

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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STANLEY NG, PARENTS AGAINST	:	
DISCRIMINATION, PEGGY FOO-CHING, and	:	
DENNIS CHEN, on behalf of themselves	:	COMPLAINT
and all others similarly situated,	:	
	:	Civ No.
Plaintiffs,	:	
	:	
-against-	:	
	:	
NEW YORK CITY DEPARTMENT OF EDUCATION,	:	
	:	
Defendant.	:	

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This is an action for discrimination on the basis of race and national origin in violation of the Fourteenth Amendment to the United States Constitution and other federal laws. Plaintiffs Parents against Discrimination and Stanley Ng seek forward-looking injunctive and declaratory relief, on behalf of a class, preventing defendants from continuing to discriminate on the basis of race or ethnicity in violation of the Constitution and various federal laws. Plaintiffs Stanley Ng, Margaret Foo-Ching, and Dennis Chen seek damages against defendant on their individual claims and seek to represent other class members who have suffered damages.

JURISDICTION AND VENUE

1. This is an action arising under the Constitution and laws of the United States. Jurisdiction is vested in this Court pursuant to 28 U.S.C. § 1331 and 1343(3).

2. Venue is proper in this Court because many of the discriminatory actions of the New York City school system at issue are taking place in this district.

#### PARTIES

3. Plaintiff Parents against Discrimination (PAD) is an organization with members of different races and ethnicities. The purpose of PAD is to represent its members by combating race and ethnic discrimination in the New York City public school system. The majority of the members of PAD are parents of Asian or white students in the fifth or sixth grade who intend to apply in the near future to the Specialized High School Institute (SHSI), a program operated by defendant to prepare students for the admission exam for New York City's Specialized High Schools.

4. Plaintiff Stanley Ng is the father of a sixth-grade student in public school in Brooklyn who intends to apply in the near future to SHSI. Both father and child are of Chinese descent.

5. Hereinafter, the plaintiffs described in paragraphs 3 and 4 above will be referred to as "the Prospective Applicant Plaintiffs."

6. Plaintiff Stanley Ng is also the father of an eighth-grade student in public school in Brooklyn who attempted to apply to SHSI in the fall or winter of 2005 but was not permitted to

have an application by defendant. Both father and child are of Chinese descent.

7. Plaintiff Margaret Foo-Ching is the mother of a seventh-grade student in public school in Brooklyn who applied to SHSI in late 2006 or 2007 but was not accepted into the program. Both mother and child are of Chinese descent.

8. Plaintiff Dennis Chen is the father of an eighth-grade student in parochial school in Brooklyn who applied to SHSI in the spring of 2007 but was not accepted into the program. Both father and child are of Chinese descent.

9. Hereinafter, the plaintiffs described in paragraphs 6 through 8 above will be referred to as "the Prior Applicant Plaintiffs."

10. Defendant New York City Department of Education operates the New York City school system, including the SHSI program.

#### FACTS

11. The Specialized High Schools are public high schools, operated by defendant, that specialize in certain areas of instruction, such as math, science, and engineering.

12. Admission to the Specialized High Schools is highly competitive and is determined solely by applicants' scores on a

standardized admissions exam.

13. The Specialized High School Institute (SHSI) is a free program established by defendant to help prepare selected middle-school students to take the admissions exam to the Specialized High Schools.

14. As a matter of or policy or practice, defendant intentionally prevented Asians (such as people of Chinese, Japanese, or Korean descent) or whites from receiving applications to SHSI on the basis of their race or ethnicity. Defendant continues to engage in such discriminatory conduct as a matter of or policy or practice.

15. If Asians or whites managed to obtain an application and apply to SHSI, defendant intentionally, and as a matter of policy or practice, discriminated against them in selecting students for SHSI on the basis of their race or ethnicity, either by not considering their applications at all or by considering them less favorably, on account of race or ethnicity, than those of applicants of other races or ethnicities. Defendant continues to engage in such discriminatory conduct as a matter of policy or practice.

16. Defendant did not have, and does not have, a compelling governmental interest to justify its intentional discrimination in restricting applicants or in selecting students for SHSI on

the basis of race or ethnicity. Even if it had such an interest, defendant's discriminatory policies or practices are not narrowly tailored to achieve that compelling interest.

17. Defendant is a recipient of federal funds.

First Claim (for Injunctive/Declaratory Relief)

18. This claim incorporates each of the previous allegations set forth above. It is brought on behalf of the Prospective Applicant Plaintiffs and seeks injunctive and/or declaratory relief.

19. The Prospective Applicant Plaintiffs seek to represent a class of plaintiffs on this claim. The class (Class I) consists of parents of children who wish to apply to SHSI in the future and who, because of defendant's policies or practices, will not be considered for admission on an equal footing because of their race or ethnicity.

20. Class I is so numerous as to make joinder impracticable.

21. The Prospective Applicant Plaintiffs' claims have questions of law and fact in common with the claims of Class I members.

22. The Prospective Applicant Plaintiffs' claims are typical of the claims of Class I members.

23. The Prospective Applicant Plaintiffs will adequately represent and protect the interests of Class I. They have retained counsel familiar with this matter, and with class litigation in general.

24. Defendant has acted (and is acting) on grounds generally applicable to Class I, making appropriate final injunctive relief or corresponding declaratory relief with respect to Class I as a whole. Accordingly, Class I should be certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.

25. If not enjoined, defendant will continue to discriminate against the Prospective Applicant Plaintiffs and members of Class I on the basis of race or ethnicity.

26. Accordingly, the Prospective Applicant Plaintiffs and the class they represent are entitled to declaratory relief declaring that the policy or practice of defendant of discriminating against them on the basis of their race or ethnicity violated the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §§ 1981, 1983, and 2000d *et seq.*

27. The Prospective Applicant Plaintiffs and the class they represent are entitled to an injunction prohibiting defendants from illegally discriminating against some applicants to SHSI on the basis of their race or ethnicity.

Second Claim (for Damages)

28. This claim incorporates each of the previous allegations of the complaint. It is asserted on behalf of the Prior Applicant Plaintiffs.

29. Each of the Prior Applicant Plaintiffs is a parent of a child who applied or tried to apply to SHSI and was not admitted to the program because defendant discriminated against him or her in violation of 42 U.S.C. §§ 1981, 1983, and 2000d *et seq.*

30. Because of defendant's discrimination, each Prior Applicant Plaintiff was forced to pay a private company to provide services, or incur other costs, to prepare his or her child for the admissions exam to the Specialized High Schools, and otherwise suffered damages.

31. The Prior Applicant Plaintiffs seek to represent a class of plaintiffs on this claim. The class (Class II) consists of (a) the parents of children who applied to SHSI and who were not accepted into the program, and whose parents, as a result of defendant's discrimination, were forced to pay a private company to provide services, or incur other costs, to prepare their children for the admissions exam to the Specialized High Schools, and (b) the parents of children who did not apply to SHSI because of defendant's discriminatory policies or practices, but who would have applied had they been given a fair opportunity to do

so, and whose parents incurred similar expenses.

32. Class II is so numerous as to make joinder impracticable.

33. The Prior Applicant Plaintiffs' claims are typical of the claims of the members of Class II.

34. The Prior Applicant Plaintiffs will adequately represent and protect the interests of Class II. They have retained counsel familiar with this matter, and with class litigation in general.

35. Common questions of law and fact exist as to all members of Class II and predominate over any questions solely affecting individual members of Class II. Among the questions of law and fact common to Class II are whether defendant violated the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §§ 1981, 1983, and 2000d *et seq.*, by discriminating against certain applicants to SHSI on the basis of race or ethnicity. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Accordingly, Class II should be certified pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

36. Each of the Prior Applicant Plaintiffs and members of Class II are entitled to damages at an amount to be determined at trial.

Demand For Judgment

WHEREFORE plaintiffs demand judgment:

A. Declaring that defendant's conduct in restricting applicants and selecting students to SHSI on the basis of race or ethnicity violates the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. §§ 1981, 1983, and 2000d *et seq.*;

B. Enjoining defendant from restricting applicants to SHSI on the basis of race or ethnicity or illegally considering the race or ethnicity of applicants in selecting students for SHSI;

C. Damages for the Prior Applicant Plaintiffs and Class II members in an amount to be determined at trial;

D. Attorneys' fees, costs, and expenses pursuant to 28 U.S.C. § 1920, 42 U.S.C. § 1988, or any other applicable authority; and

E. Any other relief that is appropriate.

Respectfully submitted,

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