

July 24, 2014

Dr. Steven M. Ladd
Superintendent
Elk Grove Unified School District
9510 Elk Grove-Florin Road
Elk Grove, California 95624

(In reply, please refer to case number 09-11-5002.)

Dear Superintendent Ladd:

This letter confirms the resolution of the above-referenced compliance review that the U.S. Department of Education (Department), Office for Civil Rights (OCR), San Francisco Office initiated on March 9, 2011. OCR conducted this compliance review pursuant to Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and its implementing regulation at 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities receiving financial assistance from the Department. The District is a recipient of financial assistance from the Department and therefore is subject to Title VI and the regulation.

The compliance review assessed whether the Elk Grove Unified School District (District) provides African American students with equal educational opportunities to participate in college and career ready programs and courses, including the District's Gifted and Talented Education (GATE) programs and Advanced Placement (AP) and honors courses. This letter summarizes the applicable legal standards, the relevant factual information OCR gathered during the review, and the case resolution.

OCR determined that the evidence obtained during the review established that the District's policies and procedures for identifying GATE students, and for enrolling students in middle and high school honors and AP courses, have an unlawful disparate impact on African American students in violation of Title VI. OCR further determined that the evidence did not establish that the District intentionally treated African American students differently than similarly situated students on the basis of their race with respect to the programs examined during this review.

The District has worked collaboratively with OCR throughout this review to provide requested information, and to address the compliance issues OCR has identified. In order to ensure equal educational opportunities for African American students and to address the compliance concerns detailed in this letter, the District has initiated a series of remedial actions, described in the attached Resolution Agreement (Agreement), including taking steps prior to entering into this Agreement.

I. Jurisdiction and Legal Standard

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

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

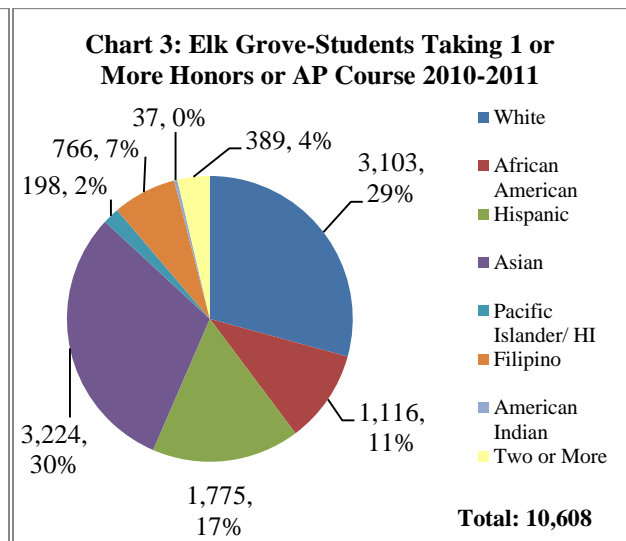
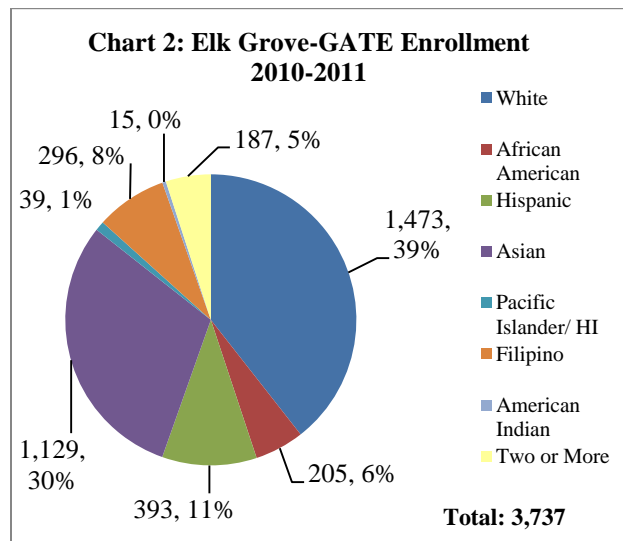
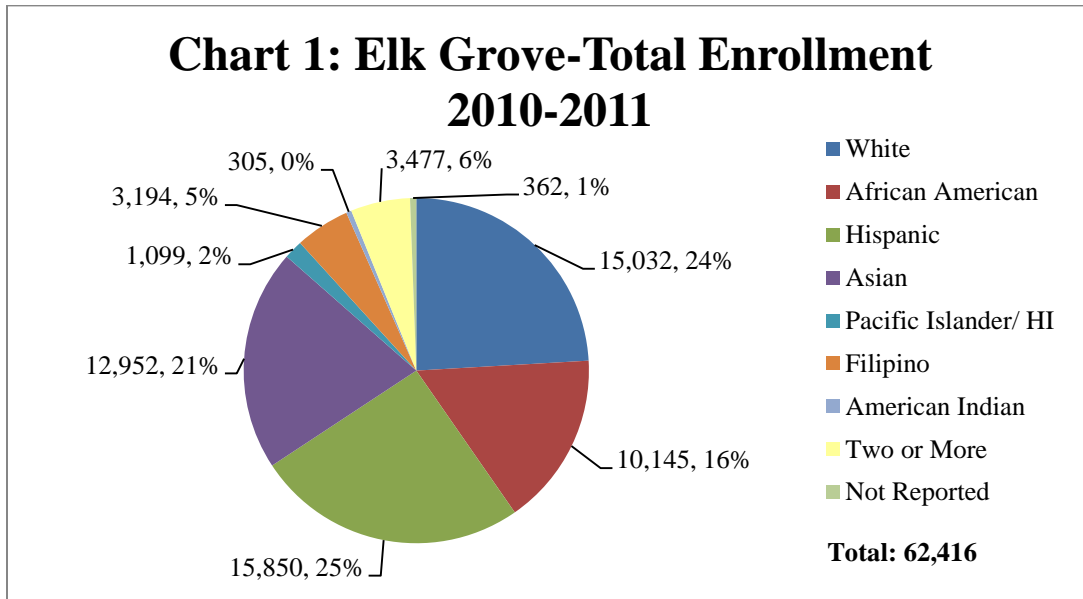
II. Background

The District is located in southern Sacramento County, and has thirty-nine elementary schools, nine middle schools, nine comprehensive high schools, four alternative education schools, one charter school, one special education school, and a virtual academy. According to OCR Civil Rights Data Collection (CRDC) data, in 2011-2012, the District was the fifth largest school district in California, and the largest in Northern California, serving 62,278 students.¹ In 2011-2012, the District also had the fifth largest African American student population in California, with 9,756 students, or 15.7% of the District's student population. Asian students (16,548) accounted for 26.6% of the District, while Hispanic students (16,128) were 25.9%, white students (14,520) were 23.3%, students of two or more races (3,840) were 6.2%, Hawaiian/Pacific Islanders (1,134) were 1.8%, and American Indian or Alaskan Native students (352) were less than 1% of the District. The 2011-2012 CRDC data reflected significant racial disparities in the identification of African American students compared to the identification of white students.

District enrollment data for the 2010-2011 school year, the time the OCR review was initiated, reflected a total student population of 62,416 students. As shown in the charts below, African-American students accounted for 16.3% of the District enrollment but only 5.5% of students in GATE and 10.5% of students in AP courses; white students constituted 24.1% of the total enrollment but 39.4% of students in GATE and 29.3% of students taking an honors or AP

¹ Unless otherwise noted, OCR analyzed student enrollment, GATE identification rates, and AP and honors enrollment for grades three through twelve because students in kindergarten through second grade are not eligible to participate in GATE or AP or honors programs.

course. African-American students were underrepresented in AP and honors courses at every middle and comprehensive high school in the District.²



With respect to participation rates, the District data showed that white students were the most likely of any racial group to be enrolled in GATE, while African American students were the least likely to be enrolled in GATE. The data showed that 12.9% of white students enrolled in grades three through twelve in the District were enrolled in GATE programs while only 2.6% of African American students enrolled in grades three through twelve in the District were enrolled in GATE programs.

² Chart 1 reflects the District's total enrollment for 2010-2011, as reported to the California Department of Education. Charts 2 and 3 reflect data provided by the District to OCR.

With respect to participation in honors and AP courses, according to the 2010-2011 data provided by the District, white students were approximately two times more likely to be enrolled in one or more honors course in middle school. While 51.4% of white middle school students were enrolled in honors courses, just 26.3% of African American middle school students were enrolled in honors courses. Similarly, white students were also nearly two times more likely than African American students to be enrolled in honors or AP high school courses. While 15.2% of African American high school students were enrolled in one or more honors courses, 28.5% of white students were enrolled in one or more honors course. While 13.3% of African American students were enrolled in one or more AP course, 25.2% of white students were enrolled in one or more AP course.

III. Investigation

During the investigation, the OCR case team reviewed publicly available information about the District as well as data and information provided by the District, including:

- data on GATE, honors, and AP participation;
- GATE and honors and AP eligibility criteria;
- GATE identification and referral practices;
- parent outreach materials;
- internal reports regarding racial disparities in GATE and honors/AP and documentation related to the District's previous efforts to address such disparities;
- standardized test scores and other achievement data; and,
- professional development and training provided to District and school-site staff.

The case team conducted fifteen on-site visits, including two visits to the District's administrative offices, six elementary school visits, four middle school visits, and three high school visits. For the thirteen school sites visited, OCR reviewed specific school-site policies and practices, data on GATE, AP/honors classes, other college and career readiness programs, and information about parent outreach for the programs.

At the District level, OCR interviewed the Learning Support Services (LSS) Department's Program Specialist who oversees the GATE program (District GATE Coordinator), GATE committee members, Associate Superintendents for Elementary and Secondary Education, and the District's Head Counselor. During each elementary school visit, the case team interviewed the principal, vice principal, GATE coordinator, third and fourth grade regular classroom teachers and, where applicable, third and fourth grade teachers in self-contained GATE/accelerated classes. During each secondary school visit, the case team interviewed the principal, vice principal, counselors, AP/honors coordinator, AP/honors teachers in science, mathematics, English, and social studies, and where applicable, the coordinators of the Advancement Via Individual Determination (AVID) Program³ and specific high school academies. In addition, the case team conducted eight focus groups with African American AP/honors, AVID, and general

³ AVID targets students in the "academic middle" who have the desire to go to college. The program places academically average students in advanced classes and provides them with an elective class that prepares them to succeed in rigorous curricula, enter mainstream activities in school, and increase their opportunities to enroll in four year colleges. See http://www.avid.org/abo_whatisavid.html.

education students, and eight focus groups with comparator non-African American students. The case team also met with representatives from a local parent advocacy group.

IV. GATE Investigative Findings

a. GATE Program

The District provides GATE programs for students in grades three through twelve. According to the District, the purpose of the GATE program is to provide high quality instruction, acceleration, and differentiated curriculum for students who are identified as having abilities and/or potential for high performance.⁴ At the elementary school level, the GATE program consists of classes composed of all GATE/accelerated students, cluster groupings in regular classes, and differentiated learning in regular classes. Similarly, at the middle school level, the GATE program also consists of cluster groupings, differentiated instruction in regular and honors classes. There are no GATE classes or specified GATE program at the high school level. GATE identification remains in a student file; in some instances GATE students may be recruited to enroll in academically rigorous honors and AP courses. At all levels, GATE students participate in academic competitions and extracurricular activities, such as academic decathlons, honor society, robotics club, and Math, Engineering and Science Achievement (MESA) program.

Each elementary school site has a GATE Coordinator whose primary responsibilities are referring students for relevant testing, providing information to teaching staff and parents, and submitting GATE referral forms to the District for review and approval. The District GATE Coordinator is responsible for ensuring that all GATE identified students receive appropriate services, serves as the liaison to sites and parents, monitors and refers students for GATE identification, handles communication related to GATE programs and services, and conducts an annual program evaluation. The District GATE Coordinator also serves on the District's GATE review committee, which reviews GATE referral forms submitted to the District and determines whether a student should be GATE identified.

The District stated that California's budget crisis has had a significant impact on the scope of activities offered through the GATE program. Under changes in state funding beginning in 2009-2010, state funds that had previously been specifically designated for GATE programs were consolidated into the District's general operating budget, resulting in elimination of several components of the GATE program, including stipends and trainings for school-site GATE Coordinators, funding for District-wide GATE advisory meetings, and funding for GATE specific extra-curricular activities.

b. GATE Eligibility Criteria

Since the 2007-2008 school year, the District has identified students for GATE through two avenues: automatic qualification based test scores or through a multi-factor eligibility matrix

⁴ See <http://www.egusd.net/lss/gate.html>

(Matrix).⁵ In the first category, students have automatically qualified for GATE through scoring in the top 2% on the California Standards Test (CST)⁶, or achieving a score of nine on the Naglieri Nonverbal Ability Test (NNAT).⁷ Students who do not automatically qualify through test scores may become GATE identified through scoring points in a combination of categories in the Matrix.⁸ Each avenue is discussed in more detail below.

According to the District, the purpose of adopting the Matrix was to provide an equitable basis for entry into the GATE program based on multiple measures of achievement and potential. The Matrix has five categories: (1) CST score; (2) NNAT score; (3) Grade Point Average (GPA); (4) Equity, and (5) Accelerated Classroom Performance or Creative Ability/Leadership. Students are assigned points in each category and are designated as gifted if they achieve a total of four points. Students may build four points through receiving one point in four different categories, or through receiving all four points in either the CST or NNAT category. Students cannot automatically qualify solely through points in the non-test based categories. The following explains each Matrix criterion:

- (1) CST Score: Students receive four points in the CST category and are automatically qualified for GATE if they score within the top 2% of students on the CST. Students receive one point if they score Advanced on the CST⁹ in two subjects in the same year, or scored Advanced in the same subject for two consecutive years.
- (2) NNAT Score: Students are referred to take the NNAT if they score Advanced on the CST. Students receive four points in the NNAT category and are automatically qualified for GATE if they receive a score of nine on a scale of one to nine. Students who do not automatically qualify based on their NNAT score may still receive a point if they receive a score of eight. Students who score less than eight receive no points under this category.
- (3) GPA: A student receives one point in the GPA category is if he/she has a GPA of 3.5 or above.
- (4) Equity: A student receives one point in the Equity category if she/he is an English Learner, receives free or reduced price lunch, or is in special education.

⁵ The District stated that, prior to the 2007-2008 school year, it identified students based on their standardized achievement test scores, the Naglieri Nonverbal Ability Test, and/or a portfolio assessment of student work. The District also accepted GATE identification by a prior school district and IQ test scores of 130 and above, when performed by a qualified psychologist, as sufficient for GATE identification

⁶ The CST was a criterion-referenced test that assessed a student's achievement level on the California content standards in English language arts, mathematics, science, and history-social science. <http://www.cde.ca.gov/ta/tg/sr/cefstar.asp>. Because of the introduction of the Common Core Standards, the state discontinued use of the CST at the end of the 2012-13 school year. The state is in the process of adopting a new statewide assessment system. Because the CST was used during all years included in OCR's investigation, this letter refers to the CST.

⁷ The NNAT is a nonverbal measure of general ability. It is designed to measure cognitive ability independent of linguistic or cultural background and is commonly used to identify potentially gifted students for placement in GATE or other accelerated programs. See www.pearsonassessments.com.

⁸ Prior to the Matrix, the District identified students as GATE if they scored within the top 2% on the CST or through IQ testing.

⁹ Advanced was the highest of six scoring levels for achievement on the CST.

- (5) Accelerated Classroom Performance/Creative Ability or Leadership: A student receives one point in the Accelerated Classroom Performance category for demonstrating that he/she is working two grades above grade level, or receives one point for Creative Ability or Leadership for excelling “in areas outside of academics.” The District has an Accelerated Classroom Performance/Creative Ability or Leadership Policy which sets out the evaluation standards for this category. The District requires a school site to submit three work samples that demonstrate that a student meets the standards. The District’s Accelerated Classroom Performance/Creative Ability Policy states that in order to receive a point for accelerated performance, a student’s work samples must clearly and consistently show evidence of performance above grade level standards, or include a description of how the work samples demonstrate the student’s ability to handle accelerated learning through depth and complexity, and show original and independent thought. In order to receive a point for creative ability or leadership, the examples provided by the school site must describe how a student has excelled in leadership or creativity through activities, beyond typical student participation. The District’s GATE Committee then determines whether the work samples/documentation reflect the requisite level of acceleration, creativity, or leadership. Students cannot receive a point in both sub-categories.

The District’s online Student Information System (SISWeb) contains student data needed for each eligibility category in the Matrix. School site GATE Coordinators can access SISWeb and assess how points each student at their site has earned, if any, under each Matrix category.

c. GATE Referral and Identification Process

The District stated that in practice most students are identified for GATE in elementary school, between grades three and six. The District provided OCR with a GATE Identification and Reporting Process flowchart and other documents that describe the process for GATE referrals and identification under the Matrix. OCR also learned how the referral and identification process works in practice with school site GATE Coordinators, the District GATE Coordinator, members of the GATE review committee and other staff.

GATE referrals under the Matrix begin with an assessment of the student’s points under the Matrix categories. The District stated that during the fall semester of each school year, school site GATE Coordinators are expected to review student CST scores in SISWeb and refer students who have achieved the required advanced scores on the CST for NNAT testing. The District explained that NNAT testing previously occurred at school sites but due to budget cuts it was moved to the District’s administrative offices and offered during the spring semester.

Following NNAT testing, NNAT scores are entered into SISWeb. The District stated that school site GATE Coordinators are responsible for accessing the system to review student scores, identify any students who automatically qualify for GATE or have earned a point under the Matrix NNAT category, and determine whether any students should be referred to the District level for GATE consideration. Once a school site GATE Coordinator has determined a student should be referred for GATE consideration, they complete a GATE Identification Matrix form.

Where applicable, the school site GATE Coordinator also collects work samples which demonstrate how the student meets the Accelerated Classroom Performance/Creative Ability or Leadership factor. The form and any necessary work samples are submitted to the District's LSS Office for review and approval by the GATE review committee.

OCR found that in practice, despite the availability of student data in the SISWeb, the school site GATE coordinators interviewed by OCR only used SISWeb to identify students who had scored Advanced on the CST and refer those students for NNAT testing. No school site GATE Coordinator at any of the sites visited by OCR used the system to identify students who might be eligible for GATE in the Accelerated Performance/Creative Ability or Leadership category.

The District has an NNAT Exception Policy under which school sites can request NNAT referrals for students who do not score Advanced on the CST. The NNAT Exceptions Policy states that it should be utilized for students who frequently display gifted characteristics and exemplary classroom performance that are not reflected by their standardized test scores. The NNAT Exceptions Policy does not specifically define gifted characteristics and exemplary performance; however, it states that school sites must provide a written statement from the student's teacher, GATE Coordinator, Administrator or parent indicating the reason for the exception request, including the characteristics the student is displaying that indicate potential giftedness, why test scores are not an accurate reflection of the student's classroom performance, and how the student exceeds basic classroom expectations.

d. Racial Disparities in GATE Referrals and Identification

Despite the adoption of the Matrix and other District efforts to increase access to the GATE program, OCR found significant disparities in GATE identification for African American students (described in more detail below). In 2010-2011, African American students in grades three through six in the District were more than 4.5 times less likely than their white peers to have been identified as GATE.¹⁰ The underrepresentation of African American students in GATE was statistically significant as compared to the overall student rate of GATE identification and the white and Asian student rate.

The District's data indicated that the majority of GATE identifications were students who automatically qualified through the CST or NNAT. As of 2010-2011, 69% of students who had been identified as GATE qualified automatically through these test scores.¹¹ Data from the District indicates that African American students are less likely than other racial groups to automatically qualify for GATE through their CST scores. Specifically, OCR found that during the 2009-2010 and 2010-2011 school years, although African American students were about 16% of the District's population, they comprised only 4% and 3%, respectively, of students who automatically qualified for GATE through CST scores. In contrast, white students who accounted for approximately 24% of all students, made up 46% and 43%, respectively, of

¹⁰ Although students may be referred for GATE in middle or high school, over 90% of GATE students in the District are identified in elementary school between grades three through six.

¹¹ Sixteen percent of GATE students had been identified through the Matrix; 15% were identified through a range of tests that were no longer in use by the District, such as IQ tests or were identified as GATE by other school districts or through other exceptions.

students who qualified for GATE with a CST score in the top 2%. Additionally, the data demonstrates that African American students have been less likely than students of other racial groups to score Advanced on the CST and receive a point under that category.

The District's data also indicated that African American students more frequently achieve the requisite NNAT scores to automatically qualify for GATE, or earn a point on the GATE Matrix under the NNAT category at rates that are close to other racial groups. For example, OCR found that during the 2009-2010 school year 8.3% of African American students taking the NNAT scored a nine, compared to 10.0% of white students who took the NNAT. However, as described above, students are likely to be referred for NNAT testing only if they meet the requisite standardized test scores, and African American students have been less likely to meet this requirement. As a result, during the 2009-2010 and 2010-2011 school years, white students were overrepresented among students taking the NNAT and accounted for 29.1% of such students, as compared to African Americans who were underrepresented and accounted for just 8.4% of such students (compared to the District enrollment which was 24.1% white and 16.3% African American).

In addition, interviews with site administrators and staff at the schools OCR visited showed that knowledge and use of the NNAT Exception Policy, described above, was very limited and that it was particularly underutilized at the schools OCR visited with higher than average African American student populations. OCR also found that white students were the largest group referred for the NNAT Exception. Specifically, the District's data indicated that during the 2009-2010 school year, approximately 42.6% of the students referred for the NNAT Exception were white, while just 12.8% were African American. During the 2010-2011 school year, approximately 40.0% of students referred for the NNAT Exception were white. No African American students were referred for the NNAT Exception during the 2010-2011 school year.

Similarly, OCR found that a small number of students were referred for consideration under the Accelerated Classroom Performance/Creative Ability or Leadership category. The majority of teachers OCR interviewed, especially at schools with higher than average African American student enrollment, were not aware of this category or the standard the District would apply when evaluating work samples. Very few school site GATE Coordinators or teachers interviewed by OCR could recall gathering the required work samples of a student's performance. Some staff who were aware of the category indicated that the process of compiling student work samples and submitting them to the GATE Committee was burdensome.

The District's data indicated that every student referred for consideration under the Accelerated Classroom Performance/Creative Ability or Leadership category during the 2009-2010 and 2010-2011 school years was successful and earned one point towards GATE identification. However, OCR found that no African American students were forwarded for consideration in the 2009-2010 and 2010-2011 school years.

One potential source of GATE referrals was self-contained accelerated classrooms serving high achieving students.¹² Few students of any race/ethnicity from accelerated classrooms were

¹² At the time of OCR's review, the District had six elementary schools with self-contained accelerated classrooms for high achieving students. The District was phasing out self-contained accelerated classrooms.

referred to GATE. OCR found that, in one elementary school with a higher than average African American student population, none of the four African American students who were in its accelerated classroom had been referred for GATE consideration during the 2010-2011 school year. The District's data showed that each of the students already had three points on the GATE Matrix – through meeting a combination of the CST, NNAT, GPA or Equity categories – but none of them had been referred for GATE consideration under the Accelerated Classroom Performance category. Site staff told OCR that they believed there were African American students at their schools who were gifted but who had not been identified as GATE. Many school site staff told OCR that additional training on identifying GATE students would be helpful to identify and refer potential GATE students.

The District's data indicated that among students in grades three through twelve, 16.3% of GATE identifications were students who qualified through the GATE Matrix. African American students were also less likely than other racial groups to qualify through this avenue. The District's data showed that during the 2010-2011 school year, approximately 5% of GATE students identified through the Matrix were African American, compared to approximately 43% Asian and 25% white.

OCR also compared the number of students participating in the GATE program at every elementary school in the District.¹³ Overall, OCR found that the elementary schools with higher than average African American student populations had smaller GATE programs than those schools with higher than average white student populations. The District's data indicated that the average number of GATE identified students in an elementary school was twenty six. OCR found that at the ten elementary schools with the highest African American student enrollment in grades three through six, the average number of GATE identified students was approximately eleven students. In contrast, at the ten elementary schools with the highest white enrollment in grades three through six, the average number of GATE identified students was thirty one. This was true even though the ten elementary schools with the highest African American student enrollment had larger student bodies than the ten elementary schools with the highest white enrollment. The average GATE identification rate at the ten elementary schools with the highest enrollment of white students was 6.5%, almost three times the average identification rate at the ten elementary schools with the highest enrollment of African American students, which was only 2.2%. OCR also found that, among students in grades three through six, African American students were 1.55 times more likely than white students to attend a school with fewer GATE students than the District average.

e. Professional Development and Parent Outreach

The District's Curriculum and Learning Office provides professional learning opportunities to District employees. School site staff interviewed by OCR had participated in professional development trainings provided by the District regarding the achievement gap, differentiated instruction and strategies for teaching accelerated students and culturally responsive pedagogy.

¹³ For purposes of this discussion, OCR considered schools with a higher than average number of students identified as GATE as schools with "larger" GATE programs, and schools with fewer than average GATE identified students as schools with "smaller" GATE programs.

In 2007, following the adoption of the Matrix, the District published a GATE Administrator's Resource Guide which was made available to all schools and explained the identification process, Matrix criteria, the duties and responsibilities of school site, provided fact sheets and a sample parent outreach plan, which provided examples of activities school site staff could organize to educate parents about the GATE program and engage parents of GATE students. The District provided training for GATE Coordinators and parents during the 2008-2009 school year. However, budget cuts in 2009-2010, eliminated GATE specific funding, and as a result, the District no longer paid stipends for school site GATE Coordinators at every school site, held school site GATE Coordinator and GATE Parent Committee Meetings, or conducted regular trainings for school site GATE Coordinators. OCR found that school site GATE Coordinators were often unfamiliar with the possible avenues for qualifying for GATE through the Matrix, such as earning a point through the Accelerated Classroom Performance/Creative Ability or Leadership factor, or gaining access to the NNAT through the NNAT exception policy. OCR found that the lack of familiarity with the Matrix identification process was more significant at schools with smaller GATE programs and higher than average African American student enrollment that OCR visited.

The District stated that following budget cuts which eliminated GATE specific funding, GATE information and materials, including the Administrator Resource Guide, continued to be made available to school sites online. In addition, the District stated that during the 2010-2011 school year, approximately ten school sites participated in voluntary training offered to school site staff on the Matrix data available in SISWeb.

Each school site visited by OCR had teachers who had received GATE certifications. District and school site staff stated that the District had not provided specific training on making the GATE referral and identification processes equitable for African American students. In addition, school site staff stated that their sites did not review or monitor GATE referral and identifications rates by race.

The District provides parents with information regarding the GATE referral and eligibility process in a variety of ways. The District's website includes a GATE program page which provides a summary description of the program, Matrix categories and the referral process and how to find information about NNAT testing dates. The District provided OCR with a description of the types of parent outreach activities conducted by school sites, which included sharing information on the purpose of the GATE program, the benefits of GATE identification and the referral process during Back To School nights and school committee meetings, such as Parent Teacher Associations, site councils, English Language Advisory Committees and Title I parent meetings. School sites may also host GATE parent nights and GATE celebration days, although these activities did not appear to be uniformly implemented across school sites. Based on interviews with staff and administrators at the schools OCR visited, the schools with higher than average enrollment of African American students had fewer parent outreach activities that specifically focused on the GATE program.

The District also publishes GATE information annually in its Parent and Student Handbook, including a summary of the GATE program, the link to the District's GATE webpage and

contact information for the LSS Office. The Parent and Student Handbook is published in English, Spanish and Hmong.

f. District Efforts to Address Racial Disparities in GATE

As discussed above, the District adopted the Matrix with the goal of providing entry into the GATE program on an equitable basis. During the 2008-2009 school year, the District completed a GATE Program Evaluation, which compared GATE identification from the 2006-2007 school year under the previous criteria with identification during the 2007-2008 year under the Matrix. The District found that the Matrix criteria had not resulted in any significant change in referral rates, and that African American students continued to be underrepresented in the program. Specifically, the District found a 0% change in the percentage of African American students identified under the Matrix criteria.

In response to the findings of the 2008-2009 internal review, the District identified several steps to undertake to continue its equitable referrals and identification effort, including increasing access to NNAT testing, providing school sites with data on potential student eligibility under the Matrix criteria, and inviting speakers to the GATE Advisory Committee to address culturally relevant curriculum and high expectations. OCR found that the District did incorporate GATE eligibility data into SISWeb, which as explained above, provided school site GATE Coordinators with the ability to assess each student's eligibility for NNAT testing and their points on the GATE Matrix. The District stated that it expected the availability of such data would decrease the degree of subjectivity in the GATE referral process. However, the District informed OCR that it was limited in implementing some of the above steps because of the elimination of GATE-specific funding, which limited training and compensation for school site GATE coordinators. In addition, NNAT testing at certain school sites and GATE Advisory Committee meetings were eliminated when GATE funding was consolidated into the District's general fund. Thus, despite its intentions, the District did not make significant progress in reducing the underrepresentation of African Americans in their GATE programs.

In addition, during the course of OCR's investigation, the District began piloting site based NNAT testing at certain Title I schools and non-Title I schools with higher populations of African American students in order to increase access to the NNAT. The District stated it had also proactively reinstated the GATE Advisory Committee with the goals of increasing GATE awareness, promoting consistency and equity of access for all students.

V. Analysis: GATE Program

African American students are underrepresented in the District's GATE program overall to a statistically significant degree compared to white students and are enrolled in GATE at a much lower rate than white students. African American students are underrepresented in GATE at every elementary school in the District. Schools with higher than average enrollment of African American students had smaller and, in some cases, no GATE programs.

a. Different Treatment

OCR reviewed the evidence to determine whether African American students are treated differently than white students and students of other races with regard to GATE programs. To determine whether students have been subjected to discriminatory treatment on the basis of race under Title VI and the regulations, OCR determines whether there is evidence that students were treated differently than students of other races under similar circumstances, and whether the treatment denied or limited students in receiving a service or benefit of a program, treated students differently in determining eligibility for provision of a service or benefit, or denied students an opportunity to participate in a program or afforded them an opportunity which is different from that afforded to others. If there is such evidence, OCR examines whether the recipient can provide a 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 recipient's actions were based on the students' race.

The preponderance of the evidence did not show that African American students were intentionally treated differently than similarly situated students or other racial groups during the GATE referral and identification process. OCR did not find evidence that individual African American students who met the CST or NNAT score criteria were not automatically qualified for GATE, or that African American students who qualified for a point under any of the other Matrix factors were treated differently than other racial groups under that category.

b. Disparate Impact

OCR also reviewed the evidence to determine whether the District's policies and practices had an unlawful disparate impact on African American students. Schools violate Federal law when they evenhandedly implement facially neutral policies or practices that were not adopted in order to discriminate but their implementation nonetheless has an unjustified effect of discriminating against students on the basis of race. The resulting discriminatory effect is commonly referred to as "disparate impact." Facially neutral policies governing referral and identification for GATE programs that result in an adverse impact on students of a particular race will be evaluated against the disparate impact standard to ensure that they are not discriminatory. In examining the application of a facially neutral student enrollment policy, OCR will engage in the following three-part inquiry.

(1) Do the GATE policies and practices result in an adverse impact on students of a particular race as compared with students of other races?

(2) Are the policies and practices necessary to meet an important educational goal?

(3) Even in situations where a district can demonstrate that its policies and practices are necessary to meet an important educational goal, are there comparably effective alternative policies and practices available that would meet the district's stated educational goal with less burden or adverse impact on the disproportionately affected racial group, or is the district's proffered justification a pretext for discrimination?

Do District Policies and Practices for GATE Identification Result in an Adverse Disparate Impact?

OCR identified several policies and practices in the GATE identification process that have the effect of screening out African American students.

The evidence established that reliance on the CST has been the main factor in qualifying students for GATE. As described above, African American students are less likely to automatically qualify for GATE identification based on CST scores. In addition African American students are less likely to score Advanced on the CST and receive a point toward GATE qualification under the Matrix.

Moreover, because African American students are less likely to score Advanced on the CST, they are less likely to be referred for NNAT, a test designed to assess cognitive ability independent of linguistic or cultural background. This in turn eliminates their chances of achieving automatic GATE qualification for an NNAT score of nine, or earning a point toward Matrix qualification with an NNAT score of eight. The CST operates as a gatekeeper to the NNAT referral, which contributes to the statistically significant racial disproportionality in GATE identification.

Although the NNAT Exceptions Policy has the potential to decrease the disproportionality caused by the CST prerequisite, few students are referred for the NNAT Exception. Although the District adopted the NNAT Exceptions Policy with the explicit purpose of permitting students who did not meet the CST requirement to have the opportunity to qualify for the GATE program, in practice, no African American students were referred for the NNAT Exception during the 2010-2011 school year and just six out of forty seven (12.8%) were referred in 2009-2010.

Further, the evidence showed that the District refers very few students for consideration under the Accelerated Classroom Performance/Creative Ability or Leadership category, a factor that also potentially identifies gifted and talented students independent of standardized test scores. No African American students were referred for consideration during the 2009-2010 or 2010-2011 school years. The burden placed on school sites and specifically on teaching staff to submit work samples, and the lack of training and consistent knowledge of the District's GATE identification criteria at the school site level creates barriers to referral under this category. This is particularly evident at Title I schools, including many of the District's elementary schools with higher than average populations of African American students.

Although the District has integrated non-test-based criteria into the Matrix, and the non-test-based factors have the potential to reduce the disproportionality caused by the test-based criteria, the higher weighted value given to the CST and NNAT limits their effect. First, one of the non-test-based criteria, Accelerated Classroom Performance/Creative Ability or Leadership, is rarely used. In addition, because of the weights given to test-based factors, even a student who earns three points for all of the available non-test-based factors – GPA, Equity, and Accelerated Classroom Performance/Creative Ability or Leadership – must still earn a fourth point through

the CST or NNAT category. There is no way to qualify for GATE through the Matrix without earning a point through the CST-based criteria.

As described above, OCR's interviews with administrators and staff indicated that the staff, including school site GATE coordinators, at the elementary schools OCR visited that had a higher than average concentration of African American students had less information about the Matrix criteria, (e.g., what standards would be applied during the District's evaluation of GATE applicants, the NNAT Exception Policy, and the Accelerated Classroom Performance/Creative Ability or Leadership points) than staff at the other elementary schools visited by OCR. While OCR did not find evidence that the size of the programs or the knowledge levels of the staff were the product of different treatment of the schools by the District, OCR found that the lack of knowledge regarding GATE eligibility criteria and standards at these schools with higher than average populations of African American students limited the opportunities for GATE identification, as compared to the schools with lower than average populations of African American students and higher populations of white and Asian students.

OCR therefore concluded that the District's policies and practices for determining GATE eligibility, although racially neutral on their face, have had a disproportionate adverse impact on African American students.

Are the District's Policies and Practices Necessary to Meet an Important Educational Goal?

The District's articulated goal and purpose for the GATE program is to provide high quality instruction, acceleration, and differentiated curriculum for students who are identified as having abilities and/or potential for high performance.¹⁴ The District has chosen to identify gifted students through the methods described above – automatic qualification through the CST and NNAT or through the multiple criteria in the GATE Matrix. The District's stated goal in adopting and utilizing the Matrix is to provide an opportunity for gifted students to be identified through multiple measures of achievement and potential entry into the GATE program on an equitable basis. However, the District did not provide OCR with an educational justification for the selected cut-off scores for automatic GATE identification, utilizing the CST as the gatekeeper for NNAT referrals, or the manner in which it weighs the Matrix criteria.

In addition, OCR determined that the District's reliance on the CST as the gatekeeper and primary criterion for GATE identification, at the time of OCR's investigation and through the fall 2013 GATE selection cycle, undermined its stated goal of identifying gifted students through multiple measures in an equitable manner.¹⁵ For example, although the District's data indicates that racial disparities in test scores are less significant on the NNAT, the District's use of the CST as a gatekeeper for the NNAT limits the number of students who have the opportunity to qualify for GATE through this method. In addition, the other non-test based criteria in the Matrix, such as Accelerated Classroom Performance/Creative Ability or Leadership, and the NNAT Exceptions Policy, are not fully or equitably utilized, especially at schools with higher

¹⁴ See <http://www.egusd.net/lss/gate.html>.

¹⁵ Although the CST is no longer administered in California, the District has not yet provided OCR with information showing that its GATE selection criteria are currently nondiscriminatory. Through the resolution agreement, OCR will work with the District to develop nondiscriminatory criteria.

than average African American student populations. Further, although the CST is designed to measure mastery of content level standards, it is not designed to identify gifted students who, for whatever reason, may be underachieving and therefore performing below grade level. Thus, the District's reliance on the CST, which is the primary factor that drives GATE identification, is not well-aligned with the District's GATE program goal to identify students with high achieving potential.

Therefore, OCR found that the District's policies and practices, which disproportionately exclude African American students from GATE identification, were not necessary to meet the District's GATE educational goals.

Are There Comparably Effective Less Discriminatory Alternatives and/or Is There Evidence of Pretext?

Even assuming the District's GATE criteria and process were necessary to meet an important educational goal, comparably effective less discriminatory alternatives, for example the NNAT, exist, including within the parameters of the District's chosen GATE identification criteria. As shown by the evidence, although African American students are less likely to automatically qualify for GATE through the CST, or earn a point under the CST Matrix factor, they score comparably to other racial groups on the NNAT. The District has already identified the NNAT as an effective means of identifying GATE students because students can automatically qualify for GATE through the NNAT or earn a NNAT point within the Matrix. The District could adopt a less discriminatory prerequisite to NNAT testing than the CST to offer a broader pool of students the opportunity to become GATE identified. As described above, the District has already taken steps in this direction by reinstating NNAT testing at certain non-Title I schools.

In addition, although the Accelerated Classroom Performance/Creative Ability or Leadership category in the Matrix was adopted in part to provide alternate paths to GATE identification, the District has failed to forward any African American students for consideration under that category for the two school years examined by OCR. OCR's school visits, particularly to schools serving higher than average populations of African American students, revealed that many staff and administrators are unaware of how students would qualify under this factor. Ensuring that all students who fall in the Accelerated Performance/Creative Ability or Leadership category, including specifically African Americans, are identified may lessen the disparate impact caused by the test-based identification criteria, and meet the District's goal of identifying gifted students through multiple measures of achievement.

In sum, OCR finds that the preponderance of the evidence establishes that the District's GATE identification policies and practices have an unlawful disparate impact on African American students on the basis of race in violation of Title VI.

VI. Honors and AP Courses: Investigative Findings

a. Honors and AP Program

The District has nine middle schools and nine comprehensive high schools, as well as four alternative or continuation high schools. The District offers honors and AP courses to provide enriched, academic opportunities for students. Students can take honors courses at the middle school level, and both honors and AP courses at the high school level.

The District's 2010-2011 Middle School Course Catalog explained that, "[i]n order to be ready for Advanced Placement (AP) courses at the high school level, it is critical that a rigorous curricular foundation is established at the middle school level," and the District's middle school "honors courses prepare students for the rigor of high school-level Advanced Placement courses and can be considered 'Pre-AP.'" AP courses are meant for "students who wish to pursue college level studies while in secondary school." The District described middle school honors courses as the "on ramp" to AP courses in high school. GATE identification in elementary school is one factor considered for honors placement and makes honors enrollment in middle school more likely.

Through a partnership with the College Board, school districts offer AP (college level courses), and participating colleges offer college credit for students who score high enough on AP tests. The College Board provides general curricular and other national guidelines for AP courses including recommendations for AP course prerequisites, and coordinates with colleges, universities and school districts to ensure that AP classes prepare students to take and pass AP tests in order to earn college credit in a particular subject.¹⁶ Although the College Board recommends course prerequisites and provides guidance regarding AP courses, each school district determines its own enrollment process for AP and honors courses.

Students enrolled in eleventh and twelfth grade high school AP and honors courses receive an extra grade point for their college and cumulative District GPA, while students in ninth and tenth grade high school AP and honors courses receive an extra grade point in their District calculated GPA only.¹⁷ Students in honors middle school science also receive an extra grade point in the GPA calculation (other honors middle school courses receive no grade point boost).

b. Enrollment Criteria and Process

With some limited exceptions in higher level math and science (e.g., Algebra two as a prerequisite for AP Calculus or AP Chemistry), the District does not have uniform or consistent rules for course prerequisites or for the enrollment process in honors and AP courses, in either middle or high school. The District leaves the enrollment criteria and process up to the discretion of each school, and the schools in-turn often leave the policies and procedures up to

¹⁶ Typically, a student who earns a score of three, four, or five (out of five) on an AP exam may be eligible for College credit for taking the course and passing the test. Scores of one or two out of five generally are not sufficient to earn the student college credit for the course.

¹⁷ For example, a student who earns an A in a junior or senior level high school AP class is awarded five GPA points, whereas a student who earns an A in a non-AP course is awarded four GPA points.

each academic department and even each teacher to determine.

OCR's investigation showed that, as a result, the enrollment criteria for AP and honors courses are different at each school, and differ depending on the subject area and course, and may also vary depending on the teachers at a particular school. Similarly, the process for a student to enroll in honors and AP courses varies. For example, at some schools, counselors review student qualifications for honors and AP courses and assign students, while whole academic departments or individual teachers determine placements at other schools. Some schools or departments require students to submit statements of interest or other application materials to enroll in an honors or AP course, while others simply allow the student to select the course. These processes also varied across academic departments within the same school.

At the middle school level, the main factors used to determine honors enrollment were CST scores and teacher recommendations, especially for incoming seventh grade students. Schools also use their own site-based diagnostic tests to identify and move students to higher or lower level classes at the beginning of the year. Enrollment in eighth grade honors courses depends more upon a student's grades in the previous class in the subject matter sequence, but teacher recommendations and CST were still significant factors.

At the high school level, OCR found that site requirements for enrollment in AP courses do not necessarily follow what is stated in the course catalog, and are often more stringent than those recommended by the College Board. For example, the College Board provides no specific curricular prerequisites for AP U.S. Government and Politics but does recommend previous course work in U.S. History. The District's materials do not list prerequisites, but one high school required students to concurrently enroll in Honors Political Science, another high school required students to complete Honors Political Science or American Government prior to enrollment, while a third required that students have taken U.S. History and earned a B or better. A fourth high school listed no prerequisites, and a fifth recruited students for the course based on their GPA, and used teacher recommendations to prioritize student placement.

School site staff also told OCR that enrollment in many honors and AP courses in high school is dependent upon, or at least significantly influenced by, students having completed honors level courses in middle school, such as honors science, Algebra two or Geometry, or honors English. In many cases, the prerequisites for the same AP course are different at different schools, making it easier in some cases and more difficult in others to qualify to take the same AP course depending on the school the student attends. OCR found these inconsistencies across all subjects, including science, mathematics, social science, English language arts and fine arts.

While many honors and AP courses have published criteria and/or course prerequisite requirements for enrollment, many also allow students to enroll without meeting the criteria if the student and/or parent/guardian requests enrollment. For example, one high school allowed students to enroll in AP World History upon parent request, even if the student did not meet the course prerequisites which included a 3.0 GPA or CST score of proficient or advanced in English language arts and history. These exceptions, however, are typically not available for math and science AP courses and some math and science honors courses, which have more firm and consistently required prerequisites.

According to the District, students are notified about the honors and AP application process and timeline during the course registration process. As with course criteria, OCR found that each school's process for informing students and parents was different. Particularly at the high school level, parent outreach regarding honors and AP courses was ineffective at some schools, including schools with high rates of underrepresentation of African American students in AP and honors. For example, at several schools that OCR visited, students agreed that their parents were unaware of the importance of AP and honors courses and had not received sufficient information about such courses.

Although GATE participation was not a requirement for honors or AP enrollment, school site staff stated that it may be considered as one factor among other considerations, particularly as a tie-breaker when a student was on the edge of being approved for enrollment based on their other academic indicators. Consideration of GATE was more common at the middle school level for honors course enrollment, and was less significant in high school. School sites also used GATE to identify students to recruit for honors and AP courses by sending GATE identified students letters with enrollment and course information packets to encourage such students to enroll.

c. Racial Disparities in Middle School Honors Courses

In 2010-2011 approximately 9,773 students were enrolled in the District's nine middle schools. Although African American students accounted for 18.0% of middle school students in 2010-2011, they made up 11.8% of middle school students taking at least one honors course. In contrast, white students accounted for 24.3% of middle school students and 31.2% of students enrolled in one or more honors course. The underrepresentation of African American students in middle school honors courses was statistically significant as compared to the middle school honors enrollment of all other races and the white student honors enrollment.

According to the District's data, during the 2010-2011 school year, 51.4% of white middle school students and 26.3% of African American middle schools students were enrolled in honors courses. Therefore, white students were an average of 1.95 times more likely than African American students to be enrolled in middle school honors courses. OCR found that the size of the disparity varied among middle school sites; some schools had more comparable enrollments, but white students were more likely to be enrolled in honors courses at every middle school and six of the nine middle schools had enrollment rates over 1.5 times greater for white students. OCR found that underrepresentation in middle school honors classes was consistent for African-American students across socioeconomic levels.

OCR also compared middle school honors enrollment rates by race in relation to school size (number of students), overall honors enrollment rates, and school schedule (traditional or block schedule). OCR did not find evidence of a pattern connecting these factors with underrepresentation of African American students in middle school honors enrollment.

OCR also found the District provided fewer sections of honors courses at middle schools with higher than average enrollment of African American students. Specifically, the four middle schools with African American enrollment below the District-wide average offered one honors section per every 24.8 students, while the five middle schools with higher than average African

American enrollment offered one honors section per every 36.3 students. Thus, schools with lower than average African American enrollment had 1.46 times more honors sections per student than schools with higher than average African American enrollment.

d. Racial Disparities in High School AP and Honors Courses

African American students in the District were underrepresented in enrollment in honors and AP courses in all of the District's nine high schools. While African American students made up 16.8% of the enrollment in the District's comprehensive high schools, they accounted for just over 9.8% of the students taking one or more honors courses, or one or more AP courses.¹⁸ In contrast, white students accounted for 25.5% of the student enrollment in the District's comprehensive high schools and just over 28.0% of students taking one or more honors or one or more AP course. The District data shows that African American students were underrepresented in the District's high school honors and AP courses to a statistically significant degree, as compared to white students.

White students were approximately two times more likely than African American students to be enrolled in one or more honors courses, or one or more AP courses. While 15.2% of African American high school students were enrolled in one or more honors courses, 28.5% of white students were enrolled in one or more honors course. While 13.3% of African American students were enrolled in one or more AP course, 25.2% of white students were enrolled in one or more AP course.

The size of the racial disparities in honors and AP enrollment rates ranged significantly from school to school. The smallest disparities at the high school level showed white students 1.4 and 1.3 times more likely to be enrolled in honors or AP courses than African American students. The largest disparities were 3.7 and 3.0 times greater enrollment rates for white students for honors and AP courses. Seven of the nine high schools had honors enrollment disparities of 1.7 or greater, and four of the nine high schools had AP course enrollment disparities of 1.7 or more.

OCR found evidence that differences in prerequisites and the variety of course offerings at some high schools contributed to racial disparities in AP and honors enrollment. For example, OCR found larger racial disparities among AP courses at schools with more demanding criteria, such as concurrent course enrollment. Sites without such requirements had smaller racial disparities. A wider array of course offerings at some sites also was related to lower racial disparities, especially among courses that were popular with a diverse array of students.

OCR did not find evidence that, as was the case with middle schools, high schools with larger African American student populations had fewer honors and AP course offerings. However, as explained below, availability of sections in honors and AP courses was an issue at some schools.

e. Parent and Student Outreach

Generally, the District and high schools provided information about honors and AP courses in the District's "Course Catalog" and in school materials. However, outreach by schools varied.

¹⁸ This data does not include students attending the District's continuation or alternative schools.

In some cases, different departments (e.g. math and English) within the same school had different outreach practices. Some schools provided information at back to school night, freshman orientation, and/or by mail. However, at some schools events such as freshman orientation were held after the beginning of the school-year, and after ninth graders had already selected their first semester courses. Some high schools worked more closely than others with their feeder middle schools to provide information to incoming ninth grade students about AP and honors courses, and to recruit potential students for these courses. Some schools provided information to their feeder schools to distribute, such as a power-point for eighth grade English teachers to deliver to students, while others mainly met with teachers and counselors to identify potential students and mailed these students additional information.

One high school reported using upper grade students in AP and honors courses to recruit students from lower grades for the coming year. Students reported that this was very effective and told OCR that having teachers and peers encourage them to enroll in these courses was very important. High School staff at several schools told OCR that they believed that their sites could improve their parent and student outreach for AP and honors courses. High school staff also told OCR that training on identifying underrepresented students for honors and AP courses would be beneficial, and many had not received such training previously.

f. District Efforts to Address Racial Disparities in AP and Honors Courses

Prior to the initiation of the compliance review, the District conducted a concerted outreach program to identify potential AP students. The District paid the PSAT fee for tenth grade students who could not afford it and recruited students who did well on the test to take AP courses.¹⁹ The District offered this program for several years in 2008-2009 and 2009-2010 and increased the number of African-American and other underrepresented students taking AP courses. However, the District ended this program because of budget cuts in 2010-2011.

OCR also identified practices at certain middle and high schools which had been successful in reducing racial disparities, including: (1) proactive enrollment efforts, such as encouraging incoming ninth graders to enroll in honors during their freshman year, targeting students on the “academic bubble” and automatically enrolling them in honors or AP courses; (2) reducing administrative barriers and unnecessary prerequisites and criteria, (3) having a specific school-wide focus on reducing disproportionality in honors enrollment; and, (4) schedule flexibility and having enough available seats for all interested students.

For example, documents provided by Pleasant Grove High School showed that the counselors and AP teachers have used strategies, since at least the 2008-2009 school year, to identify and enroll underrepresented and low income students in AP courses. School staff used teacher referrals, test scores, GPA, and other academic history to identify students who have the potential to succeed in AP courses, sent such students letters encouraging them to enroll, and followed-up with telephone calls. Pleasant Grove staff also used peer outreach to encourage honors and AP enrollment and conducted one-on-one counseling with potential AP students.

¹⁹ The PSAT is a “standardized test that provides firsthand practice for the SAT” and measures “critical reading skills,” “math problem-solving skills,” and “writing skills.” See <http://www.collegeboard.com/student/testing/psat/about.html>.

OCR also noted that Pleasant Grove's notices to parents and students regarding honors courses had a different tone than notices at many of the other high schools. Whereas notices at other schools emphasized the demanding nature of AP courses, the possibility of failure, and the rules restricting dropping such courses, Pleasant Grove notices noted the demanding nature of such AP courses but mainly emphasized the benefits of completing AP courses – both in terms of matriculation to college and college completion. Pleasant Grove staff also reported that its AP test passage rates were among the best in the District, demonstrating that its outreach efforts have been effective in identifying students who could be successful in AP courses but who otherwise might not have enrolled.

During OCR's review, as well as after OCR informed the District of the concerns reflected in this letter, the District initiated further efforts to improve access to its honors and AP programs. The District initiated a review of course prerequisites to promote consistency and remove barriers to enrollment, and participated in an AP Diagnostic program with the College Board to identify best practices and ways to increase access to AP courses. These initial efforts have yielded an increase of 14.8% in the number of African American students taking AP tests in 2012-2013, as well as an increase of 17.6% among African American students scoring a three or higher on such AP tests.

VII. Honors and AP Analysis

a. Different Treatment

OCR has determined that there is insufficient evidence to conclude that African American students who applied to take honors or AP courses were subjected to different treatment based on their race.

b. Disparate Impact

Do the District's Policies and Practices for Enrollment in Honors and AP Courses Result in an Adverse Disparate Impact?

OCR found that the District's honors and AP enrollment practices have resulted in disproportionately low rates of African American students in honors and AP courses at every middle school and comprehensive high school in the District. The underrepresentation of African American students in AP and honors is statistically significant.

OCR's analysis identified school-specific practices that had a disparate impact on access for African American students to honors and AP courses. These practices include more onerous enrollment requirements for certain honors and AP courses such as concurrent course enrollment, less AP course variety, and ineffective overall efforts to enroll African American students in AP/honors courses. OCR's analysis showed significant variance in success in enrolling African American students in AP and honors courses at schools with similar demographics, size, and other characteristics. At the middle school level, OCR's analysis showed that the District offers fewer sections of honors courses per student at schools with higher than average African American enrollment – one honors section per every 24.8 students at

schools with lower African American enrollment as compared to one honors section per every 36.3 students at schools with higher than average African American enrollment.

Are the District's Policies and Practices Necessary to Meet an Important Educational Goal?

The District stated that its mission is to provide “a learning community that challenges all students to realize their greatest potential.” Consistent with this overarching mission, the goal of District AP and honors program is to provide students with rigorous academic coursework to help prepare students for and engage them in college level coursework. The District seeks to provide such access to rigorous academic coursework on an equitable basis, and has identified underrepresentation of African American students in honors and AP courses as an area for improvement pursuant to its work to reduce the achievement gap in the District. The District’s inconsistent enrollment and outreach practices across its AP and honors courses and its failure to uniformly implement approaches used at some schools that were more effective at enrolling students in AP and honors courses and have less disparate results were not well aligned with its educational goals to engage all students in rigorous academic coursework and address underrepresentation. In fact, the District acknowledged that these inconsistent practices were a problem, and that some site-based practices may act as an unnecessary barrier to honors and AP enrollment for qualified students.

Are There Comparably Effective Less Discriminatory Alternatives and/or Is There Evidence of Pretext?

There are practices used at several school sites that have reduced racial disparities in their programs. OCR found that there were school sites, such as Pleasant Grove High and Valley High, that were enrolling African American students at rates that were more comparable to their overall enrollment and to the rates for other groups. The policies and practices used at these sites were comparatively effective in providing students access to rigorous academic coursework and had a less discriminatory effect than other policies and practices used in the District. Pleasant Grove High School also reported some of the highest AP test passing rates (typically a score of three or higher) in the District.

Based on the foregoing, OCR finds that the preponderance of the evidence establishes that the District’s honors and AP course enrollment practices have an unlawful disparate impact on the basis of race in violation of Title VI.

VIII. Conclusion and Case Resolution

For the reasons described above, OCR determined that the District did not intentionally treat African American students differently on the basis of race, in violation of Title VI, with respect to identification and placement in GATE and AP and honors courses. However, based on a preponderance of the evidence, OCR determined that the District’s policies and practices had a disparate adverse and exclusionary impact on African American students and their ability to participate in and benefit from the District’s GATE program, as well as its honors and AP courses. The evidence did not establish that these policies and practices were necessary to meet an important educational goal, and comparably effective less discriminatory alternatives are

available. Therefore, OCR concluded that the District was not in compliance with Title VI and the regulation with regard to the issues under review in this case.

The District voluntarily entered into an Agreement to remedy the compliance concerns identified in the OCR's and review and had already initiated steps to address the concerns prior to the signing of the Agreement.

When fully implemented, the Agreement will address OCR's findings of noncompliance. Pursuant to the Agreement, the District will:

- (1) retain and work with a consultant with expertise in addressing the underrepresentation of African American students in GATE programs, AP and honors courses to review and assess the District's programs;
- (2) develop and implement program reforms, including adopting modifications to eligibility and selection criteria for participating in the District's GATE program and AP and honors courses, based on the expert consultant's review and assessment;
- (3) develop targeted GATE site plans to promote equitable GATE referral and identification for African American students at all 48 District elementary and middle schools;
- (4) annually collect and analyze demographic data on the identification and selection of students for the GATE program and AP and honors courses to measure the effectiveness of the District's ongoing efforts, and make additional reforms as needed;
- (5) conduct effective outreach to the District's parents/guardians as well as counseling and outreach to students regarding the GATE program, and AP and honors courses;
- (6) conduct annual training for District and site staff regarding modified eligibility and selection criteria, effective outreach and retention strategies, identifying African American and other underrepresented students, and best practices for the GATE program and AP and honors courses; and,
- (7) establish a District GATE/Equity Committee of stakeholders to evaluate the District's ongoing efforts and progress, and make recommendations for additional reforms as needed.

Based on the steps the District has already taken since OCR initiated this review, as well as the commitments the District has made in the Agreement described above, OCR has determined that it is appropriate to close the investigative phase of this compliance review. The District has agreed to provide data and other information demonstrating implementation of the Agreement in a timely manner in accordance with the reporting requirements of the Agreement. OCR will closely monitor the District's implementation of the Agreement to ensure that the commitments made are implemented timely and effectively and that the District's policies and practices are administered in a nondiscriminatory way. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the Agreement and is in compliance with Title VI and its implementing regulation, with regard to the issues in review. OCR will not close the monitoring of this Agreement until the District has complied with its terms and is in compliance with Title VI.

This letter and the enclosed agreement address only the issues investigated as part of this compliance review and should not be construed to address any other issues. This letter is a fact-specific disposition of this review; it is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Under the Freedom of Information Act, this document and related records may be released upon request or made public by OCR. In the event that OCR receives such a request or intends to make these documents public, the respective agency will seek to protect, to the extent provided by law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for the courtesy and cooperation that you and your staff extended to OCR. OCR appreciated the collaborative nature of the relationship between OCR and the District throughout the investigation and resolution of this review. Despite the compliance issues OCR identified, OCR recognizes the professionalism and expertise, as well as the strong commitment to all students within the District. In particular, we wish to recognize the efforts of Program Specialist Alicia Canning, Associate Superintendent for Secondary Education Christina Penna, Associate Superintendent for Pre K-6 Education, Donna Cherry, Director of Learning Support Services Sonjhia Lowery, as well as Superintendent Dr. Steven M. Ladd. We would also like to thank counsel for the District, Thomas Gauthier, for his assistance. We look forward to working with the District as it implements the provisions in the resolution agreement. If you have any questions regarding this letter, please contact OCR attorney Kendra Fox-Davis at 415-486-5418 or Kendra.FoxDavis@ed.gov, or OCR attorney Brian Lambert at 415-486-5524 or Brian.Lambert@ed.gov.

Sincerely,

/s/

Arthur Zeidman
Director,
San Francisco Office

Enclosure

cc: Thomas Gauthier, Esq.
Lozano Smith Attorneys at Law