



U.S. Department of Justice

Civil Rights Division



U.S. Department of Education

Office for Civil Rights

June 16, 2017

Mr. Mike Hyatt
Interim Superintendent
Gallup-McKinley County Schools
P.O. Box 1318
Gallup, New Mexico 87305-1318

Re: Gallup-McKinley County Schools
OCR Case Number 08-11-5002
DOJ Case Number 169-49-68

Dear Superintendent Hyatt:

This is to advise you of the resolution of the above-referenced compliance review conducted by the U.S. Department of Education, Office for Civil Rights (OCR) and the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section (DOJ). The compliance review assessed whether the Gallup-McKinley County Schools (the District) discriminated against American Indian students on the basis of their race by establishing policies and procedures that exclude them from or limit their participation in the District's Gifted and Talented Education (GATE) program and Advanced Placement (AP) and honors courses. OCR and DOJ also reviewed whether the District discriminates against American Indian limited-English proficient parents based on race by not providing them with information about the GATE program and Honors and AP courses in a language they understand.

OCR and DOJ initiated this compliance review under Title VI of the Civil Rights Act of 1964 (Title VI), as amended, 42 U.S.C. § 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the U.S. Department of Education. As a recipient of such assistance, the District is subject to Title VI.

During the course of the investigation, we received and reviewed comprehensive data responses from the District. We interviewed the District's administrator overseeing the special education and GATE programs, the District's Special Education Director, and the GATE program coordinators. We reviewed September 2014 survey responses from 256 District teachers, counselors and administrators, from all District schools, about the District's GATE program and Honors and AP courses. We also interviewed GATE program teachers and school coordinators while on-site in March 2015 and conducted numerous follow-up calls with various District staff.

Initially, in October 2011 and multiple times during the course of this investigation, the District's Superintendent acknowledged the underrepresentation of American Indian students in GATE, Honors, and AP programs and courses. The Superintendent also informed OCR that the District is aware of, and has been attempting to remedy, the disparate number of American Indian students involved in its GATE, Advanced Placement, and Honors programs since 2004. Prior to the conclusion of the investigation, the District expressed an interest in voluntarily resolving this case and entered into a Resolution Agreement (the Agreement) on February 14, 2017, which commits the District to specific actions to address the issues under review. This letter summarizes the applicable legal standards, the information gathered during the review, and how the review was resolved.

Applicable Legal Standards

Title VI and its implementing regulation, at 34 C.F.R. Part 100, prohibit discrimination on the basis of race, color or national origin. Title VI, at 34 C.F.R. § 100.3(a), provides that no person shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program operated by a recipient. The regulation implementing Title VI, at 34 C.F.R. § 100.3(b)(1), prohibits a recipient, on the ground of race, color, or national origin, from denying an individual a service or benefit of a program; providing different services or benefits; restricting an individual in any way in receiving a service or benefit; treating an individual differently in determining whether the individual satisfies any admission or eligibility requirement for provision of a service or benefit; and, denying an individual an opportunity to participate in a program or affording an opportunity to do so which is different from that afforded to others. The regulation implementing Title VI, at 34 C.F.R. § 100.3(b)(2), prohibits a recipient from using criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin.

The administration of student enrollment in programs and courses can result in unlawful discrimination based on race in two ways: first, if students are subject to different treatment based on their race; and second, if a policy is neutral on its face and administered neutrally but has a disproportionate and unjustified effect on students of a particular race.

A Department policy document, the May 25, 1970 Memorandum to school districts entitled "Identification of Discrimination and Denial of Services on the Basis of National Origin," 35 Fed. Reg. 11,595 provides that recipients have the responsibility to adequately notify national-origin minority LEP parents of school activities that are called to the attention of other parents, and that such notice in order to be adequate may have to be provided in a language other than English. Executive Order 13166, *Improving Access for Persons with Limited English Proficiency*, reprinted at 65 Fed. Reg. 50121 (August 16, 2000), requires that recipients of Federal financial assistance "take reasonable steps to ensure meaningful access to their programs and activities by LEP persons." School districts have an obligation to ensure meaningful communication with LEP parents in a language they can understand and to adequately notify LEP parents of information about any essential program or activity of a school district, including about gifted and talented programs and course offerings.

About the District

The District encompasses 4,957 rural square miles and is the largest school district geographically in New Mexico. The District’s American Indian student enrollment consistently hovers above 80% of the student population. Per the District’s Civil Rights Data Collection school year (SY) 2009-2010 form, the District enrolled 12,508 students in 39 public schools, including 19 elementary schools, 7 middle schools, and 9 high schools. At 80.6%, American Indian students comprised the majority of the student enrollment. In SY 2015-16, the District enrolled 11,686 students, with 79.5% (9,291 students) being American Indian.

In SY 2004-05, the District independently began tracking and working to increase American Indian student enrollment in gifted programs. At that time only 34% of the students in the gifted program were identified as American Indian. In each successive school year, the District has identified an increasing number of American Indian students as being gifted, but American Indian students remain underrepresented to a statistically significant degree despite the increasing enrollment of American Indian students in gifted programs. Specifically, the District’s gifted program enrollment numbers reflect a nearly 20% increase in the number of American Indian students enrolled in the gifted program between SY 2004-2005 to SY 2013-2014. Despite this improvement, American Indian students comprised 81.4% of the total District enrollment in SY 2013-14 and American Indian students comprised only 56% of the students enrolled in its GATE program and in February 2015 American Indians students only comprised 57% of the students enrolled in its GATE program.

The District provided the following data, dated February 2015, “Proportionality Summary for K-12 Public at the District”:

Ethnicity	Total Population	Gifted Population	Westat Risk Ratio
American Indian/Alaskan Native:	9120	333	0.30
Hispanic:	1315	129	2.12
Caucasian:	559	82	3.10
Asian:	112	37	6.67
Black:	44	2	0.87
Hawaiian Native or Pacific Islander:	7	1	2.73
All:	11157	584	

Based on its own statistical test, the District determined that non-American Indian students are significantly overrepresented in GATE programs and, thus, inversely American Indian students are significantly underrepresented. This is demonstrated by the information in the preceding table that shows Hispanics and Caucasian students are more than two and three times more likely to appear in the gifted program than expected based on their overall population, while American Indian students appear in the program in far fewer numbers than expected. OCR conducted a Chi-square test using the same information and confirmed that American Indian students were

disproportionately underrepresented in gifted service participation in a statistically significant manner.

Summary of Review

I. Access to GATE program and Honors and AP classes

A. GATE Program

Initial Identification and Referral

The District uses the Partnership for Assessment of Readiness for College and Careers (PARCC) standardized test scores to screen for potential giftedness. For the school year 2015-2016 the top 50%¹ of 3rd graders and top 30% of 6th and 9th graders were screened for giftedness using the PARCC scores and teachers' Having Opportunities Promotes Excellence (HOPE) scales² on students. Prior to SY 2015-2016, the District screened only 3rd graders and testing of students other than 3rd graders was only done by teacher referral. Also for the first time during SY 2015-2016 teachers were asked to complete a HOPE scale on all 3rd, 6th and 9th graders; in previous school years, teachers were only asked to complete the HOPE scale for those students they believed exhibited signs of giftedness. The parents of each student nominated through teachers' use of the HOPE scale are asked to complete the Parent Inventory form, which helps to gather and assess whether the student exhibits giftedness. At about the same time as the HOPE scales are being utilized by the teachers to determine if students should be nominated for giftedness, the District announces to parents their opportunity to contact their respective Coordinator if they believe their student might be gifted. When a parent contacts a Coordinator, the Coordinator uses the Silverman Characteristics³ to guide the conversation and to gather information on any characteristics of possible giftedness that the student demonstrates. If the student demonstrates a certain number of the Silverman characteristics based on the conversation, the students' Silverman characteristic information will be entered into the Frasier Talent Assessment Profile (FTAP) Gifted Education Need Identification Engine (FTAP GENIE) database for gifted consideration. The FTAP GENIE is a single comprehensive database that allows District Coordinators to review all of the students identified through various means to determine if they should be identified as gifted and offered gifted classes. If the parent reports that the child exhibits 75% or more of the characteristics found there, the parent is advised that the student is likely to qualify; if the child has fewer, the parent is advised that the student is unlikely to qualify. The parent is then given the choice of whether to proceed with further assessments and evaluations. Parents must give written permission to further evaluate the student using the

¹ Prior to the 2015-2016 school year the District tested the top 30% of its 3rd graders, but increased the number to 50% in an effort to increase the number of American Indian students identified as gifted.

² The HOPE scale, created at Purdue University, is designed to aid in the identification of gifted students.

³ The Characteristics of Giftedness Scale was designed by psychologist Linda Silverman. The list of descriptors has been used to predict performance in the superior and gifted ranges of the Stanford-Binet Intelligence Scale, WISC-III, and other standardized intelligence tests. It was designed for parents to answer questions about their children, and was developed as a result of research findings and clinical observations. The list has 25 descriptors, such as good problem solving/reasoning abilities, rapid learning ability, extensive vocabulary, etc. If a child demonstrates more than three-fourths of the traits, it is likely that he or she is gifted.

CogAT-7 and the Torrance creativity assessment and, if the student qualifies, to begin gifted services.

The District publicizes and disseminates information about GATE through staff responsible for disseminating notice of gifted testing and screening, primarily the 6 District Coordinators and gifted teachers located at various schools throughout the District. These notices are sent home with students, flyers are posted at each school site, included in newspapers, and the District disseminates this notice to local radio stations who will often translate the notice into the native languages used throughout the District. The District reports that parents' referrals for gifted education are accepted by phone by the GATE Coordinator. However, staff surveyed reported not knowing the action they should take when a student's parent asks how to get their child tested for giftedness or placed in honors or AP classes. Staff members generally did not know the process, and other responses ranged from directing parents to GATE teachers, school principals, school counselors, special education teachers, the registration desk, and the special education director.

On an annual basis, the District provides training on how to identify gifted students to all 3rd, 6th and 9th grade teachers, all counselors and all principals. According to the District, gifted education teachers invite regular education teachers who are new or who wish retraining to learn about the gifted identification process on an annual basis. After the training opportunity, the GATE program requests referrals of 30% of 3rd⁴, 6th and 9th grade students plus any other students at other grades who are identified as potentially gifted. The District advised OCR that it seeks referrals of the top 30% of the third grade. The District continues to consider all parent and teacher referrals at any grade level and any students so identified are tested at the same time as the nearest class in age to the 3rd, 6th or 9th graders.

According to information obtained in early 2015 from 247 District staff members, including teachers, counselors, and school principals, over 79% indicated that the District had not provided them professional development training on how to recognize a gifted student or how to refer a student for evaluation for the GATE program. Of this cohort, about half (49.8%) had recommended a student to be evaluated for the GATE program. The District does not provide training to all teachers in the District on how to identify characteristics of giftedness. Instead it provides training to all 3rd, 6th and 9th grade teachers, all school counselors and all principals.

The District reports that parents' referrals for gifted education are accepted by phone by the District's six GATE Coordinators. However, based on surveys of staff members, there is no consensus regarding the actions they would take when a student's parent asks how to get their child tested for giftedness or placed in honors or AP classes. Staff members generally did not know the process, and their responses ranged from directing parents to GATE teachers, school principals, school counselors, special education teachers, the registration desk, and the special education director.

The District's SY 2012-13, 2013-14, and 2014-2015 data shows discrepancies in several stages of the GATE identification process. For example, the data shows that there is a negative

⁴ OCR noted that the District requested referrals for 50% of the third grade students during the 2015-2016 school year.

disparity between the number of American Indian students who are referred and the number of American Indian students who are recommended for evaluation, as well as a negative disparity in the number of American Indian students who are recommended for evaluation and the number of American Indian students who are actually evaluated. This disparity is not as negative for White and other students. For example, in SY 2013-2014, 83.1% of Hispanic students recommended for GATE evaluation were evaluated; however, only 66.1% of American Indian students who were recommended for evaluation were evaluated.

Evaluation and Eligibility

All of the students' test score information identified through the initial screening process is entered into the FTAP GENIE alternative assessment protocol and additional information is gathered on those students and entered into the FTAP GENIE to determine if they are gifted. If a student is identified as potentially gifted through this initial screening, the school seeks permission from the student's parents to conduct additional assessments for giftedness (CoGAT-7 and the Torrance test of creative thinking). At the same time these additional assessments are taking place, the parent is asked to complete an inventory about the students' learning opportunities within the home and the student also completes an inventory and the classroom teacher completes Scales for Identifying Gifted Students (SIGS). The CoGAT-7, Torrance, parent and student inventories and the teacher's SIGS are entered in the FTAP GENIE database and each student's scores are evaluated. The staff can adjust the scores for various factors to include economic disadvantage, ethnicity, parent-reported disadvantage characteristics, and ELL status. The staff also takes into consideration opportunity-corrected achievement data, which is information collected about the opportunities available, or not available within each student's home environment (primarily gathered through the parent inventory), e.g. lack of newspapers, books, or other hindrances to learning, and revises these students results upward to correct for the lack of opportunities for students who are slightly below a cutoff for giftedness.

For each student identified through the FTAP-GENIE as gifted, an Evaluation Determination Team (EDT) is convened. The Team is comprised of a GATE teacher (and the area GATE coordinator if the teacher is new), the principal, a general education teacher, the parents and the student. During the meeting, discussion is held concerning whether the student is qualified for GATE and the opportunities available in the program. If the team agrees, then the student enters into GATE.

The District aims to identify 5% of the student population as eligible for gifted services. For SY 2013-14, no elementary school in the District identified 5% of the American Indian student population as gifted. However, five elementary schools identified White students at a rate over the 5% goal: Jefferson, Lincoln, Turpen, Red Rock, and David Skeet. Turpen and David Skeet Elementary Schools have American Indian populations of over 90% with very few White students; and Jefferson, Lincoln, and Red Rock Elementary Schools have lower American Indian populations than most of the school populations in the District. Identification of American Indian elementary students is under the goal of 5% across the District while some schools in the District are identifying White elementary students over the 5% goal.

GATE Services

GATE teachers use a combination of pull-out programs, co-teaching, and consult with regular and advanced class teachers. Classroom teachers are provided with a list of accommodations for their gifted students and meet with the GATE teacher to discuss gifted education objectives that can be met in the regular classroom.

Each GATE student has a plan customized by an EDT to develop each student's talents. Programming options are structured to develop gifted students' talents with an approach that combines accelerated study of multiple disciplines with advanced thinking skills instruction. These services are divided into two broad areas: humanities and STEM (Science, Technology, Engineering, and Math, with Problem Solving). Students who present with aptitude in language arts or social studies, achievement in reading or writing, or ability in creative thinking generally have talent development goals and services related to the humanities (language arts, social studies, creativity). Students who present with aptitude in math or science, achievement in math or science, or problem solving ability often have talent development goals and services related to STEM fields. According to the District, most GATE students have goals and services for both areas.

According to a District administrator, Navajo-serving schools do not have GATE teachers. The administrator states: "The problem is that GATE teachers are based in town because there are more students here. They only travel to remote schools to develop the IEP and provide remote assistance to regular education teachers. There is little to no direct GATE instruction to Navajo-serving schools..." The administrator believes the remote schools need GATE teachers and AP teachers so that students can receive direct instruction that is more effective than computer courses. In staff surveys, teachers expressed that the District schools on the reservation receive limited resources. One teacher notes: "The GATE program is disproportionately represented by students who live in-town and not on the reservation."

Elementary school programming: Elementary schools are served by a GATE teacher at least one day per week, irrespective of the number of GATE students. The GATE teacher serves most grades K-3 gifted students for approximately 1.5 hours per day, and serves most 4th and 5th grade gifted students for approximately 3 hours per day. The balance of the teachers' time is spent on individual student planning, collaboration and consultation with general education teachers, and the gifted child find process. Students who are newly identified, or whose talents are latent, frequently receive 0.5-1.5 hours of pull-out service designed to transition the student into GATE. This service is mostly composed of thinking skills instruction, and scaffolding towards critical and scientific thinking. Elementary students in their second and later years of service experience a more extensive pull-out program in humanities, language arts, math, science, and social studies curriculum units.

Participation in advanced coursework (honors, AP) is recommended for all gifted students who demonstrate advanced aptitude or achievement in a curricular area. The EDT (consisting of a general education teacher, gifted education teacher, site administrator, parent, and the student) makes the decision to place or not place a student in these classes. Gifted education

programming at the elementary level is aligned with the intent of preparing gifted students for advanced middle school coursework.

Middle School Programming: At the middle school level, general education teachers co-teach with gifted education teachers. GATE teacher strengths such as subject area endorsement and real-world experiences, acceleration options at the locations such as accelerated and grouped courses or concurrent enrollment, and pooled student needs and interests such as language development or art may guide service design. Single-subject acceleration in math, GATE-taught math and science elective and core courses, and/or grouped, accelerated, GATE-supported science and math courses may be selected by middle schools to meet their students' advanced STEM needs.

For SY 2013-14, the middle schools in the District identified American Indian students as Gifted at a higher overall percentage than the elementary schools for the same year. All of the schools were close to the 5% goal, either a few points above or below (with the lowest being Thoreau Middle at 3.67%). However, White students were identified at a much higher percentage and consistently exceed the 5% goal. For example, Gallup Middle School and Thoreau Middle School identified White students as gifted at more than triple the rate of American Indian students identified as gifted, and those schools have nine honors or advanced courses. The middle schools which are predominately American Indian and do not have any Caucasian students (Crownpoint Middle, Navajo Middle, and Tohatchi Middle) identify students at a rate close to the 5% goal, but these schools offer fewer Honors courses (Crownpoint has one Honors or advanced course, Navajo has three, Tohatchi has two). Gifted education programming at the middle school level is aligned to prepare students for high school AP courses.

High School Programming: In High School, gifted students can elect to take AP or Honors courses with the help of their EDT in making placement decisions. GATE teacher strengths such as subject area endorsement and real-world experiences, acceleration options at the locations (such as AP and Honors courses or concurrent enrollment with local colleges), and pooled student needs and interests (such as post-secondary transition or foreign language) may guide service design. The District reported that beginning with SY 2006-07, it offered at least one honors or similarly academically rigorous class in both math and language arts in each high school. However, at the beginning of this review we found that only one high school had these services. AP courses are offered on a site-by-site basis – some schools have just a few, others have more. A .5 hour-per-day mentoring course is frequently used to meet transition and thinking skills goals. For students who are far beyond the regular curriculum, independent study, seminars, and online classes may be offered.

The three District GATE coordinators interviewed on March 3, 2016 advised us that the District needs additional funds to incentivize GATE teachers to work at the schools located on the reservation which are a great distance from Gallup. An additional challenge is that teachers who do not already possess the required endorsements for teaching gifted and AP courses must pay for it out-of-pocket; the District does not currently pay for those endorsements. Another related challenge identified by the coordinators is that even if the District did pay for the endorsements, the District would have no way of retaining these teachers to stay at the remote schools, many of which are located on reservations. Three GATE teachers were hired this year to work at one cluster of schools and each one left before the end of the school year. We were also informed

that online classes are used more at schools located on the reservation than in the schools located close to Gallup due to the difficulty of getting instructors to work at these schools. The Coordinators did point out that the current Superintendent is really pushing for offering more live classes in the remote, reservation schools. To that end, the Superintendent increased staffing allocations for Gifted teachers at all District schools for school year 2015-2016 in an effort to build capacity for GATE and AP and Honors course offerings. The District offered housing as an incentive as well as signing bonuses to attract Gifted teachers. The District went from 15 to 25 GATE teachers District-wide in SY 2015-16.

While AP and honor classes are available online to students throughout the District, it has become especially critical for those remote, reservation schools where it is difficult to recruit and retain qualified/endorsed teachers. For example, during our interview with the District Coordinators on March 3, 2016, we learned that there is a 9th grade student at Navajo HS who has already completed every math credit available to him at that High School. This included AP online course offerings currently available for Navajo HS (located on a reservation) students. The District is not sure it can enroll him in a dual credit college course yet (usually for 11th or 12th grade students) and getting him to Gallup which is about a 50 mile commute presents a challenge for the student and the District.

In an effort to provide more accessible programming for students located at remote/on-reservation schools the District has reached out to Northwestern University and Purdue University to see if those institutions are willing to partner and provide some online courses. To date, they have had some success when, for example, Purdue University's Gifted Education Resource Institute made room for two students in the summer of 2015 through an online learning environment.

For SY 2013-2014, the identification rate for American Indian gifted students within the high schools varies. The schools which are predominately American Indian identify at lower rates: Crownpoint at 3.07%, Tohatchi at 2.92%, Navajo Pine at 3.28%, and Thoreau High at 1.92%. Conversely, the schools in the District with lower American Indian populations identify both American Indian and White students at higher percentages. Gallup High, Miyamura High, Ramah High, and Thoreau High identify White students at a rate three times higher than American Indian students and much higher than the 5% identification goal.

Evaluating the GATE Program

The GATE Coordinator stated that a 2004 program review noted that GATE services needed improvement. Identification protocols were revised, training in identification of GATE eligible students was provided to teachers, audits for compliance were developed, and an implementation plan was developed to revitalize GATE services.

The District provided us with a list of GATE program concerns and recommendations for improvement, based on its annual internal review of the program from SY 2004-05 through SY 2013-14. Generally, the District recognized that there was disproportionality ("too few American Indian students") and that teachers needed training on identification and referral of students for gifted testing. For the two most recent years of the internal evaluation (SY 2011-12

and 2013-14), the District recognized that: referrals are most disproportionate for non-sweep grades (other than grade 3); teachers have difficulty identifying creativity; testing bias is non-significant but present for American Indian students, and significant and negative for English learner students; and 14% fewer American Indian students were tested in 2012-13 than should have been.

The District's proposed follow-up actions based on its internal evaluation included, through the years, training teachers to reduce bias in referral and identification, and improving the FTAP screening tool. For the two most recent years of the internal evaluation (SY 2011-12 and 2013-14), the District committed to follow-up actions, including: Train new teachers to reduce bias in referral and identification; teachers of gifted students must directly refer highly creative students; study use of achievement scores adjusted for American Indian status as well as free and reduced lunch and ELL status; use home liaisons to obtain permission to test; provide information about programming to parents; use American Indian comparison group to refer students based on achievement; and over-refer American Indian students for testing.

GATE Coordinators report meeting with the Indian Education Committee, parents, students, and teachers about the GATE program, although these meetings are not consistent or widely attended. The District also has a Gifted Advisory Committee composed of parents, community members, students, and school staff members. According to the District, the membership of the Gifted Advisory committee is required to reflect the cultural diversity of the school district, and, if more fully utilized, allows parents to meet with District staff during the school year to discuss GATE program satisfaction and related improvements.

District staff members surveyed provided the following recommendations to OCR and DOJ for increasing American Indian students' participation in the District's GATE program and AP and honors classes:

- Provide equal access to gifted programs to students attending schools on the reservation;
- Increase the continuum of advanced and honors courses offered;
- Ensure that parents are aware of the process for referring their child for evaluation;
- Ensure that LEP parents are notified of the GATE program and its steps, in a language the parents understand;
- Train parents to be advocates for the GATE program;
- Provide teacher and parent training on: identifying gifted students, the referral and evaluation processes, how to educate gifted students, IEP meetings, placement meetings;
- Continue to seek improved methods of identification that are devoid of cultural and language biases;
- Take information about the gifted program to American Indian chapter houses and to PTO meetings;
- Determine if there is a pattern of some District elementary schools having a discernible difference in recognizing gifted students compared to other District schools;
- Provide liaison contact to retrieve testing permission forms back from parents;
- Mail information home to the parents rather than just sending it home with students;
- Establish an American Indian Ombudsman position; and
- Provide more frequent gifted testing opportunities.

B. Honors and Advanced Placement Courses

Coordination and Notice

There are no District-wide recruitment efforts for its Honors and Advanced Placement courses. The District does not have a Districtwide coordinator regarding Honors and Advanced Placement courses. The District does not publicize information about participating in the classes, other than including AP and Honors course offerings in school course catalogs. School administrators reported: they emphasize to students and their families that AP classes offer a more challenging curriculum that will better prepare students for the rigors of college reading and writing; AP and Honors courses are discussed at registration days and at various meetings; and administrators and counselors steer new students to these classes if it seems appropriate or there is a particular student interest. School counselors and teachers provided the following individual responses when asked how students and parents are informed about Honors and AP classes: not sure; notes and letters to parents, email messages, and telephone calls; GATE and classroom teachers inform them; home visits; exposure to peers in the program; invitations to Gifted Advisory meetings for parents; conversations about class scheduling with school counselors and principals; and “all classes, including Honors and AP, are on the school’s registering system and students have access to all of the classes available.”

Eligibility and Participation

There is no District-wide eligibility criteria for participating in Honors classes at the middle school level. Responses on how a student is placed into Honors classes ranged from one or a few of the following reasons: being identified as Gifted in elementary school; demonstrating high achievement (grades or standardized test score information); determination by an EDT/IEP team; self, parent, or teacher recommendation; or “if a student generally shows the ability to be successful.” One school did not have eligibility criteria. Not all of the middle schools had honors or advanced classes.

There is a wide range in GATE and honors programming and course offerings at the District’s various middle schools. For example, one school’s GATE programming includes: Case management, co-teaching and consult support, and Philosophy and Debate electives. Its advanced or honors course offerings include: 6th grade Adv. Math, Pre-Algebra, and Adv. English; 7th grade Adv. Math, Algebra I, Science, and Adv. English; 8th grade Algebra I, Geometry, Science, and Adv. English. Another middle school’s GATE programming is described as: A combination of inclusion-based services where special education teachers support differentiation in the core classes through consult and direct instruction in order to provide advanced academic challenges. Students in the GATE program also receive direct instruction from special education teachers in a pull-out setting focusing on creative thinking and problem solving activities; and its advanced or honors course offerings include: Advanced Language Arts 7 and 8, Advanced Math, Pre-Algebra and Algebra 1, Advanced New Mexico History 7 and US History 8, Advanced Science 7 and 8, GATE Mentoring. In contrast, other middle schools offer less description about their GATE programming and with respect to

advanced or honors courses, one middle school offers two such courses, one middle school offers just one, and another offers zero advanced or honors courses.

Five of the nine District high schools did not have AP classes during SY 2010-11. By SY 2013-14, six of the nine high schools in the District offered at least one AP course. The three schools that did not offer AP classes are Tohatchi HS (with a 99% American Indian student population), Gallup Central HS (the District's alternative high school, with an 87% American Indian student population), and Navajo Pine HS (86% American Indian student population, and located on the Navajo reservation). District data shows an increase across all races in students taking AP courses. The overall participation in AP and Honors increased from SY 2009-10 to SY 2012-13, which could be attributed to the State requiring all students entering 9th grade in 2009-2010 and beyond to take at least one Honors, AP, Dual-Credit, or Distance Learning course to graduate from high school. For SY 2013-14, 317 American Indian students took at least one AP course. In 2013-2014, Tohatchi High School and Gallup Central High were the only high schools in the District without an Honors Program.

C. Analysis

The Title VI disparate impact regulations state (in part) that a recipient may not “utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color or national origin...” See 34 C.F.R. § 100.3(b)(2). A recipient who employs a facially neutral procedure or practice that has a disparate racial impact and lacks a substantial legitimate justification for this result violates Title VI. Thus, in disparate impact cases, OCR must establish whether there has been a disproportionate denial of opportunity to benefit from a program and determine if this is due to a neutral policy, process, or practice. If any disproportionate denial of opportunity results from a neutral policy, process, or practice, OCR will assess whether the recipient's policy, process, or practice is educationally necessary and determine if a less discriminatory alternative exists. If the evidence does not establish that the policy, procedure, or practice is necessary to meet an important educational goal, then it must be eliminated. Even if the policy, procedure, or practice is determined to be necessary, discrimination may still be occurring if there is a less discriminatory alternative that the recipient does not use that would meet the recipient's important educational goal.

Here, it appears that although the District's policy and practices with respect to its GATE program and honors and AP courses are facially neutral, the large disparity between the number of American Indian students enrolled in the District and the number of American Indian students who participate in the District's GATE program and honors and AP courses demonstrates there is a disproportionate denial of opportunity for American Indian students. To the District's credit, it recognized the disparity on its own and proactively took steps to improve the opportunities for American Indian students to participate in the GATE program and honors and AP courses prior to the initiation of this compliance review. Unfortunately, the District's efforts have not been sufficient to narrow the considerable gap in participation. Prior to OCR and DOJ reaching findings in this review, the District expressed a willingness to voluntarily enter into an Agreement with OCR and DOJ in an effort to continue its efforts to improve its participation rates for American Indian students. Based on the history of the District's efforts in this area, we believe the District's interest in improving is genuine. Further, we believe that the Agreement

that was reached with the District on February 14, 2017, will support the District in its efforts to effectively eliminate the disproportionate denial of opportunity for American Indian students.

II. Communication with LEP parents

According to the Department's Civil Rights Data Collection (2009-10), the District enrolled 3,747 limited-English proficient (LEP) students. Among the languages that LEP parents speak are Navajo (several District schools are located on the Navajo reservation) and other American Indian languages.

The District uses a variety of methods to communicate about its GATE program and honors and AP classes. The information is disseminated to parents and students in various ways, including in written form and during IEP meetings. The GATE Coordinator states that information about GATE testing is posted in the schools and sent home with identified students, but is not sent out to parents. The District's Associate Superintendent, who oversees the GATE program, states that there are no community liaisons who inform LEP parents about the program, but coordinators periodically hold meetings to inform parents about the GATE program. A GATE coordinator for several schools stated that the District has quarterly parent meetings for those interested in the gifted program, the District announces GATE recruitments on local radio stations, and there are posted notices at the schools regarding the identification of gifted students. Nonetheless, the coordinator expressed the need for more parent outreach. The Coordinator identified a need to hold more recruitment meetings in communities outside the city of Gallup, and admits that recruitment efforts are better in town than in the more rural schools. Several teachers who were surveyed expressed the need for increased notice about the programs, particularly in the American Indian communities. The District's special education director stated that the District notifies parents of Gifted advisory meetings through media press releases in English, and that at the meetings the program services are discussed. The press releases do not discuss GATE identification or program services. The District's parent permission forms for GATE testing is in English only, and the parent interview forms are in English only. If an interpreter is needed, the District has Spanish-speaking and Navajo-speaking staff who can assist.

District staff members surveyed provided the following recommendations to OCR for increasing American Indian students' participation in the District's GATE program and AP and honors classes, all requiring meaningful notice to parents about the programs and classes:

- Ensure that parents are aware of the process for referring their child for evaluation;
- Ensure that LEP parents are notified of the GATE program and its steps in a language they understand;
- Train parents to be advocates for the GATE program;
- Provide teacher and parent training on: identifying gifted students, the referral and evaluation processes, how to educate gifted students, IEP meetings, placement meetings;
- Take information about the gifted program to American Indian chapter houses and to PTO meetings;
- Provide liaison contact to retrieve testing permission forms back from parents; and
- Mail information home to the parents rather than just sending it home with students.

The District's Associate Superintendent who oversees the GATE program states there are no community liaisons who inform LEP parents about the program, but coordinators periodically hold meetings to inform parents about the GATE program. The GATE Coordinator for five elementary schools and two secondary schools stated that the District has quarterly parent meetings for those interested in the gifted program, the District announces GATE recruitments on local radio stations, and there are posted notices at the schools regarding the identification of gifted students. He expressed the need for more parent outreach. He wants to hold more recruitment meetings in communities outside the city of Gallup, and he admits that recruitment efforts are better in town than in the more rural schools. Several teachers who were surveyed expressed that increased notice about the programs is needed, particularly in the Indian communities.

With regard to this issue, the District similarly requested to voluntarily enter into an Agreement with OCR and DOJ to resolve the concerns. We believe that the remedies in the Agreement will help the District to communicate effectively with all parents as the District makes effort to improve access to its GATE programs and Honors and AP classes. Further, we believe that the District's efforts to communicate meaningfully with LEP parents in a language they understand will help to increase American Indian students' participation in these programs and classes.

III. Resolution Agreement

Pursuant to the Agreement, the District committed to take specific actions to ensure that it is providing an equal opportunity and equal access for all students, including American Indian students, to its advanced and higher level learning opportunities. The Agreement provides that the District will take the following actions:

- Reach out to an equity assistance center or consultant for technical assistance; obtain feedback from students, parents and staff; and conduct a comprehensive self-assessment of its current GATE program and Honors and AP courses to identify any potential barriers;
- Consider expanding criteria to determine eligibility and selection for enrollment;
- Expand student, parent, and community outreach about the available courses and programs, including engaging in community outreach within the American Indian community;
- Ensure effective oral and written communication with limited English proficient parents about the GATE program and AP and honors classes;
- Develop and implement a plan for increasing the number of Honors and AP courses offered in its middle and high schools; and
- Provide relevant training for District and school site administrators and personnel.

Conclusion

OCR and DOJ will monitor the District's implementation of the terms of the Agreement. If the District fails to comply with the terms of the Agreement, OCR and DOJ will take appropriate action to ensure the District's full compliance with Title VI and its implementing regulation.

This concludes OCR and DOJ's investigation of this compliance review and should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth our determination in one compliance review. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will protect personal information to the extent provided by law.

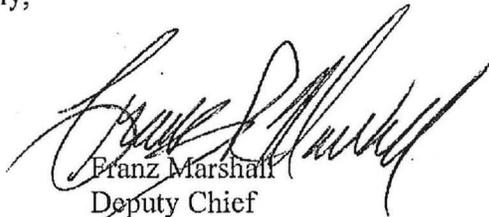
It is unlawful to harass, coerce, intimidate or discriminate against any individual who has filed a complaint, assisted in a compliance review, or participated in actions to secure protected rights.

Thank you for the District's cooperation during the investigation of this compliance review. If you have any questions regarding this letter or during the monitoring of the District's implementation of the Agreement, please contact Michael Sentel, OCR Attorney, at (303) 844-3333 or R.Michael.Sentel@ed.gov or Christopher Awad, DOJ Attorney, at (202) 353-3504 or Christopher.Awad@usdoj.gov.

Sincerely,



J. Aaron Romine
Director
U.S. Department of Education
OCR Denver Enforcement Office



Franz Marshall
Deputy Chief
U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section

Enclosure: Resolution Agreement

Cc: Hanna Skandera
Secretary of Education, New Mexico Public Education Department