



NEW YORK  
CITY BAR

**COMMITTEE ON CIVIL RIGHTS**

PHILIP DESGRANGES  
CHAIR  
Phone: (212) 607-3360  
[philipd28@gmail.com](mailto:philipd28@gmail.com)

**COMMITTEE ON EDUCATION & THE LAW**

LAURA D. BARBIERI  
CHAIR  
Phone: (914) 819-3387  
[Lbarbieri@Advocatesny.com](mailto:Lbarbieri@Advocatesny.com)

May 1, 2019

*Via Regular Mail and Email*

The Honorable Richard A. Carranza, Chancellor  
-and-  
Members of the School Diversity Advisory Group (“SDAG”)  
New York City Department of Education  
Tweed Courthouse  
52 Chambers Street  
New York, NY 10007

**Re: Eliminating competitive admissions to public elementary- and middle-school programs and schools**

Dear Chancellor Carranza and Members of the SDAG:

As the SDAG prepares to release a second report this year, the New York City Bar Association (“City Bar”), through its Civil Rights and Education and the Law Committees<sup>1</sup> write to urge the SDAG to call for the elimination of competitive admissions to public elementary- and middle-school programs and schools for the following reasons:

- Measures of young children’s ability and behavior through competitive admission screening and testing are unreliable and racially biased.
- Competitive admissions for very young children are pedagogically unsound because research demonstrates that *all* children derive educational and social benefits from

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<sup>1</sup> The City Bar, founded in 1870, is a voluntary association of lawyers and law students. With over 24,000 members, its mission is to equip and mobilize the legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest. The Civil Rights Committee addresses issues affecting the civil rights of New Yorkers, especially the rights of marginalized communities. The Education and the Law Committee addresses K-12 and higher education, and legal and policy education issues affecting the city, state, and nation. Both Committees’ memberships include attorneys from state and local government agencies, law firms, not-for-profit organizations, and law-school faculty. Education and the Law members also include K-12 educators and education consultants. Committee members are acting in their respective individual capacities as members of the City Bar, not in their professional or academic roles.

diverse classrooms with students of differing races, economic status, and learning ability.

- The practice of excluding the majority of certain socioeconomic and racial groups of young children from a large percentage of public institutions is inequitable and conducive to racial hierarchy.<sup>2</sup>

Equal access to educational opportunity and racially and economically integrated public schools are central goals of the SDAG and the larger civil-rights community. These goals cannot be achieved unless the New York City Department of Education eliminates competitive admissions to its elementary- and middle-school programs and schools.

In the elementary-school context, New York City provides separate Gifted & Talented (“G&T”) schools and in-school programs for young children who score above a certain level on what is known as the “G&T test.”<sup>3</sup> The decision to have a child take the G&T test is made by the parents - rather than by educators - often before a child has entered the public school system. Most children do not take the test or cannot obtain a seat in a program even if they are eligible.<sup>4</sup> In the middle-school context, competitive admissions take the form of school-specific criteria limiting admission based on academic “merit” and perceptions of behavior. These assessments are based necessarily on the performance of students in fourth grade when students are eight and nine years old.

Admission to the City’s official G&T programs in elementary school typically involves testing of children who are *four years old*. Chancellor Carranza has observed correctly that screening children in this way is “antithetical” to public education.<sup>5</sup> The Department of Education should work with administrators, teachers, Community Education Councils, School Leadership Teams and other groups with parent representation to eliminate screens for admission to elementary and middle schools and programs.<sup>6</sup>

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<sup>2</sup> The City Bar wishes to clarify that programs or schools in which facility with a certain language or demonstrated capability in the Arts is a prerequisite are not included in these recommendations.

<sup>3</sup> New York City Department of Education, Gifted and Talented Enrollment, available at <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/gifted-and-talented> (all websites last visited May 1, 2019).

<sup>4</sup> New York City Independent Budget Office, “How Many Students Can Enter a Gifted & Talented Program in New York City,” *New York City by the Numbers*, Dec. 18, 2014, available at <https://ibo.nyc.ny.us/cgi-park2/2014/12/how-many-students-can-enter-a-gifted-talented-program-in-new-york-city/>.

<sup>5</sup> 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, available at <https://chalkbeat.org/posts/ny/2018/05/23/why-are-we-screening-children-i-dont-get-that-chancellor-carranza-offers-harsh-critique-of-nyc-school-admissions/>.

<sup>6</sup> The Department of Education, for example, recently approved a diversity plan resulting from a community-engagement process that eliminates competitive admissions to middle schools in Community School District 15 and reportedly is achieving early success in integrating its schools. Christina Veiga, “Brooklyn middle schools eliminate ‘screening’ as New York City expands integration efforts,” *Chalkbeat*, Sept. 20, 2018, available at <https://www.chalkbeat.org/posts/ny/2018/09/20/brooklyn-middle-schools-eliminate-screening-as-new-york-city-expands-integration-efforts/>; Ben Chapman and Jillian Jorgensen, “Mayor de Blasio and Chancellor Carranza reveal new school desegregation plan,” *Daily News*, Sept. 20, 2018, available at <https://www.nydailynews.com/new-york/education/ny-metro-new-brooklyn-school-desegregation-plan-20180920-story.html>.

The City Bar believes competitive admissions to elementary and middle school must be eliminated for the following reasons:

**I. Measures of ability and behavior through competitive admissions are more likely to reflect characteristics of a child’s parents and past experiences than his or her future potential, and are unreliable, and racially biased.**

First, measures of children’s ability and behavior starting with those as young as four years old are unreliable as they more likely reflect the characteristics of each child’s parents, rather than the child’s potential. In her extensive study of G&T programs in New York City, sociologist Allison Roda documented the ways in which the process of identifying a student as G&T was highly susceptible to parent influence: children’s attendance at pre-school, expensive test-preparation courses, and the ability of parents to have children retake the test year after year until they pass all contribute to higher rates of admission for children from more affluent families.<sup>7</sup> Similar risks are present when assessing students’ “academic and personal behaviors”<sup>8</sup> to exclude students from middle school.<sup>9</sup> Some middle schools, for example, screen by number of days late or absent, but these measures, we submit, have more to do with the actions of parents or socioeconomic status than with those of young children.<sup>10</sup>

Second, measuring the potential of young children is also unreliable because “giftedness is not a unitary concept.”<sup>11</sup> Scholars in gifted education, teachers, and parents often note that a child who passed the test at four years old may show no signs of giftedness or special aptitude only a few years later.<sup>12</sup> And children who do not pass G&T tests one year may pass it the next.

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<sup>7</sup> Allison Roda, *Inequality in Gifted and Talented Programs: Parental Choices about Status, School Opportunity, and Second-Generation Segregation*, Palgrave MacMillan (2015); Parenting in the Age of High-Stakes Testing: Gifted and Talented Admissions and the Meaning of Parenthood, *Teachers College Record* Volume 119 Number 8 (2017) 1-53, available at <http://www.tcrecord.org>; Allison Roda and Halley Potter, “It’s time to stop putting kids in separate gifted education programs,” *Quartz*, April 26, 2016, available at <https://qz.com/666405/its-time-to-stop-putting-kids-in-separate-gifted-education-programs/>; NYCBA Civil Rights Committee member interviews with parents of children identified as G&T, September 2018; Sally M. Reis and Joseph S. Renzulli, The Schoolwide Enrichment Model: A Focus on Student Strengths & Interests, *Gifted Education International*, v26 n2-3 (2010) 140-157, available at <https://eric.ed.gov/?id=EJ908825>.

<sup>8</sup> “Academic and personal behaviors” is the phrase used by the Department of Education to describe one set of criteria used by selective middle schools in New York City, Department of Education middle school directories, available at <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/middle-school>.

<sup>9</sup> New York Appleseed, “Student Assignment to Public Middle Schools in New York City,” Jan. 2019, 21-22, available at [https://www.nyappleseed.org/wp-content/uploads/FINAL-Middle-School-Advocacy-Briefing\\_01\\_19-PDF.pdf](https://www.nyappleseed.org/wp-content/uploads/FINAL-Middle-School-Advocacy-Briefing_01_19-PDF.pdf).

<sup>10</sup> *Ibid*; see also Christina Veiga, “Want to make middle school admissions more fair? Stop looking at this measure, parents say,” *Chalkbeat*, Nov. 7, 2017, available at <https://www.chalkbeat.org/posts/ny/2017/11/07/want-to-make-middle-school-admissions-more-fair-stop-looking-at-this-measure-parents-say/>.

<sup>11</sup> See Reis and Renzulli, 141; Dona Matthews, Gifted Education in Transition, *International Journal for Talent Development and Creativity*—2(1) August 2014, 23; Joseph S. Renzulli, “The Three-Ring Conception of Giftedness: A Developmental Model For Promoting Creative Productivity,” The University of Connecticut (2005); James H. Borland (2005). Gifted education without gifted children: The case for no conception of giftedness. In R. J. Sternberg & J. E. Davidson (Eds.), *Conceptions of giftedness* (2nd ed., 1-19). Cambridge, England: Cambridge University Press.

<sup>12</sup> See generally Roda, *Inequality in Gifted and Talented Programs*, note 7, *supra*; City Bar Committee member interviews with parents.

This is because young children are still developing, and the concept that a child's academic potential is fixed and can be determined as early as four years old runs contrary to the experiences of many scholars, educators, and parents.<sup>13</sup>

Third, the ways schools evaluate the ability and behavior of young children tend to be racially biased. Historian Ibram Kendi has documented how standardized intelligence testing grew out of eugenicist ideas in the early twentieth century, how it was explicitly created for the purpose of "proving" an innate racial hierarchy favoring whites, and how such testing continues to perpetuate racial biases and preferences.<sup>14</sup> In New York City, subjective measures like "Respects School Rules and Collaboration," "Time Management & Independence," and "Perseverance," among others, are used to measure the behavior of young children to determine their admission to selective middle schools.<sup>15</sup> These subjective measures affect not only admissions decisions but placement decisions within schools creating classroom segregation through academic tracks that "tend to be racially biased, making classrooms more segregated than they would have been."<sup>16</sup> Given what researchers and scholars now know about the role that implicit bias plays in the classroom and the ways in which children of color are disciplined more harshly than other children across the system,<sup>17</sup> using such subjective measures of behavior to assess a child's potential is insupportable.

## **II. Even if there were reliable ways to evaluate a young child's academic "merit," separation of young children into separate classrooms is not pedagogically sound.**

First, research suggests that tracked classes may harm lower achievers, while offering a single, detracked, rigorous curriculum for all students can improve performance of lower-achieving students without harming higher achievers.<sup>18</sup> When Principal Carol Burris in Rockville Centre, NY detracked her high school mathematics curriculum and created heterogeneous, accelerated classes, the achievement gap narrowed significantly. From 1995 to 1997, the passing rate for Black and Latinx students on the state exams tripled from 23% to 75%; the white and

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<sup>13</sup> *Ibid*; Reis and Renzulli, 141-142. Matthews, 25.

<sup>14</sup> Ibram X. Kendi, *Stamped from the Beginning: The Definitive History of Racist Ideas in America*, Nation Books (2016) 311, 479.

<sup>15</sup> Specific categories of "academic and personal behaviors" described in note 8 *supra*, Department of Education middle school directories, available at <https://www.schools.nyc.gov/enrollment/enroll-grade-by-grade/middle-school>.

<sup>16</sup> Charles T. Clotfelter, After Brown: The Rise and Retreat of School Segregation (2006) 126; Whitney Pirtle, The Other Segregation, *The Atlantic*, April 23, 2019, available at <https://www.theatlantic.com/education/archive/2019/04/gifted-and-talented-programs-separate-students-race/587614/>.

<sup>17</sup> Rachel D. Godsil, Linda R. Tropp, Phillip Atiba Goff, John A. Powell, Jessica MacFarlane, The Science of Equality In Education: The Impact of Implicit Bias, Racial Anxiety, and Stereotype Threat on Student Outcomes, February 2017, available at <https://perception.org/publications/soe-education/>.

<sup>18</sup> Carol Corbett Burris, Ed Wiley, Kevin Welner, and John Murphy, "Accountability, Rigor, and Detracking: Achievement Effects of Embracing a Challenging Curriculum as a Universal Good for All Students," *Teachers College Record* 110 (2008) 571-608; Ning Rui, "Four Decades of Research on the Effects of Detracking Reform: Where Do We Stand? — A Systematic Review of the Evidence," *Journal of Evidence-Based Medicine* 2 (2009) 164-183.

Asian student passing rate increased from 54% to 98%. “Achievement follows from opportunities — opportunities that tracking denies.”<sup>19</sup>

Second, recent research supports “flexible” grouping as the best approach for all students. This grouping as opposed to “tracking”<sup>20</sup> acknowledges the differing strengths and weaknesses of children in different subject areas as well as the possibility of accelerating growth with supportive strategies for students whose achievement levels may be initially lower than some of their classmates in some areas. As one scholar describes, by using creative learning strategies, heterogeneous classrooms can support the needs of all students, especially those in the lower grades where achievement gaps are smaller.<sup>21</sup>

Perhaps most importantly, there are pedagogical strategies designed to foster deeper learning that require grouping students at different levels of ability.<sup>22</sup> Full implementation of these strategies will require extensive professional development in some schools for teachers and administrators as well as outreach to parents and other community members. Segregation of elementary- and middle-school students by “perceived” ability impedes educators from employing these strategies to provide rich and equitable opportunities for all students.<sup>23</sup>

Third, evidence from the last few decades, confirmed by the most recent data regarding selective G&T admissions<sup>24</sup> demonstrates that maintaining the current competitive admissions system will result in continued isolation of low-income African-American and Latinx students.<sup>25</sup> New York City’s continued use of screening measures will only lead to further racial segregation even as decades of evidence demonstrate the educational and social benefits of racial diversity in the classroom.<sup>26</sup>

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<sup>19</sup> Carol Corbett Burris and Kevin Welner, Closing the Achievement Gap by Detracking, *Phi Delta Kappa* (2005) 598.

<sup>20</sup> Although the supposed benefits of ability grouping have enjoyed long life in the popular mind, such segregation is beneficial neither to the children who are excluded from G&T programs and selective middle schools *nor to those who are admitted*. See City Bar Civil Rights Committee member interview with Steve Quester, retired educator, September 2018 (on file with the Civil Rights Committee).

<sup>21</sup> Nancy Melser, Gifted students and cooperative learning: A study of grouping strategies, *Roeper Review*, 21 (4) (1999) 315.

<sup>22</sup> Carol Ann Tomlinson, Differentiated instruction in the regular classroom: What does it mean? How does it look? *Understanding Our Gifted*, v14 (1), Fall 2001, 3–6, available at <https://eric.ed.gov/?id=EJ639193>.

<sup>23</sup> *Ibid.*

<sup>24</sup> Philissa Cramer, “As New York City Makes Limited Changes to Gifted Programs the Regular Admissions Process Yields Predictable Results,” *Chalkbeat*, April 16, 2019, <https://chalkbeat.org/posts/ny/2019/04/16/as-new-york-city-makes-limited-changes-to-gifted-programs-the-regular-admissions-process-yields-predictable-results/>.

<sup>25</sup> In a typical year, African American and Latinx students represent less than a third of all students qualifying for G&T schools and programs in New York City despite being over 70% of the total student population. See, e.g., Beth Fertig and Robert Lewis, “New Data: White and Asian Children Far Outpace City Population in Gifted Programs,” *WNYC*, Dec. 30, 2015, available at <https://www.wnyc.org/story/city-data-shows-diversity-varies-greatly-across-within-schools/>; Halley Potter and David Tipson, “Eliminate Gifted Tracks and Expand to a Schoolwide Approach,” *NY Times*, June 4, 2014, available at <https://www.nytimes.com/roomfordebate/2014/06/03/are-new-york-citys-gifted-classrooms-useful-or-harmful/eliminate-gifted-tracks-and-expand-to-a-schoolwide-approach>.

<sup>26</sup> Roslyn Arlin Mickelson, “School Integration and K-12 Outcomes: An Updated Quick Synthesis of the Social Science Evidence,” National Coalition on School Diversity Research Brief No 5, October 2016.

### III. The practice of awarding and denying academic opportunity based on the “academic” performance of children four to nine years old is inequitable in a public school system.

Placing children four to nine years old into different opportunity tracks is not an appropriate role for a public-education system; the role of public education is to educate the public in all its diversity.<sup>27</sup> Matt Gonzales of New York Applesseed summarized this injustice:

“When we have a publicly funded school system, the notion that you can pick and choose your students is problematic,’ .... ‘It undermines the democratic, and free and open nature of public education.’”<sup>28</sup>

When all residents of New York City contribute to the funding of schools through payment of local, state, and federal taxes, it is deeply problematic that a large percentage of public schools and programs within schools are effectively closed to the majority of students. Student-assignment methods for elementary and middle school should take into account the characteristics of individual students only for the purpose of achieving balanced and equitable access for all students - not for the disproportionate exclusion of historically disadvantaged groups.

Independent of the educational and pedagogical problems associated with racial and socioeconomic segregation, there are critical issues of racial justice that the City can no longer ignore. Each year we can predict with almost 100% certainty which racial groups will benefit from G&T tests and middle-school screens before the children are even evaluated, yet we go ahead and use them anyway.<sup>29</sup> This problem will not be solved by trying to make the methods of evaluation fairer. Decades have been wasted tweaking evaluation methods to make G&T admissions more equitable to little avail.<sup>30</sup> With the benefit of hindsight, it is evident that these efforts failed to grasp the burdened reality of the City’s discriminatory history and deeply segregated school system. We can no longer be complicit in what is unquestionably a flawed system to its core.

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<sup>27</sup> “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” [emphasis added], New York State Constitution, Art. XI, Sec. 1. Scholar and (now) University of Virginia President James E. Ryan notes, “A key idea of the common school movement in the mid-nineteenth century was to provide education to rich and poor students alike, equally and in the same schools.” *Five Miles Away a World Apart*, 12.

<sup>28</sup> Winnie Hu and Elizabeth A. Harris, “A Shadow System Feeds Segregation in New York City Schools,” NY Times, June 17, 2018, available at <https://www.nytimes.com/2018/06/17/nyregion/public-schools-screening-admission.html>.

<sup>29</sup> Impact of Screens by Race, *District 15 Diversity Plan Final Report 2018*, 59, available at [http://d15diversityplan.com/wp-content/uploads/2018/10/180919\\_D15DiversityPlan\\_FinalReport.pdf](http://d15diversityplan.com/wp-content/uploads/2018/10/180919_D15DiversityPlan_FinalReport.pdf).

<sup>30</sup> New York Applesseed, *Within Our Reach: Segregation in NYC District Elementary Schools and What We Can Do About It: Addressing Internal Segregation and Harnessing the Educational Benefits of Diversity* (2014) 6-11; Philissa Cramer, “As New York City makes limited changes to gifted programs, the regular admissions process yields predictable results,” *Chalkbeat*, April 17, 2019, available at <https://www.chalkbeat.org/posts/ny/2019/04/16/as-new-york-city-makes-limited-changes-to-gifted-programs-the-regular-admissions-process-yields-predictable-results/>.

For all these reasons, the City Bar recommends to the SDAG the complete removal of competitive admissions from elementary schools and programs and the development of a process and expeditious timeline for the complete removal of competitive admissions from middle schools.<sup>31</sup> We urge the Mayor and the Chancellor to act decisively and immediately on these recommendations.

Respectfully,



Philip Desgranges, Chair  
Civil Rights Committee



Laura D. Barbieri, Chair  
Education and the Law Committee

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<sup>31</sup> See note 2.