

**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 MOTION OF BOSTON EDUCATION
JUSTICE ALLIANCE AND THE ASIAN PACIFIC ISLANDERS CIVIC ACTION
NETWORK TO INTERVENE AS DEFENDANTS**

INTRODUCTION

For the second time in five years, Plaintiff Boston Parent Coalition for Academic Excellence challenges the facially neutral, evenly applied admissions policies of Boston’s three prestigious, publicly funded Exam Schools. The “Exam Schools” are Boston Latin Academy (“BLA”), Boston Latin School (“BLS”), and John D. O’Bryant School of Science and Mathematics (“O’Bryant”). Proposed Intervenors represent Black, Latinx, and Asian communities across Boston, including families with children who currently attend or plan to apply to the Exam Schools, and seek to intervene as defendants. Proposed Intervenors have long pushed for greater equity across Boston Public Schools (“BPS”), including an equal opportunity to compete for admission to the Exam Schools for students of all races and socioeconomic statuses. In part because of this advocacy, Defendants have taken steps to improve equitable access to the Exam Schools over the last several years.

In 2021, Plaintiff unsuccessfully challenged a previous race neutral, evenly applied Exam School admissions policy, the “Zip Code Plan.” Plaintiff now challenges the subsequent series of race neutral, evenly applied admissions policies to the Exam Schools (the “Tier Systems”).

Broadly, the Tier Systems assign seats at the Exam Schools to the highest performing students in various socioeconomic tiers, taking into account factors such as whether the applicant attends an economically disadvantaged school, lives in public housing, is experiencing homelessness, and/or is in custody of the state’s abuse and neglect system.¹ Plaintiff challenges the Tier System as racially discriminatory against white and Asian students, but fails to plead any evidence that supports this claim. Instead, in essence, Plaintiff argues that any admissions policy

¹ Bos. Pub. Schs., Official Minutes of the Boston School Committee Meeting at 1, 7-12 (July 14, 2021), https://resources.finalsite.net/images/v1728690210/bostonpublicschoolsorg/edj6ebxacubnop2y3jns/minutesbscmeeti ngdocx_1.pdf [hereinafter July 14 Committee Meeting Minutes].

that departs from the prior status quo and attempts to address Boston's historical underidentification of qualified Black, Latinx, and underserved Asian students for its top schools should be struck down.

In this litigation, Proposed Intervenors timely move to defend their distinct interests, as representatives of those students who were historically excluded and who support Defendants' reforms to the Exam Schools admissions process. An adverse ruling in this case impairs Proposed Intervenors' interests by denying the students they represent an equal opportunity to compete for admission to the Exam Schools and by curtailing their organizations' broader advocacy for policies that address systemic inequities in BPS. Defendants do not—and cannot—adequately defend these particular interests, as confirmed by their most recent change to the Tier Systems over Proposed Intervenors' objections. This change rolls back measures meant to more fairly identify qualified students for admission to the Exam Schools. Proposed Intervenors can provide this Court with critical context about how educational opportunities have improved for students of color at the Exam Schools, why the opportunity to attend these schools is so valuable for the students and families who are represented by Proposed Intervenors, and how equalizing Exam Schools access ultimately benefits *all* Boston students.

Proposed Intervenors ask that this Court grant them intervention. As this Court recognized when it granted intervention by similar parties in *Boston Parent Coalition for Academic Excellence Corp. v. The School Committee of the City of Boston*, No. 21-10330-WGY (D. Mass.) (“*Boston Parent P*”), Proposed Intervenors are uniquely placed to fill in that missing context by bringing a wealth of knowledge and expertise in the experiences of those Bostonians who stand to lose the most if Plaintiff prevails in this lawsuit: the students.

PROPOSED INTERVENORS

Boston Education Justice Alliance (“BEJA”) is a community-driven membership organization that advocates on behalf of communities of color and low-income families in Boston for a more just and equitable BPS system. BEJA Decl. ¶ 5. BEJA was founded in 2013 in response to persistent inequality in public schools and the increased efforts to privatize public schools. BEJA focuses on equalizing access to the Exam Schools, providing support to multilingual families, helping families during school closures, and improving school facilities. *Id.* BEJA’s members include groups representing Boston’s Black, Latinx, and Asian communities, youth empowerment programs, faith-based institutions, a teacher’s union, groups serving immigrant and refugee families, and service providers for LGBTQ+ youth, children involved in the criminal legal system, and families experiencing housing insecurity. *Id.* ¶ 7.

BEJA seeks to intervene on behalf of itself and its constituent members, who represent children who are applying to the Exam Schools. These members include St. Stephen’s Youth Program, an organization that promotes educational equity and organizes marginalized communities, serving hundreds of students ages 5 to 25 in neighborhoods across Boston. *Id.* ¶ 10. Daniela R. is a parent member of St. Stephen’s, whose son is in the eighth grade at Match Charter Public School in Boston. *Id.* ¶ 11. Daniela’s son plans to apply to the Exam Schools, as he receives good grades in school and wants a well-resourced high school education that will prepare him for college. *Id.* Daniela’s son’s pathway to the Exam Schools could be adversely impacted by a successful challenge to the current admissions criteria. *Id.*

Asian Pacific Islanders Civic Action Network (“APIs CAN”) is a statewide organization whose mission is to advance the interests of Asian and Pacific Islander Americans living in Massachusetts. API CANs Decl. ¶¶ 1-4. APIs CAN has a long history of working to address

systemic inequality in BPS. *E.g., id.* ¶¶ 5, 8-9, 11. In recent years, APIs CAN has supported Asian youth by gathering data on student mental health, engaging Asian youth in community education events, and connecting them to community resources. *E.g., id.* ¶¶ 7-8. In 2021, APIs CAN intervened in *Boston Parent I* to defend the city’s efforts to make Exam School admissions policies fairer. APIs *Id.* ¶ 5. CAN’s membership organizations represent thousands of low-income immigrant Chinese, Vietnamese, Cambodian, Laotian, Indian, Nepalese, and Korean families, parents, and students in Boston and Massachusetts. *Id.* ¶ 3. Many of its membership organizations have constituents who are prospective applicants to the Exam Schools. *Id.* ¶ 9. APIs CAN seeks to intervene in this lawsuit on behalf of itself and members to reflect the strong cross-racial support that exists for a more equitable Exam Schools admissions policy that accounts for students’ socioeconomic status. *Id.* ¶ 15.

BACKGROUND

The Tier Systems were designed to increase equal access to the publicly funded Exam Schools. As multiple intervenors illuminated in *Boston Parent I*, qualified students of color faced a long history of segregation and discrimination at the Exam Schools. By the early 1970s, Black students made up over 30% of BPS but less than 2% of the BLS population.² A landmark court decision found that BPS’ practices “were intentionally segregative.” *Morgan v. Hennigan*, 379 F. Supp. 410, 481 (D. Mass. 1974). Subsequently, the First Circuit upheld remedial measures that included allocating 35% of seats at BLS and the other Exam Schools to Black students “as part of a comprehensive plan to ameliorate pervasive and persistent constitutional infirmities throughout [BPS].” *Wessmann v. Gittens*, 160 F.3d 790, 792 (1st Cir. 1998) (describing the history of the desegregation litigation). The Exam Schools were subject to this mandated allocation until 1987.

² Carrie Jung, *Not Always an Exam School: The History of Admissions at Boston’s Elite High Schools*, WBUR (Mar. 5, 2020), <https://www.wbur.org/edify/2020/03/05/boston-exam-school-admissions-history>.

Id. The Boston School Committee (the “Committee”) continued to rely on race as an admissions criterion for “a subset of entrants” to maintain access to the Exam Schools for Black students until 1998, when that policy was ended by a court order. *Wessmann*, 160 F.3d at 792 (citing *McLaughlin v. Boston Sch. Comm.*, 938 F. Supp. 1001, 1018 (D. Mass. 1996)).

In the years following that order, the Exam Schools implemented a flawed admissions process that excluded qualified students. For over two decades before the Zip Code Policy, the Exam Schools’ admissions policy excluded qualified Black, Latinx, and Asian students, including low-income students and English language learners. This “Prior Process” relied on a system which considered only GPA and a student’s score on the Independent School Entrance Exam (“ISEE”). The ISEE tested topics substantially different from the curriculum taught in BPS schools, inspiring a cottage industry of costly out-of-school tutoring.³ Moreover, ISEE developers revealed that it was unclear whether the test accurately predicted how students of color would perform in the Exam Schools, given that the ISEE’s validity study did not have a large enough sample size for students of color to reach any such conclusions.⁴ Per the ISEE developers, BPS was using ISEE scores in ways that did not align with the test maker’s implementation guidelines or best practices in admissions, thereby artificially depressing the admissions rates of Black and Latinx students.⁵ Indeed, “[a]mong the top 25% of [Massachusetts Comprehensive Assessment System (“MCAS”)] scorers, Black and Hispanic students score[d] 12 percentiles lower on the ISEE than their White

³ Joshua Goodman & Melanie Rucinski, Increasing Diversity in Boston’s Exam Schools, Rappaport Instit. for Greater Bos., Harv. Kennedy Sch. (Oct. 2018), <https://www.hks.harvard.edu/sites/default/files/centers/rappaport/files/examschools%20v10.pdf>.

⁴ Molly Boigon, *Entrance Exam Used by Boston Latin May Not Be Up to the Test*, WGBH (Oct. 23, 2018), <https://www.wgbh.org/news/education-news/2018-10-23/entrance-exam-used-by-boston-latin-may-not-be-up-to-the-test>.

⁵ Kenneal Patterson, *Testing Firm Lashes Out at BPS Over Its Use of the ISEE*, Bay State Banner (Feb. 13, 2020), <https://www.baystatebanner.com/2020/02/13/testing-firm-lashes-out-at-bps-over-its-use-of-isee/>.

and Asian counterparts with similar MCAS scores.”⁶ Data spanning from the 2006-07 through the 2012-13 school years demonstrated that this system resulted in a large difference in the “likelihood of invitation” to an Exam School between white and Black and Hispanic applicants.⁷

Under the Prior Process, Black and Latinx students represented a significantly lower share of invitees to the Exam Schools than of Boston’s population of children ages 10 to 14 (i.e., the age group applying to the Exam Schools). For example, in the last school year to utilize the Prior Process, 2020-21, Black and Latinx students made up 14% and 21% of Exam Schools invitees, respectively⁸—compared to approximately 34% and 34% of Boston’s population of children age 10 to 14.⁹

Proposed Intervenor raised concerns about the inequitable Prior Process, advocating for an admissions policy that would more fairly identify the talented students they represent, and not just those from families who could afford ISEE tutoring. *See, e.g.*, BEJA Decl. ¶ 12. In response to advocacy from Proposed Intervenor and others, the Committee abandoned the ISEE, and adopted the Zip Code Plan and later the Tier Systems, which have generally resulted in important, but incremental improvements in access to the Exam Schools. *Id.* ¶ 13. For example, in school year 2024-25 (under the Third Tier System), Black and Latinx students made up 22% and 26% of Exams Schools invitees, respectively.¹⁰ But in the most recent school year, 2026-26 (under the

⁶ *Smoking Gun Reveals Extent of Boston’s Intentional Exclusion of Students of Color from Exam Schools*, Lawyers for C.R., <https://lawyersforcivilrights.org/our-impact/education/smoking-gun-reveals-extent-of-bostons-intentional-exclusion-of-students-of-color-from-exam-schools/> (last visited Nov. 11, 2025); Goodman & Rucinski, *supra* note 3, at 6, 8 (observing that “underlying differences in academic strength cannot fully explain these facts, as racial gaps exist in each of these dimensions even when examining only the academically strongest BPS students”).

⁷ Goodman & Rucinski, *supra* note 3, at 3.

⁸ Bos. Pub. Schs., Exam School Admission Policy Review (June 17, 2025), <https://resources.finalsite.net/images/v1750197966/bostonpublicschoolsorg/jleiahqg3tggwjuomsn6/FINALExamSchoolsSCUpdatePPT-61725.pdf>, at 26.

⁹ U.S. Census Bureau, 2020 Census Demographic and Housing Characteristics, 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>.

¹⁰ Off. of Data and Accountability, Bos. Pub. Schs., SY 25-26 Exam School Invitation Summary at 5 (June 2025), <https://drive.google.com/file/d/1tP8p64bb0Hd7EEGJKr0Syoy9fN2MdqTG/view..>

Fourth Tier System), Black students’ share of Exam Schools’ invitees dropped to 15%, while Latinx students’ share remained at 26%.¹¹ Overall, Black, Latinx, and Asian students continue to demonstrate a strong interest in attending the Exam Schools, comprising 20%, 16%, and 27% of applicants in school year 2024-25, respectively.¹²

ARGUMENT

In *Boston Parent I*, this Court granted intervention to a group of community-serving organizations, students, and parents, who advocated for equitable access to the Exam Schools. Proposed Intervenor here, also a group of community-serving organizations, students, and parents—some who served as defendant-intervenors in *Boston Parent I*—respectfully request that the Court once again grant intervention in this case. To preserve their rights, Proposed Intervenor request a ruling on the Motion to Intervene separate from and regardless of the Court’s decision on Defendants’ pending Motion to Dismiss. Proposed Intervenor face the risk of this Motion to Intervene being mooted if this Court decides Defendants’ Motion to Dismiss without resolving this Motion. *See, e.g., Deveraux v. Geary*, 596 F. Supp. 1481, 1487 (D. Mass. 1984) (granting motion to intervene as defendants despite apparent mootness caused by grant of defendants’ motion to dismiss, reasoning that intervenors “may wish to participate in any appellate review” of the dismissal order), *aff’d*, 765 F.2d 268 (1st Cir. 1985).

I. Proposed Intervenor are Entitled to Intervention as of Right

Proposed intervenor seeking intervention as of right must demonstrate that (1) their “motion is timely”; (2) they have an “interest relating to the property or transaction that forms the foundation of the ongoing action”; (3) “the disposition of the action threatens to impair or impede [their] ability to protect [their] interest”; and (4) “no existing party adequately represents” the

¹¹ *Id.*

¹² Exam School Admission Policy Review, *supra* note 8, at 26.

proposed intervenors' interests. *Ungar v. Arafat*, 634 F.3d 46, 50 (1st Cir. 2011). A court "must approach the four-factor test 'holistically' and keep a 'commonsense view of the overall litigation.'" *Mullane v. Portfolio Media*, No. 19-11496-PBS, 2020 WL 1931525, at *3 (D. Mass. Feb. 28, 2020) (quoting *Pub. Serv. Co. of N.H. v. Patch*, 136 F.3d 197, 204 (1st Cir. 1998)). Proposed Intervenors are entitled to intervention as of right because they have distinct, protectable interests in admission to the Exam Schools and the pedagogical benefits of a diverse classroom. Without intervention, Proposed Intervenors' interests will be substantially impaired because Defendants cannot and do not adequately represent them.

a. Proposed Intervenors' Motion is Timely

Given the current stage of litigation, intervention is timely and will not "prejudice" the "existing parties." *United Nuclear Corp. v. Cannon*, 696 F.2d 141, 142–43 (1st Cir. 1982). In assessing timeliness, courts consider (1) the length of time the applicant knew or reasonably should have known that its interests were at risk before he moved to intervene; (2) the foreseeable prejudice to existing parties if intervention is granted; (3) the foreseeable prejudice to the applicant should intervention be denied; and (4) any special circumstances militating for or against intervention. *Id.* Courts consider timeliness on a case-by-case-basis, examining all the circumstances. *Fiandaca v. Cunningham*, 827 F.2d 825, 833 (1st Cir. 1987); *Pub. Citizen v. Liggett Grp., Inc.*, 858 F.2d 775, 784 (1st Cir. 1988), *cert. denied*, 488 U.S. 1030 (1989). As part of this timeliness inquiry, the status of the litigation is a relevant consideration. *Fiandaca*, 827 F.2d at 833.

Proposed Intervenors filed this Motion before resolution of Defendants' Motion to Dismiss. Because the litigation is still in this early stage, intervention would not unduly delay or prejudice the parties. *See Geiger v. Foley Hoag LLP Ret. Plan*, 521 F.3d 60, 64–65 (1st Cir. 2008)

(intervention was timely nine months after filing of complaint “[i]n the absence of any discovery or substantive legal progress” in the case); *see also Fiandaca*, 827 F.2d at 834 (motion was timely when intervenors filed “prior to the Court’s approval of a settlement or entry of judgment”).

By contrast, the communities and students represented by Proposed Intervenors will suffer prejudice if they are not permitted to intervene. Proposed Intervenors’ members are—and regularly work with—communities of parents whose children intend to apply to and attend the Exam Schools. Thus, Proposed Intervenors have a strong interest in defending race neutral admissions policies to ensure that the Black, Latinx, and Asian students they represent have an equal opportunity to compete for admission to the Exam Schools. Proposed Intervenor BEJA, for instance, has consistently advocated for more equitable admissions to the Exam Schools, and vigorously opposed the Committee’s most recent revision to the policy. BEJA Decl. ¶¶ 12-17. Aside from their continued public advocacy, however, intervention in this lawsuit is the one legal avenue available to Proposed Intervenors to defend the admissions policy against Plaintiff’s claims. *Cf. P.R. Tel. Co. v. San Juan Cable, LLC*, 298 F.R.D. 28, 31 (D.P.R. 2014) (no prejudice because putative intervenors had the option to bring their own separate claims).

b. Protectable Interests

Proposed Intervenors seeking intervention as of right must demonstrate “an interest relating to the property or transaction that forms the foundation of the ongoing action.” *Ungar*, 634 F.3d at 50. Further, an “intervenor’s claim ‘must bear a sufficiently close relationship to the dispute between the original litigants.’” *Id.* at 51 (quoting *Travelers Indem. Co. v. Dingwell*, 884 F.2d 629, 638 (1st Cir. 2011)). Those interests must be “direct, not contingent” or speculative. *Conservation L. Found. of New England, Inc. v. Mosbacher*, 966 F.2d 39, 42 (1st Cir. 1992). Proposed

Intervenors satisfy these requirements, as they have direct, essential, and non-speculative interests related to the dispute between the parties.

First, Proposed Intervenors have “direct and significantly protectable” interests, *Ungar*, 634 F.3d at 51 (citations omitted), in increasing equitable access to selective *public* schools, *see Christa McAuliffe Intermediate Sch. PTO, Inc. v. de Blasio*, No. 18 CIV. 11657 (ER), 2020 WL 1432213, *4 (S.D.N.Y. Mar. 24, 2020) (finding organizations’ interests in “increased access to educational opportunity” to be a “direct, substantial, and legally protectable” interest in a case challenging a race neutral program to increase access to selective public high schools). BEJA was founded with the predominant purpose of making the BPS system fair and equitable for all students by uplifting the needs of marginalized children and families. BEJA Decl. ¶ 5. In July 2020, for example, BEJA partnered with allied groups to demand that the Committee suspend the administration of the Exam Schools’ entrance exam, because the COVID-19 pandemic disproportionately impacted low-income students from communities of color who could not afford to pay for test preparation resources. BEJA and its allies advocacy proved successful as the Committee changed its admissions criteria to socioeconomic and geographic criteria. *Id.* ¶¶ 12-13. Similarly, APIs CAN and its membership organizations are committed to addressing issues for families and children, particularly low-income and limited-English proficiency families, in BPS, including the Exam Schools. APIs CAN Decl. ¶¶ 8-14.

Second, each of these organizations represents parents with children who intend to apply to the Exam Schools, making Proposed Intervenors “quite distinct from the ordinary run of citizens” and instead a group “who could expect to receive” the benefits of applying under the Tier Systems if they “[are] upheld but not otherwise.” *Daggett v. Comm’n on Governmental Ethics & Election Pracs.*, 172 F.3d 104, 110 (1st Cir. 1999). BEJA’s membership organizations represent

parents of students, and students, who will apply to the Exam Schools and will be subject to the Exam Schools' admissions policy; the same is true of constituents of APIs CAN's membership organizations. BEJA Decl. ¶ 10; APIs CAN Decl. ¶ 9. These children will be directly and immediately impacted if Plaintiff prevails and changes are made to the Exam Schools' admissions policy, making their interest "substantial, predictable, and far more concrete than some general interest in precedent." *Cotter v. Mass. Ass'n of Minority L. Enf't Officers*, 219 F.3d 31, 37 (1st Cir. 2000) (granting intervention to association of minority law enforcement officers in challenge by white officers to promotional decision-making because the "outcome of this case may very well determine how the Boston Police Department handles, and is allowed to handle, comparable situations almost certain to arise in the future").

Third, these organizations and their constituents have an interest in preventing the dignitary harm resulting from their constituents' children's qualifications being questioned or impugned because they applied or were admitted under the challenged admissions processes. Plaintiff essentially alleges that the admissions process is rigged to favor Black and Latinx applicants over white and Asian applicants. *E.g.*, Compl. ¶ 120 ("Unless BLS abandons the Tier System and returns to a Citywide merit-based admissions process, the children of Coalition members will be forced to compete in a system that acts as a proxy against the admission of white students to the Exam Schools."). The implication of Plaintiff's assertions is that Black and Latinx children who have gained admission to the Exam Schools under the Tier Systems were unqualified, and do not deserve their place. Proposed Intervenors have an interest in defeating such harmful "messages of inferiority" to Black and Latinx students. *Stout v. Jefferson Cnty. Bd. of Educ.*, 882 F.3d 988, 1012 (11th Cir. 2018) (noting that a predominantly white city's racially motivated secession from a more diverse county school system sent "messages of inferiority") (quoting *Wright v. Council of*

Emporia, 407 U.S. 451, 466 (1972)). *See Brown v. Bd. of Ed. of Topeka, Shawnee Cnty., Kan.*, 347 U.S. 483, 494 (1954) (“To separate [children] from others of similar age and qualifications solely because of their race generates a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone.”).

Finally, Proposed Intervenors, their members, and the parents and students they represent have a direct interest in the increased geographic, socioeconomic, linguistic, and racial diversity the Tier Systems promote in the Exam Schools, and the educational benefits of this diversity in the classroom. There is “a long constitutional tradition” acknowledging the importance of “learning how to live in a pluralistic society.” *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 541 (2022) (quoting *Lee v. Weisman*, 505 U.S. 577, 590 (1992)); *see McAuliffe*, 2020 WL 1432213, *4 (finding an interest in “preserving any amount of increased racial diversity and decreased racial isolation” to be a “direct, substantial, and legally protectable” interest in a case challenging a race neutral program to increase access to selective public high schools).

As compared to the Prior Process, the Tier Systems’ allocation of points based on socioeconomic factors more fairly identifies students from different socioeconomic backgrounds and neighborhoods throughout the city of Boston for admission to the Exam Schools. *See, e.g.*, BEJA Decl. ¶ 17. The children represented by Proposed Intervenors who have applied to the Exam Schools or who currently attend the Exam Schools benefit from policies that further these outcomes. *See, e.g.* APIs CAN Decl. at ¶ 14 (“Ensuring that Black and Latinx communities have equal access to educational opportunities and resources will in turn uplift the educational experiences for all BPS students.”).¹³

¹³ *See* OECD, *Equity and Quality in Education: Supporting Disadvantaged Students and Schools* 9 (Feb. 2012), https://www.oecd.org/en/publications/equity-and-quality-in-education_9789264130852-en.html (“[T]he highest performing education systems . . . are those . . . [where] the vast majority of students have the opportunity to attain high level skills, regardless of their own personal and socio-economic circumstances.”); Amy Stuart Wells et al., *How*

As Proposed Intervenors seek to protect the rights of all students, including those from groups that have historically lacked access to high quality, public education, and the Exam Schools in particular—including parents and children who will be directly harmed by Plaintiff’s attempts to undermine the Committee’s efforts to create a fair admissions policy for the Exam Schools—Proposed Intervenors have a direct and significant interest in this action.

c. Impairment

To demonstrate that Proposed Intervenors’ interests will be impaired absent intervention, courts apply a “practical test” under Rule 24(a) to determine whether proposed intervenors would suffer an “adverse effect.” *Daggett*, 172 F.3d at 110 (internal citations and quotations omitted). “[E]ven a small threat that the intervention applicants’ [interest] could be jeopardized would be ample reason for finding that their ability to protect their interest ‘may’ be adversely affected.” *Cotter*, 219 F.3d at 35. In *Cotter*, Black law enforcement officers sought intervention in a challenge to their promotions over white officers. While it was unclear whether an adverse finding would strip the Black officers of their promotions, the court still found that their interest could be adversely affected. *Id.* at 35.

Here, the harmful impact on Proposed Intervenors if the Plaintiff were to prevail in this lawsuit is even more direct and certain. A judgment in Plaintiff’s favor would harm students, including many represented by Proposed Intervenors, because it would deny them an equal opportunity to compete for admission to the Exam Schools and their legitimate interest in attending schools in a school district that fairly identifies qualified students from across the city of Boston.

Racially Diverse Schools and Classrooms Can Benefit All Students, Century Found. (Feb. 9, 2016), <https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/> (“Attending racially diverse schools is beneficial to *all* students and is associated with smaller test score gaps between students of different racial backgrounds, not because white student achievement declines, but rather than [B]lack and/or Hispanic students achievement increased.”) (citing the successful example of “racially diverse interdistrict magnet schools” in Hartford, Connecticut, that closed achievement gaps).

Moreover, Proposed Intervenor's dignitary harm, *see supra* at p. 11, would be exacerbated by a court ruling that the Tier Systems are unconstitutional while a return to admissions policies that consistently under-identified Black, Latinx, and underserved Asian students is not. Absent intervention, Proposed Intervenor would be unable to protect their interest in defending the students they represent from this dignitary harm.

Finally, not only will the interests of the students and parents Proposed Intervenor organizations represent be impaired, but the organizations' own interests will also be harmed. Proposed Intervenor have long advocated for equal educational opportunity, including fairer admissions policies for the Exam Schools (in particular, the Tier Systems). An adverse ruling in this case will impair the Proposed Intervenor organizations' longstanding advocacy interests, including by potentially creating legal precedent that would foreclose or limit the ability of school boards to revise policies to advance equal opportunity. Accordingly, Proposed Intervenor satisfy the requirement that absent intervention, their interests and that of their members, will be impaired.

d. Defendants Do Not Adequately Represent Proposed Intervenor's Interests

Proposed Intervenor are required to make only a minimal showing of inadequate representation by the existing parties. *See Trbovich v. United Mine Workers*, 404 U.S. 528, 538 (1972). And while there is a presumption that interests are adequately represented by a government defendant, that presumption applies only when the government's "interests appear to be aligned with those of the proposed intervenor." *Maine v. Dir., U.S. Fish & Wildlife Serv.*, 262 F.3d 13, 19 (1st Cir. 2001). In this context, a presumption "means no more . . . than calling for an adequate explanation as to why what is assumed—here, adequate representation—is not so." *Id.* An adequate explanation "must be determined in keeping with a commonsense view of the overall litigation." *Id.* (citation omitted).

Here, Proposed Intervenor’s interests are not aligned with Defendants’. *First*, Proposed Intervenor has a direct, private interest in ensuring fairer admissions processes and equal access to the Exam Schools, especially for the students in their membership bases and communities they serve, and *second*, there is a conflict between Proposed Intervenor’s and Defendants’ arguments which can be “reasonably predicted.” *Daggett*, 172 F.3d at 112. These reasons are more than an adequate explanation as to how Defendants’ representation does not protect Proposed Intervenor’s interests.

The test of inadequacy “tend[s] to vary depending on the strength of the interest.” *Id.* at 113-14. Here, Proposed Intervenor seeks to defend the Tier Systems as incremental progress towards equalizing access to the Exam Schools. Proposed Intervenor’s members include parents whose children are applying to the Exam Schools next cycle, *see, e.g.*, BEJA Decl. ¶ 10, giving them a “direct private interest” in defending a policy which equalizes access to the Exam Schools, thereby providing important educational opportunities to these students. *Maine*, 262 F.3d at 20. Until recently, the Tier Systems have tended to equalize access for students by considering their socioeconomic status. As a result, the process more objectively identified qualified Black, Latinx, and Asian students for admission to the Exam Schools. The students represented by Proposed Intervenor are therefore “presently enjoy[ing]” the established benefits of the fairer Tier Systems process—benefits they stand to lose if Plaintiffs succeed. *Cf. Public Serv. Co. v. Patch*, 136 F.3d 197 (1st Cir. 1998) (rejecting would-be intervenors’ “overly contingent” and “as-yet-unrealized” future interest.). Similarly, Proposed Intervenor organizations’ “direct, private interest” stems from their longstanding advocacy for greater equity in the Exam Schools’ admissions policy. *See, e.g.*, BEJA Decl. ¶¶ 12-18 (describing advocacy, including member testimony, to eliminate the ISEE and in support of the Original Tier System); APIs CAN Decl. ¶ 5.

Second, Proposed Intervenor’s and Defendants’ interests are not “aligned” because Defendants’ interests and recent changes to the Tier Systems indicate that a conflict can be “reasonably predicted.” *Daggett*, 172 F.3d at 112. Defendants must serve a host of interests that will, at minimum compete with, if not contravene, the needs of the underserved student communities that Proposed Intervenor represent, including but not limited to avoiding protracted and costly litigation.¹⁴ Thus, Defendants’ actions are “necessarily constrained by [its] view of the public welfare,” which it must prioritize apart and ahead of the needs of any particular group of chronically underserved and underrepresented students. *Conservation L. Found.*, 966 F.2d at 44. Whereas Defendants adopted the Tier Systems to expand access to the Exam Schools broadly, Proposed Intervenor specifically focus on equalizing access for Black, Latinx, and underserved Asian students and low-income students, all of whom benefit from Defendants’ race neutral policy. *See, e.g., Maine*, 262 F.3d at 20 (describing cases where government defendants “could have no interest in protecting” intervenor’s “direct private interest” in promotions or commercial benefits). Proposed Intervenor are uniquely situated to explain these benefits because the organizations’ members and communities they serve experience them in the school system.

Proposed Intervenor seek to defend those policies that ensure equal access to Exam Schools for chronically underserved BPS students, including the Tier Systems, while Defendants have repeatedly indicated a willingness to move away from at least some of the measures designed to achieve equal access, with demonstrable impacts on those students. *See Daggett*, 172 F.3d at 112 (the danger of conflict “can be discerned from actions an existing party has already taken.”). Under the two most recent Tier Systems, Black students’ share of the invitees to the Exam Schools

¹⁴ Proposed Intervenor do not speculate as this is the second lawsuit brought by Plaintiff challenging equity-driven, race neutral changes by Defendants to the admissions policy for the Exam Schools.

has significantly decreased—by seven percentage points.¹⁵ But on November 5, 2025, the Committee adopted another iteration of the Tier System despite Proposed Intervenor’s concerns about the proposal (including data analysis reflecting the proposed plan’s impact on multilingual learners and others) and calls to postpone the vote to adequately assess the current Tier System’s impact before risking further reduction in access for underserved communities. *See, e.g.*, BEJA Decl. ¶¶ 17-18. This Fifth Tier System allocates seats at the Exam Schools for the top 20% of applicants citywide based on their GPA and MAP scores without consideration of socioeconomic status.¹⁶ While this may be within the scope of Defendants’ authority to respond to the changing political pressures, it highlights the “likelihood of divergence of interests.” *Cotter*, 219 F.3d at 36. Proposed Intervenor has vigorously opposed this change through public advocacy because of their strong belief that it would deny Black, Latinx, and Asian students an equal opportunity to compete for admission by failing to fully account for the effect of socioeconomic differences between applicants on educational outcomes. *See, e.g.*, BEJA Decl. ¶¶ 17-18. The risk of Defendants backtracking from a robust defense of race neutral policies designed to equalize access to the Exam Schools is therefore more than “speculation.” *Cf. T-Mobile Northeast LLC v. Town of Barnstable*, 969 F.3d 33 (1st Cir. 2020) (vague worries that Defendants “ultimately may settle” were insufficient to show inadequacy). Rather, the resource-intensive nature of defending this second lawsuit against their policies creates a strong incentive for Defendants to adopt inequitable admissions policies that under-identify talented and qualified Black, Latinx, and Asian students.

¹⁵ *See* Compl. 28 n.25; Exam School Admission Policy Review at 26, *supra* note 8; Compl. 28 n.26; Bos. Pub. Schs., SY 25-26 Exam School Invitation Summary (June 2025), <https://drive.google.com/file/d/1tP8p64bb0Hd7EEGJKr0Syoy9fN2MdqTG/view>, at 5; Compl. Ex. A., ECF No. 1-1.

¹⁶ Bos. Pub. Schs., Exam School Admissions Policy Recommendation at 10 (Sept. 25, 2025), <https://resources.finalsite.net/images/v1758836248/bostonpublicschoolsorg/arjndd1fwq4ft5uqhiyr/ExamSchoolsPolicyRecommendationPPT92525.pdf>.

Finally, Proposed Intervenor is providing a “missing element,” *T-Mobile Northeast LLC*, 969 F.3d at 40, by explaining why the Prior Process was unfair and why the use of socioeconomic norms more fairly identifies qualified students for admission to the Exam Schools. *See supra* Background (discussing how the Prior Process’ reliance on the ISEE artificially depressed Exam School admissions rates for Black and Latinx students); Mem. in Support of Proposed Mot. to Dismiss at 14-18 (explaining why comparing students within socioeconomic tiers, as the Tier Systems do, is a research-backed approach for limiting the influence of wealth, social status, and familial educational attainment in order to more accurately identify qualified students).

Defendants are unlikely to raise these arguments, which cast doubt on the validity of their prior admissions processes. *T-Mobile Northeast LLC*, 969 F.3d at 40 (noting that intervenors provide a “missing element” when they “identify[] . . . arguments that the [Defendants are] unlikely to advance”). Moreover, they demonstrate a “potential conflict” between Defendants and Proposed Intervenor on “how best to defend” the challenged policy. *Cotter*, 219 F.3d at 31.

II. Alternatively, the Court Should Grant Permissive Intervention

Even if this Court denies Proposed Intervenor’s intervention as of right, it should allow permissive intervention under Federal Rule of Civil Procedure 24(b), as it did in *Boston I*.¹⁷ District courts enjoy “broad discretion in granting or denying [a] motion” for permissive intervention, *Daggett*, 172 F.3d at 113. Courts have considered, among other factors, whether: 1) the proposed intervenor’s “claim or defense and the main action have a question of law or fact in common”; 2) the proposed intervenor’s interests “are not adequately represented by an existing party”; and 3) intervention “would not result in undue delay or prejudice to the original parties.” *In re*

¹⁷ *See Boston Parent I*, ECF No. 27 (docket entry memorializing hearing of March 3, 2021, granting permissive intervention).

Thompson, 965 F.2d 1136, 1142 n.10 (1st Cir. 1992) (citation omitted). Proposed Intervenor meets all three criteria.

First, Proposed Intervenor shares a common question of law and fact with the parties, *Daggett*, 172 F.3d at 113, specifically the existence of any racially discriminatory motive in developing the Tier Systems and their impact on all communities of children competing for admission, *see* Compl. 33. *Second*, as explained above, Proposed Intervenor's interests are not adequately represented by Defendants. *Third*, as explained above, given the early stage of the case, Proposed Intervenor would not cause any "disruption or delay." *Varsity Wireless, LLC v. Town of Boxford*, No. CV 15-11833-MLW, 2016 WL 11004357, at *7 (D. Mass. Sept. 9, 2016) ("[T]he Court also finds that intervention would not unduly delay or prejudice the adjudication of this action because this case is still in its early stages.").

Moreover, the fact that Proposed Intervenor's expertise will be "helpful in fully developing the case is a reasonable consideration" for this Court. *Daggett*, 172 F.3d at 113. Proposed Intervenor has previous experience in analyzing claims of discrimination against race neutral admissions reforms in Boston schools and deep historical ties to the BPS community. *See* BEJA Decl. ¶¶ 5, 7, 8, 12-18; APIs CAN Decl. ¶¶ 2-5, 8-9.¹⁸

For the foregoing reasons, this Court should grant permissive intervention, should it deny intervention as of right.

¹⁸ *See also* AFT Mass., *Fighting Against School Closures: Lessons From Two Boston Teachers*, <https://ma.aft.org/news/fighting-against-school-closures-lessons-two-boston-teachers> (last visited Oct. 27, 2025) (noting BEJA's involvement in the fight against the closure of two Boston public schools); Julie Pattison-Gordon, *Court Hears Charter Cap Case Appeal* (Oct. 5, 2017), <https://baystatebanner.com/2017/10/05/court-hears-charter-cap-case-appeal/> (explaining that Boston BEJA filed an amicus brief supporting a charter school cap in *Doe v. Sec'y of Educ.*, 479 Mass. 375, 95 N.E.3d 241 (2018)).

CONCLUSION

For the foregoing reasons, Proposed Intervenors respectfully ask that their Motion to Intervene be granted.

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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