



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

50 BEALE ST., SUITE 7200  
SAN FRANCISCO, CA 94105

REGION IX  
CALIFORNIA

August 14, 2014

José L. Banda  
Superintendent  
Sacramento City Unified School District  
5735 47<sup>th</sup> Avenue  
Sacramento, California 95824-4528

(In reply, please refer to case no. 09-14-1190.)

Dear Superintendent Banda:

The San Francisco Office for Civil Rights (OCR) has resolved the above referenced complaint against the Sacramento City Unified School District (District). OCR investigated whether the District discriminated against students at Lubin Elementary School on the basis of race or national origin by implementing policies and procedures that denied Hispanic students equal access to gifted and talented education (GATE) classrooms.

OCR enforces Title VI of the Civil Rights Act of 1964 which prohibits discrimination on the basis of race, color, and national origin in programs and activities operated by recipients of Federal financial assistance. The District receives funds from the Department and is a public education entity. Therefore the Recipient is subjected to laws and regulations enforced by OCR.

As explained below, prior to the end of OCR's investigation, the District communicated its interest in resolving this complaint voluntarily through an Agreement to Resolve. Therefore, OCR did not reach conclusions regarding the District's compliance with Title VI. This letter summarizes the applicable legal standards, the information gathered during the review, and the case resolution.

### **Legal Standards**

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 satisfaction of any admission or eligibility requirement for provision of a service or benefit; and, denying an individual an opportunity to participate in a program or affording an opportunity to do so which is different from that afforded to others. 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.

OCR's partial investigation showed the following:

- The District operates a GATE program that is designed to provide gifted and talented students with “highly challenging learning opportunities” through differentiated instruction that emphasizes critical and creative thinking, problem solving, and logical reasoning.
- At the elementary level, the District offers two formal GATE models: designated GATE Centers, which serve students from a number of schools in classes that are composed predominately of GATE students; and Site GATE Programs, which serve students at one school site in mixed-ability classrooms.
- The District identifies GATE students through a multi-step process that begins with, for possible GATE eligibility, annual administration of the Naglieri Nonverbal Ability Test (NNAT) to all 1<sup>st</sup> graders.<sup>1</sup> All students who score above the 77<sup>th</sup> percentile, are further considered for GATE eligibility based on a “profile” of gifted characteristics, completed by parents and teachers, as well as academic achievement data (English language arts and math benchmark tests) and consideration of “impact factors”, including economic and demographic information. Students are again screened for eligibility in third grade based on academic achievement data, and may be nominated by their teachers or parents for GATE consideration at any time thereafter. In those cases, students are tested using the Cognitive Abilities Test (CogAT).<sup>2</sup> For the 2013-14 school year, 94 students at Lubin Elementary School (the School) were identified as meeting the GATE eligibility criteria. A much larger percentage of these students were white than were enrolled in the School as a whole.

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<sup>1</sup> 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](http://www.pearsonassessments.com).

<sup>2</sup> The CogAT assesses students' abilities in reasoning and problem solving using verbal, quantitative, and nonverbal (spatial) symbols. The publisher recently updated the test (version 7) to limit reliance on oral language. See, <http://www.riversidepublishing.com/products/CogAT7>.

| <b>Lubin Elementary</b> | <b>Total Population</b> |       | <b>Students Identified as GATE eligible</b> |       |
|-------------------------|-------------------------|-------|---|-------|
| <b>Total</b>            | 569                     |       | 94  | 16.5% |
| <b>Hispanic</b>         | 177                     | 31.1% | 21  | 22.3% |
| <b>White</b>            | 243                     | 42.7% | 60  | 63.9% |
| <b>African American</b> | 64                      | 11.2% | 5   | 5.3%  |

- District administrators informed OCR that, during the 2013-14 school year, the School did not follow either of the District GATE models. Instead, even though the School was not a designated GATE Center, one classroom at each grade level enrolled only GATE-identified and high achieving students.<sup>3</sup> Because there were not enough GATE students at most grade levels to fill an entire class, between two and 19 high achieving non-GATE students were also assigned to each GATE classroom, based on their most recent standardized testing results. As a result of this placement criterion, fifteen percent of non-GATE white students, but only three percent of non-GATE Hispanic students, were assigned to GATE classrooms., Enrollment in GATE- and non-GATE classrooms is described in the chart below:

| <b>Lubin Elementary<sup>4</sup></b> |               |       |                             |       |  |       |
|-------------------------------------|---------------|-------|-----------------------------|-------|--|-------|
|                                     | <b>School</b> |       | <b>GATE Cluster Classes</b> |       | <b>Non-GATE Classes (grades 2-6)<sup>5</sup></b> |       |
| <b>Total</b>                        | 569           |       | 127                         |       | 243  |       |
| <b>Hispanic</b>                     | 177           | 31.1% | 24                          | 18.9% | 82   | 33.7% |
| <b>White</b>                        | 243           | 42.7% | 81                          | 63.7% | 86   | 35.4% |
| <b>African American</b>             | 64            | 11.2% | 9                           | 7%    | 42   | 17.3% |

- The distribution of the student population across grades resulted in the creation of split classes (more than one grade in a single classroom) at most grade levels. Because GATE students in grades 4 – 6 were assigned to single-grade classes, a large number of non-GATE students in those grades were assigned to split classes. Many parents were upset about having their children repeatedly assigned to split-grade classes.
- Based on equity concerns suggested by the data, the District’s interest in consistent implementation of its GATE models, and parent complaints about split classes, the District and School began working with staff and

<sup>3</sup> GATE-identified students in second and third grade were assigned to a split-grade class.

<sup>4</sup> Source: District data, 2014.

<sup>5</sup> Non-GATE students in this category also exclude the 27 students enrolled in the Deaf and Hard of Hearing program

parents during the 2013-14 school year to revise the GATE program at the school and to create more heterogeneous classroom configurations for the 2014-15 school year.

### **Resolution Agreement**

Prior to the conclusion of OCR's investigation, the District expressed an interest in resolving this compliance review voluntarily. The District submitted a signed Agreement to Resolve (Agreement) on August 12, 2014. Pursuant to the Agreement:

- The District will provide OCR with a report describing the School's implementation of its new GATE cluster program model, including a description of criteria for placing students, classroom rosters, and a schedule and description of outreach for parents and professional development.
- The District will provide OCR with an analysis of data regarding its GATE program, disaggregated by school, grade level and race/ethnicity. The District commits to review the data and develop a plan, for OCR review, that will ensure that all students are provided an equal access to the District's GATE program, with a focus on providing equal opportunity to participate for all groups of students who are currently underrepresented in enrollment.

OCR has determined that full implementation of the Agreement will resolve the issues raised in this complaint. OCR is therefore closing the investigative phase of this investigation. The District has agreed to provide data and other information demonstrating implementation of the resolution agreement in a timely manner in accordance with the reporting requirements of the resolution agreement. OCR may conduct additional visits and request additional information as necessary to determine whether the District has fulfilled the terms of the resolution agreement and is in compliance with Title VI and its implementing regulation, with regard to the issues in review. OCR will monitor the District's implementation of the resolution agreement and 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 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. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

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

Under the Freedom of Information Act, it may be necessary to release this document and related records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by law, personal information which, if released, would reasonably be expected to constitute an unwarranted invasion of privacy.

If you have any questions about this letter, please contact Ava De Almeida Law, Investigator, at (415) 486-5513 or Katherine Riggs, Attorney, at (415) 486-5544.

Sincerely,

/s/

Anamaria Loya  
Team Leader

Attachment