

Overview of Legal Challenges to Specialized Schools

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Over recent years, several school districts have taken steps to provide greater equity in the selection process for “specialized” middle and high schools. These efforts have faced backlash by some parents and conservative organizations, and the courts have been asked to rule on the constitutionality of some of these measures.

Also referred to as “exam schools,” “criteria-based schools,” “competitive admissions schools,” or in some instances “gifted and talented schools,” *specialized schools* are public schools that require students to apply for admission. Many have themes (such as arts or science) or specific curricular offerings and, importantly, students must meet specific academic requirements to be eligible to apply and/or attend. The admissions process for specialized schools is competitive and can be similar to college admissions, particularly for more sought-after programs.

This fact sheet summarizes five legal challenges to recently-revised admissions policies used to determine which students can gain access to specialized middle and high schools. Such challenges have emerged in Philadelphia, PA (2022); Fairfax County, VA (2021); Boston, MA (2021); Montgomery County, MD (2020); and New York City, NY (2018). NCSD has joined amicus briefs in the Fairfax County and Boston cases. The lawsuits discussed in this fact sheet challenge admissions policies at some of the most selective programs in the country.

PHILADELPHIA, PA: *Sargent, et al. v. School District of Philadelphia (2022)*

Original complaint filed: April 19, 2022 in the U.S. District Court for the Eastern District of Pennsylvania

Plaintiffs’ attorneys: America First Legal Foundation (led by Stephen Miller); Mitchell Law, PLLC; and Zimolong, LLC

The lawsuit challenges two admissions policy changes made by the school district during the 2021-22 school year. The district moved away from “requirements that applicants submit letters of recommendation, undergo interviews, and complete standardized tests” as well as “competitive entrance requirements related to attendance, punctuality, behavior, grades and standardized test scores” for all criteria-based schools to a zip-code preference lottery system for qualified students. According to the complaint, “While all students participate in the lottery, students who reside in certain ‘underrepresented zip codes’ are given preference for admission over students who do not reside in those zip codes.”

Plaintiffs contend that the newly adopted policies violate Title VI of the Civil Rights Act of 1964 and the Equal Protection Clause of the 14th Amendment as well as Article I §26 and 29 of the Pennsylvania Constitution “by establishing, maintaining, and using a system of selection to the school district’s criteria-based schools that discriminates on the basis of their race.”

Current status:

- *August 8, 2022: Plaintiffs’ motion for preliminary injunction denied by Judge Chad Kenney.*
- *August 11, 2022: Plaintiffs filed an appeal in the Third Circuit, which was later withdrawn. The case is currently pending in the district court.*

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FAIRFAX COUNTY, VA: Coalition for TJ v. Fairfax County School Board (2021)

Original complaint filed: March 10, 2021 in the U.S. District Court for the Eastern District of Virginia

Plaintiffs' attorneys: Pacific Legal Foundation

The lawsuit was filed by the Coalition for TJ, made up of "parents, students, alumni, staff, and community members of Thomas Jefferson High School for Science and Technology," located in Alexandria, VA.

The lawsuit challenges Fairfax County's school board's changes to the admissions process for TJ High School in 2020, including: 1) elimination of a standardized test; 2) establishment of new eligibility criteria (the top 1.5% of students at each public middle school who meet minimum standards are eligible); and 3) incorporation of a "holistic review of...students whose applications demonstrate[d] enhanced merit," which included "experience factors" such as "students who are economically disadvantaged, English language learners, special education students, or students who are currently attending underrepresented middle schools."

The Coalition alleged that changes to the admissions policy were designed to reduce the proportion of Asian American students enrolled at TJ because Asian American students were "overrepresented" compared to the district, in violation of the Equal Protection Clause of the 14th Amendment.

Current status:

- *The Coalition filed, on two occasions, preliminary injunction motions, seeking to block the 2020 admissions policy, both of which were denied by Judge Claude Hilton.*
- *February 25, 2022: Judge Hilton granted summary judgment in favor of the Coalition.*
- *May 23, 2023: U.S. Court of Appeals of the Fourth Circuit reversed and remanded Judge Hilton's order, ruling that TJ's admissions policy did not discriminate against or have a disparate impact on Asian American applicants.*
- *August 21, 2023: Plaintiffs petitioned the U.S. Supreme Court to hear its case.*
- *October 23, 2023: Defendants filed their opposition to the petition.*

BOSTON, MA: Boston Parent Coalition for Academic Excellence Corporation v. The School Committee of the City of Boston, et al. (2021)

Original complaint filed: February 26, 2021 in the U.S. District Court for the District of Massachusetts

Plaintiffs' attorneys: Troutman Pepper Hamilton Sanders, LLP; Pacific Legal Foundation (involved in appeal)

The lawsuit, filed by the Boston Parent Coalition, challenges the constitutionality of the Boston School Committee's (initially temporary) decision to eliminate the entrance exams during the 2021 academic year for its three highly selective public schools: Boston Latin School, Boston Latin Academy, and John D. O'Bryant School of Mathematics and Science. The Parent Coalition targets the district's use of three criteria for its admissions and eligibility process: 1) students reside in one of 29 Boston zip codes or a special-area zip code "created for students who are homeless or in the custody of the Department of Children and Families;" 2) maintain a B average or higher in English and Math during the fall and winter of the 2019-2020 school year or earn the "Meets Expectations" or "Exceeds Expectations" score in English and Math on the Spring 2019 Massachusetts Comprehensive Assessment System test; and 3) perform at grade level under the Massachusetts Curriculum standards.

The complaint alleges that Boston adopted the use of zip codes as a proxy for race in violation of the Equal Protection Clause of the 14th Amendment as well as Massachusetts General Laws, Chapter 76, §5 because, according to the plaintiffs, the district intended for its plan to discriminate against white and Asian students.

BOSTON, MA (cont'd)

Current status:

- *Along with filing its complaint in February 2021, the Parent Coalition filed a motion to enjoin the district's admissions policy from going into effect.*
- *April 15, 2021: Judge William Young denied the Parent Coalition's motion, ruling that the temporary "one-year [p]lan ha[d] a rational basis and denie[d] none of Boston's citizens the equal protection of the laws."*
- *Plaintiffs filed an appeal in the First Circuit on the same day, where the case is currently pending.*

MONTGOMERY COUNTY, MD: Ass'n for Education Fairness v. Montgomery County Board of Education (2020)

Original complaint filed: September 1, 2020 in the U.S. District Court for the District of Maryland

Plaintiffs' attorneys: Pacific Legal Foundation

The lawsuit was filed by the Association for Education Fairness, an organization of "concerned Asian-American parents" against the Montgomery County Board of Education and its then-Superintendent Jack Smith. It challenges two distinct policies regarding the district's middle school magnet programs for gifted and talented students: the "field test," implemented during the 2018-19 school year and expanded in 2020, and the "Pandemic Plan," for the 2021-22 school year.

The field test screened every upcoming middle schooler and, based on their grades and test scores, invited approximately half of the students to take a standardized exam. The field test also removed "overreliance" on teacher recommendations. The field test also considered whether an applicant would have an academic "peer group" at their local middle school, defined as a "cohort of 20 or more students in the same middle school with comparable academic range."

The district eventually got rid of the field test and replaced it with the Pandemic Plan indefinitely, due to the "profound educational challenges stemming from the COVID-19 pandemic." The Pandemic Plan involved screening all incoming middle schoolers for placement in an eligibility pool, which was based on receiving high grades, performing above reading grade level in fourth grade, and scoring in the 85th percentile on a math or reading assessment. The Pandemic Plan also employed a lottery to determine admission among the pool of qualified students.

According to the Association, the field test violated the Equal Protection Clause of the 14th Amendment because it had a discriminatory impact on Asian American students and was implemented with a discriminatory purpose, specifically the peer group portion of the field test. The Association filed an amended complaint, similarly alleging that the Pandemic Plan was intentionally discriminatory against Asian American students because it would cause a drastic decline in the number of such students admitted into the gifted and talented magnet programs.

Current status:

- *September 15, 2021: District Court Judge Paula Xinis denied the district's motion to dismiss.*
- *Regarding the Association's amended complaint, the district sought its dismissal, which was granted by Judge Xinis on July 29, 2022. Judge Xinis found that the Pandemic Plan was not "the product of intentional discrimination [and] emerged in response to COVID-19, not to address racial disparities of the magnet middle school student body."*
- *January 20, 2023: Plaintiffs filed an appeal in the Fourth Circuit, where the case is pending.*



NEW YORK, NY: *Christa McAuliffe Intermediate School PTO v. Bill de Blasio (2018)*

Original complaint filed: December 13, 2018 in the U.S. District Court for the Southern District of New York

Plaintiffs' attorneys: Pacific Legal Foundation

The plaintiffs, comprised of three organizations (Christa McAuliffe Intermediate School PTO, Inc.; Chinese American Citizens Alliance of Greater New York; and Asian American Coalition for Education), filed this lawsuit against then-New York City Mayor Bill de Blasio and then-Chancellor of New York City's Department of Education (DOE) Richard Carranza.

Admission to New York City's eight specialized, highly-selective public high schools is largely decided by a standardized test, known as the Specialized High School Admissions Test (SHSAT). The lawsuit challenges a Spring 2018 change that expanded admission to these schools for students attending the district's Discovery Program.

The Discovery Program is designed "to give disadvantaged students of demonstrated high potential an opportunity to try the special high school program" by allowing those that score just below the established SHSAT admissions cutoff to gain access to a specialized school by attending a summer preparatory program. The DOE considered a student "disadvantaged" if one of the following five factors was satisfied: 1) eligibility for free lunch; 2) eligibility for reduced-price lunch and attendance at a Title I school; 3) receipt of New York City public assistance; 4) status as a foster child, ward of the state, or residency in temporary housing; or 5) residency in the United States for under four years in a home with a primary language other than English.

Under the new policy, Discovery Program students would comprise one-fifth of each school's entering class. Further, only disadvantaged eighth graders attending high-poverty schools would be eligible to participate.

The plaintiffs alleged that the Discovery Program's expansion violates the Equal Protection Clause of the 14th Amendment because the changes were made "with an intent to discriminate against" Asian American students.

Current status:

- *March 4, 2019: Judge Edgardo Ramos denied plaintiffs' motion for a preliminary injunction, stating that the changes to the Discovery program were "exactly the sort of alternative, race-neutral means to increase racial diversity that the [c]ourt has repeatedly suggested governments may use in lieu of express racial classifications."*
- *Plaintiffs appealed Judge Ramos' order to the Second Circuit, where the case is currently pending.*

ADDITIONAL RESOURCES:

- Karina Elwood, *Supreme Court Asked to Hear Thomas Jefferson High School Admissions Case*, The Washington Post, Aug. 23, 2023
- Janel George, *The Myth of Merit: The Fight of the Fairfax County School Board and the New Front of Massive Resistance*, 49 Fordham Urb. L.J. 1091 (2022)
- Cara McClellan, *When Claims Collide: Students for Fair Admissions v. Harvard and the Meaning of Discrimination the Meaning of Discrimination*, 54 Loy. U. Chi. L.J. 1 (2023)
- Sonja Starr, *The Magnet-School Wars and the Future of Colorblindness*, 76 Stanford L. Rev. 1 (forthcoming 2024)