

Standardized Testing, Discrimination, and Affirmative Action in New
York City Public High Schools

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Abstract

Over the past ten years, race has become a higher predictor of standardized test scores than parent education or household income. Historically, access to high quality education has been out of the hands of people of color, reflected in the upholding of segregation until 1954 in the *Brown v. Board of Education* Supreme Court case that ruled segregation unconstitutional. Although segregation is illegal, several practices remain that create similar outcomes to when segregation was legal. The use of standardized testing as the sole determiner of admittance into high performing schools, such as the New York City Specialized High Schools, inaccurately selects the highest-achieving students and perpetuates a seemingly race-neutral barrier that excludes Black and brown students from the best educational opportunities.

The psychological effects of segregation have been found in American children as young as three years old when they start to associate negative traits with some racial groups.¹⁶⁶ Explicit discrimination can stimulate responses similar to post-traumatic stress disorder, and children who have discriminatory teachers have a higher chance of dropping out of school as a result of lower academic motivation and performance in combination with worse feelings towards school.¹⁶⁷ Outside the context of education, significant research has demonstrated that segregation contributes to lower self-esteem and self-image. As the co-director of the UCLA Civil Rights Project Gary Orfield stated, “Racial segregation denies equal opportunity and creates a false path of inferior educational preparation that perpetuates inequality across generations.”¹⁶⁸

Testing as an informal means to perpetuate segregation stems from voting tests that Black citizens had to take in order to be allowed to vote. These tests were over-complicated and wholly unrelated to the ability to vote. The discriminatory outcomes of the New York Specialized High School Admissions Test (SHSAT) are just one part of a large system of standardized testing that leading historian of race and discrimination Dr. Ibram X. Kendi describes as “the most effective racist weapon ever

¹⁶⁶ "Children Notice Race Several Years Before Adults Want to Talk About It," American Psychological Association, last modified August 27, 2020, accessed May 6, 2022, <https://www.apa.org/news/press/releases/2020/08/children-notice-race>.

¹⁶⁷ Christia Brown, "The Educational, Psychological, and Social Impact of Discrimination on the Immigrant Child," Migration Policy Institute, last modified September 2015, accessed May 6, 2022, <https://www.migrationpolicy.org/research/educational-psychological-and-social-impact-discrimination-immigrant-child#:~:text=Experiencing%20discrimination%20can%20provoke%20stress,dropping%20out%20of%20high%20school>.

¹⁶⁸ The Civil Rights Project, "Report Shows School Segregation in New York Remains Worst in Nation," The Civil Rights Project, last modified June 10, 2021, accessed May 6, 2022, <https://www.civilrightsproject.ucla.edu/news/press-releases/2021-press-releases/report-shows-school-segregation-in-new-york-remains-worst-in-nation#:~:text=Amid%20these%20changes%2C%20the%20city%27s,2010%20to%2070%25%20in%202018>.

devised to objectively degrade Black and Brown minds and legally exclude their bodies from prestigious schools.”¹⁶⁹ Standardized testing arose in America as part of the eugenics movement, with psychologist and eugenicist Carl Brigham claiming that testing demonstrated the superiority of White people and that “intermingling” with people of color was dangerous for the American gene pool. Brigham was commissioned to assist in developing aptitude tests for the US Army and was instrumental in the creation of the Scholastic Aptitude Test (SAT), which was considered an innovative psychological test, but was originally created to exclude Jewish people from the Ivy League.¹⁷⁰ These deeply biased tests were used throughout World War I to place over a million soldiers into units determined by race and test scores. This Army testing paved the way for the expansion of school testing, which was increasingly relied upon to group students. The Army testing was adapted to suit college admissions needs and in 1934 Harvard University began using the SAT to determine scholarship awards. From there, universities were quick to adopt the test. Black students, especially males, are disproportionately placed or misplaced in special education due to test results, which are not an accurate measure of someone’s educational needs. Perhaps more concerningly, experimental questions that Black students outperform White students on have regularly been eliminated due to concerns that inclusion of these questions would disrupt the SAT’s bell curve. Black students perform much better on tests that are not

¹⁶⁹ John Rosales, "The Racist Beginnings of Standardized Testing," National Education Association, last modified March 20, 2021, accessed May 6, 2022, <https://www.nea.org/advocating-for-change/new-from-nea/racist-beginnings-standardized-testin>

¹⁷⁰ Soares, "Dismantling White," Teachers College Press.

bell-curved, further implicating the SAT as the source of racially disparate outcomes.¹⁷¹ Despite expanding free test prep for underrepresented students and offering the SHSAT during the school day, the number of Black and Hispanic students admitted remains egregiously low. As former Mayor de Blasio said, “These numbers are even more proof that dramatic reform is necessary to open the doors of opportunity at specialized high schools.”¹⁷²

In the growing debate now on critical race theory teaching in schools, many have argued that racism should not be discussed because it makes students uncomfortable. Given that young children of color are able to identify the ways they are treated and viewed differently to their race, though, many educational and child development experts say it is an unreasonable demand to remove race discussions from curricula. In short, if children of color have to experience racism every day, White children should be able to understand it and be consciously educated in age-appropriate ways even at early stages of schooling. This can be done early-on through simple explanations of the unfair treatment people experience as a result of their race and progress into more complex ideas and history as children mature.

Intergenerational trauma also shapes outcomes, impacting both mental and physical health. For instance, Black mothers in the U.S. are disproportionately more

¹⁷¹ Ibid.

¹⁷² Eliza Shapiro, "Only 7 Black Students Got Into Stuyvesant, N.Y.'s Most Selective High School, Out of 895 Spots," *The New York Times*, March 18, 2019, accessed May 6, 2022, <https://www.nytimes.com/2019/03/18/nyregion/black-students-nyc-high-schools.html?action=click&contentCollection=The%20Upshot&ion=Footer&module=WhatsNext&version=WhatsNext&contentID=WhatsNext&moduleDetail=undefined&pgtype=Multimedia>.

likely to have birthing complications than White mothers, even when adjusting for income. The complications are more likely to cause health issues for the child, for instance, with prematurity and mental health disorders, which can be passed on. Compounded with the violent way Black people have been historically treated by the medical system, there are higher levels of distrust in the medical system, making Black people less likely to seek medical help, thus generally worsening health outcomes that may affect their education.¹⁷³ This cycle is just one example of the long-term effects of racist structures that contribute to differing levels of academic achievement across races, but is not easily pinpointed as a direct cause of educational gaps.

New York City provides a striking example of the way racist systems massively shape the lives of people who reside just steps away from each other. The city that never sleeps is frequently described as a melting pot for its extraordinary diversity in its population of eight and a half million. In 2010 New York City was reported for the first time to be majority non-White, becoming the first city in the Northeast where White people are the minority.¹⁷⁴ The shifting demographics are due to the rapidly expanding Asian and Hispanic populations that offset the slowly decreasing White and Black populations. Despite the growth of non-White populations, many specific areas of the city fail to reflect the changing demographics. This can be attributed to a variety of factors including the locations of public housing, historical racial covenants, and labor

¹⁷³ Claudia Lugo-Candelas, "Intergenerational Effects of Racism Can Psychiatry and Psychology Make a Difference for Future Generations?," JAMA Network, last modified July 28, 2021, accessed May 6, 2022, <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/2782451>.

¹⁷⁴ Sam Roberts, "Non-Hispanic Whites Are Now a Minority in the 23-County New York Region," *The New York Times*, March 27, 2011, accessed May 6, 2022, <https://www.nytimes.com/2011/03/28/nyregion/28nycensus.html>.

markets that have traditionally been highly structured by race and ethnicity. Even when holding factors like income and education constant, the differences are still disparate.¹⁷⁵ The evolving neighborhoods also mean that demographics in local schools are changing, with a growing Latine population and a shrinking Black population.¹⁷⁶ Even with the demographic shifts, the inequities across individual schools and school districts remain intact.

The New York City Department of Education was founded in 1842, and the contemporary districting system was started in the 1960s. Although *Brown v. Board of Education* officially made de jure segregation illegal in 1954, de facto segregation persisted across all of America. On February 3, 1964 over 450,000 New York City students, nearly half of the school-age population, boycotted schools to protest segregation and inequity in the education system.¹⁷⁷ The legacy of school segregation in New York is still evident, as a 2021 report from the UCLA Civil Rights Project found that since its initial 2014 research, New York remains the most segregated state in the country for Black students and the second most segregated for Latino students, behind only California.¹⁷⁸ Since 1990 the portion of schools with intense segregation, categorized as being 90 percent or more non-White, has decreased only slightly from 72 percent to 70 percent, while extremely segregated schools, categorized as schools with a 99 percent non-White student population, decreased from 31 percent to 17 percent.

¹⁷⁵ Ibid.

¹⁷⁶ The Civil Rights Project, "Report Shows," The Civil Rights Project.

¹⁷⁷ Zinn Education Project, "Feb. 3, 1964: New York City School Children Boycott School," Zinn Education Project, accessed May 6, 2022, <https://www.zinnedproject.org/news/tdih/nyc-school-children-boycott-school/>.

¹⁷⁸ The Civil Rights Project, "Report Shows," The Civil Rights Project.

While these statistics suggest some improvement in desegregation, of the 934,000 student population 94 percent still attend predominantly non-White schools.¹⁷⁹ The report explicitly cites the Specialized High Schools as particular contributors to segregation. There are nine Specialized High Schools in New York City: Fiorello H. LaGuardia High School of Music & Art and Performing Arts, which does not use testing as the sole measure of admission; The Bronx High School of Science; The Brooklyn Latin School; Brooklyn Technical High School; 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. Stuyvesant and Bronx Science are of particular note for consistently being the two most high-achieving and difficult schools to enter. Entrance to these schools is determined by one three-hour multiple choice test, the Specialized High School Admissions Test. Student scores are ranked from highest to lowest, with students earning the highest scores being given priority in their school preference. A student from any part of the city may be admitted to any of the specialized schools, eschewing the usual requirement of living in-district for public schools.

In the educational arms race, families who hold traditional privileges across, race, wealth, and other social identifiers, are able to leverage their advantages to better their children's prospects. Stuyvesant and Staten Island Technical have 92 percent enrollment of Asian and White students with only one percent Black and two to three

¹⁷⁹ *ibid.*

percent Latino students. In a city with a population distribution that stands in such stark contrast to enrollment at its top schools, very strong forces are at play to create this phenomenon. While the specialized schools have always skewed heavily towards Asian and White enrollment, the portion of Black and Hispanic students has declined significantly over the past 40 years.¹⁸⁰ A leading cause of this is that for a long time students were not preparing for the SHSAT, but recently there has been a lucrative industry of test preparation that disproportionately favors students with access to such preparatory services. Tutoring and practice exams can cost hundreds of dollars and demand significant time on both the student and their family's part, as some devote months or even years to studying for the test.

Additionally, those with more time to navigate the complex bureaucracy mean that important information regarding high school options can be miscommunicated or even not communicated at all.¹⁸¹ Many people in the city also do not speak fluent English, which is greatly disadvantageous, as such households have an even larger barrier to understanding the school system. Standardized testing additionally disadvantages English language learners, whose educational level is often poorly

¹⁸⁰ Eliza Shapiro, "How New York's Elite Public Schools Lost Their Black and Hispanic Students," *The New York Times*, June 3, 2019, accessed May 6, 2022, <https://www.nytimes.com/interactive/2019/06/03/nyregion/nyc-public-schools-black-hispanic-students.html?action=click&contentCollection=The%20Upshot&ion=Footer&module=WhatsNext&version=WhatsNext&contentID=WhatsNext&moduleDetail=undefined&pgtype=Multimedia>.

¹⁸¹ Reema Amin, "11th-hour changes may be coming to NYC's high school admissions," Chalkbeat New York, last modified March 4, 2022, accessed May 6, 2022, <https://ny.chalkbeat.org/2022/3/4/22961972/nyc-high-school-admissions-changes-david-bank>

reflected in test scores.¹⁸² Access to professionals for disability diagnoses to receive exam accommodations such as extra time also skews heavily for White people. 42 percent of students with a designation for double time on the SHSAT were White in comparison to the 18 percent of White students who took the test under normal conditions, and White students were ten times more likely to have extra time than Asian students. Students with extra time are about twice as likely to receive an offer for a Specialized High School regardless of race. Importantly, there is no evidence suggesting exaggeration or lying about disabilities, but because it is often the prerogative of a parent to request disability accommodations for their child, families with better access to healthcare and expensive health consultations are more likely to have the appropriate test-taking conditions.

This issue is further reflected in the severely segregated middle school system. From the start, students are set on a track that provides them with severely different educational outcomes. Although the public school system is meant to provide education for all students, there is a significantly higher quality of education for people in certain districts in a city which has practiced both formal and informal redlining. The middle school a student attends, determined by housing district, highly correlated with income and race, is a major indicator of the likelihood of attending a Specialized High School, with some middle schools even being known as feeder schools for these high schools. In addition, there is significant overlap between extra

¹⁸² Rosales, "The Racist," National Education Association.

time designations and prestigious public middle schools. While only 323 out of over 27,000 students in 2018 had extra time, a high concentration of those students came from wealthier districts. This inequity demonstrates how the SHSAT advantages people with more resources.

Determining placement in the specialized schools solely by a standardized test score severely restricts access to some of the highest quality education in the city. Former Mayor de Blasio had proposed a plan that would have mirrored the way systems like the University of Texas allocate seats so that top-performing students in every school are guaranteed a spot in the highest performing institutions. Under the mayor's 2018 plan, the top seven percent of middle schoolers and 25 percent of students citywide, as determined by grades and state English language arts and mathematics scores, would receive admission to a specialized school. This system would have provided more equity and diversity to the school by providing opportunities for high performing students from all different backgrounds.

This plan did not receive the required State Legislature approval, and it faced strong backlash from the fact that if enacted, Asian students would lose approximately half of the usual seats they fill in a year, leading to accusations of discrimination against the largely poor and immigrant Asian-Americans in the specialized schools. While the number of offers to Asian students would decrease dramatically, they would still constitute approximately 31 percent of offers, which is still significantly higher

than the 11.8 percent of the population that Asians make up in New York City. The number of White students in the schools would remain about the same, according to the Independent Budget Office's 2019 report, while Hispanic students would receive 27 percent of offers, in comparison to about the six percent they usually receive, and Black students would receive about 19 percent of offers instead of four percent, equivalent to almost a fivefold increase.¹⁸³ Socioeconomically, the percent of students living in poverty receiving admission would rise to 63 percent from the usual 50 percent. Grades would be slightly higher for the students offered admission under the proposal as well, indicating that acceptances would be granted for students who are even more equipped to succeed than the usual admitted students.

Proponents of the proposal contend that using multiple factors for admission allows for a more accurate selection process of students who will succeed in high school and college, and that high grades relative to the school of attendance as well as high scores on state tests are easier to access without significant financial resources. Such a system would allow students who are disproportionately less likely to take the SHSAT, namely girls, Hispanic students, and students in poverty, to compete for admission to the specialized schools. Opponents say that the students who are admitted may be less prepared for the extremely rigorous curriculum and workload the schools have and that the top student at an underperforming middle school may struggle significantly.

¹⁸³ Independent Budget Office, *Admissions Overhaul: Simulating the Outcome Under the Mayor's Plan For Admissions to the City's Specialized High Schools*, February 2019, accessed May 6, 2022, <https://ibo.nyc.ny.us/iboreports/admissions-overhaul-simulating-the-outcome-under-the-mayors-plan-for-admissions-to-the-citys-specialized-high-schools-jan-2019.pdf>.

Additionally, a high-performing student in a high-performing school may not make the cutoff. The first objection reflects a valid concern that students from less rigorous schools may find themselves discouraged and unsuccessful at a specialized high school; however, this may be remedied by programs in the specialized schools that provide specific support for students who have not traditionally had access to the specialized school system. The second objection is less salient, as a high-performing student at a high-performing school is likely to attend a high-performing non-specialized high school, and any school may have a high-performing student that just misses the cutoff.

An admissions policy that draws students exclusively with the highest GPAs, while still not necessarily the best way to determine a student's academic potential, would diversify the specialized high schools and admit students who are more likely to succeed. Because the motivation for this policy change would be largely driven by the desire to create racial equity, there are opponents to the policy that conflate it with affirmative action. While this policy change would act affirmatively to create racial diversity, the policy does not fall under the normal purview of affirmative action because it would not take a student's race into account when determining admissions. Further, while many are upset that there would be fewer Asian-American students attending the specialized high schools, the system, if truly just, would never have had such a high number of Asian students at the top high schools in the first place. Rather, the demographic of the specialized high schools would more closely reflect the racial makeup of the city.

One argument SHSAT supporters make is that many of the students that attend the specialized high schools are low-income, supporting the claim that standardized testing is financially neutral. This is patently false, and perpetuates the dangerous Asian model-minority myth. As demonstrated with the expensive test preparation centers and the prevalence of students from wealthy school districts and feeder schools, a student's financial background greatly contributes to their likelihood to do well on tests. There are much more nuanced explanations for why outcomes are so different for some low-income Asian students and some low-income students of other races.

The model-minority myth was created as a way to divide non-White people by highlighting the achievements of some Asian-Americans in comparison to the supposed non-achievements of other Americans, particularly Black Americans. Many who do not grasp the complexities of American society will cite for instance that Asian-Americans are the highest earning racial group in the U.S. This overlooks, however, the enormous income inequality within the broad category of Asian-Americans. Indian-Americans and Filipino-Americans, for instance, have a median household income above \$90,000, while the median Burmese and Nepalese-American household incomes are below \$60,000. This gap can be attributed in large part to America's immigration policies, which have prioritized immigration for people with bachelor's degrees. Understandably, then, immigrants in America with high education levels will be overrepresented in higher income brackets. The model-minority myth perpetuates the idea that if you work hard enough, you can succeed in America, which shifts the causes

of poverty away from systemic factors to individuals' motivation. In essence, if some people can do it, anyone can. The idea of readily accessible social mobility perpetuated by the model-minority myth ignores the centuries of violence and oppression that, while faced by all people of color, has been particularly cruel for Black Americans. Thus, the argument that Asian-American students' success on the SHSAT is indicative of the test being purely merit-based is inaccurate.

In a ruling that was delivered on April 25, 2022, the Supreme Court decided in *Coalition for TJ v. Fairfax County School Board, et al* that the elite Virginia magnet Thomas Jefferson High School for Science and Technology (TJHSST), which uses an entrance exam modeled after the SHSAT, may continue to use their new admissions criteria which eliminated the use of standardized tests. This change was implemented for the entering class in 2021 following the demands for solutions to racial inequity after the murder of George Floyd. TJHSST has a similar racial makeup to the New York City Specialized High Schools with a disproportionately high number of Asian-American students and disproportionately low number of Black and Hispanic students. The new admissions criteria mirror that of the college admissions process, taking into account factors such as if a student is from a historically underrepresented middle school or is an English language learner. The school additionally accepts the top 1.5 percent of students from public schools in the area, similar to Mayor de Blasio's failed proposal. The basis of the challenge to this change was that it constitutes racial discrimination against Asian-American students as they are disproportionately hurt.

The initial ruling in the Federal District Court in Alexandria was in favor of the challengers, citing that the discussions of the planned changes were, according to Judge Claude Hilton, “infected with talk of racial balancing from its inception.”¹⁸⁴ Setting aside the concerning use of the word “infecting” in relation to integration efforts, this justification against admissions changes is flawed since the purpose of the changes was to create the positive result of racial diversity. It would be unusual if these discussions did not have rhetoric surrounding race and equity. While the number of Asian-American students did fall the most of all racial groups, the incoming class was still 54 percent Asian-American in an area where only 20 percent are Asian-American. Just because one marginalized group benefited from a certain policy does not mean that changing the policy is discrimination against that group— to have maintained the admissions criteria would have upheld marginalization for other groups.

The TJHSST ruling is in line with 2016 Supreme Court case *Fisher v. University of Texas* which ruled the policy of accepting the top students across a certain district or state to be constitutional. The school board’s lawyers warned that a ruling in favor of the challengers would challenge the precedent set by the Texas case that schools may use race-neutral methods to achieve diversity. While these cases involve race-neutral admissions criteria, the two Supreme Court cases against Harvard and the University of North Carolina admissions, which previously took race explicitly into account, officially

¹⁸⁴ Adam Liptak, "Supreme Court Allows Elite High School's New Admissions Rules," *The New York Times*, April 25, 2022, accessed May 6, 2022, <https://www.nytimes.com/2022/04/25/us/politics/supreme-court-admissions-race.html>.

overtaken the legality of race-based affirmative action. In doing so, the court opened the precedent set by cases like *Regents of University of California v. Bakke*, which found affirmative action constitutional so long as quotas were not used.

Because the specialized high school admissions process is managed by each state, it is largely out of the control of any individual city official what can be implemented. New York City, an exception to the rule, does have control over five of the New York specialized schools, excluding Bronx Science and Stuyvesant, although Mayor de Blasio was reluctant to make changes separate from the state by creating a two-tier system that would not solve the racial disparity in the two most imbalanced schools and would further complicate an already complex application process. Current efforts by mayor Eric Adams include a proposal to create a new specialized high school in each of the five boroughs with admissions criteria beyond the SHSAT. He agreed with the logic against using standardized testing as the sole factor of admissions saying, “Being gifted and talented ... is more than your ability to take an exam.”¹⁸⁵

The benefits of diversity are well-documented in education. As education transcends pure academics, exposure to people of different cultures is undoubtedly helpful for all parties. Teachers who teach a more diverse group of students are more motivated to provide an inclusive education that will advance students’ potential to succeed. Students who learn alongside students of different backgrounds have been

¹⁸⁵ Conor Skelding, "Eric Adams floats building a new specialized school in each NYC borough," *The New York Post*, April 9, 2022, accessed May 6, 2022, <https://nypost.com/2022/04/09/eric-adams-eyes-building-specialized-schools-in-each-nyc-borough/>.

found to have better critical thinking and problem solving skills.¹⁸⁶ New York City's expanding population of people of color is in line with the national trend of an increasingly diverse student population, and the conversation of testing in the city's public schools is reflective of the national conversation surrounding testing, as schools increasingly recognize the limitations of testing. In May of 2020 the University of California's Board of Regents voted unanimously to stop using the SAT and ACT as a factor in testing. They said "that research had convinced them that performance on the SAT and ACT was so strongly influenced by family income, parents' education and race that using them for high-stakes admissions decisions was simply wrong."¹⁸⁷ In the wake of the COVID-19 pandemic, universities are continuing test-optional policies even as availability opens up for testing facilities. This aligns with the growing recognition of testing being less effective than high school GPA at predicting a student's success in college, indicating that as admissions practices become more equitable, the pool of candidates being chosen are the most likely to thrive in highly rigorous academic environments. Standardized tests offer only a very slim purview into a student's capabilities. They do not take into account creativity or critical thinking, which is crucial in today's world for professional and academic achievement. Removing the barriers to high quality high school education will help New York City reach its true potential as a melting pot, where people learn from everyone and their experiences.

¹⁸⁶ Amy Stuart Wells, "How Racially Diverse Schools and Classrooms Can Benefit All Students," The Century Foundation, last modified February 6, 2016, accessed May 6, 2022, <https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/>.

¹⁸⁷ Soares, "Dismantling White," Teachers College Press.

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