

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
BOSTON DIVISION**

BOSTON PARENT COALITION FOR
ACADEMIC EXCELLENCE CORP.,

Plaintiff,

V.

BOSTON SCHOOL COMMITTEE and
MARY SKIPPER, in her official capacity
as Superintendent of the Boston Public
Schools,

Defendants.

Civil Action No. 1:25-cv-12015-WGY

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT-INTERVENORS’
PROPOSED MOTION TO DISMISS**

INTRODUCTION

The Equal Protection Clause promises equal educational opportunity *for all*. Race neutral, research-backed policies that fairly identify qualified students for selective public schools further this promise. Boston School Committee’s (“Committee”) efforts to reform admissions to its three “Exams Schools”¹ through a process that accounts for an applicant’s socioeconomic status is entirely consistent with the Equal Protection Clause. Because the Complaint fails to sufficiently allege either discriminatory effect or discriminatory intent, Plaintiff’s argument that these reforms are racially discriminatory fails as a matter of law. Defendant-Intervenors respectfully request that the Court dismiss the Complaint.

RELEVANT FACTS²

Boston Public Schools (“BPS”) has a long history of segregation and unequal access to its three Exam Schools. The Exam Schools rank among the top public schools in the city and state. Compl. ¶¶ 19, 22. Prior to 2021, admission to these schools was based only on GPA and performance on the Independent School Entrance Exam (“ISEE”) (together, the “Prior Process”).³ The ISEE assessed skills that BPS did not teach sixth graders. As a result, families with access to private elementary schools, and/or expensive test preparation programs had a significant

¹ They are Boston Latin Academy, Boston Latin School, and the John D. O’Bryant School of Mathematics and Science.

² On a motion to dismiss, the Court may consider documents (1) whose authenticity is not in dispute, (2) central to Plaintiff’s claim, or (3) to which the Complaint sufficiently refers, as well as (4) official public records. *Haley v. City of Bos.*, 657 F.3d 39, 46 (1st Cir. 2011) (citing *In re Colonial Mortg. Bankers Corp.*, 324 F.3d 12, 15 (1st Cir. 2003)); *Watterson v. Page*, 987 F.2d 1, 3 (1st Cir. 1993); *see also* Fed. R. Evid. 201 (permitting judicial notice of a “fact that is not subject to reasonable dispute”). This includes records from public meetings, whether the Complaint references them or not. *See, e.g., Tyler v. City of Kingston*, 74 F.4th 57, 62 & n.4 (2d Cir. 2023) (affirming 12(b)(6) dismissal and taking judicial notice of facts contained in city council’s public agenda posted online); *Avanru Dev. Grp., Ltd. v. Town of Swansey*, 777 F. Supp. 3d 63, 77 (D.N.H. 2025) (granting 12(b)(6) motion based in part on publicly available meeting minutes and transcripts); *Alston v. Town of Brookline, Mass.*, No. CV 15-13987-GAO, 2016 WL 5745091, at *16 (D. Mass. Sept. 30, 2016) (granting 12(b)(6) motion and taking judicial notice of membership and role of city advisory committee); *see also* Pl.’s Opp’n. to Defs.’ Mot. to Dismiss, ECF No. 27 at 18 n.8 [hereinafter Pl.’s Opp’n] (concession that “most of [the facts in this case] are publicly available”).

³ *See* NAACP Bos. Branch, et al., *A Broken Mirror: Exam School Admissions Fail to Reflect Boston’s Diversity* at 1 (May 2017), <https://lawyersforcivilrights.org/wp-content/uploads/2017/05/ABrokenMirror-ExamSchoolAdmissionsFailtoReflectBostonsDiversity.docx.pdf> (referenced at Compl. ¶ 53).

advantage, while many talented students without these resources were excluded from the Exam Schools.⁴ The ISEE underpredicted the potential of Black and Latinx examinees, leading the state to conclude that reliance on the ISEE “results in the exclusion of many Hispanic/Latino and African American/Black students from the [E]xam [S]chools.”⁵ In school year 2020-21, for example, Latinx and Black students comprised 35% and 27% of seventh-grade applicants, respectively, but only 21% and 14% of invitees. *See infra* Table 1; Table 2.⁶ The Prior Process also underidentified students experiencing homelessness, English language learners, and students with disabilities.⁷

In 2020, when the COVID-19 pandemic made it impossible to administer an admissions exam, the Committee adopted an interim plan that considered students’ grades and zip codes (“Zip Code Plan”). Compl. ¶¶ 33, 34.⁸ The plan distributed 80% of Exam Schools seats proportionately to the students with the highest GPAs in each zip code, based on the area’s school-aged population, and the remaining 20% of seats to the students with the highest GPAs citywide, regardless of zip code. *Id.* ¶ 34. This plan was challenged based in part on alleged discriminatory intent of Committee members. This Court and the First Circuit upheld the plan, which is not challenged here, as constitutional. *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.* (“*Boston Parent II*”), 89 F.4th 46 (1st Cir. 2023), *cert. denied*, 145 S. Ct. 15 (2024).

Since then, the Committee has used iterative admissions plans, eliminating the ISEE and

⁴ *Id.*; *see also* Mass. Dep’t of Elementary and Secondary Educ., District Review Report: Boston Public Schools at 145; *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.* (“*Boston Parent I*”), No. 21-cv-10330-WGY (D. Mass. Mar. 15, 2021), ECF No. 38-14 (attached as an exhibit to the Joint Agreed Statement of Facts).

⁵ District Review Report, *supra* note 4, at 147.

⁶ *See also* Exam School 3-Year Invitation Data by Race, *Boston Parent I*, No. 21-cv-10330-WGY (D. Mass. Mar. 15, 2021), ECF No. 38-16 (attached as an exhibit to the Joint Agreed Statement of Facts).

⁷ Off. of Data and Accountability, Bos. Pub. Schs, SY 25-26 Exam School Invitation Summary at 4 (June 2025), <https://drive.google.com/file/d/1tP8p64bb0Hd7EEGJKr0Syoy9fN2MdqTG/view> (showing that in SY20-21, 1% of admitted students were experiencing homelessness or in the care of the DCF, 3% were students with disabilities, and 1% were English language learners). The Complaint relies on this report. *E.g.*, Compl. ¶¶ 101, 110.

⁸ *See also id.*

relying on socioeconomic tiers. The Committee’s membership has changed substantially over these five years.⁹ The BPS superintendent, who played a role in proposing these plans, has changed, too. An examination of the Complaint’s factual allegations and the records before the Court,¹⁰ make clear that: (a) the four tier systems Plaintiff now challenges (collectively, the “Tier Systems”) do not condition a student’s admission based on race, (b) are not motivated by a desire to “racially balance,” and (c) do not disproportionately burden white or Asian students.

I. The Tier Systems

Original Tier System: In July 2021, a reconstituted Committee unanimously approved a new plan using socioeconomic tiers. Compl. ¶¶ 63, 66.¹¹ The plan was recommended by a task force charged with “expand[ing] the applicant pool” and “support[ing] student enrollment . . . such that rigor is maintained and the student body better reflects the racial, socioeconomic, and geographic diversity of all students (K-12) in the city of Boston.”¹² The task force rejected racial balancing or quotas. At a May 2021 meeting, a task force member stated: “We are clear that the work we are doing is *not to racially balance* the enrollments of” the Exam Schools.¹³ Rather, the task force discussed the importance of considering inequities¹⁴ in access to resources and promoted

⁹ The Committee’s seven voting members are appointed by the mayor from nominees chosen by a panel of community members. Sch. Comm. of the City of Bos., Bylaws (Mar. 23, 2005), <https://ma01906464.schoolwires.net/cms/lib/MA01906464/Centricity/Domain/162/BY%20LAWS%202005.pdf>, Art. I, § 1; Boston Public Schools, School Committee Nominating Panel, <https://www.bostonpublicschools.org/school-committee/school-committee-nominating-panel>.

¹⁰ See *supra* note 2.

¹¹ See also Boston Public Schools, Official Minutes of the Boston School Committee Meeting at 7-9, 12 (July 14, 2021), https://resources.finalsite.net/images/v1728690210/bostonpublicschoolsorg/edj6ebxacubnop2y3jns/minutesbscmeeti ngdocx_1.pdf [hereinafter July 14 Committee Meeting Minutes].

¹² Bos. Sch. Comm., Exam Schools Admissions Task Force Charge and Membership at 1 (Jan. 27, 2021), <https://resources.finalsite.net/images/v1728701592/bostonpublicschoolsorg/vaitfpbdddxbxatkusk/examschoolsadm issionstfchargemembershipmotion.pdf>.

¹³ Bos. City TV, Exam School Admissions Task Force Meeting 5-18-21, YouTube, at 1:17:07 (May 19, 2021), <https://www.youtube.com/watch?v=x6J3RF8p3gY&t=1s> (emphasis added).

¹⁴ Equity recognizes that each person has different circumstances and, thus, allocates opportunities and resources as needed to reach a fair and just outcome. See Nancy E. Dowd, *Children’s Equality Rights: Every Child’s Right to Develop to Their Full Capacity*, 41 Cardozo L. Rev. 1367, 1400 (2020); Wilfred U. Codrington, III, *The Benefits of Equity in the Constitutional Quest for Equality*, 43 Harbinger 105, 106 (2019); see also *Hecht Co. v. Bowles*, 321 U.S.

various forms of diversity, including neighborhood diversity—ensuring that the citywide Exam Schools identified talented students from across Boston.¹⁵

The plan scored students based on their GPA, with additional points awarded to students attending economically disadvantaged schools, living in public housing, experiencing homelessness, and in the care of the Department of Children and Families. *Id.* ¶ 63.¹⁶ The task force recommended assigning 20% of seats to the highest-scoring students overall, then distributing the remaining 80% to the highest-scoring students in each of eight socioeconomic “tiers,” starting with the lowest and moving to the highest. *Id.*¹⁷ The tiers were determined using socioeconomic characteristics, collected by the U.S. Census Bureau: (1) percent of persons below the poverty level, (2) percent of households occupied by the owner, (3) percent of families headed by a single parent, (4) percent of households where a language other than English is spoken, and (5) educational attainment. *Id.* ¶ 81.¹⁸ The Committee accepted then-Superintendent Brenda Cassellius’s recommendation to remove the 20% allocation such that 100% of seats would be assigned through socioeconomic tiers. *Id.* ¶¶ 65-66.¹⁹ The Committee accepted the task force’s

321, 329–30 (1944) (“The essence of equity jurisdiction has been the power of the [old English] Chancellor to do equity and to mold each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims.”).

¹⁵ See, e.g., Exam School Admissions Task Force Meeting 5-18-21, *supra* note 13, at 1:22:09 (stressing the need to consider an applicant’s current school given “inequities . . . around such things as test prep and resources”); Bos. City TV, Exam School Admissions Task Force Meeting 6-4-21, YouTube, at 00:13:19 (“One of our hopes is that we will be able to continue to see diversity among students whose home language may not be English.”), 16:07 (agreeing with the importance of linguistic diversity as a goal, and noting that for families who “are not proficient in English, . . . that represents a barrier in accessing information and resources . . . [which] is something we should be taking into account”), 1:06:04 (referring to the co-chair’s call for neighborhood diversity and analyzing proposals that “guarantee[] neighborhood diversity”), 1:08:27 (“So if we look at the data from the interim policy . . . we did see an increase across all diversity indicators.”), 1:19:14 (“I join[] the chorus of support for protecting . . . neighborhood diversity . . .”), 1:21:32 (emphasizing the need for a “learning environment that maximizes the economic [and] racial diversity of our city” as well as the need for “socioeconomic diversity”) (June 7, 2021), <https://www.youtube.com/watch?v=dB57NAlvcE8&t=7s>.

¹⁶ See also July 14 Committee Meeting Minutes, *supra* note 11, at 8.

¹⁷ See also *id.*

¹⁸ See also SY 25-26 Exam School Invitation Summary, *supra* note 7, at 3-4.

¹⁹ The task force recommended distributing 20% of seats to the highest scorers, regardless of tier. Compl. ¶ 63. The Complaint criticizes the elimination of this aspect of the plan. Compl. ¶ 59-60, 65, 76.

recommendation to eliminate an exam for the first year, given the continuing difficulties in test administration during COVID-19, and to introduce a new exam the following school year.²⁰

Second Tier System: The Exam Schools implemented a modified version of the Original Tier System for the 2023-24 school year, adding an additional factor: student performance on the Measures of Academic Progress (MAP) Growth assessment. *Id.* ¶¶ 63, 82.²¹ Unlike the ISEE, the MAP Growth assessment is more closely aligned with the BPS curriculum and undergoes bias review to ensure it more fairly assesses students from different subgroups.²² The plan distributed seats in the same way as the Original Tier System, assigning seats to the highest scoring students in each of eight socioeconomic “tiers,” starting with the lowest socioeconomic tier. *Id.*

Third Tier System: In January 2024, a reconstituted Committee of five voting members unanimously approved a new admissions plan proposed by a new superintendent, Defendant Mary Skipper. *Id.* ¶¶ 100-01.²³ This plan changed the number of points students could earn based on whether their school is economically disadvantaged. *Id.*²⁴

Fourth Tier System: In February 2025, a Committee of seven voting members—two newly appointed and five carrying over—approved on a 5-1 vote (another member abstained) a

²⁰ July 14 Committee Meeting Minutes, *supra* note 11, at 8.

²¹ See also Bos. Pub. Schs., Memorandum to Superintendent, SY23-24 Exam School Invitation Summary at 2 (June 7, 2023), <https://docs.google.com/document/d/1z9BA7sAx66q2OvCXix2e7lQ4LBAeYCDzRFQTRLbmQOQ/edit?tab=t.0> (cited in Compl. ¶ 91 n.21).

²² See Bos. Pub. Schs., Official Minutes of the Boston School Committee Meeting at 13, *Boston Parent I*, No. 21-cv-10330-WGY (D. Mass. March 15, 2021), ECF No. 38-1 (explaining that the assessment was recommended “because of its alignment to the MA Curriculum Frameworks, robust item bank, bias review, completion of Differential Item Functioning Analysis (DIF) to assess whether items are fair to students in different subgroups, built-in accommodations for English learners and students with disabilities . . . [and] avail[ability] in Spanish”) (attached as an exhibit to the Joint Agreed Statement of Facts). DIF analysis identifies test questions for potential bias where the question is answered differently by students from different subgroups even when they have the same overall ability level.

²³ See also Bos. Pub. Schs., Official Minutes of the Boston School Committee Meeting at 1, 7-8 (Jan. 10, 2024), https://resources.finalsite.net/images/v1728696612/bostonpublicschoolsorg/k7zwpxtdpfqpviamyo7q/bscmeetingminutesforapproval_3.pdf.

²⁴ See also *id.* at 7-8.

new admissions plan proposed by Superintendent Mary Skipper. *Id.* ¶ 108.²⁵ The plan cut the number of tiers in half and assigned seats to the highest scoring students in each of four socioeconomic “tiers,” starting with the lowest socioeconomic tier and moving to the highest. *Id.*

Fifth Tier System: On November 5, 2025, a reconstituted School Committee approved a new plan,²⁶ which eliminates the points granted to students attending economically disadvantaged schools and reduces the number of housing-related points.²⁷ The plan distributes 20% of seats to the highest scorers overall and the remaining 80% by tier, starting with the lowest tier.²⁸

II. Demographics

Boston, and the BPS student population, are racially, ethnically, and socioeconomically diverse.²⁹ As of 2023, Boston’s population of children ages 10 to 14 (i.e., the age group applying to the Exam Schools) was 8% Asian, 32% Black or African American, 28% Hispanic or Latinx, and 22% white.³⁰ As of 2023, the overall BPS population was 8% Asian, 29% Black or African American, 45% Hispanic or Latinx, and 15% white.³¹ Significant ethnic and socioeconomic

²⁵ See also Bos. Pub. Schs., Official Minutes of the Boston School Committee Meeting, at 1, 4 (Feb. 5, 2025), https://resources.finalsite.net/images/v1757438271/bostonpublicschoolsorg/rvpn8sdup1vn3subiixh/BSCMeetingMinutes2525docx_1.pdf.

²⁶ Bos. City TV, Boston School Committee Meeting 11/5/25, YouTube, at 2:32:55, <https://www.youtube.com/watch?v=bmd8PaBaZQQ>.

²⁷ Bos. Pub. Schs., Memorandum to Superintendent, Exam School Admissions Policy Recommendation at 1-2 (Sept. 25, 2025), <https://resources.finalsite.net/images/v1758836231/bostonpublicschoolsorg/cbbxywxepysowkhsu2/MemoExamSchoolsPolicyRecommendation92525.pdf>.

²⁸ *Id.*

²⁹ The demographics of Boston school-age children versus the BPS student population differ in part because approximately 30% of Boston K-12 school-aged children do not attend a BPS school. See Joint Agreed Statement of Facts, *Boston Parent I*, No. 21-cv-10330-WGY (D. Mass. Mar. 15, 2021), ECF No. 38 at ¶ 16.

³⁰ U.S. Census Bureau, 2023 American Community Survey (1-Year Estimate), tbls. B01001, B01001A, B01001B, B01001D, B01001I, <https://data.census.gov/chart?q=boston&d=ACS+1-Year+Estimates+Detailed+Tables> (last visited Nov. 10, 2025). The category “Hispanic or Latino” includes individuals of any race. See also Mem. in Support of Defs.’ Mot. to Dismiss, ECF No. 20 at 5 (using these same figures). As of the 2020 Census, Boston’s population of children ages 10 to 14 was 7% Asian, 34% Black, 34% Hispanic or Latinx, and 24% white. *2020 Census Demographic and Housing Characteristics*, U.S. Census Bureau tbls. P12 Sex by Age for Selected Age Categories, P12A for White Alone, P12B for Black Alone, P12D for Asian Alone, and P12H for Hispanic/Latino, <https://www.census.gov/data/tables/2023/dec/2020-census-dhc.html#accordion-0c809bf553-item-653e6eb0b9> (last visited Nov. 10, 2025).

³¹ Mass. Dept. of Ed., Enrollment Data for Boston (School Year 2023-24), <https://profiles.doe.mass.edu/profiles/student.aspx?orgcode=00350000&orgtypecode=5&fycode=2024>.

diversity exists within aggregated categories. Notably, Asian communities encompass a broad range of groups with different ethnicities and socioeconomic statuses, including Boston's communities of Vietnamese Americans, whose per capita income is half the city average, and Chinese Americans, whose per capita income is three-quarters the city average.³²

Under each of the Tier Systems, invitees' demographics have roughly tracked applicant demographics. For example, as shown in **Table 1**, white students have made up between 24% and 32% of invitees over the last four years, while as shown in **Table 2**, white students have made up between 28% and 32% of applicants in the same time period.

Table 1: 7th Grade Invitees³³

	Prior System	Zip Code Plan	Original Tier System	Second Tier System	Third Tier System	Fourth Tier System
Race	SY2020-21	SY2021-22	SY2022-23	SY2023-24	SY2024-25	SY2025-26
Asian	21%	18%	21%	18%	20%	20%
Black	14%	23%	24%	22%	22%	15%
Latinx	21%	23%	26%	29%	26%	26%
Other	5%	6%	6%	5%	7%	7%
White	40%	31%	25%	24%	25%	32% ³⁴

³² See APIs CAN Decl., Mot. to Intervene at ¶¶ 10-12 (observing that “[s]tereotypes like the model minority myth, the wealth and academic achievement of a few Asian Americans, many of whom are East Asian, also obscure the reality that not all Asian Americans have the same educational opportunities and attainment,” criticizing BPS’ failure to disaggregate admissions data under the “Asian” umbrella, and comparing socioeconomic data for Vietnamese versus Chinese Americans in Boston).

³³ Table 1 uses the same figures as the Complaint, displaying data from the source identified in footnote 26 of the Complaint: SY 25-26 Exam School Invitation Summary, *supra* note 7, at 5.

³⁴ The Complaint misstates this figure as 30%. Compl. ¶ 113 (“White students made up 30% of those admitted to the Exam Schools in this fourth year of the Tier System, which slightly outstripped the share of white applicants in the applicant pool.”). The source on which the Complaint relies for data for school year 2025-26, *see* Compl. ¶¶ 108-15 & n.26, shows that this figure is 31.7%. *See* SY 25-26 Exam School Invitation Summary, *supra* note 7, at 5. Defendants also identified this error. Mem. in Support of Defs.’ Mot. to Dismiss, ECF No. 20, at 5 (correctly displaying this figure as 31.7%). This official public record, which the Complaint incorporates by reference, controls at the motion-to-dismiss stage. *See infra* Legal Standards.

Table 2: 7th Grade Applicants³⁵

	Prior System	Zip Code Plan	Original Tier System	Second Tier System	Third Tier System	Fourth Tier System
Race	SY2020-21	SY2021-22	SY2022-23	SY2023-24	SY2024-25	SY2025-26
Asian	13%	17%	18%	17%	16%	16%
Black	27%	22%	21%	22%	20%	19%
Latinx	35%	27%	24%	27%	27%	30%
Other	4%	5%	6%	6%	7%	7%
White	21%	29%	32%	29%	29%	28%

Under the Tier Systems, both white and Asian children represent a greater share of Exam Schools invitees than of Boston’s population of children ages 10 to 14. For example, as shown in **Table 1**, in school year 2023-24, white students made up 24% of invitees, as compared to 22% of Boston’s population children ages 10 to 14 as of 2023.³⁶

LEGAL STANDARDS OF REVIEW

I. Motion to Dismiss Under Rule 12(b)(6)

A court should dismiss for failure to state a claim if the complaint fails to set forth “factual allegations, either direct or inferential, respecting each material element necessary to sustain recovery under some actionable legal theory.” *Gagliardi v. Sullivan*, 513 F.3d 301, 305 (1st Cir. 2008) (internal citation omitted); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (To survive a motion to dismiss, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The Court must “accept as true all well-pleaded facts set forth in the complaint and draw all reasonable inferences therefrom in the pleader’s favor.” *Artuso v. Vertex Pharm., Inc.*, 637 F.3d 1, 5 (1st Cir. 2011). But “the tenet that a court must accept a complaint’s allegations as true is

³⁵ Table 2 uses the same figures as the Complaint. The first four columns display data from Exhibit A of the Complaint, and the final two display data from the source in footnote 25 of the Complaint. Bos. Pub. Schs., Exam School Admission Policy Review at 26 (June 17, 2025), <https://resources.finalsite.net/images/v1750197966/bostonpublicschoolsorg/jleiahqg3tggwjuomsn6/FINALExamSchoolsSCUpdatePPT-61725.pdf>.

³⁶ See *supra*, note 30.

inapplicable to threadbare recitals of a cause of action's elements, supported by mere conclusory statements.” *Iqbal*, 556 U.S. at 663 (citing *Twombly*, 550 U.S. at 555).

II. Equal Protection Claims for Facially Race Neutral, Evenly Applied Policies

The Equal Protection Clause of the Fourteenth Amendment guarantees that all persons receive equal protection of the laws, regardless of their race. U.S. Const. amend. XIV, § 1. In cases like this one, where a plaintiff challenges a race neutral, evenly applied admissions policy as violative of the Equal Protection Clause, the complaint must sufficiently allege “proof of both disparate impact and discriminatory intent.” *Boston Parent II*, 89 F.4th at 57 (citing *Vill. of Arlington Heights v. Metro Hous. Dev. Corp.*, 429 U.S. 252, 266-68 (1977)). In the absence of disparate impact and discriminatory purpose, such a policy “need only bear a rational relationship to some legitimate governmental purpose.” *Shurtleff v. City of Bos.*, 986 F.3d 78, 98 (1st Cir. 2021).

As to disparate impact, Plaintiff must allege that the policy “bears more heavily on one race than another.” *Arlington Heights*, 429 U.S. at 265–66. As to discriminatory purpose, Plaintiff must allege enough to “raise a reasonable expectation that discovery will reveal evidence of illegal” conduct. *Bell Atl. Corp.*, 550 U.S. at 556. Consideration or awareness of race while developing or selecting a policy is not in and of itself discriminatory. *North Carolina v. Covington*, 585 U.S. 969, 978 (2018). “‘Discriminatory purpose’ . . . implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.” *Pers. Adm’r of Massachusetts v. Feeney*, 442 U.S. 256, 279 (1979)

ARGUMENT

I. The Complaint Fails to Sufficiently Allege that the Tier Systems Have a Disparate Impact

A. Plaintiff Fails to Plead that the Tier Systems Have Caused a Disparate Impact under *Boston Parent II*

Defendants fail to plausibly allege that white or Asian students are disparately impacted by the Tier Systems. To determine whether an admissions policy has a disparate impact, the Court must compare the demographics of the “eligible school-age population” to the demographics of invited students. *Boston Parent II*, 89 F.4th at 59, 59 n.5. In the earlier challenge, both the First Circuit and this Court used the population of all school-age children in Boston as the “eligible school-age population”—*not* the Exam Schools’ applicant pool. *Id.* at 59 n.5 (analyzing the “school-age population in Boston”);³⁷ *Boston Parent I*, 2021 WL 4489840, *7, *15 (same).³⁸

Using this controlling analysis, white students make up a substantially larger proportion of Exam Schools invitees than the eligible school-age population—defined here as the population of Boston children ages 10 to 14.³⁹ White children made up 24% of Exam School invitees in school year 2023-24, but only 22% of Boston’s population of children ages 10 to 14 in 2023. *See*

³⁷ Plaintiff is therefore wrong to argue that *Boston Parent II* made only a “passing reference” to school-age population. Pl.’s Opp’n at 12.

³⁸ Notably, the U.S. Department of Education’s Office of Civil Rights has also historically employed the same analysis to determine disparate impact in Title VI proceedings. *See, e.g.*, Gallup-McKinley Cnty. Sch. Resol., OCR Case No. 08-11-5002 (2017) (comparing “the number of American Indian students enrolled in the District and the number of American Indian students who participate in the District’s [gifted and talented] program and honors and AP courses”); *see also Thomas v. Sch. Bd. St. Martin Par.*, 544 F. Supp. 3d 651, 673 (W.D. La. 2021) (in desegregation case, comparing participation in Science, Technology, Engineering, and Math programming to school-wide enrollment), *aff’d in part, rev’d in part on other grounds sub nom. Borel v. Sch. Bd. St. Martin Par.*, 44 F.4th 307 (5th Cir. 2022).

³⁹ The population of Boston children age 10 to 14 is a more precise comparator than the population of *all* school-age children in Boston. As explained in the text, the First Circuit and this Court used the population of *all* school-age children in the earlier challenge, based on the data the parties jointly submitted. Using this more specific age range narrows to the population of children in the age range eligible to apply to the Exam Schools, including children outside the BPS system (e.g., private, charter, and parochial schools, as well as home-schooled students). *See, e.g., Exam Schools FAQs*, Bos. Pub. Schs., <https://www.bostonpublicschools.org/academics/exam-schools/admissions-faqs>.

supra Relevant Facts, Section II. So too for Asian students. *See id.* (18% and 8%, respectively).⁴⁰

The Complaint’s allegations therefore fall well short of the plausibility standard.

B. Even Using the Plaintiff’s Preferred Analysis Comparing Applicants to Invitees, Plaintiff Fails to Plausibly Allege that the Tier Systems Have Caused a Disparate Impact

Instead of the comparator required by *Boston Parent II* and *Boston Parent I*, Plaintiff uses a comparison of Exam School invitees to the Exam Schools’ applicant pool to plead disparate impact.⁴¹ *See, e.g.*, Compl. ¶¶ 87, 114. Narrowing the comparator from the eligible school-age population to the pool of students who opted to apply fails to account for those students who would have applied absent the barriers to access the Exam Schools—barriers that the Tier Systems lower but do not eliminate.⁴² Still, even using Plaintiff’s chosen comparator, Plaintiff fails to plausibly plead that the Tier Systems cause a disparate impact.

To state a claim that several iterations of a policy have caused a disparate impact over multiple years, a complaint must allege significant, recurring underrepresentation, beyond natural fluctuations. *See Castaneda v. Partida*, 430 U.S. 482, 496 n.17 (1977) (“[I]n any given drawing some fluctuation from the expected number is predicted.”). In general, “[s]mall disparities are less likely than large ones to indicate that a system is not equally open.” *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 671 (2021). Contrary to Plaintiff’s argument, *see* Pl.’s Opp’n at 14 n.6, these requirements apply equally to intentional discrimination claims relying on a disparate impact

⁴⁰ The same trend holds when comparing Exam Schools invitees to the BPS student population. White children made up 24% of Exam School invitees in school year 2023-24, but only 15% of the BPS student population. For Asian children, these figures are 18% and 8%, respectively.

⁴¹ Resisting *Boston Parent II*’s comparator, Plaintiff complains that using “the school-age population [as a] comparator is nonsensical,” pointing to a Title VII case involving “special qualifications.” Pl.’s Opp’n at 13 (citing *Bos. Police Superior Officers Fed’n v. City of Bos.*, 147 F.3d 13, 21 (1st Cir. 1998)). But that case involved promotions to supervisory roles in law enforcement, not—as this case involves—an admissions process for public schools open citywide.

⁴² *See, e.g.*, *BPS Officials Won’t Let Students Take the MAP Growth Test in Spanish for Exam School Admissions* (Jan. 18, 2023), Bos. Parents Schoolyard News <https://schoolyardnews.com/bps-officials-wont-let-students-take-the-map-growth-test-in-spanish-for-exam-school-admissions-5035ee039b64>.

showing as they do to statutory disparate impact claims.⁴³ To plausibly plead disparate impact, isolated or insignificant reductions in representation do not suffice; Plaintiff must plead significant disparities, using a proper comparator. *Compare Castaneda*, 430 U.S. at 496 n.17, and *Anderson*, 375 F.3d at 90 (finding “a small net loss of seats to white students in selected schools” insufficient to demonstrate disparate impact), with *Fudge v. City of Providence Fire Dep’t*, 766 F.2d 650, 658 (1st Cir. 1985) (“in cases involving a narrow data base, the better approach is for the courts to require a showing that the disparity is statistically significant”), and *Gaines v. Bos. Herald, Inc.*, 998 F. Supp. 91, 105 (D. Mass. 1998) (recurring underrepresentation over multiple years supported disparate impact finding).⁴⁴

Even using the applicant pool comparator, the Complaint alleges nothing more than natural fluctuations—showing both minor underrepresentation *and* overrepresentation of white students—as opposed to a cognizable disparate impact. As shown in **Table 3**, even using Plaintiff’s preferred comparison of a group’s share of invitees to the group’s share of applicants, the Tier Systems are only associated with minor percentage-point variations across *all* demographic groups.

Table 3: Percentage-Point Difference Between 7th Grade Invitees and Applicants⁴⁵

	Prior System	Zip Code Plan	Original Tier System	Second Tier System	Third Tier System	Fourth Tier System
Race	SY2020-21	SY2021-22	SY2022-23	SY2023-24	SY2024-25	SY2025-26
Asian	+8%	+1%	+3%	+1%	+4%	+4%
Black	-14%	+1%	+3%	0%	+2%	-4%
Latinx	-14%	-4%	+2%	+2%	-1%	-4%
Other	+1%	+1%	0%	-1%	0%	0%
White	+19%	+2%	-8%	-5%	-4%	+4% ⁴⁶

⁴³ See, e.g., *Anderson v. City of Bos.*, 375 F.3d 71, 89 (1st Cir. 2004) (finding disparate impact showing insufficient in intentional discrimination case); *Boston Parent II*, 89 F.4th at 46, 57 (analyzing whether reductions in admissions rates were “at least minimally significant” and not “entirely random”).

⁴⁴ See also *Int’l Bhd. of Teamsters v. United States*, 431 U.S. 324, 339 n.20 (1977) (“longlasting and gross disparity” may constitute proof of discrimination); *Louis v. SafeRent Sols., LLC*, 685 F. Supp. 3d 19, 39 (D. Mass. 2023) (finding that plaintiff’s allegations of “significant statistical disparities” sufficed at pleading stage).

⁴⁵ Table 3 uses the same figures and sources as Tables 1 and 2.

⁴⁶ See note 34.

Said differently, as Defendants point out, ECF No. 20 at 11-13, as to white students, the Complaint fails to allege “longlasting and gross disparity,” *Int’l Bhd. of Teamsters*, 431 U.S. at 340 n.20, above and beyond “fluctuation[s]” from one year to another, *Castaneda*, 430 U.S. at 496 n.17. Nor does the Complaint allege any “stark” or even “clear” pattern of disparate impact. *Anderson*, 375 F.3d at 89. And because the small disparities operate in opposite directions (sometimes in white students’ favor, sometimes not), the Complaint fails to plausibly allege, and Plaintiff cannot ultimately demonstrate, any significant impact (statistical or otherwise) on white students attributable to the Tier Systems. *See SafeRent*, 685 F. Supp. 3d at 39.⁴⁷

Though the Complaint makes conclusory allegations of discriminatory *intent* as to Asian students,⁴⁸ it makes no allegations of disparate impact on Asian students, *e.g.*, Compl. ¶ 129 (alleging that “white students have been admitted at rates below [their] share of white students in the applicant pool” but making no similar allegation as to Asian students); *id.* ¶ 3 (similar). For good reason: As shown in **Table 3**, using Plaintiff’s preferred comparator, Asian students have consistently made up a slightly greater share of invitees than applicants under each of the Tier Systems. Moreover, the aggregated “Asian” category obscures substantial socioeconomic diversity across the multitude of Asian ethnic subgroups, including communities that have historically faced unfair barriers in accessing the Exams Schools—barriers that the Tier Systems have reduced.⁴⁹

II. The Complaint Fails to Allege Discriminatory Intent

Plaintiff also fails to allege that the Tier Systems are motivated by discriminatory intent.

⁴⁷ Cf. Pl.’s Opp’n at 14 (“[E]ven if statistical significance were required, the Coalition would only have to allege enough to make it plausible that the impact was statistically significant.”).

⁴⁸ The Complaint’s allegations concerning discriminatory intent as to Asian students are exceedingly bare. *E.g.*, Compl. ¶ 3 (“[T]he School Committee has twice replaced the venerable merit-based process with criteria designed to limit the proportion of white and Asian-American students[.]”).

⁴⁹ *See* APIs CAN Decl., Mot. to Intervene, at ¶¶ 10-12 (describing socioeconomic differences across Asian communities in Boston); SY 25-26 Exam School Invitation Summary (June 2025), *supra* note 7, at 4 (showing that share of Exam Schools invitees attending economically disadvantaged schools has increased since Committee began using the Tier Systems).

Whether a “discriminatory purpose was a motivating factor . . . requires a sensitive inquiry into the available circumstantial and direct evidence of intent.” *Arlington Heights*, 429 U.S. at 266-68 (internal quotations omitted). The relevant factors are: “[1] the degree of disproportionate racial effect, if any, of the policy; [2] the justification, or lack thereof, for any disproportionate racial effect that may exist; [3] and the legislative or administrative historical background of the decision.” *Anderson*, 375 F.3d at 83 (citing *Arlington Heights*, 429 U.S. at 266-68).

A. The Tier Systems Have No Disproportionate Racial Effect

As discussed *supra*, the Tier Systems have no disproportionate racial effect, even using Plaintiff’s preferred comparator. As shown in **Table 3**, *supra*, the demographics of applicants are roughly similar to the demographics of invitees, demonstrating that no racial group faces disproportionate difficulty in securing admission to the Exam Schools. Indeed, as compared to the Prior System, the Tier Systems impose substantially less racial disproportionate impact.

B. Plaintiff Fails to Allege that the Committee Adopted the Tier Systems with an Unlawful Motive

The Committee adopted the Tier Systems with a goal of removing barriers that disproportionately affect certain groups, and “there is nothing constitutionally impermissible about a school district including racial diversity as a consideration and goal in the enactment of a facially neutral plan.” *Boston Parent II*, 89 F.4th at 62. The Tier Systems, which rely on a student’s socioeconomic status, are nothing like the student assignment plan that the Supreme Court struck down in *Parents Involved*, which used a student’s race as a “tiebreaker” in admissions to bring a school’s demographics in line with the district-wide demographics. *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist. No. 1*, 551 U.S. 701, 709 (2007). The Tier Systems were designed to address unfair barriers in the Exam Schools’ admissions process. They fall under the range of constitutionally permissible race neutral initiatives. “When setting their larger goals, local

[municipal] authorities may choose to foster diversity and combat racial isolation with race[] neutral tools, and mere awareness of race in attempting to solve the problems facing inner cities does not doom that endeavor at the outset.” *Texas Dep’t of Hous. & Cmty. Affs. v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519, 545 (2015) (acknowledging that “[s]chool boards may pursue the goal of bringing together students of diverse backgrounds and races through . . . drawing attendance zones with general recognition of the demographics of neighborhoods” (citation omitted)).

This remains true after *Students for Fair Admissions, Inc v. President & Fellows of Harvard Coll.* (“*SFFA*”), 600 U.S. 181 (2023), where the Supreme Court struck down two universities’ *race conscious* admissions policies, but affirmed that the pursuit of educational benefits of diversity is a “commendable goal.” *Id.* at 214. *See also Boston Parent II*, 89 F.4th at 61 (concluding that *SFFA* did not change the law “governing the constitutionality of facially neutral, valid secondary education admissions policies”). Indeed, in concurrences, the Justices stressed that valid, facially neutral selection criteria—like the consideration of socioeconomic status here—are lawful. *See SFFA*, 600 U.S. at 299-300 (Gorsuch, J., with Thomas, J., concurring) (universities “could obtain significant racial diversity” by increasing points for “socioeconomically disadvantaged applicants”); *id.* at 280 (Thomas, J., concurring) (“If an applicant has less financial means . . . , then surely a university may take that into account”). Thus, Plaintiff’s allegations that the Committee desired an admissions process in which “everybody had the same fair shot at the [E]xam [S]chools geographically, racially or by income,” Compl. ¶ 68, and that resulted in a “student body [that] better reflects the racial, socioeconomic, and geographic diversity of all students (K-12) in the city of Boston,” *id.* ¶ 51, fail to raise an inference of discriminatory intent.

Nor does a desire to redress racial discrimination constitute a racially discriminatory purpose. *See Raso v. Lago*, 135 F.3d 11, 16 (1st Cir. 1998) (explaining that “racial motive” is not

a synonym for constitutional violation); *Jana-Rock Constr., Inc. v. N.Y. State Dep't of Econ. Dev.*, 438 F.3d 195, 211 (2d Cir. 2006) (“[T]o equate a ‘desire to eliminate the discriminatory impact’ on some disadvantaged groups with ‘an intent to discriminate against’ other groups ‘could seriously stifle attempts to remedy discrimination.’”). BPS and its Exam Schools were racially segregated in violation of the Fourteenth Amendment for decades, Compl. ¶¶ 22-23, and “[t]here is no gainsaying that the system still must confront the fallout from its days of over-serving what were traditionally white communities and under-serving what were traditionally minority, then mostly [B]lack, communities,” *Anderson*, 375 F.3d at 84. In this context, no discriminatory intent can be inferred from the Complaint’s allegations that the Committee aimed to “eliminate structures that support white supremacy,” Compl. ¶ 64, and “rectify[] historic racial inequities afflicting Exam School admissions for generations,” *id.* ¶ 32, when it went about doing so through valid, race neutral measures. As Justice Kavanaugh explained in his *SFFA* concurrence, “the effects of past racial discrimination still persist” and public schools still “‘can, of course, act to undo the effects of past discrimination in many permissible ways that do not involve classification by race.’” 600 U.S. at 317 (Kavanaugh, J., concurring) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 526 (1989) (Scalia, J., concurring in the judgment), 488 U.S. 469, 526 (1989) (Scalia, J., concurring in the judgment)).

The Complaint makes conclusory allegations that the goal of the Tier Systems was racial balancing. Compl. ¶¶ 3, 57-58. Racial balancing is the practice of “assur[ing] within [a] student body some specified percentage of a particular group merely because of its race or ethnic origin,” *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003) (citation omitted). But records incorporated by reference in the Complaint control over the Complaint’s conclusory allegations and rebut this

mischaracterization of the Committee’s aims.⁵⁰ Members of the task force charged with developing the Tier System explicitly acknowledged that its goal was *not* to conduct any racial balancing, but rather to ensure that all students had an equal opportunity to compete for admission.

Finally, the Complaint asserts that the Tier Systems work as a “racial proxy” because white students make up a larger proportion of the top socioeconomic tiers which include more students overall and where a higher cut off score was needed to gain admission to the Exam Schools. Compl. ¶¶ 73, 88-115. This is insufficient to support discriminatory intent. Proxy discrimination occurs when the challenged policy treats individuals differently based on “seemingly neutral criteria” so closely associated with the disfavored group that discrimination on that basis is the functional equivalent of facial discrimination against the disfavored group. *See Pac. Shores Prop., LLC v. City of Newport Beach*, 730 F.3d 1142, 1160 n.23 (9th Cir. 2013); *see also Boston Parent II*, 89 F.4th at 61 (explaining that using “facially neutral criteria . . . highly correlated with an individual’s race . . . [but with] little independent validity” might raise questions about discriminatory intent).

But here, the facially neutral Tier Systems use independently valid criteria, grounded in best practices and unrelated to membership in the allegedly disfavored groups. Any assessment of merit is necessarily influenced by access to resources and opportunities to develop credentials, which is precisely why experts recommend using socioeconomic norms to identify academically exceptional students.⁵¹ Low-income students typically have less access to tutoring and test prep, and parents with limited English proficiency or less educational attainment may believe in the importance of education but lack the means to provide academic enrichment.⁵² That students in

⁵⁰ *See Avanru*, 777 F. Supp. 3d at 77 (“When exhibits attached to a Complaint contradict the general and conclusory allegations of the pleading, the exhibits govern.”) (quoting *Gill v. Judd*, 941 F.3d 504, 514 (11th Cir. 2019)).

⁵¹ *See* Br. of the Nat’l Ass’n for Gifted Children as *Amicus Curiae* in Support of Appellees and Affirmance, *Bos. Parent Coal. for Acad. Excellence Corp. v. Sch. Comm. for City of Bos.*, No. 21-1303 (1st Cir. Sept. 9, 2023), at 20-22.

⁵² *Id.* at 3-4, 11.

the top socioeconomic tiers of the Tier Systems have higher overall academic scores than students in lower tiers only confirms this reality, and does not mean that students with more resources are better qualified or have more potential for success. When students are only compared to other students within their same socioeconomic status, the bias introduced into the admissions process by the influence of wealth, social status, and familial educational attainment is decreased, because students within that tier are more likely to have more similar resources than students from other tiers.⁵³ This research-backed approach does not constitute a “racial proxy,” nor is it evidence of *racial* discrimination. *See SFFA*, 600 U.S. at 220 (explaining that the “entire point of the Equal Protection Clause is that treating someone differently because of their skin color is *not* like treating them differently because they are from a city or from a suburb”).

C. The History of the Tier Systems Does Not Support Discriminatory Intent

Plaintiff fails to identify a history establishing discriminatory intent on the part of any of the task force members, or of Committee members who voted to adopt and modify the Tier Systems. In fact, the background leading to the Tier Systems’ adoption plainly rebukes any argument that their design and adoption was motivated by “racial balancing.” Paragraphs 57 to 70 of the Complaint, which Plaintiff points to as relevant history, Pl.’s Opp’n at 11, only confirm that decisionmakers were interested in equalizing access to the Exam Schools for all students—a lawful objective. Despite Plaintiff’s suggestion otherwise, mention of “unequal barriers,” Compl. ¶ 58, “geographic, socioeconomic, and racial diversity,” *id.* ¶ 61, and similar terms simply do not amount to evidence of “official actions taken for invidious purposes.” *Arlington Heights*, 429 U.S. at 267. Instead of identifying contemporaneous statements by decisionmakers, Plaintiff relies on years-old text messages between two Committee members and “hot mic” statements by a third member,

⁵³ *Id.* at 21.

regarding white and Asian parents and the Zip Code Plan, *see* Compl. ¶¶ 39–41—an entirely different admissions policy not challenged in this case. *See* ECF No. 20 at 15.

Even if these comments reflected discriminatory intent as to the Zip Code Plan, they are significantly less illuminating as to the Tier Systems for three reasons: (1) the Tier Systems are substantively different than the Zip Code Plan, (2) decisionmakers have changed, and (3) nothing else establishes discriminatory intent. *See, e.g., Abbott v. Perez*, 585 U.S. 579 (2018) (finding that evidence of discriminatory intent motivating earlier redistricting plan was insufficient to show that later plan was similarly motivated); *Greater Birmingham Ministries v. Sec’y of State*, 966 F.3d 1202, 1227 (11th Cir. 2020) (“[T]he statements . . . were not made about the law at issue . . . and thus do not evidence discriminatory intent . . .”); *Ramirez Rodriguez v. Boehringer Ingelheim Pharms., Inc.*, 425 F.3d 67, 80 (1st Cir. 2005) (finding biased comments by supervisors insufficient to establish discriminatory animus where they were not involved in the decision to terminate).

First, the Tier Systems are substantively different from the Zip Code Plan. Instead of considering an applicant’s zip code, applicants are placed into tiers based on five socioeconomic characteristics. *See supra* Relevant Facts, Section I. The Tier Systems. Moreover, both the admissions criteria and the structure of the tiers have consistently been updated. *See id.* And on November 5, 2025, the Committee adopted the most significant change yet, allocating 20% of seats to the highest-scoring students districtwide, without regard for socioeconomic tier. These modifications substantially weaken any connection between the former Committee members’ statements and the challenged Tier Systems.

Second, decisionmakers have all changed. As discussed *supra*, the Tier System was initially recommended by a task force and later updated by multiple iterations of the Committee. But Plaintiff fails to allege discriminatory intent on the part of task force members involved in the

creation of the Original Tier System, or any Committee member who voted to adopt the Tier Systems. The alleged discriminatory animus of three former Committee members is insufficient to establish discriminatory intent as to the Tier Systems because they resigned before the Original Tier System was adopted and played no role in later Tier Systems. *Ramirez Rodriguez*, 425 F.3d at 80-81. Indeed, the Committee’s membership has substantially changed over the last several years, and BPS has installed a new superintendent. *Cf.* Compl. ¶ 116 (identifying the Committee, superintendent, and “BPS officials” as decisionmakers).

Finally, even if the Court found that the alleged discriminatory intent behind the Zip Code Plan carried over to the Tier Systems, Plaintiff’s allegations still fall short under the *Arlington Heights* analysis that the Court must conduct—including the absence of discriminatory effect and of any other direct or circumstantial evidence suggesting an intent to discriminate.⁵⁴

CONCLUSION

Because the Complaint fails to allege either disparate impact or discriminatory intent, the Tier Systems are reviewed under a rational-basis standard, not strict scrutiny. Because Plaintiff does not argue that the Tier Systems fail to satisfy rational-basis review, *see* Compl. ¶¶ 121-34; *see generally* Pl.’s Opp’n, the Court should dismiss the Complaint.

⁵⁴ To the extent that the Court has questions about lingering taint that are not answered on this record—for example, additional details about the differences in the admissions plans, steps the Committee took in relation to the three Committee members who resigned, or discussions leading to changes in the admissions plans over the last four years—the Court should permit a short period of discovery narrowly limited to those questions.

Respectfully Submitted,
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CERTIFICATE OF SERVICE

I hereby certify that this document will be sent electronically to the registered participants as identified on the Notice of Electronic Filing on November 24, 2025.

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