segregated-gifted-programs-one-brooklyn-school-aims-for-greater-diversi.
[74] Sch. Diversity Advisory Grp., *Making the Grade II: New Programs for Better Schools* 26 (Aug. 2019), *available at* https://steinhardt.nyu.edu/sites/default/files/2020-05/Making-the-Grade-II_0.pdf.
[75] *Id.*
[76] Nicole Mader et al., *The Paradox of Choice: How School Choice Divides New York City Elementary Schools*, Center for N.Y. City Affairs at the New School 14 (May 2018).
[77] Allison Roda & Judith Kafka, *Gifted and Talented Programs Are Not the Path to Equity*, The Century Foundation (June 19, 2019), https://tcf.org/content/commentary/gifted-talented-programs-not-path-equity/.

students in G&T classes and predominantly Black and Latinx students in general education classes. Students on both sides are well aware of this divide: Plaintiff A.M., for example, saw his white and Asian peers call Black and Latinx students in general education "troublemakers."

63. This early segregation—the channeling of white and certain Asian kindergarteners and elementary school students into G&T programs while their Black and Latinx peers remain in general education—is exacerbated over time, as G&T programs provide superior academic preparation and create a pipeline into the City's academically screened middle schools, which in turn function as "feeder schools" for the City's selective and specialized high schools.[78]

64. Middle schools with competitive screens, which comprise approximately 37 percent of the City's middle schools,[79] consider a variety of factors in choosing which students to enroll, but many rely primarily on grades in fourth grade classes and scores on standardized State English language arts and math tests.[80] According to testing experts, including Dr. Dixon-Román and Dr. Everson, such standardized tests are not designed to provide an accurate report of a specific child's academic performance (the way they are utilized in academic screens), but instead to measure the aggregate performance of a school system year over year. Other factors considered in middle school admissions may include student interviews, attendance and punctuality records, and essays or auditions.[81] Because students are only 10 or 11 years old when they must apply to middle schools, they rely heavily on their parents or other family members (who, if they can afford it, may in turn rely on privately retained admissions consultants) to guide them through a process that most students in the United States do not undergo until seven or

[78] Christina Veiga, *To integrate specialized high schools, are gifted programs part of the problem or the solution?*, Chalkbeat (July 17, 2018), https://ny.chalkbeat.org/2018/7/17/21105352/to-integrate-specialized-high-schools-are-gifted-programs-part-of-the-problem-or-the-solution.
[79] N.Y. Appleseed, *Student Assignment to Public Middle Schools in New York City, Advocacy Briefing* 6 (Jan. 2019), https://www.nyappleseed.org/wp-content/uploads/FINAL-Middle-School-Advocacy-Briefing_01_19-PDF.pdf.
[80] *Id.*; Stefan Lallinger, *NYC Schools Should Drop Admissions Screens for Upcoming Year*, The Century Foundation (May 8, 2020), https://tcf.org/content/commentary/nyc-schools-drop-admissions-screens-upcoming-year/?session=1.
[81] Lallinger, *supra* note 80; Sch. Diversity Advisory Grp., *supra* note 74, at 20.

eight years later, when they apply to college. New York City parents and family members assist their fifth graders in researching and assessing schools; preparing their applications and practicing for interviews; and ultimately, deciding which school to attend. Students in G&T courses have an academic edge in admissions; so too do students whose families understand the critical importance of fourth grade standardized test scores in admissions screens and have the funds to pay for test preparation materials or courses.

65. A threshold challenge for most New York City fifth graders of color is even identifying what more privileged families understand to be "good" schools, *i.e.*, those with rigorous academics, robust athletic and extracurricular programs, and ample resources for student support. Such schools are commonly known as "feeder" schools, because they provide their students with the resources they need to become strong candidates for admission to the City's selective and specialized high schools. In fifth grade, students receive a thick directory listing all of the middle schools in the City by borough. Students then choose among the middle schools to which they are eligible to apply, which are typically those within their zoned district and the district where they attend elementary school.[82] For privileged students, this directory is often superfluous, as their parents have already identified desired middle schools. For many students of color, choosing a well-resourced school from the directory without additional context is, foreseeably, an insurmountable challenge; these students often choose to apply to their neighborhood schools or to schools attended by their older siblings or friends—selection patterns that reproduce inequities.

66. Even when a student of color has identified a so-called "good" school, she may understandably question her ability to gain admission. One student, who is of Haitian descent and who was accepted into a competitively screened middle school, explained that although some of her elementary school classmates also knew about her school, they felt that they were "too dumb" to apply. Now a high school student, she has met other students of color who told

[82] N.Y. Appleseed, *supra* note 79, at 4.

her they considered her school, but chose not to apply after their teachers warned that they were unlikely to be admitted. This student feels "privileged" in that her father was familiar with the New York City school system and her mother found a network of parents who guided one another through the middle school admissions process. Without this support, she may not have known about her middle school at all, much less felt confident enough to apply.

67. Given the inequities and discrimination that students of color encounter from the beginning of their time in the City's public schools, those who do apply to competitively screened middle schools must surmount years of compounding harms to gain admission, placing them at a severe disadvantage relative to their more privileged counterparts. As noted *supra*, middle school screens often rely heavily on standardized tests, which, as Plaintiffs' expert Dr. David E. Kirkland explains, disadvantages Black and Latinx students, who face culturally biased test language and tasks; who may experience stereotype threat that artificially depresses performance; and whose families may be unable to afford expensive test preparation programs and services. "Soft" factors pose a separate set of challenges: at the age of 10 or 11, most students have never participated in an interview. Successfully navigating such interviews frequently depends on a student's ability to embody white behaviors and norms, as at one competitively screened middle school in Manhattan, where interviews are conducted by members of the predominantly white PTA.

68. Once in middle school, well-connected students soon begin preparing for the City's ultimate gatekeeping mechanisms: competitive high school admissions screens and the SHSAT. The high school admissions process is significantly more complex—and thus in many ways more daunting—than its middle school counterpart: eighth graders may apply to any of the City's more than 400 public high schools, which in turn house more than 700 programs.[83] Eighth graders can apply to up to 12 programs.[84] As at the middle school level, admissions requirements

[83] N.Y. City Dep't of Educ., *supra* note 29.
[84] *Id.*

are not standardized: each high school (and sometimes, each program within a high school) has its own admissions process and timeline, and criteria and evaluation methods are often opaque to applicants and their families.[85] Similar to middle school screens, many high school screens rely heavily on middle school grade point averages and eighth grade standardized test scores, and may also incorporate school-specific assessments, interviews, and attendance and punctuality records.[86] In light of the responsibility of public schools to serve all students, and in the context of the racialized inequality of the City's hypersegregated school system, these constructs serve no rational pedagogical end.

69. The zenith of New York City's system of sorting and channeling students is the SHSAT, which allocates places at eight of the City's nine specialized high schools (the ninth, Fiorello H. LaGuardia High School of Music & Art and Performing Arts, admits students via audition).[87] The sole criterion for admission to these high schools is a student's score on the SHSAT, a two-and-a-half-hour, 114-question exam consisting of English language arts and math items. The use of the SHSAT for admission to Bronx Science, Brooklyn Tech, and Stuyvesant is expressly mandated by the Hecht-Calandra Act,[88] passed by the State legislature five decades

[85] Monica Disare, *'Why are we screening children? I don't get that': Chancellor Carranza offers harsh critique of NYC school admissions*, Chalkbeat (May 23, 2018), https://ny.chalkbeat.org/2018/5/23/21105048/why-are-we-screening-children-i-don-t-get-that-chancellor-carranza-offers-harsh-critique-of-nyc-scho; Eliza Shapiro, *Why White Parents Were at the Front of the Line for the School Tour*, N.Y. Times (Dec. 18, 2020), https://www.nytimes.com/2019/11/15/nyregion/beacon-high-school-admissions-nyc.html.

[86] Clara Hemphill et al., *Screened Schools: How to Broaden Access and Diversity*, Ctr. for N.Y. City Affairs at the New Sch. 1 (Feb. 2019).

[87] The eight test-based specialized high schools are Bronx High School of Science (Bronx Science); Brooklyn Latin School; Brooklyn Technical High School (Brooklyn Tech); High School for Mathematics, Science and Engineering at City College of New York; High School of American Studies at Lehman College; Queens High School for the Sciences at York College; Staten Island Technical High School; and Stuyvesant High School.

[88] The Hecht-Calandra Act provides, in relevant part: "Admission to the Bronx High School of Science, Stuyvesant High School and Brooklyn Technical High School and such similar further special high schools which may be established shall be solely and exclusively by taking a competitive, objective and scholastic achievement examination, which shall be open to each and every child in the city of New York in either the eighth or ninth year of study, without regard to any school district wherein the child may reside." N.Y. Educ. L. § 2590-g(12)(b) (1997)

ago to stymie the efforts of a commission, appointed by then-City Schools Chancellor Harvey Scribner with the support of Mayor John Lindsay, to study whether admissions testing for the specialized schools was discriminatory.[89] Recognizing that "serious questions" existed "with reference to admissions policies in all our specialized high schools," Scribner had asked the commission to take "a hard look" at "the extent any test of academic achievement tends to be culturally biased."[90]

70. Strikingly, the validity of the SHSAT—*i.e.*, the degree to which it succeeds in measuring what it purports to measure—has never been widely vetted in accordance with professional standards.[91] As the *Standards for Educational and Psychological Testing*, published by the American Educational Research Association, American Psychological Association, and

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(incorporated by reference into N.Y. Educ. L. § 2590-h(1)(b) ("admissions to the special schools shall be conducted in accordance with the law in effect on the date preceding the effective date of this section")).

[89] Clines, *supra* note 31 ("Sponsored by a white cross section of [legislators], the bill was drawn to defend against a special study initiated by the city's[] school Chancellor, Dr. Harvey B. Scribner, to look into charges that the four [specialized] schools were 'culturally biased' against blacks and Puerto Ricans.").

[90] Andrew H. Malcom, *Scribner to Name Unit to Study Special-School Entrance Tests*, N.Y. Times (Feb. 24, 1971), https://www.nytimes.com/1971/02/24/archives/scribner-to-name-unit-to-study-specialschool-entrance-tests.html (quoting Scribner). Mayor Lindsay ultimately opposed the legislation, on the express grounds that "[i]t has been alleged that the competitive method for ascertaining admission to these schools discriminates against Black and Puerto Rican applicants," a question that was being studied by the Chancellor, and that any reform should be taken only after the Chancellor's committee report. Bill Jacket 1971 c1212 at 21 (Letter from Mayor Lindsay to Governor Rockefeller (June 14, 1971)). Likewise, "[t]he New York City Board of Education strongly oppose[d] th[e] bill." *Id.* at 29 (Peter A. Piscitelli, Legislative Representative, N.Y. City Bd. of Educ., *Memorandum in Opposition* (May 4, 1971)); *see also* Bill Jacket, *supra*, at 45 (Assoc. of the Bar of the City of N.Y. Letter to Hon. Michael Whiteman, Executive Chamber (June 11, 1971) (disapproving of the bill because "it attempts to establish, by legislative fiat and without prior investigation, an exclusive admission procedure whose intrinsic merit has been seriously questioned")).

[91] Winnie Hu, *Does Admissions Exam for Elite High Schools Measure Up? No One Knows*, N.Y. Times (July 18, 2018), https://www.nytimes.com/2018/07/18/nyregion/shsat-new-york-city-schools.html ("[T]he SHSAT has not undergone an extensive vetting process known as predictive validity testing, which provides statistical evidence that a test is actually doing what it claims to do: In the case of the SHSAT, it would be identifying the students who can thrive in the accelerated academics of the specialized schools.").

National Council on Measurement in Education, explain: "Validity is . . . the most fundamental consideration in . . . evaluating tests. . . . Evidence of the validity of a given interpretation of test scores is a necessary condition for the justifiable use of the test."[92] Testing experts, including Plaintiffs' expert Dr. Everson, recognize not only the need to demonstrate the validity of standardized tests, but also the heightened need for robust, peer-reviewed, and repeated validity studies where a single, high-stakes admissions test is at issue. Although the City hired a private consulting firm to assess the validity of the SHSAT in 2013, that study failed to assess bias, equity, and fairness in the test,[93] nor did it examine the instructional period, what students were expected to know, and whether test scores varied by middle school attended, among other factors. (Moreover, the City transitioned to a redesigned SHSAT in 2017, without publishing any updated evidence of the redesigned test's validity.) The City's seven-year-old study, which does not even examine the current iteration of the SHSAT and which the City refused to release publicly until 2018, fails to meet professional standards for validity testing.

71. Students—many of whom have been tutored in preparation for the G&T test as toddlers, then for fourth grade State standardized tests in preparation for middle school admissions—begin preparing for the SHSAT as early as sixth grade. Top-tier test preparation programs and tutoring can cost upwards of $2,000 over multiple sessions, and students may attend test preparation classes for several hours after school or on weekends. [94] Students who wish to prepare for the test, but whose families cannot afford these options, may seek out lower-

[92] Am. Educ. Research Ass'n et al., *Standards for Educational and Psychological Testing* 11 (2014).

[93] *Cf. id.* at 49–50 (those that use standardized tests must be "sensitive to individual characteristics," such as race, ethnicity, culture, and language, "that otherwise would compromise validity," and must consider these characteristics "throughout all stages of development, administration, scoring, interpretation, and use so that barriers to fair assessment can be reduced").

[94] For example, Caddell Prep offers students a choice of two SHSAT preparation courses—the first, meeting on Monday and Wednesday afternoons, is comprised of two-and-a-half hour classes over 25 sessions, and the second consists of 12 three-hour weekend classes. *SHSAT Class on Staten Island*, Caddell Prep, https://caddellprep.com/shsat-test-prep/shsat-prep-class-staten-island/ (accessed Mar. 7, 2021), *archived at* https://perma.cc/F7CR-A5AQ.

cost courses or study entirely from test preparation books. Such disparities in access to high-quality test preparation undermine the pretense of a meritocratic testing regime. And although the City has created the DREAM program, designed to provide some degree of SHSAT preparation to low-socioeconomic status students with higher State standardized test scores, that belated intervention—after students have experienced years of compounding inequality within the City's segregated school system—predictably has had only limited success.[95] And, like other out-of-school test preparation programs requiring a significant time commitment, it can be inaccessible to students with work or familial obligations: Plaintiff F.T., for example, enrolled in the DREAM program but subsequently had to drop out in order to care for her siblings.

72. Many students of color are not made aware of the SHSAT at all, or only learn that it exists weeks or days before its administration. Even those who know about the exam remain at a pronounced disadvantage if they are unable to afford, or are unaware of the availability of, test preparation. One student, who is Black, learned about the SHSAT one month before the test—a common experience for students of color. Among the top performers at an underresourced middle school, she took the exam without any foreknowledge of what would be tested and scored just below the cutoff for the specialized high schools. This qualified her for the Discovery program, which facilitates the admission of low-income students to specialized high schools if their SHSAT scores are sufficiently close to the cutoff. Although this student eventually enrolled at a specialized high school, she frequently felt stigmatized by her method of admission—an experience common among Black and Latinx students admitted through the Discovery program. As one Latinx student at Bronx Science explained, "There is definitely a stigma against students who have gone in through the Discovery program. Most of the students I hang out with are Black and Hispanic, and people are always looking at us in a certain way. They ask: 'Why do these kids have this extra opportunity?' But Black and Latinx students don't know about the process."

[95] Jillian Jorgensen, *Carranza: City Likely to See Little Change in SHSAT Results*, Spectrum News NY1 (Oct. 9, 2019), https://www.ny1.com/nyc/all-boroughs/news/2019/10/09/doe-chancellor-richard-carranza-says-city-likely-to-see-little-change-in-shsat-results.

73. Although the DREAM and Discovery programs plainly manifest the City's awareness of the inequities of its specialized high schools admissions process, these limited programs—one consisting of nine months of test preparation, the other a "summer enrichment program" before high school[96]—are too little and too late to correct the gross racial imbalances in access to "elite" public schools that the system otherwise continues to create and perpetuate.[97] A 2018 analysis found that "[s]tudents from only 10 middle schools" comprised "a quarter of all specialized high school admissions offers . . . almost four times more than all of the admissions offers to students living in the city's 10 poorest districts combined."[98] Although students from District 2 comprised only approximately four percent of public school eighth graders, they received nearly 13 percent of admissions officers, whereas "[t]he 10 districts that are home to the most black and Hispanic students made up about 4 percent of admissions offers."[99] Focusing on the tail end of a pipeline that begins in kindergarten, the DREAM and Discovery programs enable the City to profess a commitment to equity—and cite incremental movement toward integration—while intentionally refusing to dismantle, root and branch, its racialized channeling system.

74. The immense inequities of conditioning entrance to the City's specialized high schools on a single, high-stakes exam, for which students have differential access to test preparation and which students take following years of compounding inequality, is foreseeably reflected in the specialized high schools' starkly disparate admissions outcomes.[100] In 2020, at

[96] N.Y. City Dep't of Educ., *supra* note 32.
[97] *See, e.g.*, Christina Veiga, *Program aiming to integrate NYC's specialized high schools continues to enroll few black and Hispanic students*, Chalkbeat (May 1, 2020), https://ny.chalkbeat.org/2020/5/1/21244612/discovery-few-black-and-hispanic-students.
[98] Christina Veiga & Sam Park, *Where specialized high school students come from (and where they don't)*, Chalkbeat (June 14, 2018), https://ny.chalkbeat.org/2018/6/14/21105272/where-specialized-high-school-students-come-from-and-where-they-don-t.
[99] *Id.*
[100] In addition to the SHSAT's disparate impact, the discriminatory purpose of the Hecht-Calandra Act is evidenced by the sequence of events leading up to its adoption, namely, then-City Schools Chancellor Scribner's announcement of a commission to study cultural biases in the test, *supra* para. 69 and note 90, and by the Act's legislative history, *supra* note 90; *see also*

Stuyvesant—the City's most selective specialized high school—Black students received only 10 out of a total of 766 offers of admission, up from seven offers the year before.[101] Latinx students received 20 offers—13 fewer than in 2019.[102] Although Black and Latinx students comprise nearly 70 percent of the school system as a whole, they received only 4.5 and 6.6 percent of specialized high school admissions offers.[103] White and Asian students, by contrast, received 25.1 and 54 percent of offers, respectively.[104]

C. Experience of Black and Latinx Students in Unscreened Schools

75. Students at the City's specialized and screened high schools have access to state-of-the-art facilities and a wide array of courses and extracurricular activities,[105] but the predominantly Black and Latinx students enrolled in the City's unscreened schools—to which the City also funnels English learners, like Plaintiffs S.G. and Y.J.[106]—are often relegated to poorly maintained buildings with limited academic and extracurricular programs. One such

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Bill Jacket 1971 c1212 at 5 (Memorandum in Support of Senate Reprint 30,052 Amending Assembly Bill A. 7005-A (June 4, 1971)) ("The purpose of this bill is to preserve and save the four specialized high schools in the City of New York."). *See Vill. of Arlington Heights*, 429 U.S. at 266–68.

[101] Christina Veiga et al., *Only 10 black students offered admission to Stuyvesant, as efforts to integrate NYC's specialized high schools flounder*, Chalkbeat (Mar. 19, 2020), https://ny.chalkbeat.org/2020/3/19/21196079/only-10-black-students-offered-admission-to-stuyvesant-as-efforts-to-integrate-nyc-s-specialized-hig.

[102] *Id.*

[103] *Id.*

[104] *Id.*

[105] *See, e.g.*, Adam Harris, *Can Richard Carranza Integrate the Most Segregated School System in the Country?*, The Atlantic (July 23, 2018), https://www.theatlantic.com/education/archive/2018/07/richard-carranza-segregation-new-york-city-schools/564299/ (describing classroom "amenities" at Stuyvesant including "3-D printers and robotics labs, green spaces, and giant windows with views of the Hudson River").

[106] *See, e.g.*, Toi Sin Arvidsson et al., *Over the Counter, Under the Radar: Inequitably Distributing New York City's Late Enrolling High School Students*, Annenberg Inst. for Sch. Reform i (2013) (finding that so-called "over-the-counter" English learner students (those who do not go through the school choice process) "are disproportionately assigned to high schools with higher percentages of low-performing students, English language learners (ELLs), and dropouts"; "to struggling high schools"; and "to high schools that are subsequently targeted for closure or that are undergoing the closure process").

school, Renaissance High School for Musical Theater and the Arts (Renaissance), is located on the campus of Herbert H. Lehman High School in the Bronx. The school building both abuts and extends over the Hutchinson River Parkway, with one wing built atop a bridge crossing the parkway. Students struggle to focus and speak in class over the constant din of passing cars, motorcycles, and trucks, which also expose the students to high levels of vehicle pollution.[107] The cafeteria is a windowless space in the basement; many classrooms have no windows at all. Students frequently encounter vermin, such as rats and cockroaches, in classrooms and hallways, and Plaintiff A.C. was once tasked with killing a rat on a classroom shelf.[108] Many students at unscreened high schools report similar vermin infestations and other issues with the physical plant of their schools, including:

- An insufficient number of textbooks, requiring a single textbook to be shared by up to three students, and outdated and dilapidated textbooks;
- Lack of basic classroom materials, such as working markers, paper, and lab equipment for science classes;
- Overcrowded hallways and classrooms, sometimes with as many as 40 students in a single classroom;
- Recurrent leaks in school hallways; and
- No toilet paper in the bathroom, so that students must bring their own or take tissues from the teacher's lounge.

76. For many students at the City's unscreened middle and high schools, the school building is a site of surveillance and punishment, rather than one of engagement and

[107] *See* Valeria Ricciulli, *Many NYC schools are located near major highways, raising pollution concerns*, Curbed N.Y. (Sept. 3, 2019), https://ny.curbed.com/2019/9/3/20847417/back-to-school-nyc-public-doe-pollution-highways.

[108] In 2017, "[m]ore than half of the 1,150 critical violations reported" in inspections of City school cafeterias "show[ed] evidence of mice, rats, roaches and other insects in food preparation and consumption areas, along with flies." Pauliina Siniauer & Mallory Moench, *Food Plight: Cafeteria inspections reveal critical health violations at New York City schools*, N.Y. City News Serv., https://foodplight.nycitynewsservice.com/ (accessed Mar. 7, 2021), *archived at* https://perma.cc/5PSS-YLB2.

exploration.[109] At predominantly Black and Latinx campuses, thousands of students attending multiple high schools must pass through only two or three metal detectors. Lines can snake around the block, particularly when a metal detector breaks. Students have had to wait 30 to 40 minutes, sometimes in rain or snow, just to enter the building. A former student recounted that "[i]t took a lot of time just to prepare to go through the metal detector; it felt like going through TSA every morning. Anything could set the machine off, and if it did, they'd stop and frisk you." Students at Renaissance, after passing through metal detectors, encounter "cops on every floor," who monitor the hallways and bathrooms. (New York City employs approximately 5,500 officers, known "school safety agents," to police its public schools.[110]) Students liken being at school to being "in prison"; there are so many security officers that students feel like they are suspected of being about to "commit a crime or do something illegal," when they are simply trying to learn. Multiple studies have demonstrated that students report feeling less safe in school due to the presence of metal detectors.[111] A Black and Latinx student at a non-selective high school in Brooklyn echoed this sentiment: "The metal detectors send the message to my Black and Latinx peers that we can't trust each other—that we are going to school not to learn, but with

[109] In 2015, WNYC reported that among public high school students in New York City, 48 percent of Black and 38 percent of Latinx students had to pass through metal detectors to enter their school buildings, compared to only 14 percent of white students. WNYC, *Metal Detectors in New York City High Schools* (2015), https://project.wnyc.org/metal-detectors/ (accessed Mar. 7, 2021), *archived at* https://perma.cc/86VE-GV5R. Sixty-two percent of high school students in the Bronx and 42 percent in Brooklyn had to pass through metal detectors, compared to 26 percent of students in Manhattan. *Id.* Although the New York City Police Department is required by law to disclose the locations of metal detectors in City schools, it has failed to do so, leading to demands for compliance from the City Council and a lawsuit by the NYCLU. Beenish Ahmed, *City Council Demands School Metal Detector Data From NYPD*, WYNC (June 6, 2018), https://www.wnyc.org/story/city-council-nypd-school-metal-detector-data/; NYCLU, *NYCLU Sues NYPD For Data on Metal Detectors* (Aug. 26, 2020), https://www.nyclu.org/en/press-releases/nyclu-sues-nypd-data-metal-detectors-nyc-schools.

[110] Joe Anuta, *School safety agents will stay under NYPD this year, despite city's claims of $1B cut*, Politico (July 2, 2020), https://www.politico.com/states/new-york/albany/story/2020/07/02/school-safety-agents-will-stay-under-nypd-this-year-despite-citys-claims-of-1b-cut-1296868.

[111] Jaclyn Schildkraut & Kathryn Grogan, *Are Metal Detectors Effective at Making Schools Safer?*, WestEd 3 (2019), https://files.eric.ed.gov/fulltext/ED595716.pdf (citing studies).

the intent to harm each other." Encountering metal detectors at school every morning makes this student and her classmates feel that they "are not worthy of learning or success . . . that we are not there to learn but to be criminalized."

77. As discussed *supra*, disparate rates of school discipline in New York City confirm these perceptions. Although Black and Latinx students do not misbehave more frequently or more severely than their white peers, they are disproportionately policed, which negatively impacts both school climate and academic performance.[112] Dr. Kirkland describes how many educators "fail to see Black children as children," framing them "as older and more threatening as opposed to youthful and innocent."[113] Dr. Dixon-Román further notes that male children of color are more likely to be expelled from both early childhood and K–12 education and to experience the classroom not as a space of learning, but as an environment in which they are constantly questioned and pushed out. And Plaintiffs' expert Dr. Jason Okonofua explains that "[e]xclusionary discipline . . . directly undermines children's opportunities to learn," noting that Black students are more likely than students of other racial backgrounds to cite such discipline as a reason for leaving school.[114] This aligns with Plaintiffs' expert Dr. Jonathan Rosa's description of public schools as spaces of punishment and intervention into presumed cultural and demographic pathologies, which may also be used to rationalize adverse student outcomes.

78. The City's school system also conveys to Black and Latinx students that they are "not worthy of learning" by denying them access to the high-quality arts, music, athletic, and

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[112] Katherine Terenzi et al., *The $746 Million a Year School-to-Prison Pipeline: The Ineffective, Discriminatory, and Costly Process of Criminalizing New York City Students*, Ctr. Popular Democracy 2–3 (Apr. 2017), https://populardemocracy.org/sites/default/files/STPP_layout_web_final.pdf. Troublingly, when Black parents try to engage with school staff on disciplinary issues, their efforts are often met with a racialized response that marginalizes them and negatively impacts their children's academic performance. Ezekiel Dixon-Román, *The forms of capital and the developed achievement of Black males*, 48 Urb. Educ. 828, 853 (2012).
[113] David E. Kirkland, *Learning to Teach Reading Across Racial Contexts: A Focus on Transforming Teacher Mindsets*, 50 Mich. Reading J. 48, 48 (2018).
[114] Jason Okonofua et al., *A Vicious Cycle: A Social-Psychological Account of Extreme Racial Disparities in School Discipline*, 11 Persps. Psychol. Sci. 381, 381–93 (2016).

other extracurricular programs it makes available to their white and (some) Asian peers.[115] Arts opportunities at unscreened schools are meager: students who wish to participate in theater programs at Plaintiff F.P.'s high school must pay out-of-pocket for their costumes, and students at Renaissance attend art class in a room with no windows and poor ventilation. So too with athletics: the Urban Assembly Bronx Academy of Letters, for example, enrolls predominantly Black and Latinx students and offers only three Public Schools Athletic League (PSAL) "Boys" sports teams: baseball, basketball, and soccer (although the school does not even have a full-sized soccer field).[116] By contrast, Stuyvesant High School offers 21 PSAL "Boys" sports teams, including fencing, swimming, tennis, and lacrosse.[117] At Civic Leadership Academy in Queens, where Plaintiff S.S. attends, only four PSAL teams are offered in two sports: rugby and table tennis.

II. Marginalization in Curriculum

79. Throughout the New York City school system, students of color are subjected to curriculum that reinforces their subordination by centering white language, history, and culture, which in turn inculcates in white students a false sense of superiority and centrality. In New York, the Board of Regents and State Education Department set statewide learning standards "for what all students should know and be able to do as a result of skilled instruction."[118] Although the New York City Department of Education—like other local education agencies—develops and endorses curricular programs to meet the learning standards, it chooses to allow

[115] *See, e.g.*, Olivia Schwob, *For a Level Field*, Urban Omnibus (Apr. 10, 2019), https://urbanomnibus.net/2019/04/for-a-level-field/ ("[A]ccess to space and teams in [New York City] public schools is largely determined by a student's race — by the city's geography of segregation, and by the legacy of a movement for small schools that, in an attempt to attend to struggling students, has put mostly kids of color in scaled-down facilities.").
[116] The Urban Assembly, *The Urban Assembly Bronx Academy of Letters*, https://urbanassembly.org/schools/the-bronx-academy-of-letters (accessed Mar. 7, 2021), *archived at* https://perma.cc/Z88G-H9VW ("PSAL Sports – Boys: Baseball, Basketball, Soccer").
[117] Pub. Sch. Athletic League, *Stuyvesant High School*, https://www.psal.org/profiles/school-profile.aspx#02519 (accessed Mar. 7, 2021), *archived at* https://perma.cc/8SLA-RK5M.
[118] N.Y. State Educ. Dep't, *Curriculum and Instruction*, http://www.nysed.gov/curriculum-instruction (accessed Mar. 7, 2021), *archived at* https://perma.cc/JGY5-ZDUH.

individual schools and teachers significant autonomy to design the specific curriculum they deliver to students:[119] in January 2019, former Chancellor "Carranza estimated that hundreds of different approaches to curriculum are now used in New York City."[120] Although the State and City have significant discretion with respect to what City students learn, that discretion does not include permitting City schools to deliver curriculum that privileges white experience above all others. That, however, is precisely what the State and City have done: they have allowed City schools to maintain white and Eurocentric curriculum,[121] notwithstanding expert consensus and their own pronouncements—made without any corresponding system of accountability—regarding the pedagogical need for a culturally responsive curriculum.

80. Education experts agree that such a curriculum—one that reflects students' identities, experiences, families, and communities—enhances students' academic performance; increases their engagement with their coursework; and strengthens their self-image and their perceptions of their capacity to succeed and make positive change.[122] As Plaintiffs' expert Dr.

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[119] N.Y. City Dep't of Educ., *WeTeachNYC – Curriculum*, https://www.weteachnyc.org/approach/curriculum/ ("Starting from the structure of curriculum programs, teachers can make important decisions about what curricular components to select, omit, and refine and how to adapt the program to meet their students' needs.").

[120] Christina Veiga, *Chancellor Richard Carranza vows to bring new coherence to curriculum in New York City schools*, Chalkbeat (Jan. 24, 2019), https://ny.chalkbeat.org/2019/1/24/21106650/chancellor-richard-carranza-vows-to-bring-new-coherence-to-curriculum-in-new-york-city-schools.

[121] An analysis, led by NYU's Education Justice Research and Organizing Collaborative (EJ-ROC), of the January 2019 and January 2020e New York State Regents exams in English, U.S. History and Government, and Earth Science found that all of the exams were "Culturally Destructive" in both the "Representation" and "Social Justice" categories of EJ-ROC's curriculum scorecards. *See* Educ. Justice Research & Org. Collaborative, *Culturally Responsive Curriculum Scorecard*, https://steinhardt.nyu.edu/sites/default/files/2020-12/CRE%20Scorecard%20Revised%20Aug%202020.pdf; Educ. Justice Research & Org. Collaborative, *Culturally Responsive and Sustaining STEAM Curriculum Scorecard*, https://steinhardt.nyu.edu/sites/default/files/2021-02/CRSE-STEAMScorecard_FIN_optimized%20%281%29.pdf.

[122] *See generally* Brittany Aronson & Judson Laughter, *The Theory and Practice of Culturally Relevant Education: A Synthesis of Research Across Content Areas*, 86 Rev. Educ. Res. 163 (2016).

Mariana Souto-Manning explains, culturally responsive and sustaining pedagogies—when in fact implemented—"foment critical consciousness" and "develop young children as active civic participants who critically read the injustices that characterize their lives and worlds, and actively work to problematize, challenge, and change them."[123]

81. Both the State and City have repeatedly recognized the necessity of a culturally responsive curriculum for the education of all students. As discussed *supra*, the State acknowledges that an education system must "clearly underst[and], directly challenge[], and fundamentally transform[]" structural inequities.[124] It recognizes "that the results we seek for all our children can never be fully achieved without incorporating an equity and inclusion lens in every facet of [the Education Department's] work," including curriculum.[125] And critically, it acknowledges that its "responsibility . . . is not only to prevent the exclusion of historically silenced, erased, and disenfranchised groups, but also to assist in the promotion and perpetuation of cultures, languages[,] and ways of knowing that have been devalued, suppressed, and imperiled by years of educational, social, political, [and] economic neglect and other forms of oppression."[126] Similarly, the New York City Department of Education purports to "use[] educational strategies that leverage the various aspects of students' identities, including the rich cultural, racial, historical, [and] linguistic characteristics of students[,] to provide mirrors that reflect the greatness of who their people are and windows into the world that allow students to connect across cultures."[127]

82. In light of its admitted responsibility to upend historical and contemporary

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[123] Mariana Souto-Manning & Ayesha Rabadi-Raol, *(Re)Centering Quality in Early Childhood Education: Toward Intersectional Justice for Minoritized Children*, 42 Rev. Res. Educ. 203, 214 (2018).
[124] CRSE Framework, *supra* note 6, at 6.
[125] *Id.*
[126] *Id.*
[127] N.Y. City Dep't of Educ., *Culturally Responsive-Sustaining Education*, https://www.schools.nyc.gov/about-us/vision-and-mission/culturally-responsive-sustaining-education (accessed Mar. 7, 2021), *archived at* https://perma.cc/RSS8-2ZB7.

systems of racial, linguistic, and other inequity, the State has published, in its Culturally Responsive-Sustaining Education Framework, recommendations "intended to help education stakeholders create student-centered learning environments . . . that educate all students effectively and equitably" by, among other things, "affirm[ing] cultural identities" and "develop[ing] students' abilities to connect across lines of difference."[128] Specifically, the State defines a system of "inclusive curriculum and assessment" as one that:

- "includes opportunities to learn about power and privilege in the context of various communities and empowers learners to be agents of positive social change";
- "provides the opportunity to learn about perspectives beyond one's own scope";
- "works toward dismantling systems of biases and inequities, and decentering dominant ideologies in education"; and
- "elevates historically marginalized voices."[129]

The City has adopted a similar definition and recommendations.[130] Troublingly, however, the City and State have failed to take affirmative measures or adopt any system of accountability to ensure that their prescriptions are in fact met. And as student experiences demonstrate, the under-regulated curriculum in New York City schools almost invariably has the opposite outcomes of those that would result were these governments to actually implement a pedagogically necessary, inclusive curriculum.

83. ***Failure to include opportunities to learn about power and privilege in the***

[128] CRSE Framework, *supra* note 6, at 6. The State describes the Framework as "an initiative by the [State Education Department] that establishes culturally responsive-sustaining *guidelines* for student[s], teachers, school and district leadership, families and community advocates, higher education, and the State Education Department." *Id.* at 13 (emphasis added). The Framework "aligns closely with," but is not a part of, the New York State Every Student Succeeds Act (ESSA) plan, *id.*, and is thus not subject to federal ESSA oversight. Nor has the State adopted any accountability system for ensuring compliance with the Framework.
[129] *Id.* at 15.
[130] N.Y. City Dep't of Educ., *supra* note 127 (calling for schools to "[u]se curricula and pedagogy that are academically challenging, honor and reflect students' diversity, connect learning to students' lives and identities, challenge students to be critical thinkers, and promote student agency to end societal inequities").

context of various communities and to empower learners to be agents of positive social change. The State recognizes the necessity of teachers' providing guidance to students to "[i]dentify and critically examine both historical and contemporary power structures" and "conditions of inequity."[131] It calls upon teachers to acknowledge "that personal, cultural, and institutionalized discrimination creates and sustains privilege for some while creating and sustaining disadvantage for others."[132] The State also urges teachers to empower students to combat this discrimination by acting as agents of social change.[133] Finally, the State recommends that school districts "[c]reate courses district-wide about the diversity of cultures representative of the state of New York (e.g., Native Americans, African Americans, Latinx Studies, Asian American Studies, Gender Studies)."[134] Similarly, the City urges schools to "[f]oster critical consciousness about historical and contemporary forms of bias and oppression" and "use curricula" that "promote student agency to end societal inequities" and "honor and reflect students' diversity."[135]

84. Notwithstanding these pronouncements, neither the State nor the City ensures that teachers who seek to deliver a racially equitable and culturally responsive curriculum have the training, support, and resources they require to do so. For example, New York City public high schools typically offer only three history courses: general education and Advanced Placement (AP) American history, European history, and world history, which has been criticized for omitting the achievements of many precolonial, non-European cultures.[136] Students of color are repeatedly taught historical narratives of white people exercising their power over people of color, who are treated as objects that have been enslaved, colonized, or exploited, but never as

[131] CRSE Framework, *supra* note 6, at 8–9.
[132] *Id.* at 9.
[133] *Id.*
[134] *Id.* at 39.
[135] N.Y. City Dep't of Educ., *supra* note 127.
[136] *See, e.g.*, Colleen Flaherty, *More Criticism of AP World History Timeline*, Inside Higher Ed (July 25, 2018), https://www.insidehighered.com/quicktakes/2018/07/25/more-criticism-ap-world-history-timeline.

subjects in their own right.[137] Plaintiff F.T.'s most extensive exposure to African history was in her European history class, in which she studied European imperialism and the colonization of Africa under "the white man's burden." Throughout the class, F.T. asked herself, "Why is there a class that focuses on European history, but not one that studies African history and culture?" She felt as though she were learning a "pity story narrative about Africa," in which Europeans were constantly taking from the continent. When assigned to write a research paper on the impact of European imperialism on an African country, F.T. seized the opportunity to gain a more nuanced understanding of the cultural assets of her chosen country, Togo. Although students at F.T.'s high school, Brooklyn Latin, eventually successfully advocated for the removal of the European history course, it remains the only world-regional AP history course available at many New York City public high schools. At Brooklyn Tech, Plaintiff C.H. has been advocating—unsuccessfully—for an African studies course.

85. New York City public schools also teach American history from a perspective that disempowers students of color. Notwithstanding the State's admonition that curriculum should be "empowering (e.g., African American history does not begin with slavery, but with African history),"[138] students across the City report that their classes' treatment of Black history is limited to slavery, Jim Crow, and a sanitized portrayal of the Civil Rights Movement. One student, who is Black, described her history class as "always depressing," because there was never any discussion of Black accomplishments. Another student, who is of Dominican descent,

[137] *Cf.* Bettina L. Love, *We Want to Do More Than Survive: Abolitionist Teaching and the Pursuit of Educational Freedom* 14 (2019) ("Antidarkness is the social disregard for dark bodies and the denial of dark people's existence and humanity. . . . When dark people are presented in school curriculums as unfortunate circumstances of history, that is antidarkness.") (footnote omitted). As a high school student of Chinese descent explained: "I really wanted ethnic studies in our school because" discussions of history were focused on the exploitation of people of color and their experiences solely "in relation to colonizers and white people. I took U.S. history, and we only talked about indigenous people for one week and in relation to what they experienced under the white colonizers. Having ethnic studies is a better way to bring awareness to different identities. We should highlight what happened, but also celebrate their culture and ethnicities."
[138] CRSE Framework, *supra* note 6, at 39.

lamented that the American history curriculum in his unscreened high school failed to include "times when marginalized communities were building themselves up, like Black Wall Street," which was subsequently destroyed by white rage. Instead, he explained, it "can feel like people of color are the oppressed—like we didn't do anything except the Civil Rights Movement. It would be better to highlight the great things that marginalized communities did, so we don't feel like victims the entire time."[139] Plaintiffs' expert Dr. Tyrone C. Howard thus urges teachers and school leaders to "identify and discuss Black excellence" and thriving Black communities to avoid the "pathological depiction of Black people, culture, and history" that perpetuates antiblack racism.[140]

86. ***Failure to provide the opportunity to learn about perspectives beyond one's own scope.*** A curriculum that consistently focuses on, indeed centers, white experience harms all students, not only students of color. White and Eurocentric curriculum present white students with "a picture of the world in which white people are perpetually at the center and people of color are at the margins, perceptions which ill-equip them to understand and value the rich diversity of the actual world they inhabit,"[141] and which are likely to impede their ability to understand and work well with others as adults.[142] Many white students, like students of color, desire a more nuanced view of history and a greater understanding of persons from non-white backgrounds: one white student at an academically screened high school expressed frustration that her history class touched only briefly on Black history and omitted entirely the histories of

[139] *Cf.* Love, *supra* note 137, at 14 ("The idea that dark people have had no impact on history or the progress of mankind is one of the foundational ideas of White supremacy. Denying dark people's existence and contributions to human progress relegates" them to the status of "takers and not cocreators of history or their lives.").
[140] Tyrone C. Howard, *Why Race and Culture Matter in Schools: Closing the Achievement Gap in America's Classrooms* 130 (2019).
[141] Educ. Justice Research & Org. Collaborative, *Chronically Absent: The Exclusion of People of Color from NYC Elementary School Curricula* 4 (2019), https://www.nyccej.org/wp-content/uploads/2019/02/reportCEJ-Chronically-Absent-FINAL.pdf.
[142] *Cf.* Wells et al., *supra* note 7, at 28 (describing a survey of 318 major employers, in which 96 percent said that it was "important" for potential employees to be "comfortable working with colleagues, customers, and/or clients from diverse cultural backgrounds").

Asian and Latinx Americans. Plaintiff B.W. similarly lamented his school's absence of courses on non-white cultures, explaining: "Every year, I learn about white history. I want to learn about the histories and backgrounds of my classmates of color. Learning about these things would broaden my mind and my understanding of the world."

87. Even when teachers do seek to introduce non-white perspectives into their lesson plans, such efforts are often hindered by the racial makeup of New York City's segregated schools. As Dr. Wells describes, diverse classrooms benefit "white students in particular[,] . . . because the presence of students of color stimulates an increase in the complexity with which white students approach a given issue through the inclusion of different and divergent perspectives."[143] At Stuyvesant, for example, where Latinx students make up only three percent of the student population, Plaintiff A.M.'s English teacher assigned the class a novel by a Latinx author. The novel contained language and cultural references that both the teacher and the students—none of whom were Latinx—struggled to decipher. Although he enjoyed the book, A.M. wished that he could have had a better understanding of its cultural context in order to "unpack" its contents—an understanding that could have been facilitated by a more diverse classroom or teaching corps.

88. ***Failure to dismantle systems of biases and inequities, and to decenter dominant ideologies in education.*** As the State recognizes, one of the ways in which schools can disrupt existing structural inequities and encourage civic participation is through their treatment of "current events and events that impact the community."[144] These events include instances of police violence: a 2020 study found that Black and Hispanic students exposed to police killings of other people of color experience "persistent decreases in GPA, increased incidence of emotional disturbance[,] and lower rates of high school completion and college enrollment."[145]

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[143] *Id.* at 14–15.
[144] CRSE Framework, *supra* note 6, at 38.
[145] Desmond Ang, *The Effects of Police Violence on Inner-City Students*, 136 Q. J. Econ. 115, 115 (2021).

Strikingly, "students exposed to officer-involved killings in the 9th grade are roughly 3.5% less likely to graduate from high school and 2.5% less likely to enroll in college."[146] Making space in the classroom for the discussion of these events recognizes their significant impact on students of color and honors their lived experiences and the issues they care most deeply about. For this reason, the State's 9–12 Social Studies Framework—a "guide for local curriculum development in social studies"[147]—calls for the teaching of "current events to illuminate key ideas and conceptual understandings."[148] The State's Culturally Responsive-Sustaining Education Framework likewise recommends that teachers "[i]ncorporate current events, even if they are controversial, into instruction" and "encourage students to engage with difficult topics (power, privilege, access, inequity) constructively."[149]

89. In New York City public schools, however, meaningful and respectful classroom discussion of current events—particularly instances of antiblack racism—is the exception rather than the rule. Students of color must take it upon themselves to initiate these conversations, which are rarely incorporated into classroom instruction (which focuses more narrowly on content students must learn for standardized tests), but instead take place outside of school hours. The students who might benefit the most from these discussions, including white students in predominantly segregated schools, are not required to attend. For example, Plaintiff A.M. explained that the murder of George Floyd was not discussed at all in his classes at Stuyvesant. Instead, Black and Latinx student organizations held optional talks after school, where "[o]nly 100 students would show up out of 850 kids in our grade." When schools brush aside racist events—treating them as beyond the scope of the curriculum, or as topics relevant to only a

[146] *Id.* at 117.
[147] N.Y. State Educ. Dep't, *Curriculum and Instruction – Frequently Asked Questions*, http://www.nysed.gov/curriculum-instruction/frequently-asked-questions (accessed Mar. 7, 2021), *archived at* https://perma.cc/6QC2-E2SN.
[148] N.Y. State Educ. Dep't, *New York State Grades 9-12 Social Studies Framework* 45 (2015), http://www.nysed.gov/common/nysed/files/programs/curriculum-instruction/ss-framework-9-12.pdf.
[149] CRSE Framework, *supra* note 6, at 27.

minority of students—students receive the clear message that their schools do not care about the events that impact their communities, and that school is not the proper forum for responding to these events or fostering social change. And schools miss a critical teaching opportunity: as Plaintiffs' expert Dr. Elizabeth B. Moje, Dean of the University of Michigan School of Education, explains:

> School-based learning can and should draw from what young people know, care about, and already read about, write about, and discuss. How young people understand what they read and learn in school is shaped across multiple spaces; although school spaces are typically thought of as distinct from home, community, and peer spaces, educators can help to develop "third spaces" . . . where teachers and students function as learners with the opportunity to engage in the co creation of knowledge. . . . Students who do not see themselves as represented or present, and who may not connect to the conventional content in social studies classes, might benefit from such learning opportunities that explore, with academic rigor, the questions they might already have about their world and lives that connect to the social sciences.[150]

90. ***Failure to elevate historically marginalized voices.*** The State calls for the adoption of curriculum that "reframes the monocultural [*i.e.*, white] framework that privileges the historically advantaged at the expense of other groups" by "highlight[ing] contributions and includ[ing] texts reflective of the diverse identities of students."[151] Similarly, the City recommends that schools "[u]se curricula" that "honor and reflect students' diversity" and "connect learning to students' lives and identities."[152] However, New York City students of color at every level of schooling encounter curriculum that is dominated by white voices and language; that inculcates white values; and that reflects white experiences, positing them as the norm.

91. In 2020, NYU's Education Justice Research and Organizing Collaborative (EJ-ROC), together with the New York City Coalition for Educational Justice, released a report analyzing 1,205 books used in the City's early childhood to middle grade curricula. The report

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[150] Darin B. Stockdill & Elizabeth B. Moje, *Adolescents as Readers of Social Studies: Examining the Relationship between Youth's Everyday and Social Studies Literacies and Learning*, 4 Berkeley Rev. Educ. 35, 61 (2013).
[151] *Id.* at 39.
[152] N.Y. City Dep't of Educ., *supra* note 127.

found that although white students comprise only 15 percent of the City's student population, books by white authors made up 83 percent of the books analyzed.[153] There were nearly five times as many books by white authors than books by all authors of color combined.[154] In a precursor report analyzing curricula in City elementary schools, EJ-ROC found that most City children of color "could graduate 5th grade having rarely ever read a book by an author of their cultural background," and that many Latinx and Asian children in fact do so.[155] Indeed, "over the course of six years from kindergarten to 5th grade, students read more books whose cover characters are animals than books whose cover characters are Latinx, Black or Asian people."[156] According to Dr. Souto-Manning, even when children of color are included in classroom materials, these materials frequently highlight oppression, such as enslavement, immigration, and border crossing.

92. The dearth of empowering non-white voices, protagonists, and experiences continues in City high schools, where students of color report that they rarely, if ever, read books by authors who share their racial or cultural background. Multiple students could not recall reading even a single book by an author of color in any of their high school literature classes. Works by authors of color are frequently treated as merely elective reading, which students of color must seek out independently. Although Plaintiff W.D., who is of Vietnamese descent, expressed his pleasure at finally reading a book by a Vietnamese author for one of his classes, he further explained that he had chosen the book from a list of options; it was not required reading for all students. Relegating the works of authors of color to "extracurricular" reading, while requiring students to read books by predominantly white authors, sends an unequivocal message to white students and students of color alike about whose voices truly matter.

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[153] Educ. Justice Research & Org. Collaborative, *Diverse City, White Curriculum: The Exclusion of People of Color from English Language Arts in NYC Schools* 4–5 (2019), https://www.nyccej.org/wp-content/uploads/2019/12/Diverse-City-White-Curriculum-3.pdf.
[154] *Id.* at 5.
[155] Educ. Justice Research & Org. Collaborative, *supra* note 141, at 4.
[156] *Id.* at 5.

III. Lack of Teacher Representation

93. New York City high school students can often count on one hand the number of teachers of color they have had throughout their public school careers. Between 2011 and 2017, the City had an average ratio of one white teacher for every four white students, but only one teacher of color for every 30 students of color.[157] This is the result of the failure of the State and City to take reasonable and proven steps to increase the recruitment and retention of qualified teachers of color. For example, a report by the State Education Department notes that "most P-12 superintendents that commented in [a 2019 Educator Diversity Survey conducted by the State] indicated that their retention practices were not targeted at any specific demographic."[158] The Education Department also recognizes that "[l]ocal schools and districts need to ensure their recruitment and hiring practices are culturally responsive and informed by best practices," because "intentional preparation and hiring practices matched with ongoing support throughout the pipeline can improve the diversity of the teacher workforce by bringing more educators of color into the profession and encouraging them to stay."[159] Its report acknowledges that "more intentional and comprehensive approaches"—at both the State and local levels—"are needed to change entrenched practices that perpetuate the status quo."[160] Whereas the Education Department recommends certain district-level changes, *supra*, it also recognizes the need for State-level guidance and leadership of a concerted effort to diversify New York's teacher workforce, expressly calling upon "the Board of Regents . . . [to] articulate its own expectations,

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[157] N.Y. State Educ. Dep't, *Educator Diversity Report* 21 (Figure 6) (Dec. 2019), http://www.nysed.gov/common/nysed/files/programs/educator-quality/educator-diversity-report-december-2019.pdf (accessed Mar. 7, 2021), *archived at* https://perma.cc/8A67-UXWN.
[158] *Id.* at 60.
[159] *Id.* at 93. As the Education Department recognizes, diverse school leaders play a "critical" role in hiring diverse teachers. *Id.*; *e.g.*, *id.* ("'In order for educator diversity to increase,' says Brooklyn assistant principal Princess Francois, 'it begins with having at least a few [educators of color] in a position to make [hiring decisions]. That will ultimately become a continuous cycle of leaders of color hiring teachers of color who can best serve our diverse population of students.'").
[160] *Id.* at 9.

to guide further action by the field."[161]

94. Even City students who have had a teacher of color may have never had a teacher who shares their racial background, because the demographics of New York City's teaching force have failed to keep pace with the demographic shifts in its student population. In the 2019–20 school year, just under 41 percent of New York City students identified as Latinx, as compared to just under 17 percent of teachers.[162] Black and Asian students also outnumbered their teachers of the same background by approximately nine percentage points.[163] These disparities are especially pronounced in particular school districts, such as District 25 in Queens, where Asians comprised approximately 49 percent of the student population but only 13 percent of teachers.[164]

95. Now a senior at Stuyvesant, Plaintiff A.M. has had only two Black teachers during his time in the New York City school system—in kindergarten and first grade—and no Latinx teachers. He has never had a South Asian teacher, with the exception of a single substitute. A.M.'s classmates were so unaccustomed to South Asian teachers that they teased A.M. about being related to the substitute, telling him, "That's your uncle." Some City students go through entire segments of their education—elementary, middle, or high school—without taking a single class with a teacher of color.

96. At the specialized high schools, where Black and Latinx students are severely underrepresented, the dearth of teachers of color exacerbates students' isolation. Plaintiff F.T., a senior, has had no Black or Latinx teachers during her time at Brooklyn Latin. She sometimes imagines "the ways in which my experience would have been different if I had teachers I could

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[161] *Id.* at 111.
[162] *See* N.Y. City Dep't of Educ., *supra* note 18; N.Y. City Dep't of Educ., *supra* note 54; *see also* Monica Disare, *How diverse is the teaching force in your district? A new analysis highlights the gap between students and teachers of color*, Chalkbeat (Jan. 8, 2018), https://ny.chalkbeat.org/2018/1/8/21104225/how-diverse-is-the-teaching-force-in-your-district-a-new-analysis-highlights-the-gap-between-student.
[163] *See* N.Y. City Dep't of Educ., *supra* note 18; N.Y. City Dep't of Educ., *supra* note 54.
[164] *See id.*

relate to, or who looked like me." One Black student at Brooklyn Tech did not have a Black teacher until her senior year, during remote learning. She was so surprised to see a Black teacher on her computer screen that she laughed in shock and immediately texted her friends to share the news.

97. City students understand and internalize the messages these disparities transmit about which groups of people hold authority, both inside and outside of the school building. A junior, who is Black, at an academically screened middle and high school in Manhattan explained that teachers of color at the school are mostly paraprofessionals, whereas teachers who teach the "main courses" are white. The school's cafeteria workers and janitors, by contrast, are persons of color. This hierarchy—of white persons predominantly occupying prestige positions as school leaders and full-time teachers of core subjects, whereas persons of color are largely employed as paraprofessionals, substitute teachers, and support staff[165]—is apparent to students at schools across the City.[166] For example, Plaintiff F.P., a Muslim student of Bengali descent, has never had a Muslim or Bengali public school teacher, but has taken a class in which a Muslim paraprofessional assisted students with disabilities and has had Muslim substitute teachers. Another student, of Chinese descent, noted that math and science classes at his high school were taught by white teachers, with the support of Black assistant teachers.

98. For many students of color, transitioning from family and community structures in which authority figures are persons of color to white-dominated educational spaces is extremely jarring. Plaintiff M.G., who is of Puerto Rican descent, described the experience of attending an elementary school with predominantly white teachers: "You don't see

[165] *Cf.* Love, *supra* note 137, at 14 ("When schools are filled with White faces in positions of authority and dark faces in the school's help staff, that is antidarkness.").
[166] New York City provides demographic data for three categories of school staff: teaching staff, leadership staff, and other professional and paraprofessional staff. In 2019–20, although the majority of teachers and leadership figures were categorized as white (56.6 and 52.7 percent), the majority of "other staff" identified as Black or Hispanic (55.3 percent). N.Y. City Dep't of Educ., *supra* note 54. This is despite the fact that over 65 percent of students identified as Black or Hispanic as compared to only 15 percent as white. N.Y. City Dep't of Educ., *supra* note 18.

representation in the adults around you. Your parents are Hispanic, so you expect to see someone Hispanic—more Hispanic and Black representation." Plaintiff J.M.—a senior of Mexican descent who has had mostly white teachers—aspires to become a teacher specifically so that he can teach Black and brown students and "be a mentor for youth like me."

99. Unfortunately, such aspirations are not the norm among City students of color. For many of these students, the school building is a hostile and discriminatory environment to which they are understandably reluctant to return for the duration of their professional careers. The State Education Department specifically identifies the racially disproportionate discipline experienced by many students of color as a significant barrier to the creation of a diverse educator workforce: "To the extent that . . . patterns [of racially disproportionate discipline] reflect negative experiences of schooling, such experiences may deter students of color from wanting to pursue a career in the education field. This cycle has been called one of the leading challenges to achieving educator diversity in New York State."[167]

100. Having a teacher of color is beneficial for all students. For Black students, "having a Black teacher is associated with improved outcomes . . . , including better performance on standardized tests, decreases in exclusionary discipline, and an increased probability of attending a 4-year college."[168] Latinx students with Latinx teachers experience "increased opportunities to learn in classrooms that attend[] to cultural and linguistic diversity," which are "associated with improved learning outcomes."[169] Even white students have "reported a preference for being taught by a teacher of color."[170] The State Education Department acknowledges that "a diverse educator workforce has been shown to have wide-ranging educational benefits," including "reducing the likelihood that [students] will grow up to harbor implicit bias against individuals from other racial backgrounds," improving academic outcomes

[167] N.Y. State Educ. Dep't, *supra* note 157, at 35.
[168] James Noonan & Travis Bristol, *"Taking Care of Your Own": Parochialism, Pride of Place, and the Drive to Diversify Teaching*, 6 AERA Open 1, 2 (2020) (citations omitted).
[169] *Id.*
[170] *Id.*

for students of color, and providing a population of teachers able to "serve as advocates and 'cultural translators' for students of color."[171]

101. Conversely, the absence of teachers of color harms all students, not just students of color. White students are more likely to attend school in racial echo chambers: in the 2015–16 school year, 19 percent of white students attended schools with no Black teachers at all.[172] Sixteen percent of white students attended schools with no Asian teachers, and five percent attended schools without Latinx teachers.[173] White students who have had no exposure to persons of color in positions of authority are likely to be ill-equipped to thrive in today's diverse workspaces and communities. As Plaintiffs' expert Dr. Gloria Ladson-Billings explains:

> It is important for White students to encounter Black people who are knowledgeable and hold some level of authority over them. . . . [W]hat opportunities do White students have to see and experience Black competence? In my many years as a university professor I have had so many White students who revealed that I was the first African American teacher they had ever had at any level. . . . They seemed amazed that I had both a wide and deep knowledge of a variety of subject areas . . .[174]

102. Students of color in New York City experience myriad harms inflicted, sometimes unknowingly, by teachers—many of whom are white[175]—who have not received appropriate training from the City and State on how to deliver a racially equitable and culturally responsive education. For example, when assigned to present a personal essay in front of her class, Plaintiff M.S. read a piece about societal misperceptions of immigrant parents, in which she described common assumptions that immigrant parents exert undue pressure on, and control over, their children. In her essay, M.S. questioned these perceptions, explaining that children of immigrants

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[171] N.Y. State Educ. Dep't, *supra* note 157, at 12.
[172] Disare, *supra* note 162.
[173] *Id.*
[174] Larry Ferlazzo, *Response: The Teachers of Color 'Disappearance Crisis'*, EdWeek (Jan. 6, 2015) (quoting Gloria Ladson-Billings).
[175] Although not all white teachers inflict racialized harms, which can also be caused by teachers of color, students of color report disproportionately experiencing these harms at the hands of white teachers.

understand the unique pressures their parents face and the extent of their sacrifices. M.S.'s teacher disparaged her experiences and criticized her presentation as excessively subjective. As Plaintiffs' expert Dr. Michelle Fine observes, when teachers ask students to put aside their differences, the cost of doing so is "absorbed by students of color," while the "privileged center"—*i.e.*, white students—"remains untroubled."[176]

103. Although there are many New York City teachers of all racial backgrounds who wish to provide racially equitable education to their students, these teachers are hamstrung both by an assessment process that relies on culturally destructive standardized tests and by the failure of the City and State to provide them with the training, curriculum, and resources they need to deliver culturally responsive instruction. Such supports are called for by the State itself: its Culturally Responsive-Sustaining Education Framework recommends that "Education Department Policymakers" "[a]lign existing state standards to [culturally responsive-sustaining education] guidelines" and "[c]reate high-quality resources that allow teachers . . . to plan and implement culturally responsive-sustaining practices in their respective communities."[177] Similarly, the Framework calls upon "District Leaders" to "[a]dopt curriculum that includes culturally authentic learning experiences" and "highlights [the] contributions" of diverse communities.[178] But the State has adopted no accountability system to accompany its Framework, and, unsurprisingly, its prescriptions have gone unimplemented.

104. The failure of the State and City to prepare teachers to engage in culturally responsive instruction are manifested clearly in the context of teaching about slavery. In 2018, a white teacher at a predominantly Black high school in the Bronx instructed Black students to lay on the floor during a lesson about slavery, placing her foot on a student's back and saying: "See how it feels to be a slave?"[179] At one of the City's specialized high schools, a teacher asked

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[176] Michelle Fine et al., *Communities of Difference: A Critical Look at Desegregated Spaces Created for and by Youth*, 67 Harvard Educ. Rev. 247, 251 (July 1997).
[177] CRSE Framework, *supra* note 6, at 53.
[178] *Id.* at 39.
[179] Kerry Burke et al., *Bronx Teacher Sparks Outrage for Using Black Students in Cruel Slavery*

Black students to write the pros and cons of slavery on the board. In another history class at that high school, a teacher failed to comment when a student described slavery as "a necessary evil." At an academically screened high school, a student who is Black described the pain she experienced as her teacher, while introducing a video of enslaved Africans shackled together and packed into a slave ship, blithely described it as a "really great depiction" of the triangular trade. The student was troubled by her teacher's failure to acknowledge the racial trauma of slavery, but as the only Black student in her class, felt unable to speak out.

105. New York City students of color describe actions by teachers that range from culturally insensitive to blatantly racist. One student described a teacher who repeatedly and deliberately mispronounced the surname of a classmate of Mexican descent. Other students described teachers who failed to intervene when their students used racial slurs. Some teachers have insisted on the right to use racial slurs themselves: at Brooklyn Tech, certain teachers insisted on saying—over student objections—the n-word aloud during *To Kill a Mockingbird*, asserting their right to use the slur because it was "in the book."

106. New York City students of color are also aware that many teachers view them, their families, and their cultures from a deficit perspective. At an academically screened middle and high school in Manhattan, for example, the predominantly white teaching staff maintained a spreadsheet that they used to share notes about individual students. Students gained access to the spreadsheet and shared it with their peers; it was eventually distributed widely among the student body. In addition to notes about students' behavioral issues, teachers had described multiple Black students as "low skill." The students arranged a sit-out in protest, and several Black students wore shirts marked "low skill."

107. In light of these experiences, some students of color have had to take it upon themselves to teach their teachers about their cultures and experiences. At one academically screened high school, students of color formed an antiracist education committee which, among

Lesson, N.Y. Daily News (Feb. 1, 2018), https://www.nydailynews.com/new-york/education/bronx-teacher-sparks-outrage-cruel-slavery-lesson-article-1.3793930.

other aims, seeks to inform white teachers from larger and more rural areas about the New York City communities of color in which they teach.

108. By contrast, as noted *supra*, students of color who have had teachers who share their backgrounds report feeling a sense of security and comfort; being able to let their guard down and to act and speak freely in the classroom; being able to connect more deeply with the material being taught, with the teacher, and with their peers; and feeling seen, heard, understood, and validated.[180] Plaintiff M.G. described the experience of having a Puerto Rican teacher in the fourth grade, after all of her previous teachers had been white: "I recognized that Hispanic teachers did exist. I knew that I was understood and that we could have a conversation about Puerto Rico. I could use Hispanic lingo and speak in Spanglish. I had never been able to talk like that in school before." For M.G., having a Puerto Rican teacher led to the realization that she could bring her cultural and linguistic identity into the classroom—that she could "talk about this major piece of me that really matters." Although she had spoken Spanish frequently as a child, she rarely spoke it at school, and only realized that she "could speak that way at school" when she had a teacher who shared her background and encouraged her to use the full scope of her language abilities. Plaintiff F.P. similarly described the impact of being able to connect with a Muslim paraprofessional—who, like F.P., wears a hijab—"about what Muslim girls face." The paraprofessional could sense that F.P. was going through a challenging time, and was able to empathize with her by relating similar experiences.

109. Teachers of color not only validate the experiences and identities of students of

[180] *See, e.g.*, Noonan & Bristol, *supra* note 168; Anna J. Egalite & Brian Kisida, *The Effects of Teacher Match on Students' Academic Perceptions and Attitudes*, 40 Educ. Evaluation & Pol'y Analysis 59, 74 (2018) ("[S]tudents who share gender and/or racial characteristics with their teachers have more positive perceptions of their teachers in terms of feeling cared for, feeling that their schoolwork is interesting, and more positive reports of instructional characteristics related to student–teacher communication and guidance compared with unmatched students in the same classroom. They also report putting forth more personal effort and have higher college aspirations.").

color; they also enrich the classroom with their own personal experiences.[181] Researchers have found that "*all* student groups"—including white students—"have more positive ratings of minority teachers, . . . suggest[ing] that minority teachers can translate their experiences and identities to form rapports with students that do not share the same race or ethnicity."[182] A student of Chinese descent described learning, in government class, about stop-and-frisk policies from a male teacher of color. The teacher explained his personal experience with the policy, creating an atmosphere of openness in the classroom which led the student to "not feel scared to share how my race or identity is connected" to the issues discussed. Another student of Venezuelan descent, who had rarely discussed Venezuela in her history classes, spoke appreciatively of having the opportunity to learn about the country in Spanish class, which—unlike most of her classes, including her previous Spanish classes—was taught by a South American teacher.

110. Unfortunately, such experiences are far and away the exception, rather than the norm, in New York City public schools. The State Education Department identifies the inability to retain and effectively support teachers of color as a key barrier to maintaining a more diverse teacher workforce, calling upon "local schools, districts, BOCES [Boards of Cooperative Educational Services], and educator preparation programs . . . to collaborate to strengthen and expand their mentoring programs and induction supports, be committed to improving the working environment for educators of color and provide career ladders to extend leadership opportunities and pathways to effective educators of color."[183] The absence of such support systems results in above-average turnover among teachers of color: the City's "geographic

[181] *See, e.g.*, Claire Cain Miller, *Does Teacher Diversity Matter in Student Learning?*, N.Y. Times (Sept. 10, 2018), https://www.nytimes.com/2018/09/10/upshot/teacher-diversity-effect-students-learning.html ("Does [teacher diversity] matter? Yes, according to a significant body of research: Students tend to benefit from having teachers who look like them, especially nonwhite students. . . . Students tend to be inspired by role models they can relate to. Same-race teachers might be able to present new material in a more culturally relevant way.").
[182] Cherng & Halpin, *supra* note 55, at 416.
[183] N.Y. State Educ. Dep't, *supra* note 157, at 102.

districts that employed the highest percentages of Black or African American or Hispanic or Latino teachers had higher overall turnover rates, at roughly 20 percent."[184] Thus, the teachers that are best positioned to remedy the harms experienced by too many students of color are also those most likely to leave due to inadequate support.

IV. Racial Hostility and Isolation in New York City Schools

111. The State's creation of school environments that privilege white values, language, and norms has emboldened students to openly disparage the identities of their peers of color, often in the presence of teachers and without any or serious repercussions. As Plaintiff M.G. explained, her classmates at Brooklyn Tech routinely make comments that strike directly at her "validity and existence"—her right to a place in the school itself.

112. Students of color in New York City encounter racial hostility from their classmates at every level of schooling. In elementary school, students often told Plaintiff A.M., who is of Bangladeshi descent, that he smelled "fishy" or "like curry." Other students seized on A.M.'s darker skin tone to label him a "terrorist." A.M.'s experiences are typical of those of students of color in the City school system. Another South Asian student, who is Muslim, described the experience of being called a "terrorist" in class by another student on September 11. This student also heard his peers call Black students "slaves" and repeat racial stereotypes, such as "Asians can't drive." A student who is Black recounted that, throughout elementary school, her white classmates called her a "monkey" and the n-word. When teachers turned the lights off for films or presentations, this student's classmates would say: "I can't see you in the dark"—an experience that has been described by multiple Black students.[185] Students who defend their peers may themselves become targets of hateful violence: in her first year of high school, Plaintiff F.P. intervened to defend a student from a bullying classmate, only to have that classmate forcibly rip off her hijab, a gross violation of F.P.'s body and religion.

113. These are not isolated incidents attributable to the behavior of particular children.

[184] *Id.* at 58.
[185] *Infra* para. 119.

They are products of the school environments in which they occurred. The State and City reinforce racial hierarchies throughout the education system—through racialized tracking, white and Eurocentric curriculum, and insufficient numbers of school leaders and teachers of color—and thus bear responsibility for an environment in which students feel empowered to treat Black and Latinx peers as beneath them. The deeply traumatic interactions experienced by Plaintiffs and other students of color throughout the City are consequences of messages that students receive every day about who and what is valued in school and society.

114. These problems are amplified at the City's specialized high schools, where a small minority of Black and Latinx students find themselves subsumed in a population of Asian and white students, many of whom—due to the City's severe school segregation—have never had meaningful interactions with Black or Latinx classmates. At these schools, Black and Latinx students are treated as aberrations, or curiosities: Plaintiff C.H., who is Black, described how on his second day of school, another student felt empowered to reach out and touch his hair. Plaintiff F.T. listened to fellow Brooklyn Latin students discussing the names of Black students and debating "whose name was weirder"—her name or that of another Black student—ultimately settling on F.T.'s name. F.T. listened in silence, without the energy to react or even look up.

115. Given their small numbers, Black and Latinx students at specialized high schools are doubly harmed—first by the racist aggressions and comments of their classmates and teachers, then by the absence of a sufficiently numerous community of students, teachers, guidance counselors, and social workers of color with whom to process these injuries. Studies show that "[n]on-white students are more likely to graduate high school and attend college if assigned to a non-white counselor."[186] This may be partly due to the counselor having "a better

[186] Christine Mulhern, *Beyond Teachers: Estimating Individual Guidance Counselors' Effects on Educational Attainment* 3 (May 28, 2020) (working paper), https://cepr.harvard.edu/files/cepr/files/counselors_mulhern.pdf; *see also* Oanh L. Meyer & Nolan Zane, *The Influence of Race and Ethnicity in Clients' Experiences of Mental Health Treatment*, 41 J. Community Psychol. 884, 886 (2013) (clients view "ethnically similar counselors as more credible sources of help than White counselors" because of shared values and cultures); James H. Williams et al., Nat'l Ass'n

understanding of students' experiences and needs."[187] As Plaintiff C.H. explained, in the absence of supportive counselors and teachers of color, "I feel isolated and alone. I have no one to look to—no one to back me up, to understand the struggle and pain that I am experiencing. Every Black student at Tech will tell you this." So too at other specialized high schools: Plaintiff F.T. was called a racial slur but "never felt comfortable" enough to tell anyone at school about it. She explained that because the school is predominantly Asian and white, there are just "not people who would know how it feels to be called that. Would anyone understand why this was such a moving experience—why it was impactful to the way I see myself?"

116. As Plaintiffs' experiences illustrate, students of color at specialized high schools regularly encounter outright racial hostility, such as being called racial slurs or coming across them scrawled in textbooks or around school buildings. At Brooklyn Tech, students saw a swastika in a staircase and the n-word written on the wall of a bathroom. During the COVID-19 pandemic, students took these behaviors online, posting racist comments on Instagram and circulating racist memes. As the pandemic ravaged New York City, it also resulted in an upswing of hostility against students of Asian descent: Plaintiff W.D., a student of Vietnamese descent, described being subjected to escalating racist slurs and jokes about COVID-19 during the month before Brooklyn Latin transitioned to remote learning.

117. The State and City's single-test admission system for the specialized high schools also subjects students of color to the racialized resentment and false assumptions of their peers. A classmate of Plaintiff M.G., who is of Puerto Rican descent, complained that M.G. would have an unfair advantage during college applications due to affirmative action programs. Specialized high school students often question whether their Black and Latinx peers even deserve to be in

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of Deans & Dirs. of Sch. of Soc. Work, *Advanced Social Work to Practice Behaviors to Address Behavioral Health Disparities* 6 (2013), https://www.cswe.org/getattachment/Centers-Initiatives/Institutional-Research/Social-Work-and-Integrated-Behavioral-Healthcare-P/Learning-Network-Resources/NADD-BehavioralHealthDisparities-(1).pdf.aspx (hiring more diverse mental health professionals increases positive outcomes on various behavioral health measures).

[187] Mulhern, *supra* note 186, at 25.

the building: one classmate of Plaintiff C.H. expressed her perception that Black and Latinx students largely gained admission through the DREAM program, and that these students were struggling to keep up in, if not failing, their classes. She concluded that this was because "Black people do not value education nearly as much as white and Asian people." Students of color at specialized high schools are well aware of how their classmates and teachers perceive them. A teacher at Brooklyn Tech described how students will incredulously ask their Black classmates: "How did you do so well on the physics test?" For this reason, multiple students of color described feeling the need to assert their intelligence in order to not be perceived as "a charity case."

118. Their peers' doubts about the intelligence and ability of Black and Latinx students are a particularly glaring outcome of an education system, created and maintained by the State and City, that perpetuates stereotypes about and stigma against students of color. The testing and screening that students encounter at every juncture of their trajectory through the New York City school system convey the message that Black and Latinx students simply do not belong in "elite" educational programs. These mechanisms and the racialized pipeline they create reinforce the false perception that Black and Latinx students could not possibly have gained admission to a specialized high school without some form of institutional assistance.

119. This racial hostility—and the schools' failure to prevent or redress it—is longstanding. Between 2012 and 2015, a teacher at Brooklyn Tech kept a record of racist incidents reported by Black and Latinx students, which included:

- White and Asian students asking Black students: "Do you eat fried chicken every day?"; "How is the hood?"; "Do you love watermelon?"; "Why do you carry a hair pick?";
- White and Asian students making racist jokes, such as: "What are the similarities between an apple and a Black person? They both hang from trees.";
- A white teacher telling his class that he called his wife a "Black bitch";
- A white student accusing a Black student of stealing his textbook, saying: "What do you expect? He's Black.";
- A white student researching New York criminal cases online and then asking Black

students whether any of the defendants were their fathers; and

- White students calling Black students the n-word.[188]

120. Rather than provide students of color with an environment sensitive to historical and current racial trauma,[189] the State and City have largely left students of color to cope on their own with the racial hostility and psychological violence they experience at school. Their reactions vary.[190] Many contemplate transferring schools. Others retreat into themselves, trying to attract as little attention as possible. Plaintiff Y.J., an English learner who immigrated from the Dominican Republic in middle school, was not offered language-appropriate mental health support services, and responded to her classmates' relentless mocking by avoiding speaking in class and with other students.[191] Still others take it upon themselves to advocate for a more just educational environment, teaming up in affinity groups and creating spaces for students to discuss racist incidents in town halls. As discussed *supra*, however, these assemblies are all too often optional events attended only by the impacted students; many students and teachers do not participate at all. Plaintiff W.D. described a voluntary town hall to discuss antiblack racism as "very othered out," consisting of "mostly just talk" among the quarter of the student body that

[188] Although the teacher reported these incidents to Brooklyn Tech's leadership, the school enacted no meaningful policy changes.

[189] *See, e.g.*, Nat'l Child Traumatic Stress Network, *Racial Injustice and Trauma: African-Americans in the U.S.* (2016), https://www.nctsn.org/sites/default/files/resources//racial_injustice_and_trauma_african_americans_in_the_us.pdf ("I]t is necessary to acknowledge both how racism and oppression are embedded in American society, and to understand how the massive historical trauma of slavery continues to shape the lives of individual children, families, communities, and the systems with which they interact.").

[190] For instance, Latinx students who report racism are more likely to display symptoms of depression, whereas Black students, who may also experience depression, may use anger as coping mechanism. Amy Masko, *Racism and Mental Health: Are Schools Hostile Learning Environments for Students of Color?*, 30 Language Arts J. Mich. 62, 64 (2014).

[191] Immigrant students will often isolate and segregate themselves, both socially and academically, to deal with peer-based discrimination. *See* Christina Spears Brown, *The Educational, Psychological, and Social Impact of Discrimination on the Immigrant Child*, Migration Pol'y Inst. 8–11 (2015), *available at* https://www.migrationpolicy.org/sites/default/files/publications/FCD-Brown-FINALWEB.pdf.

opted to attend. Such events rarely result in changes to school policies or student and teacher behavior, leaving the students who organized them frustrated and discouraged from planning future events. Moreover, as Plaintiffs' expert Dr. Bettina L. Love explains, the fact that students of color, rather than school administrators or teachers, "are tasked with the work of" responding to racist incidents is itself a manifestation of racism.[192]

121. The most common response described by students of color to the racial hostility and stress they experience in school is "feeling numb."[193] In the words of Plaintiff M.G.: "I hear microaggressions every single day I go to school. You pick up on these things, but you become so numb. You just hear it and it sounds okay because it's so normalized at school." Plaintiff C.H. explained: "I don't feel anymore. It's painful and infuriating. It tears you down piece by piece every single day."

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Violation of N.Y. Const. Art. XI, § 1

122. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 121.

123. Article XI, section 1 (Education Article) of the New York Constitution states: "The legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this state may be educated."[194]

124. The Court of Appeals has recognized that the Education Article guarantees a "sound basic education" to all New York schoolchildren. *CFE I*, 86 N.Y.2d at 316. The State and

[192] Love, *supra* note 137, at 9.

[193] Race-based traumatic stress can trigger reactions of avoidance, where an individual can become numb to certain racial incidents, such as discrimination or harassment, by "retreat[ing] physically or psychologically into a safer world where it is difficult to be reached by the pain of racism." *See* Robert T. Carter, *Racism and Psychological and Emotional Injury: Recognizing and Assessing Race-Based Traumatic Stress*, 35 The Counseling Psychol. 13, 84, 93 (2007).

[194] N.Y. Const. art. XI, § 1.

City Defendants have failed to provide such an education to New York City schoolchildren.

125. A sound basic education requires that the State and City Defendants provide "the basic literacy, calculating, and verbal skills necessary to enable children to eventually function productively as civic participants."[195] It guarantees "not merely skills," but has a "purposive orientation": a sound basic education must prepare students for "meaningful civic participation in *contemporary* society."[196] Over a century ago, the framers of the New York Constitution recognized that a sound basic education must equip students to redress "the 'public problems confronting the rising generation,'"[197] including, as the State and City Defendants acknowledge, racial and economic conditions of inequity.

126. The education that City students receive fails to satisfy these standards. The caste system that continues to exist—indeed, to expand—in City schools enshrines racial hierarchy. A system that, *inter alia*, segregates large swaths of students of color from their white peers, cements different and superior outcomes for white students, marks students of color with badges of inferiority, infrequently exposes students to adults of color in positions of power and stature, and presents students with a curriculum steeped in Eurocentrism and divorced from the modern, multiethnic City and world in which they live leaves students unfit to engage in meaningful civic and economic participation. This system, which reifies and enhances race-based stratification, does not impart the "skills, *knowledge*, *understanding*[,] and *attitudes* necessary" for meaningful "participat[ion] in democratic self-government."[198]

127. These failures, caused by the policies and practices of the City and State Defendants described herein, deny New York City public school students, including the individual student plaintiffs and students represented by IntegrateNYC, a sound basic education in violation of the Education Article.

SECOND CAUSE OF ACTION

[195] *CFE I*, 86 N.Y.2d at 316.
[196] *CFE II*, 100 N.Y.2d at 905 (emphasis added).
[197] *Id.* (quoting 2 Documents of 1894 NY Constitutional Convention No. 62, at 4).
[198] *CFE I*, 86 N.Y.2d at 319 (emphases added).

Violation of N.Y. Const. Art. I, § 11

128. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 121.

129. Article I, section 11 (Equal Protection Clause) of the New York Constitution provides: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his or her civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state."[199]

130. From students' matriculation to the day they conclude their educations (through graduation or otherwise), New York City's public schools divide children into two separate groups, one of which is denied equal protection on account of their race. One group, largely white and economically privileged at the outset, receives a meaningful opportunity to succeed and flourish. The other, largely of color and economically disadvantaged, is further marginalized. City schools do not mirror the City's racial and economic inequality; they magnify it. Defendants know this and have intentionally adopted and adhered to a range of admissions, screening, and other policies that facilitate such inequality. As a result, students of color, particularly Black and Latinx students, are denied the equal protection of the laws.

131. For those students whose families have financial resources and social capital—students who are disproportionately white and from certain Asian backgrounds—superior treatment is assured. For example, the school choice process provides certain schoolchildren with a reliable route to a quality education and even better educations than those available from their neighborhood schools. Meanwhile, students of color, particularly Black and Latinx students, whose families and communities disproportionately lack such capital, consistently find themselves in more segregated and lower performing schools than they would if their place of residence alone determined school placement. Rather than equalize opportunities and outcomes,

[199] N.Y. Const., art. I, § 11.

the system that the State and City Defendants maintain cements and exacerbates racial hierarchy.

132. The school system's selective gatekeeping mechanisms exacerbate this segregation. Defendants use and for decades have intentionally retained—with no pedagogical basis—testing-based sorting that they know excludes students of color from equal educational opportunities. Children just emerging from toddlerhood are evaluated for "giftedness"—assuming their families know about G&T programs—and then placed into a pipeline that affords them superior educational opportunities as they advance through the system. Racial stratification persists into middle school because (i) there are no measures in place to overcome or even offset the existing advantages accrued by the predominantly white and certain groups of Asian students who attended G&T programs or the most desirable schools offering generalized education, and (ii) instead, more testing-based criteria for screening students has been the benchmark. These inequities are compounded once again before high school, when City Defendants rely on, and State Defendants sanction, a screened high school admissions process that denies equal opportunity and protection to students of color.

133. This racially stratified system culminates in Defendants' reliance—in contravention of professional standards for testing—on a single, underexamined test, the SHSAT, to determine admission to the specialized high schools. As described herein, this admissions process is the product of discriminatory intent. The 1971 Hecht-Calandra Act, the state law that codified the testing requirement, was enacted to thwart the City's investigation of the test's potential bias against Black and Puerto Rican students. Under Hecht-Calandra, the SHSAT has been successful as a means of not only "guard[ing] against increased numbers of [B]lack[] and [Latinx]" students[200]—as its opponents feared—but also dramatically reducing the number of such students at the specialized high schools.

134. The educational caste system Defendants have created and maintained has cemented racial inequality, impermissibly discriminates on the basis of race, and fails to provide

[200] Clines, *supra* note 31.

equal protection under the law to the Black, Latinx, and other students of color who comprise the overwhelming majority of New York City public school students.

THIRD CAUSE OF ACTION

Violation of N.Y. State Human Rights Law

135. Plaintiffs adopt and incorporate herein the allegations of paragraphs 1 through 121.

136. The New York State Human Rights Law (NYSHRL) imposes "a responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life and that the failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education . . . not only threatens the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants."[201]

137. The NYSHRL specifically guarantees that the "opportunity to obtain education . . . without discrimination because of . . . race, . . . color, [or] national origin" is a "civil right,"[202] and makes it an "unlawful discriminatory practice for an educational institution to deny the use of its facilities to any person otherwise qualified, or to permit the harassment of any student or applicant, by reason of his race, color, . . . [or] national origin . . . ."[203] Under the NYSHRL, disparate impacts constitute unlawful discrimination.[204]

138. The State and City Defendants' policies and practices described herein have violated and continue to violate the NYSHRL. Students are segregated by race and class from the moment they enter the City school system, and indeed are more segregated in their schools than in the already highly segregated communities in which they live. Students of color, particularly

[201] N.Y. Exec. L. § 290(3).
[202] *Id.* § 291(2).
[203] *Id.* § 296(4).
[204] *People v. New York City Transit Auth.*, 59 N.Y.2d 343, 348–49 (1983); *see also Margerum v. City of Buffalo*, 24 N.Y.3d 721, 733–41 (2015) (Rivera, J., concurring in part and dissenting in part).

Black and Latinx students, are disproportionately relegated to neglected schools and inferior educational opportunities. The City school system thus fails to afford students of color, particularly Black and Latinx students, an equal opportunity to enjoy a full and productive life, and instead ensures that they experience discriminatory and inferior outcomes on a range of measures—both academic and in terms of well-being—described herein.

139. Through specialized education programs such as G&T, selective middle schools, and selective and specialized high schools, the State and City Defendants have sanctioned and employed admissions policies and practices—including screened admissions, G&T testing and evaluation, and the SHSAT, a test with a profound disparate impact—that discriminate against students of color, particularly Black and Latinx students, by denying them access to facilities to which they have equal right.[205]

140. In generalized education programs, specialized programs (such as G&T programs), and specialized schools alike, the State and City Defendants have engaged in unlawful discriminatory practices under the NYSHRL by permitting the systemic harassment of students on account of their race, color, and national origin, and failing to protect students from and to remedy such harassment.

141. The State and City Defendants instead have established and maintained school environments that privilege whiteness and Eurocentrism and subject students of color to hostility and isolation, including harassment by administrators, teachers, and classmates. Students of color experience harmful racial stereotypes and outright slurs, and the presence of Black and Latinx students at selective schools and in selective programs is consistently attacked.

142. The State and City Defendants' practices have undermined the purpose of the NYSHRL—"to eliminate and prevent discrimination . . . in educational institutions"—and have consistently "fail[ed] to provide . . . equal opportunity" to all New York City schoolchildren.[206]

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[205] *New York Univ. v. New York State Div. of Human Rights*, 84 Misc. 2d 702, 706 (Sup. Ct.), *aff'd*, 49 A.D.2d 821 (1st Dep't 1975).
[206] N.Y. Exec. L. § 290(3).

REQUEST FOR RELIEF

Plaintiffs request the following relief:

a. Injunctive relief requiring Defendants and their officers, agents, and employees to ensure that Plaintiffs receive a sound basic education, including, but not limited to:

i. Elimination of the G&T and middle and high school admissions screens currently in use, and prohibition of future such screens to the extent that they operate in a racially discriminatory manner;

ii. Adoption of evidence-based programs to improve recruitment and retention of school leaders, administrators, teachers, social workers, and guidance counselors of color;

iii. Monitoring and enforcement of schools' compliance with the New York State Culturally Responsive-Sustaining Education Framework;

iv. Establishment of a system of accountability whereby Defendants:

1. Monitor conditions that deny students a sound basic education, such as segregated schools and programs; disproportionately low numbers of school leaders, administrators, teachers, social workers, and guidance counselors of color; and failure to provide sufficient mental health supports to students, including failure to implement trauma-informed practices; and

2. Intervene in a timely manner to address identified conditions that deny students a sound basic education.

b. A declaration that Defendants' actions and omissions violate:

i. Article XI, section 1 of the New York Constitution;

ii. Article I, section 11 of the New York Constitution; and

iii. The New York State Human Rights Law, New York Executive Law sections 290 *et seq.*

c. The issuance of an order requiring the preparation of a plan, with Court approval

and consideration of any objections by Plaintiffs, designed to cure Defendants' violations of law, and bring them into compliance with the law;

d. An award of costs, disbursements, and reasonable attorneys' fees and expenses; and

e. Such other relief as this Court deems just and proper.

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