

**Testimony of the New York Civil Liberties Union before
The New York City Council Committee on Education:**

**“Breaking Testing Culture: Evaluating multiple pathways to determine
student mastery”**

September 24, 2019

The New York Civil Liberties Union (“NYCLU”) respectfully submits the following testimony on the harms of and alternatives to testing culture in New York City schools. We would like to thank the Committee on Education for giving us the opportunity to provide testimony today on this important topic.

The value and utility of making important education decisions about children and teachers based on a single (or even a series of) standardized tests is more than a question of pedagogical preference. It is an urgent civil rights issue, driving some of the deepest and most racially unjust wedges in our system of public education. In New York City, the education philosophy of former Mayor Bloomberg and past federal education policy—adding more tests and relying on them for more high-stakes decisions—has contributed to extreme segregation, especially in our most coveted programs.

The 2014 report by the Civil Rights Project at UCLA, *New York State’s Extreme School Segregation*, states “New York’s record on school segregation by race and poverty is dismal now and has been for a very long time... A great center of American liberalism, New York seemed to turn away when race issues came close to home.”¹ Indeed, it is time for New York to take bold and concrete action to meaningfully and purposely integrate our schools. And this cannot happen without a hard look at our testing culture.

I. Introduction

The NYCLU, the state affiliate of the American Civil Liberties Union, is a not-for-profit, non-partisan organization with nine offices across New York state and more than 210,000 members and supporters. The NYCLU’s mission is to defend and promote the fundamental principles, rights, and constitutional values embodied in the Bill of Rights of the U.S. Constitution and the Constitution of the State of New York, with particular attention to addressing the pervasive and persistent harms of racism.

The NYCLU founded the Education Policy Center in 2018 to bring a civil rights and civil liberties analysis to institutions that serve young people, and to ensure our public schools are living up to their promise as incubators of democracy. One of the strategic priorities of the Education Policy Center is to tackle the practices and policies that have led New York schools to become the most segregated in the nation. High stakes testing—and the overreliance on testing to make education decisions—is a major contributor.

The NYCLU has always recognized that education is a cornerstone of democracy. As such, we believe education should be publicly funded and accountable, provide school environments that are safe, supportive and dignifying

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for all students, are rooted in pedagogy that promotes critical thinking and is factually accurate, age-appropriate and free from bias, that create equitable opportunities for all students, and that promote relationship- and community-building.

High-stakes testing represents the opposite of this vision. Our school system's overreliance on testing creates unnecessary challenges for students, teachers, and schools without adding educational value. High stakes testing negatively impacts schools and students in almost every way, including:

- **Narrowing the curriculum:** Purporting to measure the quality of schools (and teachers²) by looking solely at test scores has led to a forced narrowing of the curriculum, reducing teachers' job satisfaction and students' access to meaningful content.³ It leaves virtually no class time for culturally responsive or inquiry-based education, or for lessons on subjects that aren't tested, such as civics, sexuality and health education, physical education, and the arts.⁴ It fails to capture kids' attention or their imagination, making class boring or frustrating and contributing to misbehavior.⁵
- **Separating and tracking students:** Test scores are used to separate and segregate NYC students into Gifted and Talented programs before they are even in Kindergarten. This tracking has contributed to our city being home to the most racially segregated schools in the nation, and it means students of color miss out on the best programs before they've even started school. Our convoluted middle school admissions system uses elementary students' test scores to funnel kids into excellent, good, and struggling programs. The Specialized High School Admissions Test ("SHSAT") and 7th-grade exam scores are used to further segregate students in high school. Inside schools, even those with diverse student bodies, test scores are used to determine access to Advanced Placement and Honors courses, college- and Regents- prep courses, and many other programs that can boost kids into higher achievement.⁶
- **Harming students with disabilities and those for whom English is not a first language:**⁷ Data indicates that students with disabilities fail standardized tests at higher rates than their peers.⁸ This is often a result of them not having access to the same curriculum, but can also be attributed to particular disabilities being incompatible with the testing methods. Rather than take an exam they know they are likely to fail, many students with learning and other disabilities simply drop out of school.⁹ Likewise, for students who are Multilingual Learners (MLL), high stakes tests can present an impenetrable barrier, due to lack of access to the same curriculum, and language mastery factors.¹⁰
- **Harming teachers:** Research has demonstrated that new NYC teachers reported that "teaching to the test" stifled their creativity, individuality, and autonomy.¹¹ Teachers in these regimes said it was harder to connect with students and build relationships, an essential component of classroom management and teacher job satisfaction. High stakes testing also discourages

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teachers from investing in special needs and other children who won't score well on the test.

- **Incentivizing ways to game the system:** When the stakes are high, people will use whatever tools they can access to ensure their children make the cut. We hear often about more affluent families spending thousands on test preparation courses and tutors, beginning in preschool. There has also been widespread coverage of cheating scandals where educators inflate exam scores to save their schools and students from being seen as “failing.”¹² Less understood are the myriad ways, short of cheating, that families of means ensure their children succeed on tests. For example, of the students given extra time to take the SHSAT under a 504 disability designation, 42 percent are white, and those students are far more likely to receive an offer of admission.¹³
- **Correlating intelligence with test performance:** Studies have demonstrated that high stakes tests are better at measuring a student's socioeconomic status than her knowledge.¹⁴ Of the dozens of tests NYC students will be expected to take in their school career, nearly all have been criticized at some point for content errors, language bias, and predictive validity.¹⁵ Supposedly objective, the tests are beset by subjectivity: they are learnable through expensive private test-prep¹⁶, students are drilled on the content through curriculum-narrowing, and test results are used inappropriately as measures for which they have not been validated.

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II. School Segregation in New York City

Forty-five percent of neighborhood elementary schools in New York City are more than 90 percent black and Latino.¹⁷ One in eight NYC kindergarten classes is racially homogenous, meaning 90 percent or more of the students are of the same race or ethnicity.¹⁸ And, according to the Civil Rights Project, 73 percent of charter schools across New York City were considered “apartheid schools” in 2014, in which less than one percent of the students were white.¹⁹

Brown v. Board of Education concluded that separate educational facilities are inherently unequal, and despite Civil Rights-era victories in the movement to integrate schools, the last several decades have seen the broad re-segregation of our nation's schools.²⁰ Expiration of consent decrees mandating integration, strategic disinvestment in Black and brown neighborhoods, funneling of public dollars to private institutions, and gentrification all contribute to continued separate and unequal education.

High stakes testing is an additional piece of this system. Despite obvious data showing the racially isolating impact, we permit tests to funnel children into or out of gifted programs, Regents, Advanced Placement and honors classes, and exceptional schools such as NYC's specialized high schools. In New York State, one of a minority of states that still requires a graduation exam, a single test can even deny students a high school diploma.

Segregation aims not just to maintain physical separation, but to isolate people of color from power, opportunity, and the ability to fully and equally

participate in the democratic process. Consider that, although white students comprise just 15 percent of the New York City public school population, sixty percent of white students attend schools where white students are more than double their system-wide percentage.²¹ These schools are disproportionately better resourced than schools serving students of color in racially isolated schools. It is, therefore, no accident that students of color who attend racially isolated schools have lower academic outcomes, lower graduation rates, and are less likely to graduate from college.²²

Racially integrated schools—including all the programs inside the schools—are our best opportunity to break the cycle of purposeful discrimination and disadvantage. Even though some of the systems that created our deep racial isolation—including discriminatory housing and economic practices—extend beyond the reach of the Department of Education (“DOE”), segregation today is perpetuated and worsened by the failure to implement and maintain deliberate system-wide policies to integrate the schools.²³ The DOE has, therefore, an urgent obligation to act decisively to remedy the segregation in its school system. This includes a serious examination of the ways reliance on testing creates and reinforces segregation, even inside otherwise-diverse school buildings.

III. New York City’s Specialized High Schools

While New York City’s specialized high schools serve only a small fraction of students in the system, they have become an embarrassing symbol of our city’s inability to confront segregation. And while a serious effort to integrate these schools would not make a difference for the majority of kids, it would accomplish two important things. First, eliminating the state law that keeps these schools segregated by limiting admission to the results of a single exam would ensure that the most academically promising kids from every middle school have a fair shot at attending what are considered the top public high schools in the country.²⁴ Second, it would send a powerful message across our state, and even the nation, that exceptional education does not require rote learning, mastering test-taking techniques, or spending a fortune to prepare for an exam.

One very small step already taken by the DOE was to expand the Discovery Program, an attempt to slightly increase the opportunities for students from low-income families who attend under-resourced middle schools to make it into the Specialized High Schools. But to qualify, students must still do well on the SHSAT, which is required by state law for admission to several of the specialized schools.

In the absence of a change in New York State law that would allow three of the Specialized High Schools to implement a fairer and more educationally-sound admissions policy—one that does not rely entirely on a single, standardized test—the Discovery Program is one of the City’s only ways to address the stark racial disparities in admission to the Specialized High Schools.

It’s important to recognize the Discovery Program expansion for what it is: a single step. We must not only enable more equitable access to the top schools in the City, but also continue tirelessly fighting to promote diversity and equality in our public schools across the board.

i. Introduction 1541

Council Intro 1541 would create a “specialized high school task force” to address the racial and ethnic inequalities in the student bodies of the test-based

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specialized high schools.²⁵ The task force would include representatives from the DOE, teachers, students, parents, and experts in certain subject matters. It would meet monthly and hold quarterly public hearings and would submit a report on its findings regarding “alternative admissions criteria for the specialized high schools.”

While the NYCLU supports the creation of this task force and efforts to change the admissions processes at the Specialized High Schools, there may be considerable overlap with the existing School Diversity Advisory Group. We recommend that the Council to consider whether there is significant difference in these bodies, in mandate and composition, to necessitate separate entities. We would also urge the inclusion of legal and civil rights advocates to the composition of the task force to bring a valuable perspective and expertise to the discussion.

IV. Gifted and Talented Programs

Prior to the 2007-2008 school year, Community School Districts were able to utilize a holistic system for evaluating admissions to neighborhood gifted and talented (“G&T”) programs that included teacher evaluations, classroom observations, and in-district exam scores. That year, Mayor Bloomberg and Chancellor Joel Klein eliminated the holistic admissions model, replacing it with a single standardized test, under the auspices of making the system more equitable. In order to gain admission into a district G&T program, children as young as four years old had to achieve a score on this exam that was in the nationwide 90th-percentile. Essentially overnight, there was a catastrophic drop in the number of Black and Latinx children admitted to these programs, from 31 percent Black students in 2007 to 13 percent Black students in 2008.²⁶ The children who did well on the tests often had access to expensive prep courses and private preschools.

Our City’s extremely racially-segregated housing patterns multiplied the effects of this change to admissions. In districts where too few children scored high enough, G&T programs were eliminated, so even if children did qualify they would have to travel across neighborhoods or even boroughs in order to enroll. This domino effect meant that some districts in the Bronx and Central Brooklyn, for example, had no G&T programs, reducing parents’ familiarity with the programs and knowledge of how to apply, even if they would be willing to send their kids to a school across town. And parents’ understandable unwillingness to send their young kids to faraway schools meant that surviving G&T programs became less and less diverse.²⁷

Today, more than 75 percent of students in G&T programs are white or Asian.²⁸ Again, this racial segregation in advanced academic programs is unacceptable. The NYCLU supports the recommendation of the School Diversity Advisory Group to end the use of high-stakes admission exams in this context and phase out our current, racially isolated system. There is also compelling data that a return to a broader set of assessments, involving teacher recommendations and psychological profiling, would fail to integrate G&T programs. Simply put, expanding the number of G&T programs only serves to expand segregation to more districts.²⁹

This is not to say we should reduce students’ access to rigorous, challenging, or enriched curriculum. It is not only possible but beneficial to move away from a system where children are labeled and sorted into cohorts, into one where each student’s individual needs are met and her talents cultivated. Many states and districts around the country have successfully adopted a system of individualized

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education plans to meet the needs of academically-promising children in a mainstreamed environment.³⁰ Indeed, an individualized system of providing gifted education makes room for enhancements in any area where a kid excels, whether in math, reading, science, or the arts, without discounting that he may struggle in other subjects, or even have a disability.³¹

V. Recommendations

Fortunately, there are alternatives to testing that are proven to work, meeting kids' needs, achieving exceptional education, and fostering meaningful curriculum and healthy relationships between students and teachers. In New York City, we can look to the Performance Standards Consortium, a group of dedicated teachers and school leaders who have piloted a better way to teach and to measure students' mastery of the material. Consortium schools allow students to demonstrate their grasp of a subject through portfolios and projects—research papers, experiments, and in-depth discussions—rather than taking the Regents Exams. They are permitted to do this through a waiver granted by the state Education Commissioner.³² We recommend the City Council, working closely with the experts at the Consortium, explore ways to protect and even expand the waiver to new schools that are equipped to adopt similar strategies.

There are other local success stories as well. In 2017, District 8 in the Bronx began offering enriched curriculum to all students, not just those who qualify for a designated G&T program, and demonstrated benefits across their student body.³³ The education professor who designed the curriculum used in D8 said the main tenets were engagement, enthusiasm, and enjoyment, which in turn supported deep, inquiry-based learning because children were excited to be in school. We recommend the Council work with the DOE to explore ways to provide enriched and advanced curriculum to all students, using an inquiry-based model, rather than having to identify and label kids.

Finally, we urge the Council, and New York City officials, to become involved in the State's Task Force examining the continued use of the Regents Exam graduation requirement. We believe that removing the Regents as a requirement for high school graduation will bring a diploma in-reach for many kids who would otherwise fail or drop out. California recently dropped its high school exit exam, and New York should study their experience, as well as data from the majority of states with no exit exam requirement, to make high school graduation a more achievable and less arbitrary measure.

¹ John Kucsera and Gary Orfield, *New York State's Extreme School Segregation: Inequality, Inaction, and a Damaged Future*, UCLA Civil Rights Project, March 2014, p. viii, available at <https://www.civilrightsproject.ucla.edu/research/k-12-education/integrat...>

² Under a 2019 state law, school districts will have the option to include student test scores as part of teachers' evaluations, pursuant to collective bargaining agreements. 2019 N.Y. Laws Chap. 27.

³ Valerie Strauss, "U.S. teachers' job satisfaction craters- report," *The Washington Post*, February 21, 2013, available at <https://www.washingtonpost.com/news/answer-sheet/wp/2013/02/21/u-s-teachers-job-satisfaction-craters-report/>

⁴ Andrea Gabor, "Bring Back High School Civics, With a Twist," available at <https://www.bloomberg.com/opinion/articles/2019-09-17/high-school-civics-is-on-the-way-back-with-a-twist>

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- ⁵ Valerie Strauss, “13 ways high-stakes standardized tests hurt students,” The Washington Post, March 11, 2014, available at <https://www.washingtonpost.com/news/answer-sheet/wp/2014/03/10/13-ways-high-stakes-standardized-tests-hurt-students/>
- ⁶ Lena V. Groeger, Annie Waldman, and David Eads, *Miseducation: Is There Racial Inequality at Your School?*, ProPublica, October 16, 2018, available at <https://projects.propublica.org/miseducation/>; Halley Potter, *Integrating Classrooms and Reducing Academic Tracking*, The Century Foundation, available at <https://tcf.org/content/report/integrating-classrooms-reducing-academic-tracking-strategies-school-leaders-educators/?agreed=1>
- ⁷ Cindy Long, “High-Stakes Testing for Disabled Students: A System ‘Gone Horribly Wrong,’” National Education Association Today, March 5, 2014, available at <http://neatoday.org/2014/03/05/high-stakes-testing-for-disabled-students-a-system-gone-horribly-wrong/>
- ⁸ “Implications of High-Stakes Testing for Students With Learning Disabilities,” GreatSchools, April 2, 2015, available at <https://www.greatschools.org/gk/articles/high-stakes-testing-learning-disabilities/>
- ⁹ The National Center for Fair and Open Testing, *Standardized Testing and Students with Disabilities*, March 20, 2017, available at <https://www.fairtest.org/standardized-testing-and-students-disabilities>
- ¹⁰ José Luis Vilson, “How common core hurts English language learners,” The Progressive, September 8, 2015, available at <https://progressive.org/public-school-shakedown/common-core-hurts-english-language-learners/>
- ¹¹ Margaret Crocco and Arthur Costigan, *The Narrowing of Curriculum and Pedagogy in the Age of Accountability Urban Educators Speak Out*, Urban Education, November 2007, URBAN EDUC. 42. 10.1177/0042085907304964, pg. 512-535.
- ¹² Sharon Nichols and David Berliner, *The Inevitable Corruption of Indicators and Educators Through High-Stakes Testing*, Arizona State University Education Policy Studies Laboratory, March 2005, available at <https://files.eric.ed.gov/fulltext/ED508483.pdf>
- ¹³ Kevin Quealy and Eliza Shapiro, “Some Students Get Extra Time for New York’s Elite High School Entrance Exam. 42% Are White,” The New York Times, June 17, 2019, available at <https://www.nytimes.com/interactive/2019/06/17/upshot/nyc-schools-shsat-504.html>
- ¹⁴ Zachary Goldfarb, “These four charts show how the SAT favors rich, educated families,” The Washington Post, March 5, 2014, available at <https://www.washingtonpost.com/news/wonk/wp/2014/03/05/these-four-charts-show-how-the-sat-favors-the-rich-educated-families/>
- ¹⁵ See, e.g. Geoff Decker, “‘Hare and Pineapple’ test item scrapped amid media attention,” Chalkbeat, April 20, 2012, available at <https://www.chalkbeat.org/posts/ny/2012/04/20/pineapple-test-question-scrapped-for-media-attention/#.VTgWCZTF-hI>; Winnie Hu, “Does Admissions Exam for Elite High Schools Measure Up? No One Knows,” The New York Times, available at <https://www.nytimes.com/2018/07/18/nyregion/shsat-new-york-city-schools.html?module=inline>; “Tests & Assessments,” National Association for Gifted Children, available at <https://www.nagc.org/resources-publications/gifted-education-practices/identification/tests-assessments>; Valerie Strauss, “Pearson flubs test scoring for gifted-and-talented programs,” The Washington Post, April 22, 2013, available at <https://www.washingtonpost.com/news/answer-sheet/wp/2013/04/22/pearson-flubs-test-scoring-for-gifted-and-talented-programs/>; Christina Veiga, “A potential Regents question refers to ‘illegal aliens.’ A petition says that’s racist,” Chalkbeat, September 18, 2019 <https://www.chalkbeat.org/posts/ny/2019/09/18/a-potential-regents-question-refers-to-illegal-aliens-a-petition-says-thats-racist/>; Valerie Strauss, “Millions of kids take standardized tests simply to help testing companies make better tests. (Really.)” The Washington Post, June 7, 2019, available at <https://www.washingtonpost.com/education/2019/06/07/millions-kids-take-standardized-tests-simply-help-testing-companies-make-better-tests-really/>; Valerie Strauss, “Why one testing expert says New York state’s ever-changing standardized testing program is ‘useless,’” The Washington Post. April 9, 2019, available at <https://www.washingtonpost.com/education/2019/04/09/why-one-testing-expert-says-new-york-states-ever-changing-standardized-testing-program-is-useless/>

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¹⁶ See, e.g. Jennifer Senior, “The Junior Meritocracy,” *New York Magazine*, January 29, 2010, available at <http://nymag.com/news/features/63427/>; “How to Prepare for the Gifted And Talented Test,” available at <http://www.getyourchildintogat.com/p/top-10-list-for-gifted-and-talented.html>; “Test Preparation: NYC Gifted & Talented Exam,” available at <https://catestutoring.com/test-preparation/nyc-gifted-talented-exam/>;

¹⁷ Clara Hemphill and Nicole Mader, *Segregated Schools in Integrated Neighborhoods: The city’s schools are even more divided than our housing*, available at <http://www.centernyc.org/segregatedschools/>.

¹⁸ Elizabeth Harris, “Racial Segregation in New York Schools Begins in Pre-K, Report Finds,” *The New York Times*, Sept. 20, 2016, available at <https://www.nytimes.com/2016/09/21/nyregion/racial-segregation-in-new-yo...>

¹⁹ John Kucsera and Gary Orfield, *New York State’s Extreme School Segregation: Inequality, Inaction, and a Damaged Future*, UCLA Civil Rights Project, March 2014, p. viii, available at <https://www.civilrightsproject.ucla.edu/research/k-12-education/integrat...>

²⁰ *Brown v. Board of Educ. of Topeka, Shawnee Cnty., KS*, 347 U.S. 483, 493 (1954).

²¹ New York City Department of Education Demographic Snapshot, 2017-2018, available at <https://infohub.nyced.org/reports-and-policies/citywide-information-and-data/information-and-data-overview>

²² Brief of 553 Social Scientists as Amici Curiae in Support of Respondents, at 6-12, *Parents Involved in Cmty. Schs. v. Seattle Sch. Dist. No. 1, et al.*, 551 U.S. 701 (2007) (Nos. 05-908, 05-915).

²³ John Kucsera and Gary Orfield, *New York State’s Extreme School Segregation: Inequality, Inaction, and a Damaged Future*, UCLA Civil Rights Project, March 2014, pp. 19-24, available at <https://www.civilrightsproject.ucla.edu/research/k-12-education/integration-and-diversity/ny-norflet-report-placeholder/Kucsera-New-York-Extreme-Segregation-2014.pdf>

²⁴ 1971 N.Y. Laws Chap. 1212; See also, Jim Dwyer, “Decades Ago, New York Dug a Moat Around Its Specialized Schools,” *The New York Times*, June 8, 2018, available at <https://www.nytimes.com/2018/06/08/nyregion/about-shsat-specialized-high-schools-test.html>

²⁵ New York City Council, *Introduction 15410-2019*, available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=690910&GUID=B1E34E6C-43EF-4824-9C1E-3C4A6564195A&Options=&Search=>

²⁶ Elissa Gootman and Robert Gebeloff, “Fewer Children Entering Gifted Programs,” *The New York Times*, Oct. 29, 2008, available at <http://www.nytimes.com/2008/10/30/nyregion/30gifted.html>; see also Elissa Gootman and Robert Gebeloff, “Gifted Programs in the City Are Less Diverse,” *The New York Times*, June 19, 2008, available at <https://www.nytimes.com/2008/06/19/nyregion/19gifted.html>.

²⁷ Blue Telusma, “Majority minority NYC schools offer fewest programs for gifted and talented children,” *The Grio*, April 8, 2019, available at <https://thegrio.com/2019/04/08/new-york-schools-gifted-programs-black-hispanic/>

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²⁹ Allison Roda, *Gifted and Talented Programs are Not the Path to Equity*, the Century Foundation, June 2019.

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³⁰ See, e.g. Florida (available at <http://www.fldoe.org/core/fileparse.php/7690/urlt/0070110-p-gifted.pdf>); Maryland (available at <http://marylandpublicschools.org/programs/Documents/Gifted-Talented/Top10GT2017.pdf>); Pennsylvania (available at <https://www.giftedpage.org/wp-content/uploads/2016/12/Parents-Guide.pdf>)

³¹ See *JD ex rel. JD v. Pawlett School District*, 224 F.3d 60 (2d Cir. 2000), where the court held that because a student was identified as gifted, he was not entitled to special education services under the IDEA.

³² The New York Performance Standards Consortium, available at <http://www.performanceassessment.org/>

³³ Amy Zimmer, “Gifted Programs Ditched for Hands-On Learning for All at More NYC Schools,” DNA Info, June 13, 2017, available at https://www.dnainfo.com/new-york/20170613/hunts-point/schoolwide-enrichment-model-gifted-and-talented-renzulli/?utm_content=bufferfc620&utm_medium=social&utm_source=twitter.com&utm_campaign=DNAinfoNY

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