



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310  
DENVER, CO 80204-3582

REGION VIII  
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COLORADO  
NEW MEXICO  
UTAH  
WYOMING

September 18, 2020

Mr. Max Perez, Superintendent  
Grants/Cibola County Schools  
413 West Roosevelt Avenue  
Grants, New Mexico 87020

*via email only to xxxx@xxxx.xxx*

Re: **Grants/Cibola County Schools**  
OCR Case 08-19-1269

Dear Superintendent Perez:

We write to inform you of the resolution of the above-referenced complaint, filed on March 18, 2019, with the Office for Civil Rights (OCR) of the U.S. Department of Education ("Department"), against Grants/Cibola County Schools ("District"), alleging discrimination on the basis of race and disability. Specifically, the Complainant alleged that the District:

- discriminates against American Indian students based on race by having policies and procedures that exclude them from or limit their participation in the District's gifted and talented education (GATE) program;
- discriminates against American Indian students based on race by having policies and procedures that exclude them from or limit their participation in advanced placement (AP), honors, and advanced middle school math courses; and
- treats students differently based on disability by having a policy or practice of not allowing students to be considered twice exceptional.

We began investigating the allegations pursuant to:

- Title VI of the Civil Rights Act of 1964 ("Title VI"), and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 100, which prohibit discrimination based on race, color, or national origin in programs or activities receiving federal financial assistance from the Department;
- Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination based on disability in programs and activities that receive federal financial assistance from the Department; and
- Title II of the Americans with Disabilities Act of 1990 ("Title II"), and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination based on disability by public entities.

As a recipient of federal financial assistance from the Department and a public entity, the District is subject to these laws and regulations.

Prior to OCR issuing a final determination pursuant to Section 303 of our *Case Processing Manual (CPM)*, the District expressed an interest in resolving the allegations pursuant to Section 302 of the CPM. OCR determined that it was appropriate to resolve the allegations because our investigation identified issues that could be addressed through a resolution agreement. Therefore, on June 24, 2020, OCR sent the District a proposed resolution agreement (“Agreement”). On September 18, 2020, OCR received a signed Agreement from the District. The provisions of the Agreement are tied to the allegations and evidence obtained during the investigation, and are consistent with applicable regulations.

This letter details the applicable legal standards, OCR’s investigation to date, and the evidence that OCR collected prior to receiving the District’s request to enter into an agreement.

## **I. LEGAL STANDARDS**

Pursuant to the Section 504 regulations, at 34 C.F.R. Section (§) 104.4(a)-(b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives federal financial assistance. The Title II regulations, at 28 C.F.R. § 35.130(a)-(b), create the same prohibition against disability-based discrimination by public entities. Likewise, pursuant to the Title VI regulations, at 34 C.F.R. § 100.3(a)-(b), a school district may not treat individuals differently based on race, color, or national origin regarding any aspect of services, benefits, or opportunities it provides. Therefore, school districts may not, based on disability, race, color, or national origin:

- deny an individual any service or other benefit;
- provide an individual any service or other benefit that is provided in a different manner from that provided to others;
- subject an individual to segregation or separate treatment in the receipt of any service or other benefit;
- treat an individual differently in determining whether he or she satisfies any admission, enrollment, eligibility, or other requirement which must be met to receive any service or other benefit; or
- deny an individual an opportunity to participate, or afford an opportunity to participate, which is different from that afforded others.

To determine whether individuals have been discriminated against based on disability under Section 504 and Title II, OCR first looks at whether there is evidence that the individuals were treated differently than individuals without disabilities under similar circumstances. Similarly, to determine whether individuals have been discriminated against based on race, color, or national origin, OCR first looks at whether there is evidence that the individuals were treated differently than individuals of another race, color, or national origin under similar circumstances. If there is such evidence, OCR next examines whether the different treatment resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR then examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. If there is such evidence, OCR will generally find a violation of Section 504 and Title II, or Title VI.

The practice of denying, on the basis of disability, a qualified student with a disability the opportunity to participate in an accelerated program, such as GATE, violates Section 504 and Title II. Moreover,

conditioning participation in GATE by qualified students with disabilities by requiring these students to forfeit their necessary special education or related aids and services violates Section 504 and Title II.

Pursuant to the Title VI regulations, at 34 C.F.R. § 100.3(b)(2), a school district may not use criteria or methods of administration that have the effect of subjecting individuals to discrimination because of their race, color, or national origin. To determine whether a school district's policy or practice has a discriminatory disparate impact based on race, color, or national origin, OCR examines whether a policy or practice that is neutral on its face has a disproportionate, adverse effect on students of a particular race, color, or national origin. If so, OCR next asks whether there is a substantial, legitimate justification for the policy or practice. If not, OCR will generally find a violation of Title VI. If so, OCR then asks whether there is an alternative policy or practice that would result in a lesser disparate impact and be comparably effective in meeting the school district's objectives. If so, OCR will generally find a violation of Title VI.

## **II. INVESTIGATION**

Our investigation to date included:

- requesting and reviewing information and records from the Complainant;
- requesting and reviewing extensive information, records, and data from the District;
- interviewing nine District staff members who work districtwide, including the District's Director of Instructional Support, Health Services/Section 504 Coordinator, Special Education Coordinator, Indian Education Coordinator, School Psychologist, two diagnosticians ("Diagnostician 1" and "Diagnostician 2"), and two GATE teachers ("GATE Teacher 1" and "GATE Teacher 2");
- interviewing 25 school-based District staff members, including seven principals, one assistant principal, four secondary content area department heads (most of whom teach at least one AP course), two secondary special education department heads, an additional secondary AP teacher, one head of multiple departments who is also an AP teacher, one secondary general education teacher, three elementary general education teachers, one elementary reading coach teacher, two elementary special education teachers, and two high school guidance counselors; and
- interviewing the Special Education Director at the New Mexico Public Education Department (PED).

## **III. BACKGROUND**

### **a. Location**

The District spans from approximately 60 miles west of Albuquerque to the Arizona border. See Figure 1. The District includes the city of Grants and the northern and eastern portions of the county of Cibola. The District's geographic boundaries also include portions of the Pueblo of Laguna and the Pueblo of Acoma. See Figure 2.

### **b. Schools**

The District has: seven elementary schools ("Bluewater," "Cubero," "Mesa View," "Milan," "Mt. Taylor," "San Rafael," and "Seboyeta"); two middle schools ("Los Alamos" and "Laguna-Acoma MS"); two high

schools (“Grants” and “Laguna-Acoma HS”); and one early college high school (“Early College”). Cubero and Seboyeta, which are 23.3 miles and approximately a 29-drive minute apart, share staff members. Bluewater and San Rafael, which are 13.4 miles and approximately a 16-minute drive apart, also share staff members. Laguna-Acoma MS and Laguna-Acoma HS are combined in one facility as a “Jr./Sr. High School.”

Early College is located on the campus of New Mexico State University, which is one mile and approximately a four-minute drive from Grants, and 28 miles and approximately a 32-minute drive from Laguna-Acoma HS. Early College began, during the 2019-2020 school year (SY), with approximately 26 ninth grade students. The District plans to add one grade level per year until Early College is serving students in grades nine to 12.

### **c. Student Population**

According to the PED, during the 2017-2018 SY, the District’s total student population was 3,625, and 45.4% American Indian, 39.7% Hispanic, and 13.5% white, 16.6% students with disabilities, and 11.3% English language learners. Then, in 2019-2020, according to the District, its total student population was 3,525, and 46.2% American Indian and 52.5% white, with both groups including Hispanic students.

The District’s east side schools are Cubero, Seboyeta, Laguna-Acoma MS, and Laguna-Acoma HS; the remaining District schools are on the west side. During the 2018-2019 and 2019-2020 school years, the west side’s total student population was 36-37% American Indian and 62% white, whereas the east side’s total student population was 89-90% American Indian and 9-10% white. During the 2019-2020 SY, Grants’ student population was 40.5% American Indian and 58.3% white, whereas Laguna-Acoma HS’ student population was 95.4% American Indian and 4.6% white. See Figures 3 and 4.

### **d. Student Assignment**

District Policy J-0250 (“JC School Attendance Areas”) reads, “Students will attend school in the attendance areas in which their respective residences are located.” The Policy allows exceptions for open enrollment, special placements based on IEPs, and placements based on available curricula. District Policy J-1050 (“JFB Open Enrollment”) reads, “District resident pupils may enroll in another ... school within this District.” District Regulation JFB-R reads, “All applicants will be accepted if there is sufficient capacity. If there is insufficient capacity, applicants will be selected from the submitted applications for enrollment in a school in accordance with a random selection process by enrollment priority except where policy may indicate otherwise.” The open enrollment application form (Policy J-1081/JFB-E) reads, “Transportation for the student shall be the responsibility of the parent or legal guardian.”

Regarding feeder patterns, the District told OCR that:

- Bluewater, Cubero, Mesa View, Milan, Mt. Taylor, and San Rafael feed into Los Alamitos;
- Seboyeta and Cubero feed into Laguna-Acoma MS;
- Los Alamitos feeds into Grants and Laguna-Acoma HS; and
- Laguna-Acoma MS feeds into Laguna-Acoma HS.

The District’s Special Education Coordinator told OCR that the District’s elementary schools have specific attendance boundaries, while the District’s middle and high schools do not have specific attendance

boundaries. She also told OCR that there is a specific “imaginary” line past which District school buses will not travel further east (toward the predominantly American Indian side of the District), and thus, the District does not provide transportation to or from home for middle school students who live east of the line and attend schools west of the line.

#### **e. Opportunity Gaps**

In 2014, families, nonprofits, and school district filed lawsuits against the State of New Mexico for failing to provide all students a constitutionally sufficient system of education in violation of the State Constitution. The cases were consolidated – *Yazzie/Martinez v. State of New Mexico* – and tried in 2017 and 2018. The judge’s findings, based on extensive expert testimony and evidence, included, in relevant part:

- “[F]ederal funds ... are insufficient to meet the unique needs of [the District’s] Native American population.”
- “[The District] is in need of a college counselor(s) to inform students in all grade levels, especially incoming freshmen, about college opportunities, college preparation, and ensuring that first generation college-goers are on track for college.”
- “[District] students attending Laguna-Acoma schools are deprived of access to certain educational and extracurricular programs because they lack adequate transportation.”

#### **f. Achievement Gaps**

During the 2017-2018 SY, 33%, 16%, and 32% of District students were proficient in reading, math, and science, respectively. These percentages were five or six percentage points below statewide averages. The proficiency rates for the District’s American Indian students are lower than statewide averages for American Indian students. See Figure 5. Additionally, the proficiency rates for the District’s American Indian students are significantly lower than the proficiency rates for the District’s white students. See Figure 6. For instance, during the 2017-2018 SY, the percentages of American Indian students districtwide who were proficient in reading, math, and science were 28, 17, and 30 percentage points lower, respectively, than the proficiencies for white students districtwide. Relatedly, the proficiency rates at Laguna-Acoma MS and Laguna-Acoma HS were significantly lower than the proficiency rates at Los Alamitos and Grants, respectively. See Figures 7 and 8.

### **IV. EVIDENCE TO DATE: TWICE EXCEPTIONAL**

The New Mexico Annotated Code (NMAC) allows for students to be identified as twice exceptional – that is, “properly be determined to be both gifted and a child with a disability.” According to the District, it has “adopted” the definition of “twice exceptional” in the NMAC.

The District does not have written policies and procedures that are specifically about twice exceptional students. Additionally, the District does not train staff about twice exceptional students. During interviews with OCR, many staff members did not know the definition of twice exceptional. Moreover, the District identified only one student as twice exceptional.

During interviews with OCR:

- The Special Education Coordinator told OCR that the District did not identify any students as twice exceptional students during the 2018-2019 SY, and identified only one student as twice exceptional during the 2019-2020 SY.
- GATE Teacher 1 said that the District had four or five twice exceptional students during the 2018-2019 SY, and three twice exceptional students during the 2019-2020 SY.
- At least five staff members said that they did not know whether District students could be identified as twice exceptional.
- At least three staff members said that they assumed District students could be identified as twice exceptional, but were not certain.
- A principal said that, in the past, she had a student who was twice exceptional, but that the student stopped receiving disability-related services.
- One teacher said that, in 2015, she was told that District students could not be considered twice exceptional.
- No staff members said that they were aware of any current prohibitions on identifying students as twice exceptional.

**V. EVIDENCE TO DATE: GATE**

GATE in the District is governed by state law, state regulations, PED guidance, and Board of Education policies and procedures. On July 15, 2014, the District's Board of Education adopted "Policies and Procedures for the Provision of Special Education Services for Students with Disabilities and Gifted Students," which was produced by the PED on June 2, 2014 ("Policies and Procedures"). Then, in September 2014, the District "initiated" a "Gifted and Talented Education Program Guide" ("Program Guide"), written by GATE Teacher 1. In 2019, the PED published a "Gifted Education in New Mexico Technical Assistance Manual 2019" ("TA Manual"), which incorporated and replaced the PED's 2011 version of the manual.

**a. GATE Advisory Committee**

New Mexico law requires that:

- "[e]ach school district offering a gifted education program ... create one or more advisory committees of parents, community members, students and school staff members;"
- "[t]he membership of each advisory committee ... reflect the cultural diversity of the enrollment of the school district or the schools the committee advises;" and
- the advisory committees "regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program."

The NMAC also requires advisory committees and that "[f]ormal documentation of committee membership, activities and recommendations ... be maintained." The NMAC details five "purposes" for advisory committees, including:

- “provide information regarding the impact that cultural background, linguistic background, socioeconomic status and disability conditions within the community may have on the child referral, identification, evaluation and service delivery processes;”
- “advocate for children who have been under-represented in gifted services due to cultural or linguistic background, socioeconomic status, or disability conditions, in order to ensure that these children have equal opportunities to benefit from services for gifted students;” and
- “meet three or more times per year at regular intervals.”

The TA Manual lists responsibilities for Gifted Advisory Committees (GACs), which include, “educate parents about students who are gifted and their needs;” “provide ongoing workshops and in-services for teachers regarding the nature and needs of gifted students;” and sponsor activities that “highlight the needs and the contributions of students who are gifted.”

District Policy requires that, “to assist with review of the goals, priorities and operational plans for implementation of the gifted program and to demonstrate support for the gifted program,” the District “create as many advisory committees as there are high schools or one (1) District-wide committee consisting of parents, community members, students, and school staff members and reflecting the cultural diversity of the enrollment.” The District’s Program Guide reads, “The G/CCS Gifted program Parent Advisory Committee meets twice per year,” even though state regulations require meetings “three or more times per year.”

The Special Education Coordinator and GATE Teacher 1 told OCR that the District did not have a GATE advisory committee during the 2018-2019. Regarding the 2019-2020 SY, the District wrote to OCR on September 30, 2019, “There is no GT advisory committee.” However, during interviews with OCR, the Special Education Coordinator and GATE Teacher 1 told OCR that, during the 2019-2020 SY, there was a GATE advisory committee that met twice, consisted of the two GATE teachers and parents of gifted and talented (GT) students, and started on two tasks: (a) reviewing and discussing new GATE guidelines published by the PED; and (b) planning an end-of-year event for all of the District’s identified GT students. The District did not provide OCR with “[f]ormal documentation of committee membership, activities and recommendations,” despite such records being requested by OCR.

Nearly all District staff interviewed by OCR, including Diagnosticians 1 and 2 and the Psychologist, told OCR that they did not know whether the District had a GATE advisory committee.

#### **b. Dissemination of Information about GATE**

The District told OCR that information about GATE is disseminated to parents, guardians, and staff in three primary ways.

First, the District asserted that handouts about GATE are disseminated, throughout the school year, to parents, teachers, and staff. The District provided OCR with copies of two brochures and a resource guide. However, though OCR asked, the District did not indicate specifically when and where the handouts are disseminated. Additionally, nearly all staff interviewed by OCR – including principals, special education staff, counselors, teachers, the Health Services/Section 504 Coordinator, and GATE Teacher 2 – could not identify any ways that information about GATE is disseminated to parents – at least prior to students being referred for GT testing. Moreover, all staff interviewed by OCR indicated that they either received no information at all about GATE or only received GT students’ IEPs. In fact, not a single staff member interviewed – besides GATE Teacher 1, who created the brochures and

resource guide provided to OCR – mentioned District handouts about GATE. Diagnosticians 1 and 2, the Psychologist, and the Special Education Coordinator said that they did not know what information, if any, District staff receive about GATE.

Second, the District wrote to OCR, “Parents/guardians are notified of and invited to participate in GT screenings through school personnel and through advertisements for Child Find” events. The District informed OCR that the Child Find events are advertised through flyers at District schools, radio and print advertisements, and websites. However, when asked by OCR for links to the websites, the District wrote, “For purposes of clarification, and upon further review, the District does not post advertisements for child find on any website[.]” Additionally, the District later clarified that flyers are posted only in elementary schools. The District provided OCR with copies of the print advertisements; however, none of the advertisements made any mention of GATE or GT testing. Moreover, the Director of Special Education told OCR that although GT screening is available at Child Find events, the primary purposes are early childhood education and “Child Find” for purposes of compliance with the Individuals with Disabilities Education Act (IDEA). GATE Teachers 1 and 2 told OCR that the District does not have regular screenings for GATE. Also, the Psychologist told OCR that she has never encountered a parent or guardian who has gone through a Child Find event for a GATE referral. Finally, Diagnostician 1, who has been with the District for five years and attends the Child Find events, told OCR that she has never had a GATE screening at a Child Find event.

Third, the District wrote to OCR, “Information on the GATE program is included in the Parent Handbook, an excerpt of which is attached hereto as Exhibit 21.” However, Exhibit 21, which was two pages from the Grants’ handbook, did not mention GATE. The District did not provide handbook information for any other schools.

### **c. Definition of a “Gifted Child”**

State law defines “gifted child” as “a school-age person who is determined to be gifted pursuant to Section 22-13-6.1 NMSA 1978 and standards adopted by the [PED] pursuant to that section.” The NMAC defines “gifted child” as, “a school-age person ... whose intellectual ability paired with subject matter aptitude/achievement, creativity/divergent thinking, or problem-solving/critical thinking meets the eligibility criteria in 6.31.2.12 NMAC and for whom a properly constituted IEP team determines that special education services are required to meet the child’s educational needs.”

The NMAC defines four qualifying areas for a student to be considered gifted:

“Intellectual ability” means a score two standard deviations above the mean as defined by the test author on a properly administered intelligence measure. ...

“Subject matter aptitude/achievement” means superior academic performance on a total subject area score on a standardized measure, or as documented by information from other sources ...

“Creativity/divergent thinking” means outstanding performance on a test of creativity/divergent thinking, or in creativity/divergent thinking as documented by information from other sources ...



“Problem-solving/critical thinking” means outstanding performance on a test of problem-solving/critical thinking, or in problem-solving/critical thinking as documented by information from other sources ...

In a data request to the District, we asked “how the District defines a gifted student.” In response, the District provided copies of District policies that do not define “gifted student” and copies of GATE-related materials produced by the PED.

**d. Referrals for GT Testing**

The NMAC requires that each school district “establish a child find procedure that includes a screening and referral process for students in public school who may be gifted.” In the District, the process generally begins with a student suspected of being GT referred by his or her parent or, more commonly, by his or her teacher, to a school-based student assistance team (SAT). State law defines SAT as “a school-based group whose purpose ... is to provide additional educational support to students who are experiencing difficulties that are preventing them from benefiting from general instruction.”

The TA Manual reads, “All teachers, administrators, diagnosticians, parents, and community members should be educated regarding giftedness. Educators, parents, and others must be sensitive to and aware of the signs and characteristics of giftedness in all cultural, ethnic, and socioeconomic groups.” However, according to the District and staff interviewed, the District does not train staff regarding suspected or actual GT students or GATE.

We requested from the District “a list of all students referred [for GT testing] by parents and guardians during the 2017-2018 and 2018-2019 SYs, including the name, race, and school for each student.” The District reported zero parent or guardian referrals during the 2017-2018 SY. For the 2018-2019, the District reported two students referred by their parent or guardian – one white student at Mesa View and one Hispanic student at Mt. Taylor. However, in response to another data request, the District listed four students referred by parents or guardians during the 2018-2019 SY.

We requested from the District “a list of all students referred [for GT testing] by staff during the 2017-2018 and 2018-2019 SYs, including the name, race, and school for each student.” In response, the District provided a list of 12 students, including five at Milan, four at Mesa View, and one at Grants, at San Rafael, and at Cubero. Among the 12 students, eight were Hispanic, two were Asian, two were Native American, and one was white. The response did not specify which referrals were during the 2017-2018 SY and which were during the 2018-2019 SY.

**e. Student Assistance Teams**

According to staff, including the Special Education Coordinator, the District does not have specific guidelines for SATs; and its SATs differ, by school, in composition, leadership, and practices. According to one data response, all SATs include the school’s principal and most SATs include a counselor (at seven out of the eight schools), instructional coach (at six out of the eight schools), and the referring teacher (at six out of the eight schools). See Figure 9. However, two school principals told OCR that they were not on their school’s SAT. Another data response read, “The SAT is a team comprised of regular education teachers (possibly the school counselor), an LEA representative, and a parent.”

The TA Manual reads, “Giftedness in students from diverse backgrounds may be manifested in ways different from the dominant culture. ... [T]he school’s SAT must be aware of the criteria for identifying giftedness in all populations. In some instances, a student’s true abilities are not recognized, and he or she may not receive appropriate educational services.” However, according to staff, including the Special Education Coordinator, the District does not train SAT members. During interviews, we asked five principals about the criteria for students to be considered GT. They did not provide a consistent response or articulate a response that was consistent with the NMAC definition. In fact, three of the five principals – two of whom are at schools with predominantly American Indian student populations – said they did not know about GATE eligibility.

Once a student is referred for GT testing, a SAT meeting is supposed to be convened for the student. The District wrote, “This team discusses whether a student may benefit from services in addition to the regular curriculum and may recommend testing.”

According to District staff, students referred to SATs for GT testing are generally put in their school’s response to intervention (RTI) process (which some schools refer to as multi-layered system of support or MLSS). State law defines RTI as “a multitiered intervention model that uses a set of increasingly intensive academic or behavioral supports, matched to student need, as a framework for making educational programming and eligibility decisions.” According to the Special Education Coordinator and GATE Teacher 1, the RTI process varies by school and is not always required before an evaluation takes place.

If the SAT decides a student should undergo GT testing – either before, during, or after the RTI process – the SAT refers the student to the District’s Special Education Coordinator. We requested from the District “the names of all students, if any, who were referred to GATE by an SAT team during the 2017-2018 and 2018-2019 SYs.” Regarding SAT referrals during the 2017-2018 SY, the District wrote, “The District was unable to locate records indicating what students were referred to GATE by an SAT team[.]” For the 2018-2019 SY, the District reported that SATs referred six District students for GT testing. Three of the students attended Mesa View; and the remaining students attended Seboyeta, Milan, and Cubero, respectively. The District did not provide information regarding the race of these students. Additionally, we requested from the District a list of all students who, during the 2018-2019 SY, were referred for GT testing but for whom testing did not occur. The District reported that there was one such student, writing, “The request was made in May, 2019. Due to the diagnosticians’ schedules, workload, and obligations to other students, this request will be fulfilled in the fall of 2019. Parent was informed about this and is in agreement.”

After receiving a referral from a SAT, the Coordinator creates a consent for testing form and sends the form to school staff, who then attempt to obtain written consent from the student’s parent or guardian. If a student’s parent or guardian provides written consent, the student is referred to a District diagnostician for testing.

#### **f. GT Testing**

The District has two full-time, licensed diagnosticians who conduct testing for students suspected of being GT. One of the diagnosticians speaks English and Navajo; however, she reported never having needed to use Navajo for GATE purposes. Additionally, the District has a Spanish-speaking school psychologist who is also a licensed diagnostician and whose job duties include testing students suspected of being GT. Each year, diagnosticians are assigned to work with specific schools; however,

they also share schools, as needed, depending on workloads. All three diagnosticians estimated that they spend less than 10% of their work time on GT evaluations. According to the Special Education Coordinator, the District's diagnostic team is understaffed.

For the "standard method for [GT] identification," the NMAC requires that a "child's ability" be assessed "in all four areas" of giftedness – *i.e.*, "intellectual ability," "subject matter aptitude/achievement," "creativity/divergent thinking," and "problem-solving/critical thinking." – as defined above.

The NMAC allows school districts to "apply to the [PED] to utilize an alternative protocol for all students." If an alternative protocol is used, then a student's eligibility will "be determined by a properly administered and collected, department-approved alternative protocol designed to evaluate a student's intellectual ability, subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking." The NMAC requires school districts to use alternative protocols "if an accurate assessment of a child's ability may be affected by factors including cultural background, linguistic background, socioeconomic status or disability condition." Likewise, the TA Manual reads, "Districts ... must adopt an alternative assessment to be used by trained examiners with students who are identified as having factors (*e.g.*, cultural, linguistic, socioeconomic status, and disability conditions)." According to the District, it has not applied to the PED, at least in the last five years, to use an alternative protocol. According to the PED's Director of Special Education: (a) the District is unusual among New Mexico local educational agencies (LEAs) in not having applied to use an alternative protocol; and (b) she cannot imagine a diverse District not needing to use alternatives and consider factors other than IQ.

According to District staff, the first test for all students referred for GT testing is a cognitive test – specifically, an intelligence quotient (IQ) test. The TA Manual defines IQ as "a measure of intellectual aptitude at a given point in time based on comparison of children of the same chronological age – ratio of mental age (MA) to chronological age (CA)." The IQ test the District typically uses is the Reynolds Intellectual Assessment Scales, 2nd Edition (RIAS-2). The District indicated that it also has three alternative cognitive tests available: Woodcock-Johnson Tests of Cognitive Abilities (WJ-Cog); Differential Ability Scales-2 (DAS-2); and Wechsler Intelligence Scale for Children IV or V (WISC-IV/V). Diagnostician 1 told OCR that she has used the RIAS and WJ-Cog for GT testing. Diagnostician 2 told OCR that she has used all three alternative cognitive tests.

The TA Manual lists three cognitive tests that the District does not use, one of which is the Cognitive Abilities Test (CogAT). According to the PED's Director of Special Education: (a) the CogAT was created "using more diverse assessments," unlike IQ, which is "Anglo-based;" (b) the CogAT "hits a lot of areas for minority students;" and (c) the majority of New Mexico districts use the CogAT. However, the District reported that its diagnosticians do not administer the Cognitive Abilities Test (CogAT), even though the PED has approved it, "because CogAT is not considered an IQ (intelligence) test." The TA Manual also includes a list of ten "assessment instruments for intellectual ability among diverse populations." Only one of the District's tests, the DAS-2, appears on that list.

According to District staff, in order to move to the next phase of GT testing, a student must have an IQ of 130 or above. The 130 score may be a verbal score, a non-verbal score, or a composite score. The District wrote to OCR, "If a student does not have the Intelligence Quotient that indicates they are two standard deviations or more above normal, additional testing is not completed because the student does not meet the criteria for the gifted program." According to the District's Special Education Coordinator, the District's population of identified GT students has declined because, in recent years,

she has ensured “fidelity with testing instruments” and more strictly enforced standardized quantitative benchmarks. She said to OCR, “When it comes to data and numbers, I don’t feel like there are any grey areas.”

However, Diagnostician 1 said that she might use a cognitive test other than the RIAS-2 if a student scores high on the RIAS-2, but just below 130, and has a history of high academic performance. The Psychologist said that she might use a cognitive test other than the RIAS-2 if the student scores just below 130. The PED’s Director of Special Education told OCR that, while an IQ of 130 is the recommended threshold, other factors – such as poverty, ethnicity, culture, and language – may be considered if the student has a high IQ below 130. Notably, the Director specifically used, as an example, an IQ of 120 to 129.

District students referred for GT testing who meet the IQ threshold then undergo academic achievement (or aptitude) testing in reading, writing, and math. For academic testing, the District uses the Woodcock-Johnson Tests of Achievement-IV (WJ-IV). If the student meets the threshold for IQ and one or more of the three academic achievement tests, the District will generally identify the student as GT. If a referred student meets the IQ threshold, but does not meet the threshold on any of the academic achievement tests, then the District’s diagnosticians will test the student for possible giftedness in critical thinking and/or creative thinking. The District uses the Structure of Intellect Learning Abilities Test (SOI-LA) for critical thinking and for creative thinking. There are two SOI-LA subtests for critical thinking and two subtests for creative thinking. To be eligible under critical thinking or creative thinking, the student must meet the threshold on both subtests. Notably, the TA Manual lists six “screening assessment instruments for creative thinking” and five “screening assessment instruments for critical thinking.”

The NMAC reads, “The child’s ability shall be assessed in all four areas specified in Subsection B of 6.31.2.12 NMAC.” As explained above, the areas are “intellectual ability,” “subject matter aptitude/achievement,” “creativity/divergent thinking,” and “problem-solving/critical thinking.” The PED’s Director of Special Education confirmed that LEAs should not stop with academic achievement testing, even if the student being tested qualifies in reading, writing, and/or math. In fact, she specifically said that districts with large American Indian populations should be looking at all areas, including creativity, because creativity is prevalent among that population. However, the Psychologist told OCR that while she typically administers the full battery of achievement tests, she also may not test students for critical or creative thinking giftedness if a student tests as gifted in reading, writing, or math. Similarly, Diagnostician 1 said she might test students for critical or creative thinking giftedness, depending on how a student scores on the cognitive testing and academic achievement testing. Stated differently, she said that she will look at creative or critical thinking testing, if a student does not have adequate scores on academic achievement tests. Likewise, GATE Teacher 1 said that the District tests for creative and critical thinking giftedness, if a student does not have adequate scores on academic achievement tests.

#### **g. GT Eligibility Determinations**

##### **i. Standards/Criteria**

According to the NMAC, the “standard method for identification” is as follows: “A student who meets the criteria established in Subsection B of 6.31.2.12 for intellectual ability and also meets the criteria in one or more of the other areas will qualify for consideration of service.” The NMAC requires the

“identification of a student as gifted” to include “documentation and analysis of data from multiple sources for subject matter aptitude/achievement, creativity/divergent thinking, and problem solving/critical thinking.” The documentation must include “standardized measures” and “information regarding the child’s abilities from other sources, such as collections of work, audio/visual tapes, judgment of work by qualified individuals knowledgeable about the child’s performance (e.g., artists, musicians, poets and historians, etc.), interviews, or observations.”

District Policy reads, “Ability of candidates for [the GATE program] shall be evidenced by: “achievement in schoolwork;” “scores on tests measuring intellectual ability and aptitude;” and “the judgment of teachers, psychologists, administrators, and supervisors familiar with the demonstrated abilities of the students.” The District wrote, “In order to be eligible for participation in the GATE program, the District follows the guidelines set forth by the [TA Manual].”

## **ii. Multidisciplinary Team/Evaluation Determination Team Composition**

Pursuant to state law, each school must have a multidisciplinary team (MDT) “vested with the authority to designate a child as gifted.” The District wrote to OCR, “All schools use multidisciplinary teams consisting of both District and school-based team members.” According to the District, staff primarily use the term evaluation determination team (EDT) for the school-based group that decides whether a student is eligible for GATE. District staff use EDT and MDT interchangeably.

Regarding composition of EDTs, the District wrote in one data response, “District diagnosticians, a psychologist, physical therapists and school based special education teachers, gifted education teachers, case managers, other District and school personnel and parents comprise the multidisciplinary teams within the District.” In another data response, the District wrote, “The MDT is a team comprised of the diagnostician, regular education teacher, GATE teacher, LEA representative, parent, and student (if appropriate).” We requested from the District the names and titles of individuals who serve on EDTs. The District responded, “The Team includes a gifted teacher, regular education teacher, diagnostician, LEA, parent and student.” We again requested the names and titles of individuals who serve each MDT or EDT. The District responded, “The makeup of teams varies among schools and grade levels.”

OCR asked District staff who makes final decisions regarding eligibility for GATE and if schools have EDTs/MDTs. Three staff members – including two elementary principals and a teacher – said that their schools did not have an EDT or an MDT. Six staff members – including one elementary principal, one content area department head, two special education department heads, one counseling department head, and one general education teacher – said that at their respective school a SAT determines eligibility for GATE. Two staff members – a special education teacher and a general education teacher – said that at their school an MLSS team determines eligibility for GATE. Nine staff members – including one elementary principal, two secondary principals, three subject area department head, one special education teacher, and two general education teachers – said that they did not know whether their schools had an MDT or an EDT. One general education said that a special education teacher makes the final GATE eligibility determination. One teacher said that a diagnostician makes the final GATE eligibility determination. One special education teacher said that an IEP team makes the final GATE eligibility determination.

### iii. MDT/EDT Process

In determining whether a child is gifted, state law requires MDTs to consider: (a) “information regarding a child’s cultural and linguistic background and socioeconomic background;” (b) “any disabling condition;” and (c) “diagnostic or other evidence of the child’s: creativity or divergent-thinking ability; critical-thinking or problem-solving ability; intelligence; and achievement.” The TA Manual specifies that the EDT “reviews the evaluation results and determines whether the student is eligible by virtue of meeting criteria for giftedness and demonstrating a need for specially designed instruction.”

After District diagnosticians complete testing of a student, they send or bring the results to an EDT (or whatever the student’s school calls the team that makes GATE eligibility decisions). According to the District’s Special Education Coordinator, the EDT is supposed to meet within 90 calendar days of the referral and 60 calendar days of the parent providing written consent for testing.

The District wrote to OCR, “This team reviews and considers the results of the diagnostic testing that has been completed and, if the student qualifies for services, discusses whether or not the student would benefit from services.”

We asked for, during 2018-2019, “a list of all District students tested or evaluated for giftedness, but found not gifted or ineligible, including, for each student: requester’s name and title (*e.g.*, parent, guardian, teacher, etc.); student’s first and last name; student’s grade; student’s race; student’s ethnicity (if available); and reason(s) student was found not gifted or ineligible.” In its response, the District provided a list of ten students, but provided race and testing information for 12 students, three of which were not on the list of ten students. The 12 students for whom information was provided were:

- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]
- [XXX-Redacted-XXX]

Notably, the same diagnostician conducted the testing for all 12 students. The diagnostician no longer works for the District. The conclusions for all of the students simply read, “Does not qualify for further testing.”

#### **h. GATE Staffing**

According to the District, its Special Education Coordinator is also its Gifted Coordinator. The District has two GATE teachers: GATE Teacher 1, who works full-time on GATE; and GATE Teacher 2, who works part-time on GATE.

According to records provided by the District, during the 2018-2019 SY, GATE Teacher 1 serviced students on the District's west side, spending her time as follows: 20% at Mesa View; 20% at Milan; 20% at Grants; 10% at Bluewater; 10% at Mt. Taylor; 10% at San Rafael; and 10% at Los Alamitos. GATE Teacher 2 serviced students on the District's east side, spending her time as follows: 15% at Cubero; 12% at Laguna-Acoma HS; 4% at Seboyeta; and 4% at Laguna-Acoma MS. GATE Teacher 2 spent the remainder of her time (65%) on special education for students with disabilities.

According to records provided by the District, during the 2019-2020 SY, GATE Teacher 1 again serviced students on the District's west side, spending her time as follows: 50% at Grants; 30% at Los Alamitos; 10% at Bluewater; 5% at Milan; 3% at Mesa View; 1% at Mt. Taylor; and 1% at San Rafael. GATE Teacher 2 again serviced students on the District's east side, spending her time as follows: 18% at Cubero; 9% at Laguna-Acoma HS; 3% at Laguna-Acoma MS; and 0% at Seboyeta. GATE Teacher 2 spent less time on GATE than during the previous school year and more time (70%) on special education for students with disabilities.

According to the District, GATE staffing full-time equivalents (FTEs) for each school is based on the number of GATE students and the IEP schedule of services for each student at the school. See Figure 9.

#### **i. GATE Programming**

##### **i. IEP Teams for GT Students**

After an MDT/EDT determines that a student is GATE-eligible, the NMAC specifies that "a properly constituted IEP team, including someone who has knowledge of gifted education, will determine if special education services are required to meet the child's educational needs. According to the District, "All schools have IEP teams for students identified as gifted." Additionally, the District wrote, "The Team includes a gifted teacher, regular education teacher, diagnostician/school psychologist, LEA, parent, and student." According to the TA Manual, the District, and staff interviewed, a GT student's MDT/EDT and IEP team are often the same.

##### **ii. IEPs for GT Students**

If the IEP team determines that services are required to meet a GT student's educational needs, the team must develop a written IEP detailing the appropriate services to be provided to the student. The TA Manual reads, "The IEP is a written statement for each student with a disability or identified under state criteria as gifted. It sets forth the essential components of all the specially designed instruction and related services the student will receive, as well as supplementary aids and services, program modifications, and supports for school personnel serving the student." According to District staff, IEPs are often created during the same meeting at which the eligibility determination is made.

According to the District's data response, during the 2019-2020 SY, "All 36 students in the GATE program ha[d] IEPs." Notably, the same data response indicated that the District had 46 students in the GATE

program. OCR reviewed the IEPs of the 46 students. All IEP teams, as indicated on IEP documents, included at least a parent, an LEA representative, a special education teacher, and a regular education teacher.

### iii. Services

The TA Manual indicates that school districts should have a continuum of services and placements for GT students, and lists the following examples:

- differentiated instruction within the general classroom;
- enrichment/learning centers within the general classrooms (*i.e.*, an area of the classroom is set-aside for independent student activity in a particular area of study);
- acceleration (*i.e.*, studying the regular curriculum earlier or at a faster pace than a typical student);
- advanced classes within and across grade level (*e.g.*, honors courses, advanced placement courses, and dual enrollment);
- curriculum compacting (*i.e.*, streamlining the general education curriculum for students who can master it at a faster pace);
- pull-out classes or groups;
- homogeneous classes (*i.e.*, ability grouping);
- specialized or magnet schools;
- internships, apprenticeships, and mentorships; and
- special enrichment options (*e.g.*, afterschool, Saturday, and summer programs).

The TA Manual reads, “Development of coherent services for students who are gifted requires careful planning, development, and implementation and should be differentiated according to the nature of giftedness, family, community environments, and the age of the student.” Additionally, the TA Manual reads, “Students receiving gifted services must be provided a differentiated education from that which is regularly provided by New Mexico school districts[.]”

The District wrote to OCR, “The GATE services and programming depends on the age and abilities of students.” According to the District, in its elementary schools, students with GATE IEPs receive services ranging from monitoring only to up to 120 minutes per week. Monitoring involves a GT teacher collaborating with a general education teacher to provide materials, feedback, recommendations, accommodations, and/or modifications for the student. Some elementary GT students are pulled out to participate in enrichment activities with a GATE teacher, as set forth in the students’ IEPs.

Through interviews and review of the District’s data responses, OCR learned that the District, for GATE, generally offers elementary school students pull-out enrichment for between 45 and 90 minutes per week, regardless of their areas of need and giftedness. The 45-minute pull-out sessions are reserved mostly for younger students (grades one to four). In grades five and six, the students mostly receive 90 minutes weekly of GATE services. Two students had only 60 minutes weekly (the offer made and agreed to in the IEP), including a fifth-grade American Indian student at Seboyeta, who is the school’s only student identified as GT.

Regarding middle and high school GT students, the District wrote to OCR:



Middle and high school students have the option to take a daily enrichment and/or seminar class. These class periods are the same amount of time that every class period is at the various schools, which is almost an hour per day. Middle and high school students that choose (along with their IEP team) to take the gifted enrichment and/or seminar classes also choose to give up an elective, as these classes are elective classes. Since some students in middle and high school – especially those in grades 11 and 12 – are concerned with “weighed” classes that influence their GPAs, they may also choose (with their IEP team) to have service provided through a monitor basis, up to 15 minutes weekly.

In middle school, the District generally provides 295 minutes of enrichment weekly. The one student (Hispanic) identified as GT at St. Teresa is provided 125 minutes of enrichment per week.

In high school, there are a few options. There are only two Laguna-Acoma HS students (one white and the other’s race is not indicated) listed – one of them is supposed to receive 50 minutes of enrichment twice weekly, while the other is supposed to receive 265 minutes of independent study enrichment. The remainder of the high school GATE IEPs are for students at Grants. Many of the IEPs for the Grants students did not have race or ethnicity information. Some students have 125 minutes of enrichment per week in the form of a “Study Skills” seminar; other students are supposed to receive 15 minutes per month of consultation; and one student is supposed to receive 30 minutes of consultation services monthly. A white student, who is the daughter of a retired District teacher, is supposed to receive 175 to 250 minutes weekly of pull-out enrichment.

The accommodations and modifications listed in the GATE IEPs are mostly the same, with little variation. The most common are:

- Environment – work with other gifted or high ability learners, move elsewhere if needed;
- Instructional materials – provide additional resources;
- Assignments/homework – accelerate out of work if needed, excuse from completing assignments while in GATE;
- Instructional presentation mode – multimodal approach;
- Instructional strategies – allow open-ended activities and acceleration to higher grade; and
- Student response mode – allow variety of assignment products.

#### **j. Student Population**

Relative to their overall populations in the District, American Indian students are consistently under-represented in GATE, while the white students have been consistently overrepresented in GATE.

According to OCR’s Civil Rights Data Collection (CRDC), during the 2015-2016 SY, the District had 72 students identified as GT. That year, American Indian students made up 44.9% of the District’s total student population, but only 26.4% of the total students identified as GT. White students, on the other hand, were 13.6% of the District’s total student population, but 33.3% of the total students identified as GT.

According to the District, as of approximately May 17, 2019, the District had 49 students identified as GT. At the time, American Indian students made up 45.4% of the District’s total student population, but

only 22.4% of the total students identified as GT. White students, on the other hand, made up 13.5% of the District's total student population, but 40.8% of the total students identified as GT. See Figure 10.

According to the District, as of approximately September 30, 2019, the District had 46 students identified as GT. Notably, approximately one-third of the 46 students were children of District employees. The distribution of the students across schools was: 20 at Grants; six at Bluewater; four at Cubero; four at Milan; four at Los Alamitos; three at Mesa View; two at Laguna-Acoma HS; one at Launa-Acoma MS; one at Mt. Taylor; one at San Rafael; and none at Seboyeta. The racial breakdown of the students was: 21 white students (45.7%); 17 Hispanic students (37.0%); and eight American Indian (17.4%). White students were approximately 8.8 times more likely than American Indian students to be identified as GT. See Figure 11. Among the 46 students:

- 12 Hispanic students, eight white students, and four American Indian students were qualified for subject matter(s) only;
- three white students, one Hispanic student, and one American Indian student were qualified for critical thinking only;
- no students were qualified for creativity only;
- six white students, two Hispanic students, and two American Indian students were qualified for subject matter(s) and critical thinking;
- two white students and one Hispanic student were qualified for subject matter(s) and creativity;
- one Hispanic student and one American Indian student were qualified for critical thinking and creativity; and
- two white students were qualified in all areas – subject matter(s), creativity, and critical thinking. See Figure 12.

#### **k. Program Evaluation**

The TA Manual reads, "As part of the continuous improvement process, schools evaluate their programs on a regular basis." The Program Guide reads, "Nearing the completion of the school year, parents will be mailed a Gifted Program Rating Scale along with the students' last progress report. ... Score will be tallied, averaged and presented at the first [District] Gifted Program Parent Advisory Committee meeting of the following school year." Additionally, the Program Guide reads, "Evaluation is a key component in identifying the strengths of a program and [sic] well as its limitations, which should ideally drive the change. The [District] Gifted Program is no exception."

However, the District wrote to OCR, "The GATE program is not formally evaluated." During interviews with OCR, staff confirmed that its GATE program is not evaluated – formally or informally. Additionally, the District wrote to OCR, "The District does not use a 'Gifted Program Rating Scale.'"

#### **VI. EVIDENCE TO DATE: HONORS, AP, AND MIDDLE SCHOOL ADVANCED MATH COURSES**

In this case, we began investigating honors, AP, and middle school math courses (collectively "advanced courses"). The District does not offer International Baccalaureate (IB) classes; and therefore, we did not investigate IB courses. We also did not investigate dual enrollment courses because they were not included in the allegations.

New Mexico law reads:

At the end of grades eight through eleven, each student shall prepare an interim next-step plan that sets forth the coursework for the grades remaining until high school graduation. Each year's plan shall explain any differences from previous interim next-step plans, shall be filed with the principal of the student's high school and shall be signed by the student, the student's parent and the student's guidance counselor or other school official charged with coursework planning for the student.

Additionally, New Mexico law reads:

A local school board shall ensure that each high school student has the opportunity to develop a next-step plan based on reports of college and workplace readiness assessments, as available, and other factors and is reasonably informed about curricular and course options, including honors or advanced placement courses, dual-credit courses, distance learning courses, career clusters and career pathways, pre-apprenticeship programs or remediation programs that the college and workplace readiness assessments indicate to be appropriate[.]

Moreover, in order to graduate from high school, New Mexico students must earn at least one unit of credit for "an advanced placement or honors course, a dual-credit course offered in cooperation with an institution of higher education or a distance learning course."

We requested from the District "a copy of the District's policies, regulations, procedures, manuals, handbooks, or similar documents for advanced math, honors, and AP courses." In response, the District provided one relevant page from the New Mexico School Boards Association's "Policy Manual and Administrative Regulations." During interviews, staff told OCR that the District does not have written policies or procedures for advanced courses. However, OCR found online District Policy J-1400 ("JG Assignment of Students to Classes and Grade Levels"), which reads, "Assignment of a student to classes (classroom or subjects) shall be made based upon the student's grade-level assignment, completion of any prerequisites, achievement of any required standard, and any classroom limitations or class-size guidelines, in that order." The Policy's regulation for high schools, which OCR also found online, reads:

The principal of the high school will prepare a list of prerequisites for classes offered in the high school, specifically stating grade level and credit or achievement required before a pupil can take a specific class or subject. Also included shall be a statement of priority for assignment to a class or subject - with classroom limits based upon number of sections offered or scheduled - and/or the class-size guidelines. The list developed will be submitted to the Superintendent for approval. All subjects offered in the high school will be included in the list.

Despite requests from OCR that would include the lists pursuant to the regulation for District Policy J-1400, the District did not provide OCR with any such lists.

Additionally, OCR found online District Policy I-1250 ("IHA Basic Instructional Program"), which reflects state law and reads, "Beginning with the 2006-2007 school year the District shall offer at least one (1) honors or similarly academically rigorous class in both mathematics and language arts in each high school."

District Policy I-4700 (“IIE Student Schedules and Course Loads”) reflects the relevant page from the New Mexico School Board Association’s “Policy Manual and Administrative Regulations.”

The Board requires that each student at the end of grades eight (8) through eleven (11) develop an interim next-step plan that sets forth the coursework for the grades remaining until high school completion or transition following high school. The Board shall ensure each student has the opportunity to develop a plan based upon reports of college and workplace readiness assessments and other factors and be reasonably informed about:

- Curricular and course options, including honors or advanced placement courses ... ;
- Opportunities available that lead to different post-high-school options; ...

**a. Information Dissemination**

We requested from the District, in four different data requests, copies of all information disseminated to students, parents, and guardians regarding advanced courses. The District provided only an excerpt from the Grants’ “Student/Parent Handbook,” which listed AP courses at the school and contained two paragraphs about enrollment:

Students wishing to take any of the above courses should complete an interest form in the spring semester for the upcoming fall. Forms may be obtained from the department chairpersons. In most cases there is only one section of honors or AP per course. Legal requirements limit enrollment in all classes.

Enrolling in an honors or AP class is a big responsibility and is designed to be student initiated. Honors and AP classes are much more demanding than non-honors. Therefore, it is recommended that students take no more than 2 in a semester.

During interviews, most staff answered that they did not know what information is disseminated, or that information is informally shared by staff in individual conversations. One AP teacher said that Grants disseminates a bulletin about AP courses to parents; however, no other staff, nor the District’s data responses, made mention of a bulletin. One guidance counselor said that Grants’ student handbook includes information about advanced courses. The handbook provided to OCR includes a list of AP courses, but no descriptions of the courses. One department head said that Grants’ course descriptions are online; however, no other staff, nor the District’s data responses, made mention of online course descriptions. OCR reviewed the Grants’ High School webpage and found only a course catalog for the 2018-2019 school year that did include descriptions of AP courses (*e.g.*, AP-Calculus, AP-Biology, etc.)

**b. Course Offerings**

**i. Processes for Determining Course Offerings**

The District reported that it decides which advanced math, honors, and AP courses to offer at the high schools based on teacher input, teacher/student interest, and teacher certification. The District also stated that eligibility for and participation in AP and Honors courses is determined on a “case by case basis;” and that during the 6th grade student/parent orientation, announcements are made regarding

middle school advanced math courses to alert parents of the existence of, and opportunity to participate in, such courses.

During interviews with OCR, staff shared that decisions about course offerings are made at the school level (not District level), largely based on available resources at the school, including certified teachers available, and student interest. They also shared that school administrators and counselors create schedule matrices; however, the District did not provide any such matrices. A teacher at Laguna-Acoma HS said that her school surveyed students during SY 2019-2020 about the classes they would want to take. The principal at Grants said that students at her school use “Major Clarity,” an online career exploration platform, which includes a survey that counselors consult when generating course schedules. No other District staff mentioned “Majority Clarity” during interviews, nor did the District’s data responses.

### **ii. Advanced Middle School Math Offerings**

OCR requested information regarding Advanced Middle School Math Offerings for the 2017-2018, 2018-2019, 2019-2020 school years. The District’s response was only that pre-algebra and not algebra is offered to high achieving students at the middle school level, and no further information was provided about pre-algebra offerings. During interviews with OCR:

- The 2019-2020 SY principal at Los Alamitos said that the eighth-grade math class offered in District middle schools is like pre-Algebra and that students are automatically enrolled in the class.
- The 2019-2020 SY assistant principal at Los Alamitos, who will become the principal at Los Alamitos starting in the 2020-2021 SY, said that her school does not have pre-Algebra.
- The special education department head at Los Alamitos did not know whether her school had pre-Algebra.
- When asked about pre-Algebra, the Director of Instructional Support said, “Everything is pre-Algebra in my mind.” When asked about the highest level of math offered in District middle schools, she said seventh- and eighth-grade math.
- A math teacher at Laguna-Acoma Jr./Sr. HS said that: her school’s eighth grade math class is a “pre-Algebra-like;” occasionally, on a case-by-case basis, when there is an advanced eighth grade student, her school might offer Algebra I in eighth grade; and in past years, there have been instances of an eight grade student attending a ninth grade Algebra I class.

### **iii. Honors and AP Course Offerings**

The District’s middle schools do not have honors or AP courses. Middle school students cannot take honors and AP courses at the high schools or online.

During the 2018-2019 SY, Grants had:

- two sections of Honors Biology;
- one section of Honors Physics;
- one section of Honors Spanish IV;
- one section of Honors Jazz Ensemble;
- one section of AP Biology;

- three sections of AP U.S. History;
- one section of AP World History;
- two sections of AP English III;
- two sections of AP English IV;
- one section of AP Calculus;
- one section of AP Studio Art Drawing; and
- one section of AP Studio Art 2-D Photography.

In contrast, during the 2018-2019 SY, Laguna-Acoma HS had:

- one section of Honors Physics;
- two sections of Honors Trigonometry/Statistics; and
- one section of AP U.S. History.

According to District staff, students who attend Laguna-Acoma HS cannot take courses at Grants. Additionally, District students cannot take honors and AP courses online.

Despite OCR's requests, the District did not provide a list of honors and AP courses in which students were enrolled during the 2019-2020 SY. Instead, the District provided a list of all courses – both "active" and "inactive" – that are in schools' "PowerSchool System Course Catalogue." The District also provided the 2018-2019 course catalogue for Grants, but not the course catalogue for Laguna-Acoma HS, if one exists. A teacher at Laguna-Acoma Jr./Sr. HS told OCR that her school does not have a course catalogue and that she is in the process of creating one. The "active" courses included eight AP courses and five honors courses at Grants; and seven AP courses and eight honors courses at Laguna-Acoma HS. However, according to staff interviewed by OCR, Grants actually had one honors course (Biology) and eight to eleven AP courses (reports varied), including two sections of English; and Laguna-Acoma HS actually had no honors courses and only two AP courses – U.S. History and U.S. Government and Politics – taught by one teacher who initiated the courses.

### **c. Eligibility for Course Enrollment**

The District indicated in its data responses that enrollment in honors and AP courses requires students to complete an interest form, obtain letters of recommendation, possess "strong" grades, have taken prerequisite courses, and have their eligibility determined on a case by case basis. A case by case basis means that each student is individually considered and grades are reviewed in the subject area classes. For example, if a student wants to participate in Honors or AP biology, the grade that the student earned in Biology I and Biology II (if taken) would be considered. If a student scores high in the regular Biology courses, they would be candidates for Honors/AP Biology courses.

However, Staff indicated that the District does not have any formal, written policies or procedures for advanced courses. During interviews with OCR, District staff shared information about eligibility for honors and AP courses that was inconsistent with the District's data responses and inconsistent with each other. For example:

- The principal at Grants named one requirement – a teacher recommendation.

- A department head at Grants said that, to date, any student could sign up – *i.e.*, there were no eligibility criteria; however, she also said that the school is considering a process, starting with the 2020-2021 SY, that involves applications and interviews prior to enrollment in AP courses.
- Another department head at Grants said that each course has its own criteria. To determine enrollment in her advanced classes, she has used standardized test scores, references, meetings with students and parents, and pre-requisite courses.
- Another department head at Grants said that there used to be an application process for some advanced courses, but he was not sure whether applications are still used. To determine enrollment in his advanced classes, he reviews whether prospective students have taken pre-requisite courses.
- Another department head at Grants specified one requirement for students to enroll in honors or AP courses – that the teacher of the course signs off on the enrollment.
- An AP teacher at Grants said that the process varies by course. To determine enrollment in her AP course, she requires that prospective students be a junior or senior and have taken specific pre-requisite courses. She also noted that some teachers require signed contracts and completion of summer assignments.
- A department head/AP teacher at Laguna-Acoma HS said that there are no standard processes or eligibility requirements at her school. To determine enrollment in her AP courses, she requires only that students informally ask her to be enrolled or that students' previous school year teacher for the same discipline suggests enrollment.
- A department head/AP teacher at Laguna-Acoma HS said that AP teachers talk to lower grade teachers about who would be successful in their AP class, develop a list of the "cream of the crop," and recommend that certain students enroll in the AP course. He also said that enrollment is based on students' prior courses and plans for college or their career.
- A counselor at Laguna-Acoma HS said there are no eligibility requirements to enroll in honors and AP courses; instead, students simply sign up.

#### **d. Student Participation**

According to the CRDC, during the 2015-2016 SY, American Indian students were under-represented among District students enrolled in AP courses, while white students were over-represented, relative to their representation in the overall student population. The CRDC data also show that 70 students at Grants (7.9% of the school's total student population) were enrolled in at least one AP course, compared to just 13 students at Laguna-Acoma HS (4.5% of the school's total student population). See Figure 13.

We requested from the District – for the 2017-2018, 2018-2019, and 2019-2020 SYs – enrollment in honors and AP courses by school course, student name, and student race. The District did not provide the requested information for the 2017-2018 SY or the 2019-2020 SY. For the 2018-2019 SY, the District provided records showing that: at Grants, 191 students, 22.6% of the total student population, were enrolled in at least one honors or AP course; American Indian students were 40.5% of the total student population at Grants, but 35.1% of students who took at least one honors or AP course at Grants. At Laguna-Acoma HS, 31 students, 15.0% of the total student population, were enrolled in at least one honors or AP course (individual students not duplicated); of the 31 students, 29 are American Indian and 2 are white.

## VII. CONCLUSION

We thank the District for being willing to voluntarily address the allegations raised by the Complainant. A copy of the signed Agreement is attached. OCR will monitor implementation of this Agreement through periodic reports from the District about the status of the Agreement terms. We will provide the District written notice of any deficiencies regarding implementation of the terms of the Agreement and will require prompt actions to address such deficiencies. We will inform the Complainant of the status of the monitoring, including providing the Complainant with copies of our monitoring responses. If the District fails to implement the Agreement, we will take appropriate action, as described in the Agreement.

This concludes OCR's investigation of the complaint 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. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

The case is now in the monitoring phase. The monitoring phase of this case will be completed when OCR determines that the District has fulfilled all terms of the Agreement. When the monitoring phase of this case is complete, OCR will close this case and send a letter to the District, copied to the Complainant, stating that this case is closed. We will provide the Complainant with a copy of our monitoring letters.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and it 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint investigation. If this happens, the individual may file another complaint alleging such treatment.

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 seek to protect, to the extent provided by law, personally identifiable information, which, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

If you have any questions, please contact the attorneys assigned to this complaint: Jason Langberg (303-844-6299 or [Jason.Langberg@ed.gov](mailto:Jason.Langberg@ed.gov)) and Jason Sinocruz (303-844-4321 or [Jason.Sinocruz@ed.gov](mailto:Jason.Sinocruz@ed.gov)).

Sincerely,

/s/

Angela Martinez-Gonzalez  
Supervisory General Attorney

cc (via email): Darcee Williams, Attorney for the District, Himes, Petrarca & Fester (xxxx@xxxx.xxx)  
Andrew Sanchez, Attorney for the District, Himes, Petrarca & Fester (xxxx@xxxx.xxx)  
Ryan Stewart, New Mexico Secretary of Education (xxxx@xxxx.xxx)



### Figures

Figure 1: Map of schools on the west side of the District

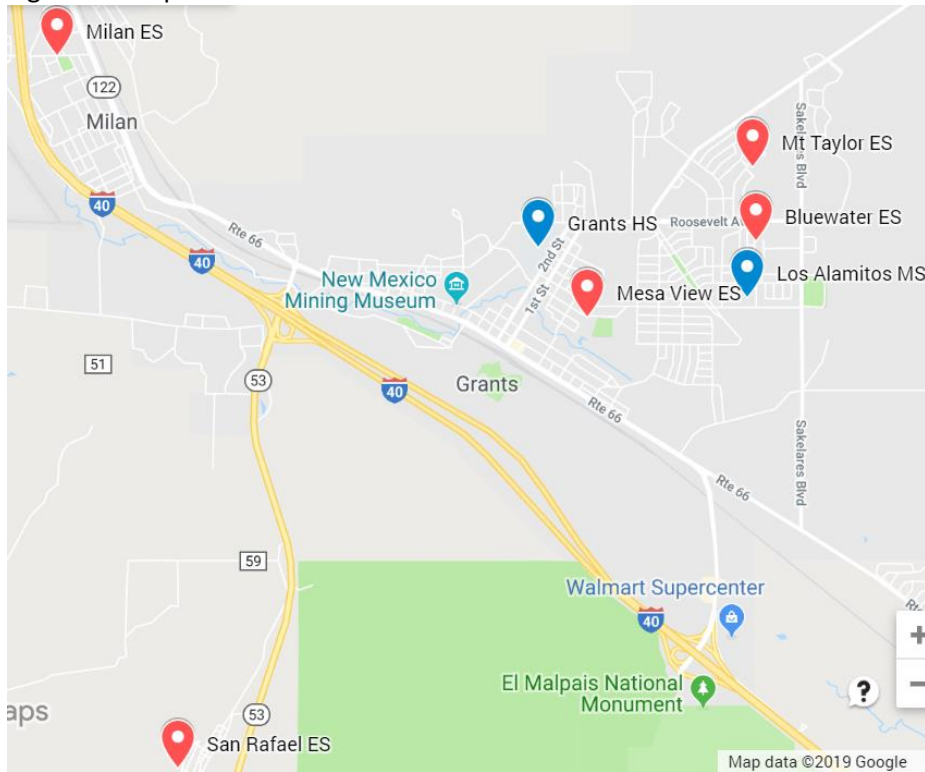


Figure 2: Map of schools on the east side of the District



Figure 3: Student populations by race and school (2018-2019)

School	Grades	Total Students	American Indian Students		White Students	
			Number	Percent	Number	Percent
Bluewater	K-6	95	26	27.4	68	71.6
Mesa View	K-6	473	190	40.2	270	57.1
Milan	K-6	465	110	23.7	349	75.1
Mt. Taylor	K-6	523	206	39.4	309	59.1
San Rafael	K-6	62	10	16.1	52	83.9
Los Alamitos	7-8	433	177	40.9	248	57.3
Grants HS	9-12	844	327	38.7	506	60.0
Cubero	K-6	273	243	89.0	29	10.6
Seboyeta	K-6	41	28	68.3	12	29.3
Laguna-Acoma MS	7-8	51	46	90.2	5	9.8
Laguna-Acoma HS	9-12	207	198	95.7	8	3.9

Figure 4: Student populations by race and school (2019-2020)

School	Grades	Total Students	American Indian Students		White Students	
			Number	Percent	Number	Percent
Bluewater	K-6	86	26	30.2	59	68.6
Mesa View	K-6	478	179	37.4	289	60.5
Milan	K-6	478	108	22.6	366	76.6
Mt. Taylor	K-6	491	208	42.4	272	55.4
San Rafael	K-6	58	7	12.1	51	87.9
Los Alamitos	7-8	437	195	44.6	238	54.5
Grants HS	9-12	824	334	40.5	480	58.3
Cubero	K-6	254	227	89.4	26	10.2
Seboyeta	K-6	34	19	55.9	14	41.2
Laguna-Acoma MS	7-8	50	43	86.0	7	14.0
Laguna-Acoma HS	9-12	196	187	95.4	9	4.6

Figure 5: Percent of student subgroups districtwide that were proficient in reading, math, and science (2017-2018)

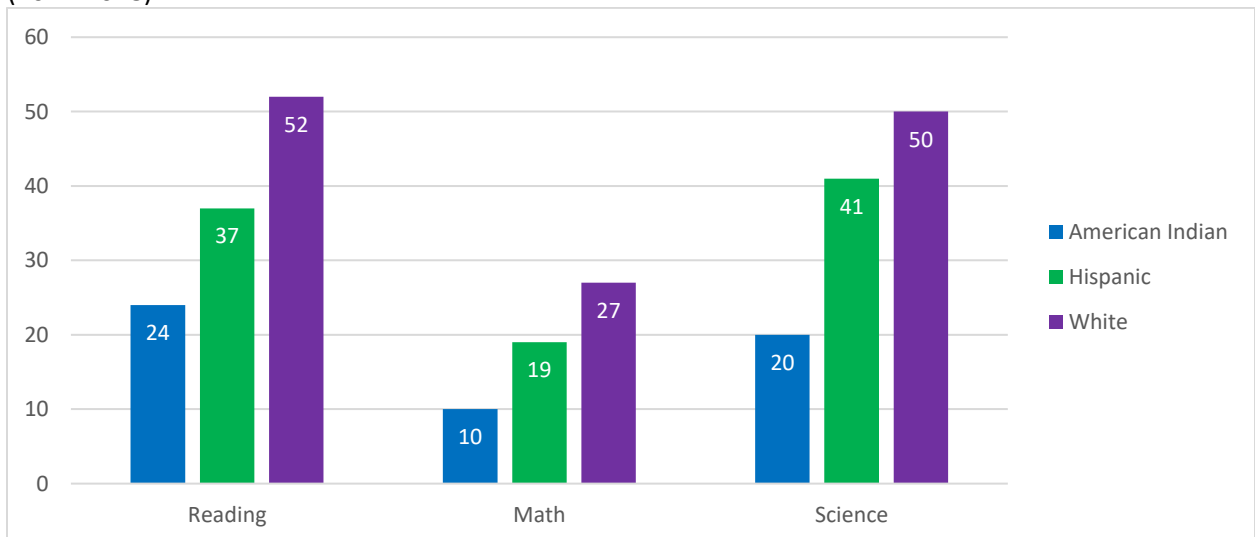


Figure 6: Percent of American Indian students proficient in reading, math, and science statewide and district wide

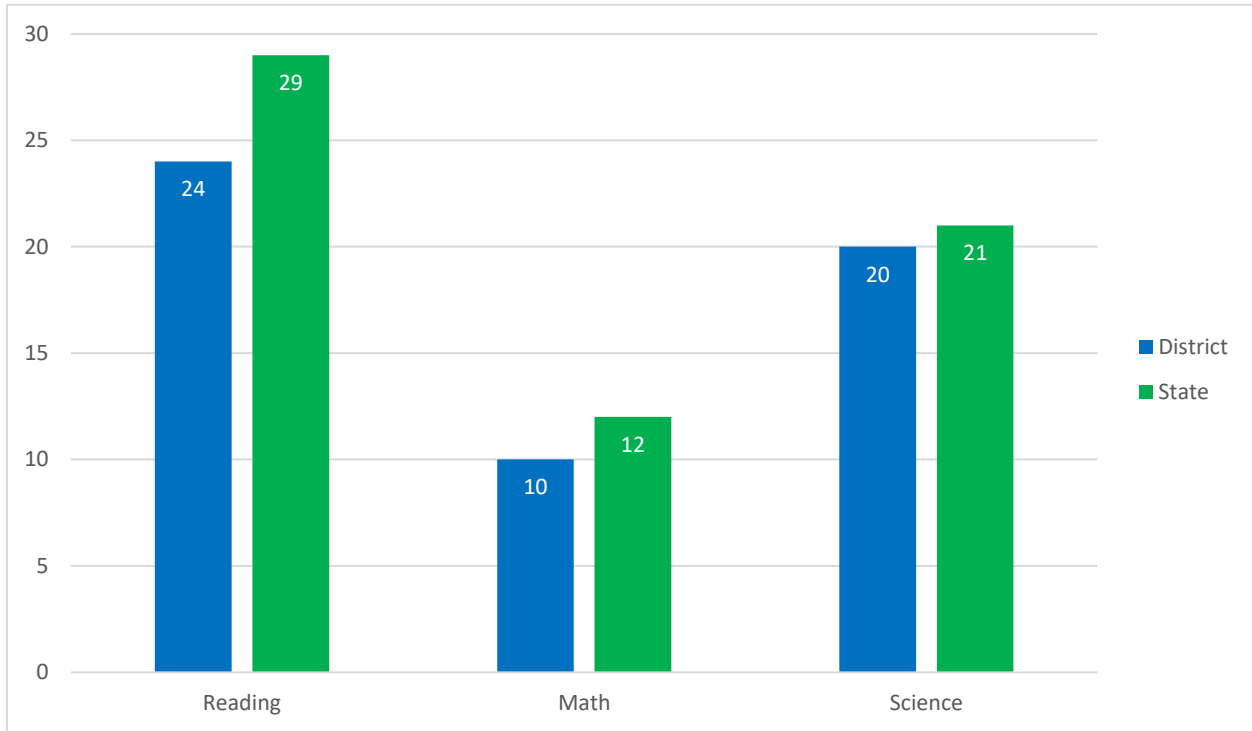


Figure 7: Percent of students who were proficient in reading, math, and science in District middle schools (2017-2018)

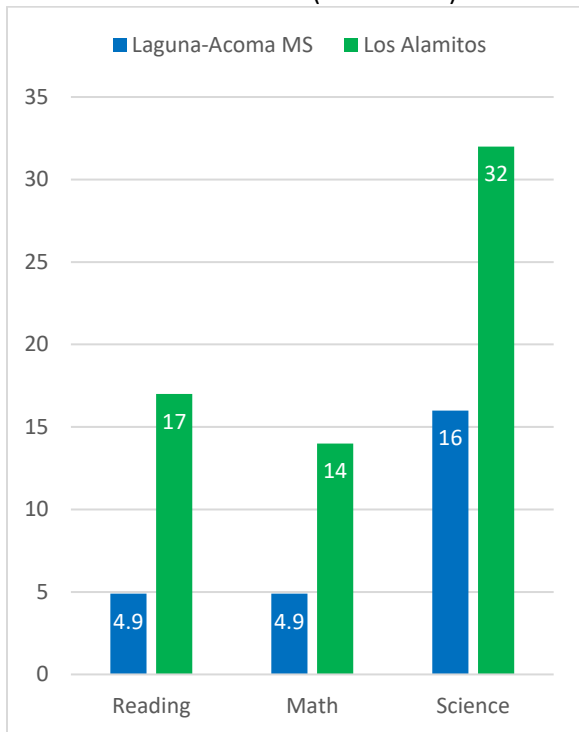


Figure 8: Percent of students who were proficient in reading, math, and science in District high schools (2017-2018)

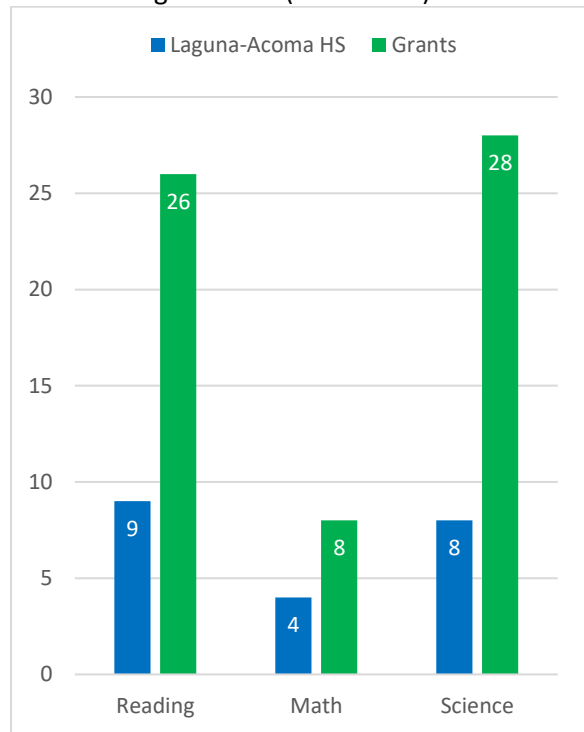


Figure 9: District schools by GATE staffing and GATE students (2019-2020)

School	Full-Time Equivalent (FTE)	GATE Students	FTE Per Student
Bluewater	0.10	6	0.017
Mesa View	0.03	3	0.010
Milan	0.05	4	0.013
Mt. Taylor	0.01	1	0.010
San Rafael	0.01	1	0.010
Los Alamitos	0.30	4	0.075
Grants	0.50	20	0.025
Cubero	0.18	4	0.045
Seboyeta	0.00	0	0.000
Laguna-Acoma MS	0.03	1	0.030
Laguna-Acoma HS	0.09	2	0.045

Figure 10: Percent of District-wide student population by race vs. percent of students identified as GT by race (as of May 17, 2019)

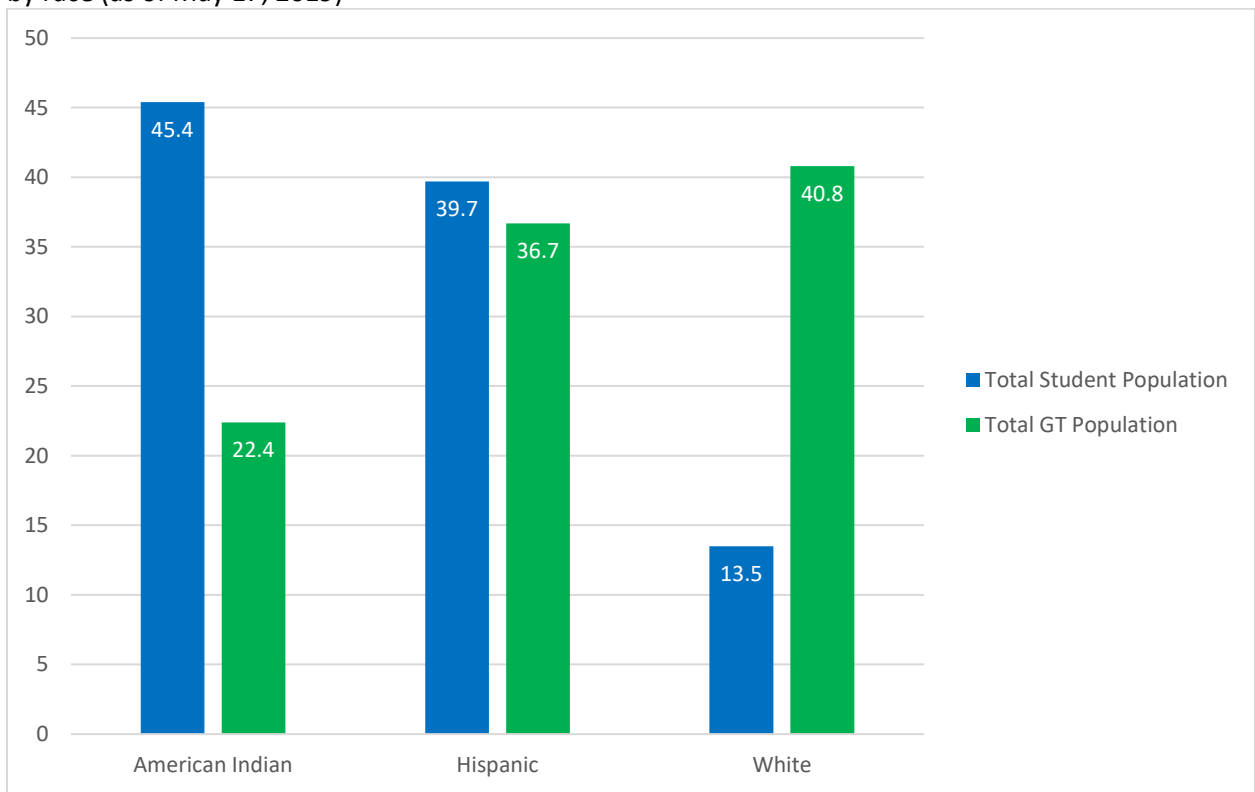


Figure 11: Rates of District students identified as GT by race per 100 students (2019-2020)

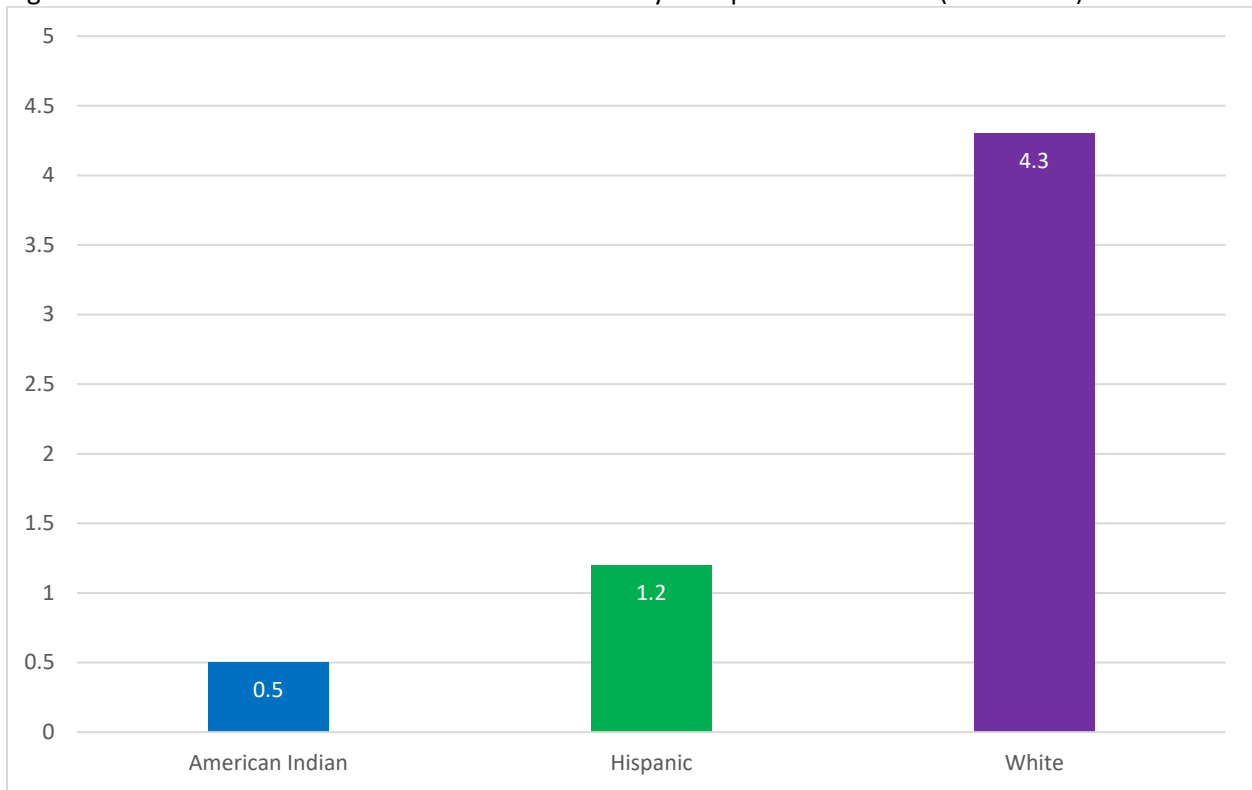


Figure 12: Population of District students identified as GT by eligibility area and race (as of approximately September 30, 2019)

Eligibility Area	White Students	Hispanic Students	American Indian Students	% of American Indian Students in Eligibility Area
Subject matter(s) only	8	12	4	16.7
Critical thinking only	3	1	1	20.0
Creativity only	0	0	0	n/a
Subject matter(s) + creativity	2	1	0	0.0
subject matter(s) + critical thinking	6	2	2	20.0
critical thinking + creativity	0	1	1	50.0
subject matter(s) + creativity + critical thinking	2	0	0	0.0

Figure 13: Percent of District-wide student population by race vs. percent of District students of race who took at least one AP course (2015-2016 SY)

