



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

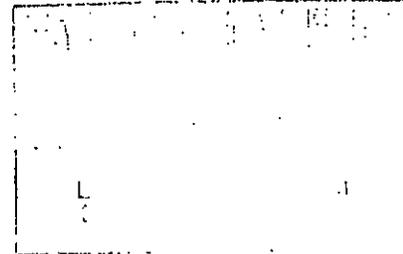
1244 SPEER BLVD, SUITE 310  
DENVER, CO 80204-3582

REGION VIII  
ARIZONA  
COLORADO  
NEW MEXICO  
UTAH  
WYOMING

June 12, 2012

Mr. Raymond R. Arsenault, Superintendent  
Gallup-McKinley County Schools  
P.O. Box 1318  
Gallup, New Mexico 87305

Re: Gallup-McKinley County Schools  
OCR Case Number 08-12-1194



Dear Superintendent Arsenault:

On May 23, 2012, we received a complaint alleging that Gallup-McKinley County Schools (the District) discriminated against Native Americans on the basis of race. We have determined that we have the authority to investigate this complaint consistent with our complaint procedures and applicable law.

Specifically, the complaint alleges that the District discriminated against Native American students when it decided to consolidate three middle schools into three nearby high schools. The complaint alleges that the District Board of Education decided to consolidate the Navajo Middle and Navajo Pine High School, the Crownpoint Middle and Crownpoint High school, and Tohatchi Middle and Tohatchi High School. These closure/consolidations are alleged to be discriminatory to Native American students in that it treats Native American students differently than white students and also the District action creates a disparate impact against Native American students because only schools located in the Navajo Reservation are selected for closure/consolidation and no other schools in the District were selected for closure/consolidation. Additionally, the complaint alleges that, when making the decision to close/consolidate the schools located on the Navajo Reservation, the District failed to take appropriate steps to notify and include Native American parents so that those parents would have an opportunity to access information and participate in a manner comparable to other parents, in violation of Title VI and its implementing regulation.

We are responsible for enforcing:

Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the U.S. Department of Education;

Individuals filing a complaint, participating in an investigation, or asserting a right under Title VI are protected from intimidation or retaliation by 34 C.F.R. § 100.7(e).

06-21-12 Original  
S/L - [unclear] [unclear]  
Kim B. [unclear]  
File [unclear]

As a recipient of Federal financial assistance from the Department the District is subject to Title VI and its implementing regulation. Additional information about the laws OCR enforces is available on our website at <http://www.ed.gov/ocr>.

Because we have jurisdiction and the complaint was filed timely, we are opening these allegations for investigation. Please note that opening the allegations for investigation in no way implies that we have made a determination with regard to their merits. During the investigation, OCR is a neutral fact-finder, collecting and analyzing relevant evidence from the complainant, the recipient, and other sources, as appropriate. OCR will ensure that its investigation is legally sufficient and is dispositive of the allegations, in accordance with the provisions of Article III of the *Case Processing Manual*.

Please read the enclosed document entitled "OCR Complaint Processing Procedures" which includes information about

OCR's complaint evaluation and resolution procedures, including the availability of Early Complaint Resolution (ECR);

Regulatory prohibitions against retaliation, intimidation and harassment of persons who file complaints with OCR or participate in an OCR investigation; and

Application of the Freedom of Information Act and the Privacy Act to OCR investigations.

We intend to conduct a prompt investigation of this complaint. The regulation implementing Title VI, at 34 C.F.R. § 100.6(b) and (c), requires that a recipient of Federal financial assistance make available to OCR information that may be pertinent to reach a compliance determination. Pursuant to 34 C.F.R. § 100.6(c) and 34 C.F.R. § 99.31(a)(3)(iii), of the regulation implementing the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, OCR may review personally identifiable records without regard to considerations of privacy or confidentiality.

In order to reach an efficient and timely resolution to this matter, we are providing you an opportunity to present the District's response to these allegations and to submit supporting documentation. We have also determined that the information itemized in the enclosed "Data Request" is necessary to initiate resolution. We request that this information reach our office as soon as possible but no later than **June 30, 2012**. If any of the required items are available to the public on the Internet, you may provide the website address. You may also send documents to us by email to [r.michael.sentel@ed.gov](mailto:r.michael.sentel@ed.gov) or by fax to (303) 844-4303. Because email is not reliably secure, please do not email any document that contains personally identifiable or private information.

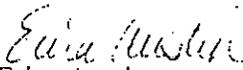
If our investigation establishes that there has been a violation of law, we will attempt to negotiate a remedy. If we are unable to secure appropriate remedial action, we must initiate formal enforcement action by commencing administrative proceedings seeking the termination of Federal funds to the District or a referral to the Department of Justice. These enforcement procedures will be initiated only if a violation is found and then only if we are unable to negotiate voluntary remedial action.

Thank you for your cooperation in this matter. In addition to the information requested above, we may need to request additional information and interview pertinent personnel. If an on-site visit is determined to be necessary, you will be contacted to schedule a mutually convenient time for the visit.

Please notify us of the name, address, and telephone number of the person who will serve as the District's contact person during the resolution of this complaint. We would like to talk with this person as soon as possible regarding this matter. We will continue to address letters to your attention with a courtesy copy to the District's designated contact.

We are committed to prompt and effective service. If you have any questions, please contact R. Michael Sentel, senior attorney at (303) 844-3333 or by email at [r.michael.sentel@ed.gov](mailto:r.michael.sentel@ed.gov).

Sincerely,

  
Erica Austin  
Chief Regional Attorney

Enclosures – Data Request and “OCR Complaint Processing Procedures”

cc (w/o enclosures) Honorable Hanna Skandera  
Secretary-Designate, Public Education Department

## Data Request

Office for Civil Rights case number 08-12-1194

Recipient: Gallup-McKinley County Schools

Class Action complaint on behalf of Native American Students

We request that this information reach our office as soon as possible, but no later than **June 30, 2012**. If any of the required items are available to the public on the Internet, you may provide the website address. You may also send documents to us by email to [r.michael.sentel@ed.gov](mailto:r.michael.sentel@ed.gov) or by fax to (303) 844-4303. Because email is not reliably secure, please do not email any document that contains personally identifiable or private information.

Please provide from school year 2011-2012, unless indicated otherwise:

1. Please provide a chronology beginning in 2002 of school and program closures in the District, including race demographics of the schools under consideration for and ultimately selected for closure/consolidation
2. Please provide a full description and documentation of the District's process and procedures used for determining school closures/consolidations.
3. Please provide a full description and documentation of the District's process criteria.
4. Please provide what the seat capacity is within each of the District's middle schools. Describe which schools are under and over capacity and what is the projected enrollment for each.
5. Please provide the construction dates or remodel dates of each of the District's middle schools.
6. What is the cost per pupil for each of the District's middle schools?
7. Please provide a map of the District, including attendance boundaries, showing the location of each school in the District, and any schools currently proposed or under construction. Please also include any changes made to school attendance boundaries.
8. Please identify any changes in procedures, process, or substantive criteria that may have occurred during the process of identifying school closure/consolidations.
9. Identify any reasons for any identified process changes.
10. Description of process used by the District in selecting schools for closure/consolidation in the past. If more than one process was used, identify what each process was and when it was used.

11. Please provide the names and contact information for each of the school board members and district staff who participated in the criteria development or recommendations of which schools would be closed/consolidated.
12. Please provide the name, position, and title of persons who developed school closure/consolidation criteria.
13. Please identify all District officials and staff responsible for or contributing to the decision to close these middle schools.
14. Please identify all written reports and documentation relied upon by the recommending staff or school board members.
15. Please provide an explanation of the District's specific rationale for closing/consolidating each of the three middle schools, including the criteria used.
16. Please provide a chronology of the actions taken and decisions made by the District with respect to closing consolidation of the three middle schools, including dates and locations of public hearings.
17. Please provide a copy of all minutes, recordings, transcripts, and/or notes retained by District officials, the School Board or any School Board member with respect to any meetings at which the closing/consolidation of these three middle schools (or any of the three schools) was discussed.
18. Please provide a copy of all inspections, reports, studies, memoranda or other documentation prepared and/or considered by the District related to the closing/consolidation of these three middle schools.
19. Please provide a copy of any correspondence maintained by the District related to the objections or support for the closing/consolidation of these three middle schools, or any of the three schools individually.
20. Please provide a chronology of proposed and actual school openings and closings, by school and, date of closure/opening, and the reason(s) for opening/closure including information regarding student enrollment by race for any school for this period. For any school that was closed, indicate the school(s) to which students were assigned.
21. Please provide a description of the alternatives considered to school closures and alternatives to the selection of these three middle schools for closure that would have met the District's objectives.
22. Please provide the student enrollment for the three closure/consolidations in the District, disaggregated by school, grade and race/national origin for the 2010-2012 school years.
23. Please provide an explanation of how school capacity is calculated.

24. Please provide a copy of the District's communications regarding the school closure/consolidations, including all native language communication regarding school closures.

25. The District's position statement regarding the Complainant's allegations, and any other supporting documentation you would like us to consider.

## OCR COMPLAINT PROCESSING PROCEDURES

### **LAWS ENFORCED BY OCR**

OCR enforces the following laws:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin;
- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex;
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability;
- Age Discrimination Act of 1975, which prohibits discrimination on the basis of age;
- Title II of the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disability;
- Boy Scouts of America Equal Access Act, part of the No Child Left Behind Act of 2001, which prohibits denial of access to or other discrimination against the Boy Scouts or other Title 36 U.S.C. youth groups in public elementary schools, public secondary schools, local education agencies, and state education agencies that have a designated open forum or limited public forum.

### **EVALUATION OF THE COMPLAINT**

OCR evaluates each complaint that it receives in order to determine whether it can investigate the complaint. OCR makes this determination with respect to each allegation in the complaint. For example, OCR must determine whether OCR has legal authority to investigate the complaint; that is, whether the complaint alleges a violation of one or more of the laws OCR enforces. OCR must also determine whether the complaint is filed on time. Generally, a complaint must be filed with OCR within 180 calendar days of the last act that the complainant believes was discriminatory.<sup>1</sup> If the complaint is not filed on time, the complainant should provide the reason for the delay and request a waiver of this filing requirement (see "Bases for Granting a Waiver," below). OCR will decide whether to grant the waiver. In addition, OCR will determine whether the complaint contains enough information about the alleged discrimination to proceed to investigation. If OCR needs more information in order to clarify the complaint, it will contact the complainant; the complainant has 20 calendar days within which to respond to OCR's request for information.

OCR will dismiss a complaint if OCR determines that:

- OCR does not have legal authority to investigate the complaint;
- The complaint fails to state a violation of one of the laws OCR enforces;
- The complaint was not filed timely and that a waiver will not be granted;
- The complaint is unclear or incomplete and the complainant does not provide the information that OCR requests within 20 calendar days of OCR's request;
- The allegations raised by the complaint have been resolved;
- The complaint has been investigated by another Federal, state, or local civil rights agency or through a recipient's internal grievance procedures, including due process proceedings, and the resolution meets OCR regulatory standards or, if still pending, OCR anticipates that there will be a comparable resolution process under comparable legal standards;
- The same allegations have been filed by the complainant against the same recipient in state or Federal court;
- The allegations are foreclosed by previous decisions of the Federal courts, the U.S. Secretary of Education, the U.S. Department of Education's Civil Rights Reviewing Authority, or OCR policy determinations.

---

<sup>1</sup> Complaints that allege discrimination based on age are timely if filed with OCR within 180 calendar days of the date the complainant first knew about the alleged discrimination.

## **OPENING THE COMPLAINT FOR INVESTIGATION**

If OCR determines that it will investigate the complaint, it will issue letters of notification to the complainant and the recipient. Opening a complaint for investigation in no way implies that OCR has made a determination with regard to the merits of the complaint. During the investigation, OCR is a neutral fact-finder. OCR will collect and analyze relevant evidence from the complainant, the recipient, and other sources as appropriate. OCR will ensure that investigations are legally sufficient and are dispositive of the allegations raised in the complaint.

## **INVESTIGATION OF THE COMPLAINT**

OCR may use a variety of fact-finding techniques in its investigation of a complaint. These techniques may include reviewing documentary evidence submitted by both parties, conducting interviews with the complainant, recipient's personnel, and other witnesses, and/or site visits. At the conclusion of its investigation, OCR will determine with regard to each allegation that:

- There is insufficient evidence to support a conclusion that the recipient failed to comply with the law, or
- A preponderance of the evidence supports a conclusion that the recipient failed to comply with the law.

OCR's determination will be explained in a letter of findings sent to the complainant and recipient. Letters of findings issued by OCR address individual OCR cases. Letters of findings contain fact-specific investigative findings and dispositions of individual cases. Letters of findings are not formal statements of OCR policy and they 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.

## **RESOLUTION OF THE COMPLAINT AFTER A DETERMINATION OF NONCOMPLIANCE**

If OCR determines that a recipient failed to comply with one of the civil rights laws that OCR enforces, OCR will contact the recipient and will attempt to secure the recipient's willingness to negotiate a voluntary resolution agreement. If the recipient agrees to resolve the complaint, the recipient will negotiate and sign a written resolution agreement that describes the specific remedial actions that the recipient will undertake to address the area(s) of noncompliance identified by OCR. The terms of the resolution agreement, if fully performed, will remedy the identified violation(s) in compliance with applicable civil rights laws. OCR will monitor the recipient's implementation of the terms of the resolution agreement to verify that the remedial actions agreed to by the recipient have been implemented consistent with the terms of the agreement and that the area(s) of noncompliance identified were resolved consistent with applicable civil rights laws.

If the recipient refuses to negotiate a voluntary resolution agreement or does not immediately indicate its willingness to negotiate, OCR will inform the recipient that it has 30 days to indicate its willingness to engage in negotiations to voluntarily resolve identified areas of noncompliance, or OCR will issue a Letter of Finding to the parties providing a factual and legal basis for a finding noncompliance.

If, after the issuance of the Letter of Finding of noncompliance, the recipient continues to refuse to negotiate a resolution agreement with OCR, OCR will issue a Letter of Impending Enforcement Action and will again attempt to obtain voluntary compliance. If the recipient remains unwilling to negotiate an agreement, OCR will either initiate administrative enforcement proceedings to suspend, terminate, or refuse to grant or continue Federal financial assistance to the recipient, or will refer the case to the Department of Justice. OCR may also move immediately to defer any new or additional Federal financial assistance to the institution.

## **RESOLUTION OF THE COMPLAINT PRIOR TO THE CONCLUSION OF THE INVESTIGATION**

### **Early Complaint Resolution (ECR):**

Early Complaint Resolution allows the parties (the complainant and the institution which is the subject of the complaint) an opportunity to resolve the complaint allegations quickly; generally, soon after the complaint has been opened for investigation. If both parties are willing to try this approach, and if OCR determines that Early Complaint Resolution is appropriate, OCR will facilitate settlement discussions between the parties and work with the parties to help them understand the legal standards and possible remedies. To the extent possible, staff assigned by OCR to facilitate the Early Complaint Resolution process will not be the staff assigned to the investigation of the complaint.

OCR does not approve, sign or endorse any agreement reached between the parties as a result of Early Complaint Resolution, and OCR does not monitor the agreement. However, if the recipient institution does not comply with the terms of the agreement, the complainant may file another complaint with OCR within 180 days of the date of the original discrimination or within 60 days of the date the complainant learns of the failure to comply with the agreement, whichever date is later.

### **Resolution of the Complaint Prior To the Conclusion of an Investigation**

A complaint may also be resolved before the conclusion of an investigation, if the recipient expresses an interest in resolving the complaint. If OCR determines that resolution of the complaint before the conclusion of an investigation is appropriate, OCR will attempt to negotiate an agreement with the recipient. OCR will notify the complainant of the recipient's request and will keep the complainant informed throughout all stages of the resolution process. The provisions of the resolution agreement that is reached must be aligned with the complaint allegations and the information obtained during the investigation, and must be consistent with applicable regulations. A resolution agreement reached before the conclusion of an investigation will be monitored by OCR.

## **REQUEST FOR RECONSIDERATION OR APPEAL OF OCR'S DETERMINATIONS**

OCR is committed to a high quality resolution of every case. OCR affords an opportunity to the complainant to submit a request for reconsideration or an appeal of OCR determinations that are not in the complainant's favor. The reconsideration and appeal processes provide an opportunity for complainants to bring information to OCR's attention that would change OCR's decision. The reconsideration and appeal processes will not be a *de novo* review of OCR's decision. The specific process for requesting a review differs depending on the nature of OCR's determination:

### **Requests of Reconsideration of Dismissals:**

If the complainant disagrees with OCR's decision to dismiss a complaint for any reason (e.g., jurisdiction, timeliness, other administrative reasons), he or she may send a request for reconsideration to the Director of the Enforcement Office that issued the determination. If the complainant has documentation to support the request for reconsideration, the documentation must be submitted with the complainant's request for reconsideration. In the request for reconsideration, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, and how this would change OCR's determination in the case. Failure to do so may result in the denial of the request for reconsideration.

In order to be timely, a request for reconsideration (including any supporting information) must be submitted within 60 days of the date of the dismissal letter. The Office Director may exercise discretion in granting a waiver of the 60-day timeframe where:

1. the complainant was unable to submit the request for reconsideration within the 60-day timeframe because of illness or other incapacitating circumstances and the request was filed within 30 days after the period of illness or incapacitation ended; or
2. unique circumstances generated by agency action have adversely affected the complainant.

A written response to a request for reconsideration will be issued as promptly as possible. The decision of the Director of the Enforcement Office constitutes the agency's final decision with respect to dismissals.

### **Appeals of Administrative Closures and Letters of Findings:**

If the complainant disagrees with OCR's decision in an investigative determination (either an administrative closure or a letter of findings) he or she may send a written appeal to the Deputy Assistant Secretary for Enforcement within 60 days of the date of OCR's determination letter. If the complainant has documentation to support the appeal, the documentation must be submitted with the complainant's appeal. In an appeal, the complainant must explain why he or she believes the factual information was incomplete, the analysis of the facts was incorrect, and/or the appropriate legal standard was not applied, *and* how this would change OCR's determination in the case. Failure to do so may result in the denial of the appeal. Appeals should be sent to:

Deputy Assistant Secretary for Enforcement  
Office for Civil Rights  
U.S. Department of Education  
400 Maryland Avenue, S.W.  
Washington, D.C. 20202-1100

In order to be timely, an appeal (including any supporting documentation) must be submitted within 60 days of the date of the letter of findings or administrative closure letter. The Deputy Assistant Secretary for Enforcement may exercise discretion in granting a waiver of the 60-day timeframe where:

1. the complainant was unable to submit the appeal within the 60-day timeframe because of illness or other incapacitating circumstances and the appeal was filed within 30 days after the period of illness or incapacitation ended; or
2. unique circumstances generated by agency action have adversely affected the complainant.

A written response to an appeal will be issued as promptly as possible. The decision of the Deputy Assistant Secretary constitutes the agency's final decision with respect to letters of findings or administrative closure letters.

### **ADDITIONAL INFORMATION**

#### **Right to File a Separate Court Action**

The complainant may have the right to file suit in Federal court, regardless of OCR's findings. OCR does not represent the complainant in case processing, so if the complainant wishes to file a court action, he or she must do so through his or her own attorney or on his or her own through the court's pro se clerk's office.

If a complainant alleges discrimination prohibited by the Age Discrimination Act of 1975, a civil action in Federal court can be filed only after the complainant has exhausted administrative remedies. Administrative remedies are exhausted when either of the following has occurred:

- 1) 180 days have elapsed since the complainant filed the complaint with OCR and OCR has made no finding; or
- 2) OCR issues a finding in favor of the recipient. If this occurs, OCR will promptly notify the complainant and will provide additional information about the right to file for injunctive relief.

### **Prohibition against Intimidation or Retaliation**

An institution under the jurisdiction of the Department of Education may not intimidate, threaten, coerce, or retaliate against anyone who asserts a right protected by the civil rights laws that OCR enforces, or who cooperates in an investigation. Anyone who believes that he or she has been intimidated or retaliated against should file a complaint with OCR.

### **Investigatory Use of Personal Information**

In order to investigate a complaint, OCR may need to collect and analyze personal information such as student records or employment records. No law requires anyone to give personal information to OCR and no formal sanctions will be imposed on complainants or other persons who do not cooperate in providing information during the complaint investigation or resolution process. However, if OCR is unable to obtain the information necessary to investigate a complaint, we may have to close the complaint.

The Privacy Act of 1974, 5 U.S.C. § 552a, and the Freedom of Information Act (FOIA), 5 U.S.C. § 552, govern the use of personal information that is submitted to all Federal agencies and their individual components, including OCR. The Privacy Act of 1974 protects individuals from the misuse of personal information held by the Federal government. It applies to records that are maintained by the government that are retrieved by the individual's name, social security number, or other personal identifier. It regulates the collection, maintenance, use and dissemination of certain personal information in the files of Federal agencies.

The information that OCR collects is analyzed by authorized personnel within the agency and will be used only for authorized civil rights compliance and enforcement activities. However, in order to investigate or resolve a complaint, OCR may need to reveal certain information to persons outside the agency to verify facts or gather additional information. Such details could include the age or physical condition of a complainant. Also, OCR may be required to reveal information requested under FOIA, which gives the public the right of access to records of Federal agencies. OCR will not release any information to any other agency or individual except in the one of the 11 instances defined in the Department's regulation at 34 C.F.R. § 5b.9(b).

OCR does not reveal the name or other identifying information about an individual unless it is necessary for completion of an investigation or for enforcement activities against an institution that violates the laws, or unless such information is required to be disclosed under the FOIA or the Privacy Act. OCR will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under the FOIA, the Privacy Act or otherwise by law.

FOIA gives the public the right of access to records and files of Federal agencies. Individuals may obtain items from many categories of records of the Federal government, not just materials that apply to them personally. OCR must honor requests for records under FOIA, with some exceptions. Generally, OCR is not required to release documents during the case evaluation and investigation process or enforcement proceedings, if the release could affect the ability of OCR to do its job. 5 U.S.C. § 552(b)(7)(A). Also, a Federal agency may refuse a request for records if their release would result in an unwarranted invasion of privacy of an individual. 5 U.S.C. §

552(b)(6) and (7)(C). Also, a request for other records, such as medical records, may be denied where disclosure would be a clearly unwarranted invasion of privacy.

#### **Bases For Granting a Waiver**

The regulations that OCR enforces require that a complaint be filed not later than 180 days from the date of the alleged discrimination. A waiver of this requirement may be granted under the following circumstances:

1. The complainant could not reasonably be expected to know the act was discriminatory within the 180-day period, and the complaint allegation was filed within 60 days after the complainant became aware of the alleged discrimination (note that lack of previous awareness of OCR or the civil rights laws enforced by OCR is not a basis for a waiver);
2. The complainant was unable to file a complaint because of incapacitating illness or other incapacitating circumstances during the 180-day period, and the complaint allegation was filed within 60 days after the period of incapacitation ended;
3. The complainant filed a complaint alleging the same discriminatory conduct within the 180-day period with another federal, state, or local civil rights enforcement agency, or federal or state court, and filed a complaint with OCR within 60 days after the other agency had completed its investigation or, in the case of a court, reached a determination, or the agency or court notified the complainant that it would take no further action;
4. The complainant filed, within the 180-day period, an internal grievance with a recipient of federal financial assistance, or a due process hearing, alleging the same discriminatory conduct that is the subject of the OCR complaint, and the complaint is filed no later than 60 days after the internal grievance is concluded; or
5. Unique circumstances generated by OCR's action have adversely affected the complainant.