

Testimony to Panel for Educational Policy
Chancellor’s Regulation A-101

The undersigned are experts and advocates in the area of educational equity and school diversity. We commend you on the attention you are paying to the importance of racial and economic diversity in New York City public schools. As Mayor de Blasio declared when signing the School Diversity Accountability Act, we have a duty “to ensure that our schools are as diverse as our city and people of all communities live, learn and work together.”

To that end, we are writing to express our concern regarding one provision in the current and proposed amendment to Chancellor’s Regulation A-101. We believe a small but potentially far-reaching error runs the risk of undermining efforts to achieve diversity in New York City schools. Diverse classrooms provide long-lasting academic and social benefits for all children.

Footnote 1 to the regulation reads **“Race may be considered as a factor in school enrollment only where required by court order...”**

The notion that race can only be considered as a factor when required by court order is patently wrong.¹ The United States Supreme Court explicitly permits the use of race-conscious measures to achieve school diversity and reduce racial isolation. Specifically, voluntary desegregation policies are guided by the U.S. Supreme Court decision in Parents Involved in Community Schools v. Seattle School District No. 1, 551 U.S. 701 (2007) (“PICS”). The PICS decision sanctioned the use of race-conscious student assignment policies. As Justice Kennedy noted in his controlling opinion, districts are “free to devise race-conscious measures to address the problem” of racial isolation in schools. PICS, 551 U.S. at 788-89.

Based on PICS, in 2011, the U.S. Department of Education, Office of Civil Rights and the U.S. Department of Justice issued guidance to school districts that explicitly recognizes the permissibility of using race in redressing racial isolation in schools. See Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools, available at <http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.html>. In this guidance, OCR and DOJ explain the importance of racial diversity in schools and provide examples of ways in which schools and districts can use race-conscious (and of course race-neutral) policies to reduce racial isolation and advance school diversity.

As communities across New York City explore more equitable assignment policies, it is important that NYC DoE's regulations are able to best support these efforts by accurately reflecting the current status of the law. Accordingly, we respectfully request that the regulation be corrected by:

¹ In a 2013 publication, entitled: “Within Our Reach, Segregation in NYC District Elementary Schools and What We Can Do About It: School-to-School Diversity,” New York Appleseed pointed out that the footnote at issue was more restrictive than the U.S. Supreme Court standard and unnecessarily restricted the Department of Education. https://www.appleseednetwork.org/wp-content/uploads/2013/10/First-Briefing-FINAL-with-Essential-Strategies-8_5_13.pdf, page 14.

1. Deleting the language in footnote 1 to CR A-101 that reads: “Race may be considered as a factor in school enrollment only where required by court order...”; and
2. Replacing that language with the following:

“School districts are strongly encouraged to consider legally permissible race-conscious and race-neutral approaches to promote diversity and reduce racial segregation.”

Once again, we applaud your efforts to address the inequity in our schools by supporting policies that fulfill Mayor de Blasio’s promise that our schools reflect the richness and diversity of our city. As U.S. Supreme Court Justice Thurgood Marshall stated, “unless our children begin to learn together, there is little hope that our people ever learn to live together.”

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*for identification purposes only