



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

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October 6, 2017

VIA ELECTRONIC MAIL

Dr. Nellie Meyer
Superintendent
Mt. Diablo Unified School District
1936 Carlotta Drive
Concord, CA 94519

(In reply, please refer to case no. 09-11-1164.)

Dear Superintendent Meyer:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against the Mt. Diablo Unified School District (District). The complaint alleged that the District discriminated against Latino students on the basis of race and/or national origin when, in February of 2011, it determined that Glenbrook Middle School (Glenbrook Middle or Glenbrook) would be closed at the end of the 2010-11 school year. During its investigation, OCR learned that the District had also simultaneously decided to Holbrook Elementary School (Holbrook Elementary or Holbrook) and that the school's enrollment was also majority Latino. OCR therefore expanded its investigation to address the issue with respect to both school closures.

OCR investigated the complaint under the authority of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d, and its implementing regulation, 34 C.F.R. Part 100. Title VI prohibits discrimination on the bases of race, color, or national origin in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department and is subject to Title VI and the regulation.

OCR gathered evidence through interviews with the Complainant and District administrators, including the Superintendent and an Assistant Superintendent, and by reviewing documents and records provided by the District and available on-line, including minutes and recordings of Board meetings and records of presentations made to the Board.

OCR's investigation to date raised concerns that the District was not in compliance with Title VI and its implementing regulation with respect to the school closures at issue. Prior to completing the investigation, the District stated its interest in entering into a voluntary Resolution Agreement

(Agreement) with OCR to address the concerns raised. The facts reviewed to date, applicable legal standards, analysis, and the resolutions reached in this matter are summarized below.

Findings of Fact

Background

The District is a K-12 school district located in eastern Contra Costa County. During the 2010-11 school year, when the school closure decision was made, the District operated 29 elementary schools, ten middle schools, six comprehensive high schools, and six continuation high schools. The District enrolled 34,116 students, of whom 36% were Latino, 43% were white, 12% were Asian, and 5% were African American.

In February 2011, the District announced that it planned to close two schools in North Concord, Glenbrook Middle and a neighboring elementary school in its feeder pattern, Holbrook Elementary, at the end of the 2010-11 school year. The student population of Glenbrook was 68% Latino and the population of Holbrook was 60% Latino, significantly higher than the Latino population of the District as a whole. The Complainant, a parent of a student at Glenbrook, alleged that closure of Glenbrook would result in the elimination of a number of educational and enrichment programs and extended library hours available to students at the school. She also alleged that closure would require students to walk significantly farther to school or to incur substantial expenses for public transportation.

The Complainant further alleged that the burden of the school closures fell more heavily on Latino students than on students of other racial and ethnic groups, and that, in choosing to close Glenbrook, the Board had favored the concerns of white parents over those of Latino parents. While the Complainant only raised concerns about the closure of Glenbrook, because the only other school closed by the District was also majority Latino, OCR investigated whether the simultaneous closure of the two schools resulted in discrimination against Latino students.

April 2016 Board Vote To Reopen Schools

Nearly five years after the schools were closed, on April 11, 2016, the Board voted 4-1 to allocate \$50,000 to plan for the reopening of Holbrook Elementary in fall of the 2017-18 school year and for the possibility of reopening Glenbrook Middle in the fall of the 2018-19 school year. The motion passed after the then-current Board President, who had voted against the closures in 2011, stated on the record that she “never did find out why these two were closed” and “why we stripped North Concord of these two schools.” Holbrook reopened at the beginning of the 2017-18 school year.

School Closure Process

During the 2010-11 school year, the District was facing a serious budget shortfall, caused in part by student enrollment that had been declining since 2002, and exacerbated by statewide

budget cuts. News reports at the time characterized the District as “teetering on the brink of a financial crisis.” The previous year, in December 2009, staff had presented a proposal to the Board for addressing a projected \$17 million budgetary deficit for the 2011-12 school year. Among the many proposed savings measures was \$1.5 million from the closure of an unspecified number of schools. The Board voted at its January 12, 2010, meeting to achieve \$1.5 million in cost savings by closing or consolidating schools.

According to District administrators, no District schools had been closed in the previous twenty years. A District administrator consulted with other school districts that had recently closed schools, and developed a list of eight criteria for closure, including facility condition, school capacity utilization, capacity at neighboring schools for receiving students, student academic achievement, and costs. The criteria were adopted and presented to the Board before the school closure process began.

In preparation for the process of deciding which schools to close, the District hired a consultant to conduct a detailed demographic analysis and to project District and school-by-school enrollment for the following ten years. Among other findings, the consultant determined that the District’s elementary and middle schools were, overall, operating at less than 80% of their capacity. They also projected an additional decrease in enrollment of about 2000 students District-wide by the 2018-19 school year.

The District invited school administrators and employees, parents, and community members from all schools to apply for membership in a School Closure Advisory Committee (Committee). Twenty-six Committee members were selected, with each high school feeder pattern represented by a school administrator, a school employee, a parent, and a community member. District administration informed OCR that committee members were chosen to maximize the number of schools represented.¹ Race or national origin of committee members was not considered in the selection process. Members of District employee groups and advisory committees were also represented. Three District administrators co-chaired the Committee.

The Committee was charged with evaluating each of the schools in the District for closure, based on the eight closure criteria. The Committee was asked to make recommendations to the Board, based on these criteria. None of the criteria and none of the voluminous information given to Committee members addressed the topic of race or ethnicity of student enrollment or the potential impact of school closures on students of different racial/ethnic groups.

The Committee held twelve meetings during the fall of 2010. Agendas and minutes for each meeting, and copies of presentations made at meetings, were posted on the District’s web site.

¹ OCR reviewed the list of Committee applicants and found that most of those not selected were multiple applicants from the same school. OCR did not find any evidence that those not selected were not selected on account of race, color or national origin.

Members of the public were allowed to address the Committee; at the final two meetings, representatives of eight schools, including two representatives from Glenbrook, spoke in opposition to the closure of their schools. The Committee arrived at a composite score, based on seven of the criteria, for each District school at all grades, with a low score (out of a possible 140 points) justifying closure. One elementary school -- El Monte (46% Latino; 30% white) -- received the lowest score with 41 points; Glenbrook Middle and four other elementary schools received between 56 and 58 points. All of the remaining elementary schools, including Holbrook, and middle schools received higher scores (between 60 and 126).

The Committee found that Glenbrook met many of the closure criteria, with especially low scores for capacity utilization, academic performance, and “geographic equity” (a measure of the number of students living within the school boundaries and the number of students transferring into and out of the school). Holbrook, while scoring higher on several measures, received low scores in capacity utilization, availability of capacity in adjacent schools, and “improved facility condition for students” (measuring the likelihood that the closure of the school would result in large numbers of students being moved to a site that had not recently been renovated).

After reviewing the criteria scores, the Committee was divided into subgroups and developed scenarios for school closure. The Committee ultimately proposed nine scenarios, each designed to save at least \$1.5 million by closing between three and five schools. Fifteen different schools, with Latino populations ranging from 9% to 88%, were included in the scenarios. Most scenarios included both predominately white and predominately Latino schools. Following the development of the scenarios, the consultant conducted additional analysis to determine the feasibility and cost of each scenario.

The populations of the schools, and their scores on the school closure measurements, are described below:

School	2010-11 Enrollment	% Latino	% White	Closure score
Scenario 1a (recommended unanimously)				
Glenbrook Middle	525	68%	14%	57
Silverwood Elementary	403	35%	38%	56
Holbrook Elementary	393	60%	24%	66
Scenario 1b (recommended unanimously)				
Glenbrook Middle	525	68%	14%	57
Silverwood Elementary	403	35%	38%	56
Wren Avenue Elementary	387	63%	17%	58
Scenario 4a (recommended by a split vote)				
Monte Gardens Elementary	551	20%	55%	90
Sequoia Elementary	570	12%	57%	83

School	2010-11 Enrollment	% Latino	% White	Closure score
Sequoia Middle	895	30%	48%	77
Schools included in other scenarios				
Ayers Elementary	431	31%	44%	78
Bel Air Elementary	451	63%	6%	68
El Monte Elementary	469	46%	30%	41
Fair Oaks Elementary	338	58%	16%	61
Rio Vista Elementary	390	75%	7%	56
Shore Acres Elementary	529	89%	4%	57
Woodside Elementary	518	27%	41%	81
El Dorado Middle	871	37%	44%	72
Oak Grove Middle	576	75%	10%	60
Riverview Middle	741	64%	14%	76
Valley View Middle	736	21%	58%	75

At the final Committee meeting, on December 13, 2010, each Committee member was given four votes to distribute as s/he wished among scenarios and four votes to distribute among individual schools.² The three school closure scenarios that received the highest number of votes were:

- 1a: Close Glenbrook Middle, Silverwood Elementary, and Wren Avenue Elementary Schools – 39 votes, cast by 17 committee members
- 1b: Close Glenbrook Middle, Silverwood Elementary, and Holbrook Elementary Schools – 16 votes, cast by 9 committee members
- 4a: Close Sequoia Middle, Sequoia Elementary, and Monte Gardens Elementary – 13 votes cast by 6 committee members

After the voting, the Committee members reconvened and unanimously recommended forwarding the first two scenarios (variants of the same proposal) to the Board, while splitting in their support of the third scenario. Both of the two unanimous possible closure scenarios included the closure of Glenbrook Middle and Silverwood Elementary (35% Latino). Only one of the scenarios (1b in the chart above) included the closure of Holbrook Elementary. The other scenario (1a in the chart above) involved also closing Silverwood Elementary and Wren Avenue Elementary (63% Latino).

The third and final scenario, recommended by a split vote (4a in the chart above), involved closing the District's majority or predominantly white "choice" schools, Sequoia Middle and

² Each member could vote for four different scenarios or schools, or concentrate his/her votes on fewer scenarios or schools. The Assistant Superintendent told OCR that this voting method provided evidence of the strength of support for closing any school or schools.

Monte Garden and Sequoia Elementary. Enrollment at these schools was primarily determined through parent application rather than student residence. According to the consultants' analysis, several of the schools of residence of students at these schools did not have the capacity to accommodate them if they returned. In addition, the academic achievement of all three schools was among the highest in the District.

El Monte Elementary (46% Latino; 30% white), the school with the lowest score (and thus the one that appears to have qualified as most appropriate for closure under the rubric), appeared in only one closure scenario, which also involved closing Holbrook, Silverwood, and another predominately white school. Because the scenario selection was part of the ongoing deliberations of a large committee, OCR was not able to obtain information about why that scenario was not ultimately recommended, or why El Monte was not included in other closure scenarios.

In listing the "pros" and "cons" of each of the three final scenarios, the Committee noted that the two scenarios involving Glenbrook had the advantage of low cost and did not "zero in on one community." The disadvantages were listed as the limited savings (\$1.5 million), "elementarys [sic] serve communities," and "[m]ore disruptive to close a secondary school rather than elementary."

The Latino enrollment of the schools included in the third scenario ranged from 12% to 30%. The list of "pros" for this scenario focused on the dispersal of high-performing students to other schools and the advantage of closing schools that did not serve neighborhoods. The "cons" noted that closure would be costly, that receiving schools did not have the capacity to accommodate students, and that closure would eliminate the District's "choice" option. OCR notes, however, that in cost savings figures presented by the District, the total savings from the closure of Sequoia Middle School was estimated at \$723,528 while the cost savings for closing Glenbrook Middle was only \$619,356.

The Board considered the school closure scenarios at Board meetings on January 25 and February 8, 2011. Representatives from all of the schools being considered for closure, including Glenbrook and Holbrook, addressed the Board at both meetings. At both meetings, the Superintendent presented information about the costs and savings associated with each of the options, and of several other possible actions, including the creation of a non-public school on the Glenbrook campus for students with disabilities, and the consolidation of several small high schools on an elementary school campus. These two actions had the potential for saving an additional \$270,000 beginning immediately, and \$400,000 more once the non-public school was fully functional.

At the February 8 Board meeting, the Superintendent gave a presentation about the school closures, outlining the cost savings associated with each of the three Committee options (each between \$1.5 and 1.6 million), and a new "Option 4", which would entail closing Glenbrook Middle and either Holbrook Elementary or Wren Avenue Elementary (68% Latino; 17% white), creating a non-public school on the Glenbrook campus for students with disabilities, and

consolidating several District continuation and other small high schools on the elementary school campus. Staff estimated the total savings for the new scenario at \$1,750,000 per year. As part of this presentation, the Superintendent included a slide to address the question of: "Why Wren or Holbrook and not Silverwood?" In connection with the proposal to consolidate continuation schools from across the District at one school site, the slide stated that Holbrook and Wren "both have public transportation that connect with the Concord BART station which makes the schools more accessible for students coming from various parts of the community." At the February 8, 2011, meeting, the Board voted 4-1 to close Glenbrook Middle and Holbrook Elementary. The Board president stated that a decision would be made at the following Board meeting as to whether to close an additional elementary school, either Silverwood (35% Latino) or Westwood (37% Latino).

At the following Board meeting, on February 22, the Superintendent provided a new presentation to the Board addressing various costs associated with the existing school closure proposals, including loss of a School Improvement Grant (SIG grant) at Glenbrook. According to the minutes of that meeting, he then provided a staff recommendation, taking into account the Governor's then-current budget recommendations, to limit school closures to those already approved. The staff also recommended developing a special education program at Glenbrook, redrawing school boundary lines to minimize overflow transportation costs, and further evaluating ways to meet the needs of students at the District small and alternative high schools. The Board unanimously voted to approve the staff recommendation not to close additional schools. No additional schools have been closed since that date.

On June 14, 2011, consistent with adoption of the District staff plan, the Board approved a Memorandum of Understanding with a non-public school provider to create an intensive day treatment center on the Glenbrook Middle campus for District students with serious emotional disturbances. District staff estimated that creation of the center would enable the District to serve a number of students who were previously placed in out-of-state residential facilities and save between \$300,000 to 400,000 in 2011-12, and higher amounts in succeeding years. As of July 2016, the District reported to OCR that 32 District students were receiving intensive day treatment services at the center on the Glenbrook site. The District estimated that providing services for these students at other day treatment centers in the area would cost approximately \$600,000 per year.

OCR interviewed the former Superintendent in 2012. He stated that he did not know why Holbrook was closed rather than Silverwood. He stated that the Board had made that decision. OCR reviewed district data available at the time of the closure decisions showing that the savings associated with closing Holbrook were identified as \$423,538 whereas the savings identified at Silverwood were identified as \$461,559.

OCR found no evidence that consolidation of the small high schools on the Holbrook campus was publicly considered again after the February 22, 2011, Board meeting. No specific proposal for combining the schools was presented or voted on at that meeting, and the schools have not been combined.

Impact of Closure

A majority of the students at both of the closed schools were Latino. While the District was 36% Latino during the 2010-11 school year, 64% of the students affected by the closure were Latino. The closures affected 4.8% of the Latino students in the District, but only 1.1% of the white students.

The District created a transition plan to facilitate the closure of Glenbrook and Holbrook, which included dates for informing parents of the process for closing the schools and reassigning students, allowing for various transfer requests through lottery, open enrollment, and choice options available pursuant to the No Child Left Behind Act (NCLB). Parents were apprised of these options through individual letters mailed to each parent and at school meetings. The transition plan also called for various meetings and events for parents and students at the receiving schools. Community meetings were held in March at Holbrook and Glenbrook. Meetings and community events, such as an ice cream social, Spring Concert, and Community Family Fun Night, were also held for Glenbrook and Holbrook parents and students at the receiving schools.

Glenbrook Closure

In order to determine the receiving school to which Glenbrook students would be reassigned for the 2011-12 school year, the District divided the attendance area into five geographic subdistricts³. Students were assigned to one of three middle schools based on their subdistrict of residence and proximity to the reassignment school, with a goal of reducing travel time for all students. OCR reviewed the shapes and locations of these subdistricts and determined that they were evenly shaped and appeared to place students at the school closest to their residence.

The increase in the maximum distance of travel for students enrolled in 6th and 7th grades at Glenbrook, or in 5th grade at one of its feeder schools (i.e., students directly affected by the closure) in 2010-11 is outlined below:

Glenbrook	Subdistrict 1	Subdistrict 2	Subdistrict 3	Subdistrict 4	Subdistrict 5
Reassigned to	Valley View	El Dorado	El Dorado	Valley View	Oak Grove
Maximum before closure	2.9 miles	1.6 miles	1.3 miles	1.2 miles	2.8 miles
Maximum after closure	6.8 miles	4.5 miles	4.1 miles	3.5 miles	3.1 miles

³ The Glenbrook subdistricts varied in geographic size. OCR was unable to determine the population of each subdistrict.

Glenbrook	Subdistrict 1	Subdistrict 2	Subdistrict 3	Subdistrict 4	Subdistrict 5
Difference	3.9 (134%)	2.9 (181%)	2.8 (215%)	2.3 (192%)	0.3 (11%)

Two of reassignment middle schools (El Dorado and Valley View) had a lower Latino and higher white enrollment than Glenbrook and higher academic achievement. One (Oak Grove) had a higher Latino and lower white enrollment, and slightly lower academic achievement than Glenbrook Middle. As a result of the reassignment of the Glenbrook Middle students, the percentage of Latino students at each of the receiving schools increased by only three to eight percentage points the following year.

The District assigned a slightly larger proportion of the Latino students who had previously attended Glenbrook Middle to Oak Grove than to either of the other receiving middle schools based on the closer proximity of their residences to Oak Grove than to the other schools, consistent with the District's stated goal of reducing student travel time. Approximately 220 Latino students were initially assigned to Oak Grove Middle; 60 of them ultimately attended other schools through intra-district transfers and special education placements.

The enrollment by race, the Academic Performance Index, and the number of students from Glenbrook or Glenbrook feeder schools who enrolled in each of the receiving schools in 2011 are set forth in the chart below.

School	Total	% Latino	% White	% Other	API	Number and (%) Glenbrook students 2011-12*	Number and (%) Latino students from Glenbrook 2011-12⁴
Glenbrook	525	67.8%	14.1%	17.8%	660	--	--
Valley View	736	20.9%	58.4%	21.4%	828	74 (13%)	53 (14%)
El Dorado	871	37.0%	43.7%	19.4%	708	226 (39%)	104 (27%)
Oak Grove	576	74.8%	10.1%	14.3%	646	185 (32%)	160 (42%)

OCR analyzed capacity data provided to the School Closure Committee prior to the closure decision and determined that, even with the addition of students from Glenbrook, none of the receiving schools exceeded its student capacity in 2011-12. OCR notes, however, that information was presented at a Board meeting in April 2016 suggesting that, because of the closure of Glenbrook, the population of El Dorado had increased to close to 1000 students, with the result that classes and school buildings became overcrowded.

⁴ Numbers in parentheses represent the percentage of the total Glenbrook students/total Hispanic Glenbrook students who attended the named receiving school in 2011-12 (i.e. 12% of all students, and 13% of the Hispanic students, who would otherwise have attended Glenbrook were placed at Valley View). The remaining students were assigned to other schools.

According to information provided by the District, prior to closure Glenbrook students traveled a maximum of 1.3 miles to 2.9 miles to get to school. After Glenbrook students were reassigned, some who were reassigned to El Dorado and Valley View had to travel more than twice that distance, between 3.5 and 6.8 miles. The District initially announced that bus transportation would not be provided, since the District had not previously provided bus transportation to any students except those awarded transfers under the NCLB and those who received transportation services pursuant to individualized education programs (IEPs). Ultimately, buses were offered from Glenbrook Middle to both El Dorado and Valley View immediately after school from both schools, and from El Dorado to Glenbrook at 5:30 pm for students participating in the after school program. The buses were partially subsidized by a community grant. During the 2011-12 school year, students were expected to pay \$85 per semester (\$170 per year) for a bus pass in order to use these buses; in subsequent years through the 2015-16 school year, these students received free bus passes.

The maximum distance traveled for Glenbrook Middle students reassigned to Oak Grove increased slightly, from 2.8 miles to 3.1 miles. No bus service was provided from Glenbrook Middle to Oak Grove. Although it appears that Oak Grove was not located substantially further from most students' homes than Glenbrook, both the Complainant and at least one speaker at a recent Board meeting expressed concerns about the safety of the walk from the Glenbrook attendance area to Oak Grove, based on the need to cross a major thoroughfare.⁵

During the 2010-11 school year, an after-school program at Glenbrook Middle provided homework assistance, snacks and non-academic activities, such as sports, cooking and games. Two of the three receiving middle schools have offered similar programs through the time of this investigation. Only about 13% of the former Glenbrook Middle students ultimately enrolled at the one middle school that did not offer an after school program, Valley View.

As a persistently low-achieving school in program improvement under the No Child Left Behind Act, Glenbrook Middle received a three year \$1.75 million School Improvement Grant (SIG) through the California Department of Education (CDE), which funded a variety of services, including teacher support coaches, summer and after-school intervention and enrichment programs, and staffing for extended library hours. CDE informed the District that the remaining two years of SIG funds could not be transferred to another school unless all Glenbrook students transferred to that school. The Board considered such a scenario, but did not adopt it. The District received a SIG for Oak Grove beginning in the 2011-12 school year; as a result, some of the same services previously provided at Glenbrook were provided to students at Oak Grove.

The District provided information reflecting the changes in grade point average (GPA) experienced by every student who attended Glenbrook during the 2010-11 school year and

⁵ In June of 2015, the former office manager at Glenbrook for more than a decade testified to the Board that she saw displaced students walking in early morning darkness on streets with no sidewalks to El Dorado, which is approximately 3 miles southeast of Glenbrook. The President of the Holbrook Heights neighborhood association also noted the students walking in darkness.

moved to another middle school after Glenbrook closed. OCR reviewed all of this data and found that almost no students experienced more than a 0.5 point drop in GPA. While the majority of students who transferred to each of the three receiving schools had no change or an improvement in their GPA, the grades of 57 of the 154 students who transferred from Glenbrook to El Dorado were lower during the year after the transfer.

Holbrook Closure

In determining where students who attended Holbrook should be reassigned, the District divided the school attendance area into four geographic subdistricts of approximately equal size. Students were assigned to one of two elementary schools, based on the subdistrict in which they resided. The increase in the maximum distance of travel for students enrolled in K – 4th grade (i.e. students directly affected by the closure) in 2010-11 is outlined below:

Holbrook subdistrict	Subdistrict 1	Subdistrict 2	Subdistrict 3	Subdistrict 4
Reassigned to	Sun Terrace	Wren Ave	Wren Ave	Sun Terrace
Maximum before closure	1.9 miles	1.5 miles	0.72 miles	0.63 miles
Maximum after closure	1.9 miles	1.8 miles	1.3 miles	1.6 miles
Difference	0	0.3 miles – 20%	0.58 – 88%	.97 miles - 154%

Approximately the same number of students overall, and approximately the same number of Latino students, were reassigned from Holbrook to Sun Terrace and to Wren. Both receiving schools had ample capacity to accommodate incoming Holbrook students. No bus transportation was provided to either school.

The academic achievement of Holbrook, as measured by the State Academic Performance Index (API) was similar to that of both Sun Terrace and Wren Avenue Elementary schools during the 2010-11 school year. After analyzing both APIs and the schools' five-year improvement rate, the Committee scored Wren Avenue significantly lower than Holbrook and Sun Terrace (with scores of 7, 13, and 15, respectively). Holbrook offered after-school programs to students that provided homework assistance, snacks and non-academic activities, such as sports, cooking and games. Sun Terrace and Wren offered similar after-school programs.

As of July 2016, the Holbrook site was being used to house the construction team for a bond issue approved in June 2010. The District estimated that placement of the team on the Holbrook site, rather than in portables at another site, enabled the District to save \$800,000 for initial portable placement and \$160,000 per year for portable rental. In addition, several classrooms at the site had been leased to a non-public school, generating \$86,400 in additional revenue during the 2011-12 school year and between \$100,000 and \$200,000 each year thereafter (up until the 2015-16 school year). OCR did not obtain any evidence to indicate that

the District could not have realized similar savings if a different elementary school had been closed.

Legal Standards

A. Different Treatment

Under the Title VI regulations, at 34 C.F.R. §100.3(a) and (b), a school district may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of services, benefits, or opportunities it provides. Specifically, a school district may not, directly or through contractual or other arrangements, on the basis of race, color or national origin, deny an individual any service, financial aid or other benefit; provide an individual any service, financial aid or other benefit that is different, or is provided in a different manner, from that provided to others; or restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit.

To determine whether a student has been discriminated against on the basis of race, color, or national origin under Title VI, OCR looks at whether there is evidence that the student was treated differently than students of other races or national origins under similar circumstances, and whether the treatment has resulted the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a legitimate, nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district's actions were based on the student's race, color or national origin.

B. Disparate Impact

Under the Title VI regulations, at 34 C.F.R. §100.3(a) and (b), a recipient may not treat individuals differently on the basis of race, color, or national origin with regard to any aspect of the services, benefits, or opportunities it provides. Section 100.3(b)(2) provides that a recipient may not, directly or through contractual or other arrangements, use criteria or methods of administration which 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 an unlawful disparate impact on the basis of race, color or national origin, OCR examines: (1) whether a policy or practice that is neutral on its face has a disproportionate, adverse effect on students of a particular race or national origin; (2) whether the discipline policy or practice is necessary to meet an important educational goal (i.e., whether there is a substantial, legitimate educational justification); and

(3) if so, 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.

Analysis and Concerns

In a school closure case, OCR assesses whether a school district's decision to close a school discriminates against students on the basis of race, color or national origin in violation of Title VI and its implementing regulation. In assessing compliance, OCR examines not only the decision to close a school or schools, but also the decision about which schools to close, and the decision about where to reassign students from closed schools and otherwise implement a school closure decision.

A. Disparate Treatment

The Complainant alleged that, in reaching its decision, the Board discriminated against Latino students when it rejected a closure scenario that involved other predominately white schools, including but not limited to the "choice" schools. She also alleged that the decision was based in part on the arguments of white parents at those schools, which were given more weight in the Board's decision making process.

OCR found that, while the enrollment of the District as a whole was 36% Latino and 43% white at the time the decision was made, 68% of the students at Glenbrook were Latino, and less than 15% were white, and 60% of the students at Holbrook Elementary were Latino and 24% were white. Therefore, although the closure affected all of the students attending Glenbrook and Holbrook, OCR found that the decision to close Glenbrook and Holbrook over other similarly situated schools with a majority or predominantly white student population provided sufficient evidence of a difference in the treatment of Latino students in the District when compared to white students at schools also under consideration for closure.

OCR further found evidence that, in selecting Glenbrook and Holbrook for closure, the District bypassed Silverwood Elementary, which was on the two lists unanimously approved for closure by the Committee, and met more of the District's criteria for closure, as evidenced by its lower score. Because the student enrollment of Silverwood was predominately white (38% white and 35% Latino), this evidence suggested that the District treated Latino students differently from similarly situated white students.

OCR next examined whether the District provided a legitimate, nondiscriminatory reason for closing Glenbrook and Holbrook, and, if so, whether the evidence established that the reasons provided were pretextual. In conducting this analysis, OCR considered both the general decision to close schools and the decision to close Glenbrook and Holbrook in particular.

With respect to the general decision to close the schools, the evidence confirmed that, at the time the Board decided to close schools, it anticipated a major budget shortfall for the 2011-12 school year. State data confirmed the District's findings that student enrollment had been falling for

seven years with no school closures. OCR concluded that the District provided a legitimate nondiscriminatory reason for its general decision to close one or more schools, and that there was no evidence that this reason was a pretext for discrimination.

OCR also found that the District adopted a set of non-discriminatory criteria for selecting sites for possible closure, including facility condition, school capacity utilization, capacity at neighboring schools for receiving students, student academic achievement, and costs. The District selected a Committee to review all District schools according to these criteria after an extensive and widely publicized process designed to ensure representation from various areas of the District and types of interests. OCR did not find any evidence of pretext with respect to the chosen criteria or the Committee process.

Furthermore, after reviewing the variations among schools included in the scenarios, OCR found no indication of any pattern in the scenarios that suggested that they were developed with intent to discriminate. The initial list of schools presented for consideration included schools with both majority white and majority Latino populations. With respect to Glenbrook Middle's specific inclusion on the list and in two of the three final scenarios presented to the Board, the District presented evidence in the form of the specific scores for the schools and the information relied on to reach those scores that the Committee found it more appropriate for closure than most schools in the District, because it had the smallest student population and the lowest capacity use of any middle school in the District; the only middle school with lower student achievement had a higher Latino student population.

With respect to the inclusion of Holbrook Elementary on the list and in one of the three final scenarios presented to the Board, the evidence was less conclusive. The Committee reviewed data and scored the school higher than 7 other elementary schools, 3 of which had lower Latino enrollment than Holbrook. Three of the schools with lower scores were not included in any closure scenario; one of these three (Gregory Gardens, 30% Latino) had significantly lower Latino enrollment than did Holbrook. OCR did not interview members of the Committee to determine the reasons for their selection of Holbrook for inclusion in one of the most feasible scenarios. Based on the available evidence, however, OCR concluded that the data supported the reasons that the Committee provided for including Holbrook on the list for possible closure.

For these reasons, OCR concluded that the District had presented and supported its legitimate, nondiscriminatory explanations for the selection of Glenbrook Middle and Holbrook Elementary on the initial list for closure and in the scenarios presented to and voted on by the Committee for the Board's final approval.

However, with respect to the final selection of schools for closure at the Board meeting, the District did not provide a legitimate nondiscriminatory reason for closing Holbrook rather than Silverwood. While the Superintendent made a presentation to the Board in which he argued that closure of Silverwood was not feasible because of limited public transportation options, when interviewed by OCR after this investigation was opened, the Superintendent told OCR that the decision was the Board's alone and that he did not know why the Board selected Silverwood

rather than Holbrook for closure⁶. Because the District agreed to resolve this case prior to the completion of OCR's investigation, OCR did not interview Board members to determine whether they could provide a nondiscriminatory explanation for the closure decision. However, the absence of an explanation from the administrator, along with data that shows that closing Silverwood could have saved slightly more funding, raised concerns about whether there was a legitimate nondiscriminatory reason for the decision to choose Holbrook for closure.

With respect to the complainant's allegation that the Board considered the arguments of white parents over Latino parents, OCR did not find evidence that parents from either Glenbrook or Holbrook were underrepresented at the Board meetings. OCR noted that parents from all of the schools included in the recommended scenarios addressed the Board, and that a large number of Glenbrook Middle and Holbrook Elementary parents spoke at two different Board meetings. Nothing in the Board's comments or the meeting minutes gave any indication that Board members gave greater weight to the comments of white parents than Latino parents. Only one parent specifically discussed the issue of only one neighborhood being affected and no parents expressed a concern that the decision was based on race, national origin or color. OCR concluded that the preponderance of the evidence did not establish discrimination in connection with this specific allegation.

OCR therefore concluded that the evidence established a *prima facie* case of different treatment on the basis of national origin with respect to the Board's decision to close Glenbrook Middle and Holbrook Elementary. The investigation completed to date raised concerns that the District did not have a legitimate, nondiscriminatory reason for departing from the Committee's scenarios and ultimately choosing a scenario in which all of the schools were majority Latino, instead of a scenario where one of the two or two of the three schools chosen were majority Latino, which would require further investigation. However, OCR has not reached a compliance determination with respect to this issue because the District expressed an interest in entering into a voluntary Agreement prior to the completion of the investigation, and OCR determined it was appropriate to do so.

B. Disparate Impact

OCR next considered, under 34 C.F.R. section 100.3(b)(2), whether the closure of Glenbrook Middle and Holbrook Elementary violated Title VI because the school closure process, while neutral on its face, had a discriminatory impact on Latino students. In order to establish a violation of Title VI under a disparate impact theory, OCR must first determine that the school closure decision had a disproportionate effect on students of one race, and whether, on balance, the closure harmed those students. If OCR finds that such a disproportionate adverse impact exists, it next considers whether there is a substantial educational justification for the district's decision.

⁶ OCR also notes that, at the meeting at which the Board voted to consider reopening Holbrook, a Board member who was also on the Board at the time of the closure decision stated that she "never did find out why those two [Glenbrook and Holbrook] were closed."

Finally, OCR determines whether an equally effective alternative existed that would have reduced the disproportionate impact of the decision.

As discussed above, OCR determined that the District's school closure decision affected the students at two schools, Glenbrook and Holbrook. Both schools had much higher Latino enrollments than the District as a whole, and 64% of the total students affected, but only 36% of the District as a whole, were Latino. Overall, the closure affected almost five percent of the Latino students in the District, but less than 1.1% percent of the white students. Twenty of the 39 elementary and middle schools in the District had white populations that exceeded the District average; none of them was closed. OCR concluded that the school closure decision had a disproportionate effect on Latino students.

In considering whether the closure of Glenbrook and Holbrook caused harm to students at the schools, OCR considered the differences in academic performance, between the two schools and the schools to which students were reassigned, as measured by the then-current Academic Proficiency Index (API) calculated by CDE and by the scoring of the School Closure Committee, which reviewed API scores and five-year growth. OCR also compared information about building conditions, and considered whether students were required to travel further to school and whether the change in travel raised safety concerns for students.⁷ The evidence that OCR reviewed to date suggests that, on balance, the closure of Glenbrook and Holbrook was adverse to the students at both schools.

In this regard, Glenbrook students were assigned to three different middle schools, based on their residence. Two of these schools (Valley View and El Dorado) had higher student achievement, than Glenbrook. However, neither of these schools benefitted from a SIG grant, which had provided services to students at Glenbrook, including extended library services and after school and summer academic and enrichment programs. The School Closure Committee scored Valley View and El Dorado significantly lower than Glenbrook with respect to facilities conditions. Moreover, students assigned to these schools were required to travel up to four miles farther to attend school and, in the first year after closure, were required to pay for bus service (\$85). In addition, because Glenbrook was in program improvement under NCLB, parents were already able to request a transfer to a higher performing school if they desired to do so. OCR determined that, while the grades of most Glenbrook students did not change significantly after their transfer to the receiving schools, a significant number of those who were assigned to El Dorado (57 of 154) had lower GPAs after the transfer.⁸ For these reasons, OCR had concerns based on the facts gathered to date that the transfer of students to schools with higher test

⁷ If OCR had completed its investigation, it would also have considered whether the transition services offered to students from Holbrook and Glenbrook adequately addressed the potential disruption to their education caused by the move. OCR obtained general information about meetings and information provided to parents about the school closures, their options, and the programs available at the receiving schools, but did not review evidence about other actions the District took, if any, to meet the academic and social needs of individual students.

⁸ OCR did not review comparable evidence concerning elementary school students, who did not receive letter grades, but who may still have incurred deficits as a result of the closure of Holbrook.

scores --- El Dorado and Valley View -- after the school was closed may not have been a sufficient advantage to outweigh the burden of additional travel and the unavailability of additional programs.

The third school to which Glenbrook students were reassigned, Oak Grove, had slightly lower academic achievement than that of Glenbrook. Beginning in the 2011-12 school year, Oak Grove benefited from a SIG grant that resulted in additional services for students at this school. Attendance at Oak Grove did not require significant additional travel but, according to the complainant and at least two commenters at a 2016 Board meeting, posed safety issues for some students who must cross a major thoroughfare to get to the school.

At the time of the decision, Holbrook had a similar API to that of the schools to which students were transferred, but the Committee scored it significantly higher in academic achievement scores than one of the receiving schools and slightly lower than the other school. All three schools received comparable scores on facility conditions from the School Closure Committee. With respect to travel, OCR found that the reassignment placed a significant burden on students. Some students were required to travel between 80% and 150% farther to get to school. In addition, Holbrook is across fairly major streets from both Sun Terrace and Wren, and, as parents and other testified, these transit patterns created additional risks and dangers for elementary school students trying to walk to school. OCR concluded that, based on the transportation burden, the closure of Holbrook had an adverse impact on students at the school.

OCR next considered whether the closure decisions were supported by a substantial educational justification. As discussed above, Glenbrook Middle and Holbrook Elementary were closed as part of a school closure process designed to save \$1.5 million by closing those schools that best met a variety of objective criteria. For the same reasons discussed in connection with the disparate treatment analysis, OCR concluded that the relatively low achievement, small student population, and availability of adequate capacity in neighboring schools constituted a substantial educational justification for the decision to include Glenbrook and Holbrook in the top scenarios for closure. However, based on the statements of the Superintendent and a current Board president described above, OCR had concerns that the District had not provided a substantial educational justification for its ultimate decision to close Holbrook rather than another elementary school with a lower school closure score and a much lower Latino population, especially since data provided by the District suggests that closure of the second school would have resulted in the District saving slightly more funding (\$38,021).⁹

⁹ While not raised by the complainant, OCR separately examined the District's post- closure reassignment decisions and determined that they were based on residence and an objective analysis of geographic location. For example, the Glenbrook students assigned to Oak Grove lived substantially closer to Oak Grove than to any other middle school, and closer to the school than other residents of the Glenbrook attendance area. As such, OCR concluded that the reassignment decisions were supported by a substantial educational justification.

Finally, OCR conducted a preliminary analysis as to whether an equally effective alternative to the District's decision would have reduced the disproportionate impact of the closure. In conducting this analysis, OCR considered whether an alternative existed that would have met the District's educational needs while reducing the disproportionate adverse impact on Latino students. Such alternatives could include not closing the specific schools at issue or implementing the closure in a manner that offsets any harm to the students caused by the closure.

In analyzing the availability of equally effective alternatives, OCR focused only on the scenarios that had been recommended by the Committee. In creating feasible scenarios for closing schools, and in selecting among those scenarios, Committee members were expected to use their varied knowledge of the District and its schools, as well as the criteria-based scores they awarded to each school. OCR notes that the Committee was not asked to consider data regarding the racial/national origin impact each of the scenarios would have, and it is possible that different scenarios would have emerged if the impact of race/national origin had been a criterion.

OCR determined that, if the Board had adopted any of the specific scenarios recommended by the Committee, the closure decision would likely have had a less disproportionate impact on Latino students in terms of such students being displaced from their current schools at the time. While 64% of the students affected by the closure of Glenbrook and Holbrook were Latino, 55% of the students impacted under Scenario 1a (Glenbrook, Silverwood and Holbrook), 56% of the students under Scenario 1b (Glenbrook, Silverwood, and Wren Avenue) and 23% of the students under Scenario 4a (Monte Gardens, Sequoia Elementary, and Sequoia Middle) would have been Latino. OCR also notes, if only two schools needed to be closed, the data reviewed to date suggests that the closure of Glenbrook and Silverwood would have resulted in a substantially less disproportionate impact on Latino students (53% of the students affected would have been Latino); in addition, the closure of Silverwood instead of Holbrook Elementary would have resulted in slightly higher savings for the District.

The only reason raised by the District for closing Holbrook rather than Silverwood was included in a presentation by the Superintendent at the final Board Meeting about the comparative proximity to BART of Holbrook and Wren Avenue, when compared to Silverwood. OCR found support for the concern that Silverwood might not be an appropriate site for relocating the District's small necessary high schools, as it was located 4 miles away from a BART station. However, OCR found no evidence that the District took any further action to relocate the high schools to the Holbrook campus.

In summary, OCR determined that the closure of Glenbrook Middle and Holbrook Elementary had a disparate adverse impact on Latino students. OCR's investigation raised concerns that the decision to close these schools, rather than another school with fewer Latino students in attendance may not have been supported by a substantial educational justification, and that equally effective alternative closure options, including the adoption of one of the Committee's recommendations or the closure of another elementary school may have been available.

Summary of Conclusions and Resolutions

Before OCR completed its investigation, which would have included interviews with Board members, Committee members, additional staff, and parents, as well as further document review, the District expressed an interest in voluntarily entering into an Agreement with respect to this issue. OCR determined that this was appropriate, and, accordingly, did not reach a compliance determination in this matter.

In the Agreement, which is enclosed, the District agreed to develop criteria and procedures to be used in the event of future school closings designed to minimize any disproportionate impact of the closure based on race/national origin, consistent with the Title VI principles discussed in this letter. The District also agreed take steps to mitigate the harm imposed on students at Holbrook and Glenbrook by the school closures by reimbursing parents for money spent on bus transportation and by offering a plan of compensatory education services for students currently in the District who attended Holbrook or Glenbrook during the 2010-11 school year, and whose grades or tests scores dropped significantly in the year after the schools were closed. As discussed above, as of the beginning of the 2017-18 school year, the District has reopened Holbrook, and students are currently enrolled and in attendance.

When fully implemented, the Agreement is intended to address all of OCR's compliance concerns in this investigation. OCR will monitor the implementation of this Agreement until the District is in compliance with Title VI and 34 C.F.R. §100.3(a) and (b), which were at issue in the case.

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. OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently.

This letter sets forth OCR's determination in an individual OCR case. 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.

Please be advised that the District may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. 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. In the event that 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.

The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

OCR would like to thank Deborah Cooksey, Associate General Counsel, for her assistance with this investigation and in resolving this matter. If you have any questions about this letter, please me at (415) 486-5544.

Sincerely,

/s/

Katherine Riggs
Acting Team Leader

Cc: Deborah Cooksey, Associate General Counsel

Enclosure