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May 29, 2024

Nicole Swigart, Superintendent
Rapid City Area School District 51-4
Sent via email to: [redacted content]

Re: Rapid City Area School District 51-4 Compliance review
OCR Case No. 07115001

Dear Superintendent Swigart:

This letter advises you of the resolution of the U.S. Department of Education, Office for Civil Rights (OCR) compliance review of the Rapid City Area School District #51-4 (District). The compliance review, opened on December 23, 2010, examined whether (1) the District discriminated against Native American students by disciplining them more frequently and more harshly than similarly situated white students, and (2) the District discriminated against Native American students with respect to access, referral, identification, and selection for the District's advanced learning programs and courses including honors courses and Advanced Placement (AP) courses, all in violation of the District's obligation to comply with Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. §§ 2000d- 2000d-7, and its implementing regulations, 34 C.F.R. Part 100.

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the Rapid City Area School District expressed an interest in resolving this compliance review, and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Resolution Agreement which, when fully implemented, will address all the concerns raised in this review.

Summary of Concerns

OCR's investigation raised concerns that similarly situated Native American and white students have been treated differently at the referral and sanctioning stages of the District's discipline process and with respect to access, referral, identification, and selection for the District's advanced learning programs and courses.

Discipline:

The data gathered by OCR show that when compared to enrollment numbers by race or national origin, Native American students were disproportionately disciplined at higher rates compared to

The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

white students across discipline categories. Discipline referral rates for Native American students in all District schools OCR analyzed for the 2021-22 school year were 2.06 times more than discipline referral rates for white students across all discipline referrals. Native American students were referred 4.57 times more than white students for in-school suspensions and 4.83 times more than white students for out-of-school suspensions. Native American students also received 5.49 times more truancy referrals than white students, 5.51 times more law enforcement referrals and 5.84 times more arrests than white students.

OCR found no evidence indicating District administrators examined the disparities themselves or set up any system to evaluate whether discrimination infects District practices. The statistical significance of the disparities combined with notably lax school site practices that sometimes deviate from the District's governing policy and matrices – generally to the benefit of white students – and the District's decision not to assess the practices for compliance with Title VI – raises concern for OCR that discrimination may animate District disciplinary practices. The failure to assess the impact of variable school practices is best exemplified with respect to truancy, as District Policy requires such an assessment in the District's Student Absences and Excuses/Truancy (Policy Code JED-P), and Native American students were referred for truancy 4.90 (2015-16) and 5.49 (2021-22) times more than white students.

Further, records and student files provided to OCR did not provide enough detail to determine whether Title VI violations occurred, e.g., whether the different rates of discipline based on race, color, or national origin were based on legitimate, nondiscriminatory factors. For example, the District's discipline spreadsheets and the student files received did not provide any narrative statements reflecting the circumstances surrounding discipline offenses, the views of witnesses, or any communications with parents. Listening sessions with Native American community members and parents raised concerns regarding the District's discrimination complaint process and discipline decisions. Community members also reported that School Resource Officers' (SROs') home visits to truant students were intimidating, but OCR did not receive truancy files referencing such visits or any other records tracking the impact of such visits on truancy referral rates.

Advanced Learning

OCR identified significant statistical disparities in access, referral, identification, and selection of Native American students compared to white students in advanced learning programs and courses. For instance, the 2021-22 data show that only 2.48% of all advanced learning middle school students were Native American despite Native American students constituting 18% of the total middle school population. In contrast, white students made up 75% of all advanced learning middle school enrollees, although the total white middle school population was 59%. At Central High School, Native American students comprised 19.58% of the student population while only 11.34% of advanced learning students were Native American. Also, only 4.65% of Central AP students were Native American, while white students comprised 57.05% of the student population and 80% of all Central AP students.

Beyond these disparities, OCR remains concerned with aspects of the District's advanced learning program suggesting that the district may not offer equal access, including: eligibility requirements for advanced learning or AP courses are not addressed in the District's formal

written policies; Central High School offered only four AP classes in 2021-22 while Stevens High School offered ten, and Central’s student population is 19.58% Native American while Stevens’ student population is only 3.58% Native American, suggesting both reduced access to such classes for Native American students and a lack of District-wide equity; AP students are not properly informed of the AP test fee structure including the option for fee waivers, which could contribute to the low numbers of Native American students enrolling in AP classes; student files reviewed by OCR lacked adequate documentation for OCR to determine whether the advanced learning opportunities are being equally made available to Native American and white students alike; and the District does not systematically monitor or track students involved in advanced learning, while the Indian Education manager is generally left out of the loop on advanced learning matters. Taken together, the lack of effective oversight could impede Native American students’ access to these courses and make more difficult the task of ensuring equity in AP and other college-level courses.

District Complaint Process

Finally, as relevant to potential discrimination in discipline or advanced learning, OCR also uncovered evidence of the misapplication of the District’s discrimination complaint process, which allows for the submission of complaints directly to the District’s central office. The superintendent and the school officials interviewed by OCR indicated that complaints should start at the school level instead, which is not a feature of the policy. When questioned during 2023 OCR interviews, District staff were not aware of any complaints of discrimination being addressed by the District’s central office. However, community members shared their personal frustrations that they could not file their complaints at the District’s central office due to the District’s confusing and ineffective process, and that complaints at the school level were left unresolved.

Methodology

Regarding the discipline issue, OCR reviewed District discipline data and policies for the 2015-16 and the 2021-22 school years (Review Period) and data from the Civil Rights Data Collection (CRDC) for 2015-16, 2017-18, and 2020-21. For the 2021-22 academic year, OCR focused on seven schools within the District with either a majority population of Native American students or higher 2015-16 discipline referral rates for Native American students than white students: South Park, Grandview, and General Beadle Elementary Schools; and South, North, and East Middle and Central High Schools, in addition to interviewing pertinent staff.

To better understand the disparities in subjective discipline between Native American and white students, OCR also reviewed 135 student files from the 2021-2022 school year. The District’s files included the student’s race/ethnicity, grade, and offense with a few words of description and the consequence; even though OCR requested the “complete student file,” there were no contemporaneous notes or other documents included with the records nor did the district produce detailed truancy files in response to OCR’s request.

Regarding the advanced learning issue, OCR examined information regarding the District’s advanced learning courses, AP courses and dual enrollment programs for college credit. OCR

also analyzed student enrollment data for the District and for each school in the District and compared it to enrollment data for each advanced course, AP and dual enrollment courses for the 2015-16 school year and for the 2021-22 school year (with an emphasis on Central High School and East, North and South Middle Schools), in addition to interviewing pertinent staff and reviewing files of students enrolled in middle school and high school advanced and AP courses. While the District does not have a gifted and talented or advanced learning program in elementary schools, OCR did examine how the feeder elementary schools prepare students for the middle and high school advanced learning courses.

OCR also engaged in four listening sessions, with seven to thirteen Native American community members in each session, during the 2022-2023 school year. The participants included three tribal education directors (who oversee the educational issues affecting enrolled members of a tribe) from the Cheyenne River Sioux Tribe, Oglala Sioux Tribe, and the Rosebud Sioux Tribe. Other participants included Rapid City community leaders and parents, including members of the District's Parent Advisory Committee (PAC) and the Indigenous Education Task Force (Task Force).

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the Rapid City Area School District expressed an interest in resolving this compliance review, and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Resolution Agreement which, when fully implemented, will address all the concerns raised in this review.

Background

The Rapid City Area School District is the second largest in South Dakota and currently has 23 schools: 15 elementary schools, five middle schools, two high schools and one alternative high school. The boundaries of the District are divided geographically, and there is a feeder pattern from elementary schools, to middle schools, to high schools, all based on the location of each student's residence, except for the alternative school.

The District's total student enrollment for the 2015-16 school year was 13,923 students. Of the total student enrollment, 67.47% were white, 22.31% were Native American, 6.36% were Hispanic, 2.00% were African American, 1.68% were Asian and 0.18% were Native Hawaiian or Pacific Islander. In the 2021-22 school year total enrollment dropped to 12,751 with 60.43% White, 16.59% Native American, 9.21% Hispanic, 1.23% Asian, 1.06% African American, and 0.11% Native Hawaiian or Pacific Islander.

Programs focused on the Native American school community

The District's Title VI Indian Education Office's primary responsibility is to manage and oversee the District's Title VI Indian Education grant. As noted on the District's website, "Title VI Part A of the Elementary and Secondary Education Act (ESEA) supports a comprehensive approach to educational improvement and reform for Indian students, helping ensure they benefit from national education reforms and receive every opportunity to achieve to high standards." A Parent Advisory Committee (PAC) functions in an advisory capacity to the Title VI Education

Program and serves as a liaison between the District and tribal community parents. The PAC holds monthly open meetings throughout the school year. According to its by-laws, the PAC also meets regularly with District staff, including the Superintendent or designee, and school board representatives to review District services for the Native American community.

In February 2021, the District created the Indigenous Education Task Force, charged with recommending improvements in the educational experience, learning environment, and outcomes for Indigenous students. The Task Force included District staff, school board members, Indian Education PAC leadership, Indigenous parents/guardians, and other community members.

In January 2022, the Indigenous Education Task Force issued reports with recommendations to the District including: increase access to social work and mental health resources; increase opportunities to engage and partner with Indigenous families; increase enforcement of District bullying policies to better protect Indigenous students; as well as other program-specific recommendations. However, the [redacted content] at both General Beadle Elementary and at South Park Elementary, and [redacted content] at Central High School informed OCR during their 2023 interviews that they were not aware of these reports. Also, the Superintendent informed OCR during her 2023 interview that she did not know if the District had initiated any of the recommendations. Indigenous Education Task Force members also informed OCR that the District did not respond to their final reports.

Legal Standards

The standards for determining compliance with Title VI are set forth in the regulations at 34 C.F.R. §§ 100.3(a) and (b) and 100.6(b).

The Title VI regulation, at 34 C.F.R. § 100.3(a), states 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 receiving Federal financial assistance. Sections 100.3(b)(1)(i)-(vi) further state, in relevant part, that a recipient may not, on the ground of race, color, or national origin, (i) deny an individual any service or benefit provided under the program; (ii) provide any service or benefit to an individual which is different, or provided in a different manner, from that provided to others under the program; (iii) subject an individual to segregation or separate treatment in any matter related to receipt of any service or other benefit under the program; (iv) restrict an individual in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit under the program; (v) treat an individual differently from others in determining whether the individual satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition to be provided any service or other benefit under the program; or (vi) deny an individual an opportunity to participate in a program through the provision of services or otherwise afford an individual an opportunity to do so which is different from that afforded others under the program.

The regulation, at 34 C.F.R. §100.3(b)(2), also provides that a recipient may not utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race,

color, or national origin.

OCR investigates alleged discrimination in a recipient's application of student discipline and provision of advanced learning programs and courses consistent with federal statutory authority, the Department's regulations, and pertinent case law.

Title VI protects students even if a recipient contracts or arranges for entities, over which it exercises some control, to be responsible for aspects of a school's student safety or student discipline program. Recipients cannot divest themselves of responsibility for the non-discriminatory administration of school safety and student discipline by relying on SROs, school district police officers, contracted law enforcement companies or other contractors or law enforcement personnel over whom the school can exercise some control.

Under the Title VI regulation, at 34 C.F.R. § 100.6(b), a school district must keep timely, complete, and accurate records so that the Department may be able to ascertain whether the school district has complied or is complying with Title VI.

Findings of Fact: Discipline

Discipline Policies, Law Enforcement Memoranda of Understanding

Various policies govern the District's discipline procedures, which have been in effect throughout the compliance review with some revisions that will be addressed below. OCR reviewed the following District policies related to discipline:

- Student Conduct (Policy Code JFC), adopted in 1982 and last revised in 2000.
- Student Absences and Excuses (Policy Code JED), adopted in 2016.
- Student Absences and Excuses/Truancy (Policy Code JED-P), adopted in 1981 and last revised in 2016.
- Suspension and Expulsion (Policy Code JGD), adopted in 1998.
- Elementary, Middle and High School Discipline Matrices (different versions in place in 2015-16 and in 2021-22).
- School Resources Officer Memorandums of Understanding with the Rapid City Police Department and the Pennington County Sheriff's Department, adopted July 1, 2021.
- Discrimination/Harassment (Policy Code AC1), adopted in 2017 and last revised in 2018.
- Public Complaints Policy and Procedure (Policy Code KL), adopted in 2017 and last revised in 2018.

The District's Student Conduct Policy, Code JFC, is incorporated into student handbooks, was last revised in 2000, and covers OCR's entire review period. The policy addresses broad categories of misconduct that are subject to suspension or referral for expulsion. These include possession/use of controlled substances, alteration of school records, stealing or property damage, willfully disobeying or defying staff direction, attendance policy violations, weapons violations, assault, and a category called "habitual disobedience" defined in the policy as "behavior by students who have been advised on more than one occasion of their inappropriate behavior and the nature of it, including but not limited to disobeying a teacher; and despite being

so advised and directed to cease behaving inappropriately, continue to behave in an inappropriate manner.”

Although truancy is referenced in the Student Conduct Policy, the Student Absences and Excuses, Code JED, adopted in 2016 and revised June 20, 2023, provides the basis for determining when absences are excused and states that any unexcused absences are considered truancy; accompanying procedures - Code JED-P, defines truancy as “any absence from school, . . . for part or all of one or more days during which the school has not been notified of the cause of the absence, or the school deems the absence as unexcused.” Also, the policy requires maintenance of individual student files accounting for all unexcused absences, all truancy correspondence, notes, contact logs, checklists, assessments, and referrals.

JED-P articulates school level-specific truancy procedures with little variation. Specifically, at each level, following each missed class or block, an auto dialer calls the parent; after two cumulative days of unexcused absences, staff send the parent a formal letter; after four cumulative days of unexcused absences, staff will call the parent and send a formal letter; and after five cumulative days of unexcused absences, staff will call the parent and send a formal letter including notice that the student has been referred to the State’s Attorney’s Office. Additionally, each Principal is required to annually compile and analyze truancy statistics by ethnicity or race, among other characteristics, and submit an annual report including statistical analyses and recommendations to the Assistant Superintendent.

District Policy Student Suspension and Expulsion, Code JGD, last revised in 1998, also covered OCR’s entire review period. Short-term suspension is exclusion for not more than 10 school days; long-term suspension is exclusion for more than 10 but not more than 90 school days. Expulsion is defined as the termination of a student’s membership in school for not more than 12 consecutive months.

Elementary school, middle school, and high school student handbooks contain discipline matrices for each school level. The matrices identify categories of unacceptable behavior and list the types and ranges of disciplinary consequences that may be imposed. The matrices are progressive, so the severity of the disciplinary response increases with repeated misbehavior. In addition, more severe consequences are generally associated with more dangerous or problematic behavior.

The matrices discuss the use of restorative means to “reduce the punitive nature of consequences and create an approach that allows for students to remain in school and learn from their mistakes when possible and appropriate” and to allow administrators to “utilize the existing Positive Behavior Intervention and Supports (PBIS) framework.”

Each matrix allows school administrators and staff, based on their “professional discretion,” to deviate from the prescribed consequence options. But any such deviations from the matrices must be explained and noted in Skyward, the District’s electronic recordkeeping system. Within each matrix, there are 16 misbehavior categories, and within each category there are infraction types ranked 1-6, with 6 being the most egregious. Each matrix identifies consequences based on whether a first violation or a subsequent violation has occurred. For

example, under disrespect and disobedience, the infraction “insubordination” is a class 3 offense. Insubordination, not defined in Policy JFC, is defined in student handbooks as well as the narrative section of the matrix as “gross/deliberate refusal to follow an appropriate direction given by a staff member.” An insubordination first violation is met with a broad range of possible consequences: restorative intervention or 1 to 3 days of detention and/or in-school suspension (ISS). Progressive levels of consequences/interventions come with subsequent violations.

The 2015-16 matrices were substantially similar to the 2021-22 matrices, with limited exceptions. For instance, the 2015-16 matrices divided misbehavior into seven infraction types rather than six.

Each discipline matrix, in its definition section, notes the District’s partnership with the SROs and states that “it may be necessary to invite the SRO into the conversation with the student to help emphasize the importance of making good choices and possibly the negative legal ramifications that the continued behavior could cause. This does not always result in a citation or arrest.”

The District’s use of SROs is governed by two identical Memoranda of Understanding (MOUs), one with the Pennington County Sheriff’s Office and one with the Rapid City Police Department. In 2015, the officers assigned to the schools were referred to as School Liaison Officers. According to District data request responses, SROs are assigned to each high school and each middle school with additional duties serving elementary schools; the District also employs six security officers at Central High School.

The MOUs state that “SROs are responsible for the majority of law enforcement activities occurring at school, during school hours, but not general school discipline.” However, the MOUs also state that among SRO responsibilities are “dealing with law enforcement matters and school code violations” and assuring a “safe environment as to law enforcement matters and school code violations.” The MOUs further state that “[t]he SRO will be involved in school discipline, when it pertains to preventing a disruption that would, if ignored, place students, faculty and staff at risk of harm....”

Whether regarding the action of an SRO or District staff, when a parent or student believes that a student has been subjected to discriminatory discipline practices, District policies provide conflicting information regarding available complaint processes. District Code JFC Student Conduct Policy cross references “AC1 Discrimination/Harassment” and “AC1-P Discrimination/Harassment Procedures,” yet AC1 and AC1-P were neither provided by the District to OCR nor available through the District’s website. In contrast, District Code AC Discrimination and Harassment Policies and Procedures refers complaints to Public Complaint Policy KL, last revised in 2018.

Students, parents or others may use Public Complaint Policy KL for race discrimination complainants by submitting form KL-E1 to the human resources director within 30 days of the alleged violation. The human resources director must submit this form to the parties, commence any investigation within 5 working days, and may gather evidence from the parties and/or try to

resolve the matter between the parties. There are two levels of appeals, the first to the Superintendent and the second to the School Board; there are separate forms for each level of appeal and a tracking form that the District must use throughout the process.

Recordkeeping

The District records discipline, including truancy, offenses through an electronic information system (Skyward) that allows it to track student discipline information by student, referral, consequence, type of offense, race/ethnicity, and other factors. School-site staff enter data into the system. In 2015-16, Skyward was supplemented by paper records. Some schools in the District maintained paper copies of discipline referrals in the Principal's or Assistant Principal's office after the student received discipline, and the incident and consequences were recorded in Skyward. The District continues to use Skyward to track discipline issues. District staff indicated that, as of the 2021-2022 school year, most schools no longer use paper records for major offenses.

With regard to truancy recordkeeping, each school has designated at least one attendance secretary who is responsible for determining and recording this information, including excused and unexcused absences. Attendance secretaries also prepare truancy letters for the appropriate administrator to sign.

Although Principals are required to compile and analyze truancy statistics by ethnicity or race, among other characteristics, and submit an annual report to the Assistant Superintendent, the District acknowledged and staff stated that these reports are not being prepared. Based on OCR's review, the truancy documentation required by Policy JED is not being maintained in student files.

Discipline Data

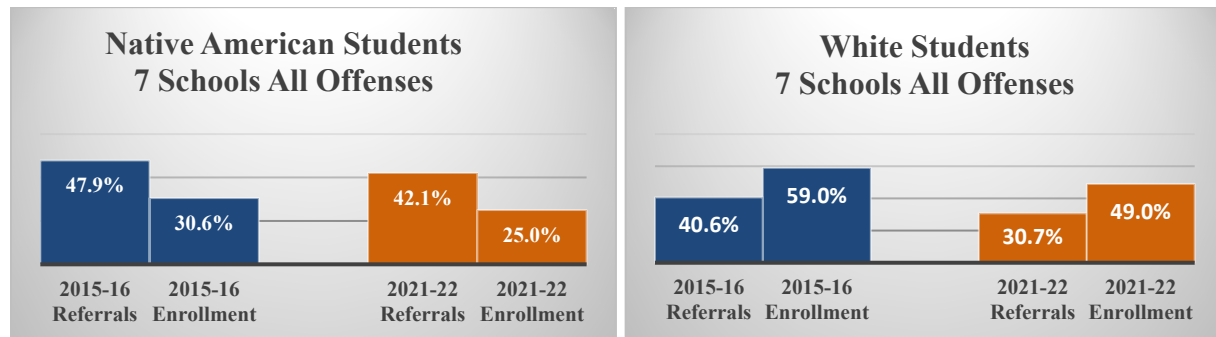
OCR focused on data collected for the 2015-16 and the 2021-2022 school years and looked most closely at seven target schools: South Park, Grandview, and General Beadle Elementary Schools; and South, North, and East Middle Schools; and Central High Schools. OCR also reviewed the District's data reported for OCR's biannual Civil Rights Data Collection (CRDC) from 2009-10 through 2020-21 with particular attention to out-of-school suspension (OSS), ISS, arrest and law-enforcement referral rates for Native American and white students. A disparity is statistically significant when chance alone is unlikely to explain the difference. For all tests of statistical significance, OCR used a p-value threshold (confidence interval) of 0.05. OCR found that in each year, the differences between the discipline rates for Native American and white students were statistically significant in all categories.

1. District Discipline Data Collection

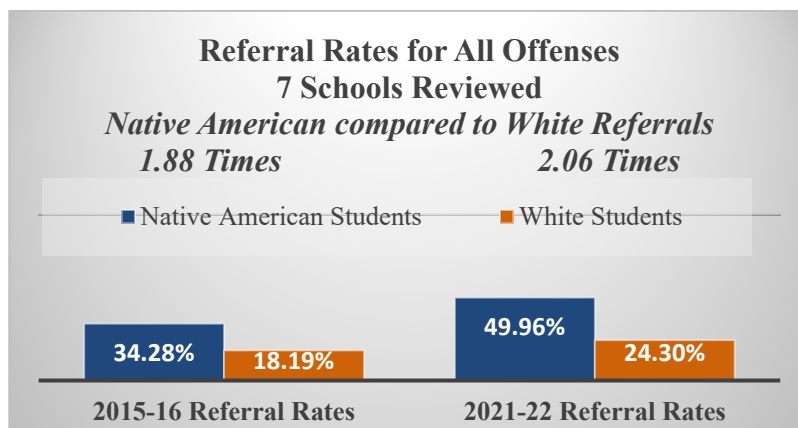
Teachers in the District are responsible for responding to and tracking minor classroom offenses. District policy provides that once a student commits four minor offenses, the fourth offense is disciplined by an administrator as a major offense under the District's discipline matrix. Some teachers tracked minor offenses via Google forms or other systems allowing administrators to

monitor minor offenses and potentially address behaviors before escalating to major offenses. Due to the inconsistent nature of the record keeping for minor offenses throughout the District, OCR was not provided with complete data regarding minor offenses.

In contrast to offenses handled in the classroom, referred major discipline offenses are tracked in the District’s Skyward electronic system. The data gathered by OCR show that Native American students were disproportionately disciplined at higher rates compared to white students across discipline categories, as reflected in the charts below.



In order to assure that a chronic repeat offender would not skew percentages, OCR also analyzed all offense referrals by calculating the number of Native American students and white students referred at least once for any offense divided by the total number of students enrolled of their race or national origin, and the results showed that the disparity was statistically significant. In 2015-16 for the seven schools reviewed, Native American students received major discipline referrals 1.88 times more than white students. In 2021-22, Native American students received major discipline referrals 2.06 times more than white students as illustrated in the chart below.



In order to analyze if the disproportionate referrals violated Title VI, OCR specifically requested 135 student files divided between the seven target schools. The data in the student files was not sufficient to establish that the statistical difference in referral rates was based on nondiscriminatory factors. OCR has not yet supplemented the incomplete files with staff interviews which possibly could provide data concerning such factors or could explain why the apparent harsher treatment of Native American students was based on factors other than their race or national origin.

2. *Specific Discipline Categories*

a. Subjective Discipline Referrals:

OCR reviewed discipline referrals for the categories “Disrespect and Disobedience” and “Disruption.” (subjective discipline referrals). The data showed statistically significant disparities in the discipline imposed on Native American students compared with white students during the 2015-16 and 2021-22 school years.

OCR compared 2015-16 and 2021-2022 discipline data for the seven target schools, all of which saw increases in these offenses from 2015-16 to 2021-22. North Middle School, with the largest middle school Native American population and Central High, with the largest high school Native American population, both saw the most significant increases.

In 2015-16, North Middle School had 115 subjective discipline referrals, and in 2021-22, there were 758. In 2015-16, Central High School had just 22 subjective discipline referrals; this number jumped to 211 in 2021-22. Native American representation in these categories was disproportionate to total Native American population in six of the seven schools. In South Park, white students were referred disproportionate to their total population. However, these rates were not considered statistically significant and were based on a very small sample size of only 14 offenses for the entire year. When the subjective discipline referrals are combined for the seven schools, Native American students accounted for 47.5% of the total subjective discipline referrals even though they only comprised 30.6% of enrollment. In comparison, white students accounted for 43.9% of the total subjective discipline referrals while accounting for 59.0% of the enrollment.

OCR also analyzed the referral rates for subjective discipline referrals in each of the seven schools. Referral Rates were calculated by dividing the total number of students of a particular race or national origin referred at least once for “Disruption of School,” “Disruption of Class,” or “Disrespect Rude to Staff” by the total number of students of that particular race or national origin. In the instances where statistical significance was determined, the relationship between the referral rates and a student being white or Native American was significant, in a manner that disfavored the latter.

For the 2015-16 school year, discipline rates in four schools demonstrate a statistically significant difference: Native American students were referred 8.8 times more than white students at Grandview Elementary School; 4.6 times more at General Beadle Elementary School; 1.17 times more at South Middle School; and 1.8 times more at North Middle School. In three schools, South Park Elementary School, East Middle School and Central High School, differences in referral rates were not statistically significant. Referral rates for all Disruption/Disobedience/ Disrespect offenses in the entire District show that Native American students were referred 2.23 times more than white students.

OCR analyzed, for the 2021-2022 school year, referral rates for subjective discipline referrals in the seven schools. In two schools, differences in referral rates were not statistically significant.

The five other schools demonstrated a statistically significant difference: Native American students were referred 7.1 times more than white students at General Beadle Elementary School; 2.9 times more at South Middle School; 1.45 times more at North Middle School; 2.4 times more at East Middle School; and 1.7 times more at Central High School. The District has not produced the total district discipline data for the 2021-22 school year, so OCR does not have referral rates for all Disruption/Disobedience/Disrespect offenses in the entire District for this school year.

b. Suspensions and Expulsions:

The same patterns seen in the subjective discipline categories were also evident for ISS and OSS for all types of offenses and would warrant further investigation. Based on a review of available CRDC information for the entire District, referral rates for both ISS and OSS from the 2009-10 through the 2020-21 school years were generally statistically significant. Native American students received ISS on average between 2 and 3 times more than their white counterparts and OSS on average around 4 times more.

In OCR's analysis of the District's data for 2015-16, referral rates for Native American and white students with at least one OSS in the following three schools showed a statistically significant difference: Native American students were referred 2.8 times more than white students at North Middle School; 3.1 times more at East Middle School; and 3.1 times more at Central High School. In the four remaining schools, differences in referral rates were not statistically significant.

In 2021-22, referral rates for both ISS and OSS in the seven schools continued to show disparities that tended to disfavor Native American students. For the seven target schools as a whole, Native American students received ISS 4.57 times more than their white counterparts and OSS 4.83 times more.

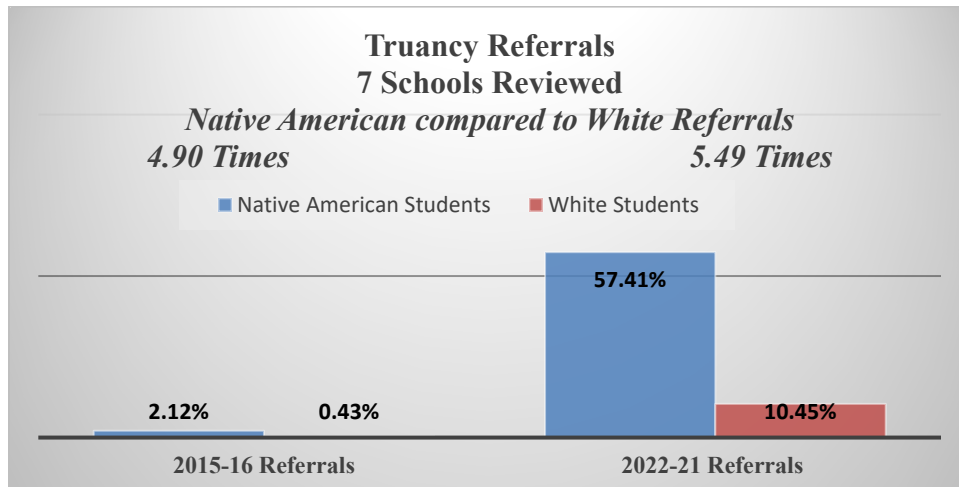
The East Middle School [redacted content] in a 2023 interview noted that ISS was used as “a break for the teacher and student” and was not effective as a discipline measure. Yet despite its reported ineffectiveness, East Middle School reported 248 total ISS offenses in 2021-22; 124 of those were of Native American students. In other words, Native American students were referred 10.5 times more than white students at East Middle School.

OCR also reviewed expulsions for the District, but according to the CRDC data, there were no expulsions in the District for 2015-16 and only one expulsion in 2017-18. The District's data provided to OCR for 2021-22 was consistent in this regard, as it too did not show any expulsions.

3. Truancy

As described in Policy Code JED and JED-P above, after five cumulative unexcused absences, the student is referred to the State's Attorney's Juvenile Diversion Office – a significant consequence that can ultimately lead to a misdemeanor conviction for the student's parent(s) or guardian(s). See SD Codified L § 13-27-11. The State's Attorney's Office runs a truancy intervention program, with a goal of keeping students out of formal court proceedings. Students referred to the State's Attorney are monitored under this program to ensure school attendance.

Native American students consistently received more truancy referrals than their white peers in 2015-16 and in 2021-22. As an overview of OCR truancy concerns in the 2015-16 school year, Native American students received truancy referrals 5.49 times more than white students, as illustrated in the chart below. If absences continue after a referral to the State’s attorney, students may be formally charged.



OCR analyzed the truancy records for each of the seven target schools, which showed stark referral rate disparities for the seven schools. Truancy referral rates in the seven schools and throughout the District compared to enrollment percentages based on race or national origin in 2015-16 also showed significant disparities. Four schools showed a statistically significant difference: Native American students were referred 9.25 times more than white students at South Middle School; 21.4 times more at North Middle School; 15.8 times more at East Middle School; and 3.2 times more at Central High School. The other three schools showed no statistically significant differences in referral rates. For the entire District, Native American students received referrals 4.21 times more than white students.

Referral rates in the seven schools in 2021-22 also showed significant disparities. Native American students were referred 18 times more than white students at South Park Elementary; 4.6 times more at General Beadle Elementary; 10.2 times more at South Middle School; 6.1 times more at North Middle School; 12.5 times more at East Middle School; and 4.8 times more at Central High School.

Additionally, as OCR reviewed truancy records, OCR noted concerns regarding the accuracy of the records. The records had limited to no notations about parent phone conversations. For example, when OCR reviewed a student record related to an incident described by a parent from a Listening Session, there was no record of her discussion with an attendance secretary about her daughter’s absences prior to a truancy referral.

4. Law Enforcement Referrals and Arrests

Law enforcement referral and arrest data in both the 2015-16 and 2021-22 school years show consistent disparities. In 2015-16, four schools reported no or virtually no law enforcement

referrals. In the schools that reported referrals, Native American students were referred 2.9 times more than white students at North Middle School; 2.4 times more at East Middle School; and 1.25 times more at Central High School. Three schools reported no arrests. In the schools that reported arrests, Native American students were referred 7.25 times more than white students at South Middle School; 3.7 times more at North Middle School; 4.7 times more at East Middle School; and 5 times more at Central High School.

For the entire District from the 2009-10 through the 2017-18 school years, CRDC and District data show Native American students received on average around three times more law enforcement referrals than white students and four times more arrests.

Similar patterns existed for law enforcement referrals and arrests in 2021-22. In terms of referral rates for 2021-22 for the five of the seven target schools that had them, Native American students received 5.5 times more law enforcement referrals and 5.84 times more arrests than white students. Examining rates by each school, Native American law enforcement referrals were 10.7 times more than those for white students at General Beadle Elementary School; 14.7 times more at South Middle School; 2.8 times more at North Middle School; 9.7 times more at East Middle School, and 2.96 times more at Central High School. The universe of arrests in the seven schools are small; one school, East Middle School, was responsible for the bulk of the disparities.

Pattern of Increasing Disparities Over Time

All seven schools OCR reviewed saw increases in subjective discipline offenses between 2015-16 and 2021-22. North Middle School, with the largest middle school Native American population, and Central High School, with the largest high school Native American population, both saw significant increases in subjective categories of discipline referrals for all students, suggesting that administrators in Native American-majority schools are increasingly interpreting discipline policies more harshly than administrators in other District schools do. Further, at North Middle School, the disparity between total Native American enrollment and Native American referrals went from 15% in 2015-16 to 23% in 2021-22. All the other schools, except for Grandview Elementary School (which had a negligible number of total referrals) saw continued disproportionate discipline referral of Native American students.

These same disproportionate patterns were also evident for suspensions, truancy and law enforcement referrals and arrests. Again, schools with larger Native American populations, such as General Beadle Elementary School and North Middle School saw large disparities in suspension numbers. But large disparities existed elsewhere as well. East Middle School, with a Native American population of 12%, gave 50% of all in-school-suspensions and truancy referrals to its Native American students in 2021-22. At Central High School, with a 20% Native American population in 2021-22, 43% of all law enforcement referrals and 67% of all arrests were of Native American students.

Community Member Listening Sessions and Interviews

Community Listening Sessions and Interviews on Discipline, Generally:

During 2022-2023 OCR listening sessions, Parent Advisory Committee members, community leaders, parents and tribal education directors voiced concern that Native American students are discriminated against within the District, including in discipline. Two parents shared that the District does not punish students for harassing Native American students before such events escalate into a discipline situation. They each shared stories of the District not responding to harassment but punishing Native American students who defended themselves.

District Interviews and Other District Evidence on Truancy

In 2016, [redacted content] told OCR that he would send letters to parents of truant students asking how they could help. If they did not hear back, he and his staff would do home visits to those families. He saw good success from this initiative as the year after this program started, his office sent out one-third as many letters as in the previous year. He also attempted to implement several incentive programs directed at Native American students' truancy rates, such as sending personal notes and gift cards to local restaurants to students with perfect attendance. Turning to the 2021-2022 school year and into the present, and as noted above, the [redacted content] informed OCR that she did not have any involvement with truancy issues.

School administrators OCR interviewed in 2023, including [redacted content], stated that District schools use attendance secretaries to make absentee determinations that ultimately lead to truancy referrals. The secretaries are given broad discretion to make such determinations. At some schools, the secretaries work with student success coordinators to address truancy issues. OCR reviewed copies of 2021-2022 letters sent to parents informing them of truancy issues with their children. The truancy letters do not explain how to report an absence, and provide information from District Policy JE, which specifically states, “[t]he District reserves the right to deem an absence excused or unexcused,” without providing the criteria from Policy JE for either type of absence.

OCR learned that school Principals and other administrators are often uninvolved in the truancy process. In fact, some Principals OCR interviewed were unaware of basic provisions of the District's truancy policies. For instance, [redacted content] told OCR in a 2023 interview that truancy referrals issued after 5 consecutive unexcused absences, rather than 5 cumulative absences. The [redacted content] stated that she thought truancy referrals were made after 15 consecutive unexcused absences. [redacted content] admitted that he was not fully aware of the District's policies and that he leaves absence decisions to the attendance secretary.

[Redacted content] noted in her interview that if a parent calls the school about an absence, she will consider the student excused. The Assistant Superintendent and [redacted content] stated in his 2023 interview that although parents technically have twenty-four hours to call in and excuse an absence, there were occasions when he excused absences that were weeks old. In other words, unexcused absences can become excused absences if channels of communication are open and clear to parents. The District has not produced documents or interview information reflecting that parents are consistently informed how to address absences leading to trancies, including regarding the informal systems used in some schools.

OCR learned that unlike the home visits described by the former [redacted content] in 2016, the common practice in 2021-2022 was to send SROs along with school staff to do home visits for truancy. The SRO interviewed by OCR in 2023 stated that on some home visits, people would not open the door after seeing a law enforcement officer arriving.

Some Principals, in 2023 OCR interviews, insisted that it was necessary to send SROs on such checks for reasons of safety. The Superintendent said that the SROs would visit a student's home only if a significant time passed without hearing from the family, noting that truancy checks were not part of the SRO job description. However, the [redacted content] stated in a 2023 interview that SROs almost always make these home visits to students from his school. Native American parents told OCR in 2023 listening sessions that they found it intimidating and traumatic when law enforcement would show up at their door, especially unannounced.

In 2023 interviews, OCR asked District officials about causes for the high truancy rates of Native American students compared to white students. The Superintendent reported that certain Native American tribes, such as the Lakota, Dakota, and Nakota Tribes, do not commonly value education and inform their students that they do not need to graduate. Additionally, she said that the District struggles with what she termed "Indian Time." The Superintendent explained her meaning by stating that "Native Americans view time differently" than other community members so that for instance, "arriving two hours late" is common and results in being marked absent. She also pointed to the fact that Native American families, many living in multigenerational homes, suffered higher losses during the pandemic and as a result, Native American students are more likely to stay home from school because of COVID outbreaks or during flu season.

In addition to these views, some school administrators, including the Superintendent and the [redacted content], pointed to high poverty levels, gang activity, and general family dynamics as causes for their Native American students' high truancy rates.

The [redacted content], stated during a 2023 OCR interview that any discrepancy in truancy rates between Native American and white students is likely because Native American parents less frequently contact the school to excuse their students. At the same time, multiple interviewees, including the [redacted content], informed OCR during 2023 interviews that the schools were less likely to have accurate phone or email addresses for Native American families than for white families. So, if calls about absences are made to Native American parents, they are less likely to receive those calls and thus are not in a position to promptly respond.

As mentioned above, District policy requires that each Principal compile and analyze truancy statistics by ethnicity or race and prepare an annual report including statistical analyses and recommendations to the Assistant Superintendent. The Superintendent told OCR these reports generally are not being prepared. In addition, most of the Principals and other school officials interviewed in 2023 were unfamiliar with the requirement to do so.

Community Listening Sessions and Interviews on Truancy, In Particular:

Native American community members provided a different perspective than the District on truancy. In particular, a PAC executive leadership member stated in a 2023 listening session that Lakota values support a strong work ethic and that nothing in the Lakota culture supports students missing or being late to school. However, according to this individual, there is a need for greater cultural awareness in the District. For instance, the funeral services of extended family members can affect student attendance. While others may go to a funeral for a day, in the Native American community, the process surrounding death and grieving could take one to two weeks, which is not always accepted as an excused absence.

Participants in the listening sessions also voiced concerns regarding transportation options. A PAC member noted that there are Native American students from families struggling to meet basic needs, lacking transportation to school if they miss the bus.

In addition, Some community members reported to OCR that some students' legitimate absences were not excused after a parent called. For instance, one parent told OCR that during the 2021-22 school year she called to excuse her daughter who was experiencing [redacted content]. When she called, the attendance secretary asked, "Is she sick?" and the parent responded "no." The attendance secretary then reportedly stated the absence was not excused. This student ultimately was deemed truant and referred to the State's Attorney's office. OCR obtained copies of this student's attendance file. OCR found the parent's account credible, and the file showed no record of the attendance secretary's conversation with a parent.

Law Enforcement and SROs

According to the District, SROs spend most of their time at the middle schools and high schools. School officials told OCR that SROs do not make discipline referrals and generally get involved with activity like assaults, fighting, and drug possession. During 2023 OCR interviews, school administrators, including the [redacted content], stated that these SROs are also responsible for making arrests of, and issuing citations to, District students.

An SRO needs a minimum of three years in the police force before starting in a school, according to the SRO whom OCR interviewed in 2023. Should an SRO elect to seek training, an MOU provision does provide for reimbursement. The SRO interviewed by OCR stated that some District SROs participate in trainings at the National Association of School Resource Officers yearly convention; however, no training is required prior to SRO service in the schools.

In 2023 interviews, several administrators, including [redacted content], specifically pinpointed increased gang activity to explain law enforcement referral and arrest disparities. However, during the 2021-2022 school year of the 197 arrests in the seven schools only three were coded as gang-related offenses, and of the 232 referrals to law enforcement only 8 were coded as gang-related offenses.

Community members raised concerns during the 2023 OCR listening sessions regarding the District's use of SROs in the schools and the impact on Native American students. A tribal education director noted that the SRO program does not benefit Native American students. She

explained that SROs should be used for conflict resolution and not just to break up a fight, which was an observation also made by [redacted content]. Ateyapi (“fatherhood” in Lakota) is primarily a mentoring program funded by outside grants. Native Americans knowledgeable about Lakota culture lead the program and have provided services to Native American students in the District for over 28 years. [redacted content] believed the District performed better in the past when focused more on de-escalating conflict. A listening session participant echoed these concerns noting that in earlier years some outstanding SROs worked in the schools and that these SROs knew how to handle conflict. This participant voiced concern over the current SROs, maintaining that the police department was sending low-performing officers not well versed in conflict resolution into the schools.

District Complaint Process

OCR also gathered evidence regarding the recourse a parent or student might have if they believed that the student was being discriminated against based on race or national origin in a disciplinary action by the District and/or use of an SRO. All the school officials interviewed by OCR in 2023 stated that they try to resolve complaints at the school level, which is not a feature of Public Complaint Policy KL. While some said that they then, as needed, informed complainants about the District’s formal process, others did not know any details about the formal policy.

For instance, the [redacted content] was unfamiliar with the formal complaint policy, while the [redacted content] knew that complaints should be processed “downtown,” but said she would try to resolve them on her own. The [redacted content] stated that while she has received calls about parents complaining their children are picked on because of their race or national origin, and she works with them, she does not know how to file a complaint. The [redacted content] stated he tries to resolve all complaints, and if he cannot, he directs complainants to the central office.

The Indigenous Education Task Force’s parent survey illustrated Native American community concern with the District’s complaint processes. The survey asked parents whether they ever needed to resolve an issue with the District. Thirty-six percent said yes. Of those thirty-six percent, thirty-three percent filed formal complaints. Seventy percent of the complaint filers stated that the complaint process was not clear or understandable (the survey does not specify a particular complaint policy, such as KL, but asks about formal complaints generally).

One parent, when asked in the survey about filing complaints, stated that District policies routed parents first to the individual school. Resolution attempts at this level were sometimes “futile given certain circumstances.” The parent further stated that “there is an unwillingness to acknowledge and directly address racism – even when it is direct and overt.”

Analysis

OCR’s analysis of the District’s discipline data and practices raises concerns that the District appears to treat Native American students differently than white students at the referral stage and the sanctioning stage of the discipline process.

District data reflect persistent, and statistically significant, disparities in discipline for Native American students compared with white students over all the years OCR reviewed, across all the schools OCR reviewed. District documents and administrator interviews reflected different treatment in specific instances for Native American students with respect to discipline, notably frequently with respect to truancy, compared to white students, again across all the years OCR reviewed. District officials reported to OCR that they modify truancy records based on parent input but the District does not advertise the availability of such input in any District policy and administrators reported to OCR that Native American parents less frequently contact their schools to excuse their students. OCR notes that even where a parent testified to OCR that the parent had explained a justification for her daughter's absence from school, the District records do not reflect consideration of the parent's explanation of a Native American student's absences. OCR also notes with concern that the Superintendent and multiple school administrators relied on biased stereotypes regarding Native American people, including a perception that particular tribes do not value education and operate on what the Superintendent termed "Indian Time," to explain causes of high truancy rates. When OCR interviewed tribal leaders regarding the values the Superintendent attributed to the tribes, tribal leaders testified that those perceptions are not correct.

OCR's document reviews also yield concern regarding the District's fulfillment of its recordkeeping obligations. After reviewing the District's discipline records including for truancy, OCR selected and requested the complete student file for approximately 135 students and analyzed the discipline records therein. These records were not precise enough to determine whether Title VI violations occurred. For instance, discipline spreadsheets and the student files requested did not reflect the circumstances surrounding discipline offenses and/or deviation from established consequences, the perspective of the offending student, the perspective of witnesses, or any communications with parents about discipline offenses; the records lacked any contemporaneous notes and/or phone logs created by staff, emails or other correspondence, investigative notes, or other key documentation. The District also did not provide records on home visits by SROs to absent students. These home visits were of particular concern to Native American community members interviewed by OCR. Absent such records, OCR cannot determine whether home visits by SROs contribute to differential treatment of Native American students.

The method of recording minor infractions varies by teacher and by school. For some schools, minor infractions are recorded on Google forms, accessible to school administrators, while in others many teachers use their own tracking system, which administrators cannot view. Without such data, the District and OCR do not have the ability to determine whether responses to minor classroom infractions are consistent and appropriate. Responses to such infractions can play a significant role in whether students ultimately receive a discipline referral or not and whether students are treated differently based on race or national origin in handling minor infractions.

When considered in light of the stark disparities in the statistical data, OCR's review of the District's practices revealed several inconsistencies and deficiencies that raise concerns regarding the District's compliance with its nondiscrimination obligations under Title VI. These include:

- Tracking of offenses that could lead to discipline referrals are inconsistent across the District. The method of recording minor infractions that could ultimately lead to a discipline referral varies by teacher and school. For some schools, minor infractions are recorded on Google forms, accessible to school administrators, while in others many teachers use their own tracking system, which administrators cannot view. This inconsistent recordkeeping impedes OCR's ability to assess the bases for disparities to determine whether the stark disparities present in District discipline practices applied to Native American students compared to white students are legally justified. In addition, the inconsistent recordkeeping practices impede the District's ability to evaluate and assess its own practices. Access to such records is an important element in effectively monitoring patterns of differential treatment.

Records and student files provided to OCR lacked documentation and/or did not provide enough detail to determine when or if Title VI violations occurred.

- Inconsistent practices within and among schools might leave Native American students vulnerable to greater and more frequent penalties for truancy than white students receive. The attendance secretaries who make absentee determinations that ultimately lead to truancy referrals are given broad, nearly unfettered discretion in this regard. It is unclear whether such staff have the requisite knowledge, expertise, and supervision to exercise such authority consistently. Also, multiple school administrators said if a parent calls the school about an absence that student will ultimately be considered excused, but evidence indicated that this practice was not effectively communicated or consistently available to Native American parents and guardians.
- Home visits with an accompanying SRO for truant students are not handled consistently across the District and tend to be used more regularly in Native American-majority schools. For instance, North Middle School is a majority Native American school with the highest percentage of Native American students in any District middle school or high school and uses SROs consistently for home visits. North also had the second largest number of truancy referrals of the seven schools (only the much larger Central High School had more): 72% of the North referrals were of Native American students. At the same time, OCR did not receive truancy files referencing such visits or any other records tracking the impact of such visits on attendance.
- The District's definition of "habitual disobedience" raises concerns because the definition is overly vague yet has severe consequences and does not recognize that for some students, this type of ongoing behavior may suggest the possibility of an emotional or behavioral disability, which would trigger the District's duty to identify and evaluate a student suspected of having a disability. As the above incident with the student under medical care for an ongoing mental health issue indicates, the District may not engage in proper evaluations when made aware of a student with a possible disability.
- Lack of compliance with or knowledge of the District complaint process: the Superintendent and school administrators alike evidenced little specific knowledge of the District's formal complaint policy, Public Complaint Policy KL, and often do not properly follow it. All the

school officials interviewed by OCR stated that they try to resolve complaints internally, which is not a feature of the complaint policy and possibly requires complainants to address the issue with the staff accused of the discrimination. While some officials indicated that they then, as needed, informed complainants about the District process, others did not know any details about the formal policy. Additionally, parents reported that the District's complaint process was confusing, difficult to maneuver, and left discrimination complaints unresolved. These practices, ungirded by actual policy, leave students vulnerable to race or national origin discrimination.

Thus, a need exists for better training of school and District administrators on the District's complaint process and for better communication with students and parents as to how to file a complaint and on proper complaint steps should a parent or student want to challenge a discipline sanction.

Advanced Learning

OCR's investigation into the District's advanced learning opportunities disclosed significant disparities with respect to access, referral, identification, and selection for the District's advanced learning programs and courses including honors courses and AP courses. Accordingly, OCR's investigation focused on advanced learning opportunities in the District middle schools, Central High School, and Stevens High School. OCR confirmed a statistically significant pattern of underrepresentation of Native American students in advanced learning opportunities. Equal access to advanced learning also emerged as a significant concern in several ways.

Advanced Learning Policies

The District maintains the following relevant written policies:

- Student Acceleration Support (Policy Code IGBB) (and accompanying flow chart), adopted in 1982 and last revised in 2019.
- Earning College Credit in High School (Policy Code IGCF), adopted in 2016 and last revised in 2020.

The Student Acceleration Support policy guides the implementation of district acceleration practices for high ability students in grades K-12. In addition to discussing advancing students to another grade level, the policy also incorporates use of AP and dual enrollment courses, and other methods for accelerating a student's learning.

The Graduation Requirements policy, in relevant part, notes that the District offers dual credit coursework in high school and dual enrollment courses in collaboration with Western Dakota Technical College.

AP and dual enrollment requirements are guided by the Earning College Credit in High School Policy. This policy is designed to capture the District's belief "that high school students need to be continually challenged in order to maintain their academic interests."

The policy states that the District offers AP programs at its "comprehensive" high schools

(Central High and Stevens High), which “will go through the district’s instructional council process to ensure there is sufficient student interest, qualified staff to teach, fiscal support, and curriculum support and alignment.” Students are entitled to take an AP class at a different District high school if the class is not offered at their school but transportation is not provided by the District. The policy also “prohibits inconsistent practices that could discourage access, equity, and alignment.”

Advanced Learning Data

The District offers no GATE program or advanced learning courses in elementary schools. Accordingly, OCR focused on the middle schools and high schools that offered advanced learning courses and AP classes, with an emphasis on schools with the highest Native American enrollment.

Advanced Learning Courses

a. Middle Schools:

District middle schools offered several advanced learning courses in 2015-16. At this level, according to the Gifted Services Director, some schools used only standardized tests to determine eligibility for placement in advanced courses. The other schools relied on a combination of standardized tests, teacher recommendations and a school counselor review of annual assessments in determining eligibility.

Middle schools offer a handful of advanced courses, primarily 8th grade Algebra I, a high school level course. Some schools offer Advanced English, Advanced Reading and Advanced 7th Grade Math. According to the District’s data request response, enrollment in these middle school courses is based on meeting the cut-off scores to two standardized tests: A score of at least 232 on RIT (Rasch-UnIT) and a score of at least 2600 on the seventh grade SBAC (Smarter Balanced Assessment Consortium) test. While the District maintains that middle school advanced learning course enrollment is based purely on meeting standardized cut-off scores, several school and District officials, including [redacted content], told OCR in 2023 interviews that teacher recommendations are also part of the process. Additionally, letters sent home to parents of advanced 7th grade math students also state that enrollee selection is at least partially based on teacher recommendations. These eligibility standards are not captured in the District’s formal written policies on advanced learning.

In the 2015-16 school year, across all the District’s middle schools, Native American students represented just 8.10% of students in advanced learning courses, despite being 21.20% of the total school population. In contrast, white students represented 82.39% of all advanced learning students, but just 68.82% of the total student population. The 2021-22 data indicates that Native American students continued to be enrolled in advanced courses well below their proportion in the student population. In middle schools across the entire District, only 2.48% of all advanced learning students were Native American while comprising 18.08% of the school enrollment; 75.21% were white while comprising 58.72% of the school enrollment.

b. High Schools:

In 2015-2016, the District offered three types of courses for high school students categorized as advanced coursework: 1) advanced high school courses; 2) AP courses; and 3) courses offering the opportunity to dual enroll in a District high school and a postsecondary institution.

At Central High School, entry into advanced classes for incoming freshman was based on counselor review of standardized test scores. According to [redacted content] in a 2016 interview with OCR, these counselors would then meet with the student and the student's family to discuss options for enrollment in these courses. At Stevens High School, no screening of students was conducted. Students who wished to enroll in advanced learning classes were only required to obtain their parents' permission.

At the high school level, assessments were rarely relied upon to evaluate whether a student may qualify for advanced learning, according to 2016 interviews with the [redacted content] and others. The position of gifted services director no longer exists, and the responsibilities of that position are currently handled by the Advanced Placement Coordinator and other advanced learning opportunities are overseen by the Director of Teaching, Learning, and Innovation. In 2015-2016, data for students enrolled in advanced courses at the high school level revealed that although Native American students comprised 17.67% (674) of total high school enrollment, they accounted for only 6.97% of the students enrolled in an advanced course at the high school level. White students made up 73.91% of the high school population in 2015-16 yet accounted for 85.45% of the high school students enrolled in an advanced course.

Looking more closely at just Central High School – the high school with largest Native American enrollment – in 2021-2022, only 38 out of 335 advanced learning students were Native American, or 11.34% of the total while comprising 19.58% of the school enrollment; 78.81% were white while comprising 57.05% of the school enrollment.

AP Courses

In 2021-22, the AP classes offered at Central High School were: AP English, AP Chemistry, AP U.S. History and AP Statistics. While Central High School offered only these four AP classes, Stevens High School offered 10, even though Stevens High School is a slightly smaller school than Central High School. According to data provided by the District's [redacted content] following her 2023 interview, Central High School is 19.58% Native American, while Stevens High School is only 3.58% Native American. District policy allows Central High School students to take AP classes at Stevens High School but, especially given the lack of transportation provided by the District, it is unlikely that many Central High School students could take advantage of this option.

For AP courses in 2015-16, teacher academic recommendations were required at both schools, as explained in 2016 interviews of the Central High School and Stevens High School [redacted content] As for dual-credit courses, any juniors or seniors in good academic standing could enroll in a dual credit course through Western Dakota Technical College. Dual credit enrollment

in other public postsecondary institutions in South Dakota required that the student meet the admission standards for that institution.

All AP courses are open enrollment with no cut-off scores, according to the District’s data request responses, but as with advanced learning course requirements, these standards are not incorporated into the District’s formal written policies. As with the requirements during 2015-16, students need only be a junior or senior “in good standing” to enroll in AP courses. The District’s [redacted content] explained to OCR in a 2023 interview that being “in good standing” means not facing any major discipline issues like suspension or expulsion. Dual enrollment classes are also open to all, subject to state requirements.

Information on AP courses is on school websites and is discussed in parent meetings, according to the [redacted content]. According to the [redacted content] in his 2023 OCR interview, Central High School also has informal meetings, termed “grab-time meetings” with juniors and seniors to discuss AP options with them.

The same disparities evident for advanced learning courses held true for AP enrollment. In 2015-16, Native American students made up just 5.22% of AP course students compared to 19.30% of the school enrollment, while white students comprised 86.79% of AP course students compared to 80.70% of the school enrollment.

In 2021-22, only 4 out of 86 AP students at Central High School were Native American, or 4.65% of all AP students, while white students comprised 80% of all students with a 57.05% school enrollment.

AP students are not required to take the AP exams but must do so to receive college credit. Those taking the test are required to pay a fee mandated by the college board. But, as explained by the District’s [redacted content] in her 2023 interview, when signing up for the test a student can self-select payment of a reduced rate (\$53). If the reduced rate is still too burdensome, the Advanced Placement Coordinator will work with the student to fully cover the test fee. If a student tells her that they cannot pay the reduced fee she will first propose a payment plan, as the District wants a student to have “some skin in the game” concerning AP testing. If the student rejects that proposal, the District fully covers the fee. Although she stated that students will typically first go to their teacher and then ultimately connect with her, she also stated that usually only one student a year asks for such assistance. However, communication with students and their parents about the AP test fee system appears ineffective and inconsistent. Initially, all students are told that fees are required for AP tests. Students are not informed that a system is in place that can reduce, and potentially, eliminate fees until already enrolled in AP classes.

Advanced Learning Selection Documentation

As noted above, individual student files are lacking in information and there does not appear to be school-level accountability for documenting advanced learning. Evidence gathered about advanced learning from elementary school through high school suggests that the District does not appear to carefully monitor or track students interested or involved in advanced learning. School and District administrators could not describe with any certainty how the District

monitored the progress of advanced learning opportunities. In 2023 OCR interviews, [redacted content] was unaware of any such tracking and the [redacted content] indicated that monitoring of AP student progress was left to the individual teachers. The Superintendent explained that AP progress was the responsibility of the District's College and Career Readiness Department but acknowledged that she was not confident that the department was properly functioning.

Lastly, District officials also did not include the Title VI Indian Education Manager in any advanced learning discussions. For instance, the District's Director of Teaching, Learning & Innovation told OCR in her 2023 interview that she never discussed these issues with the Title VI Manager and never sought her advice or insight on ensuring that the Native American population has appropriate access to the District's advanced learning programming. The Superintendent confirmed that the District does not consult with the Title VI manager on these issues.

The Superintendent in 2023 OCR interviews attributed the smaller numbers of Native American students enrolling in advanced learning, compared to white students' enrollment, to the trend among Native American families to enroll their students at a later age than white students and also to the high mobility rate among Native American students.

OCR requested complete files for students enrolled in advanced learning or AP courses for a select number of District students. The files that the District provided shed no light on how enrollment, and related, decisions are made. Student information provided by the District included each student's attendance, discipline issues, and grade records. Absent from the files were other relevant information such as counseling notes, teacher recommendations, parent correspondence, high school "grab time" meeting notes (as discussed below) and/or placement testing scores. This limited recordkeeping impeded OCR's ability to make determinations as to the legal adequacy, under Title VI, of the District's advanced learning program.

Analysis

OCR examined whether the District treats Native American students differently than white students with respect to access, referral, identification, and selection for the District's elementary school advanced offerings, if any; middle school advanced learning courses; and high school AP and advanced learning courses.

OCR's analysis of existing data indicates that Native American students remain enrolled in advanced learning and AP courses well below their proportion in the student population. For instance, the 2021-22 data shows that at the middle school level across the entire district, 103 students were enrolled in Advanced English 8; none were Native American. The data indicated 138 students took Algebra 1 but only 6 of those students were Native American. On a percentage basis, only 2.48% of all advanced learning middle school students were Native American despite their constituting 18% of the total middle school population. In contrast, white students made up 75% of all advanced learning enrollees, although the total white middle school population was 59%.

At Central High School, only 38 out of 335 advanced learning students were Native American, or 11.34% of the total, while white students comprised 78.81% of all students. For AP classes, only 4 out of 86 students were Native American, or 4.65% of all AP students, while white students comprised 80% of all students. This was despite a total Central High School Native American population of 19%, with a white population of 57%.

As the data indicates, over many years Native American students have participated in advanced courses, including AP courses, at substantially lower rates than their white peers. OCR is concerned that the district has not taken appropriate action to address whether it offers equal access to these courses. In particular:

- The eligibility requirements for advanced learning or AP courses are not addressed in the District’s formal written policies, including in the Student Acceleration Support Policy (Policy Code IGBB) or in the Earning College Credit in High School Policy (Policy Code IGCF).
- Policy IGCF also “prohibits inconsistent practices that could discourage access, equity, and alignment.” Yet, differences in the number of AP offerings at the two primary high schools seemingly belies this policy: While Central High School offered only four AP classes in 2021-22, Stevens High School offered ten, even though Stevens is a slightly smaller school than Central. Central is 19.58% Native American, while Stevens is only 3.58% Native American, suggesting both reduced access to such classes for Native American students and a lack of District-wide equity. While the District claims that students are free to take any AP class at any District school, this is logistically much more difficult for Central High School students.
- OCR is concerned that the District’s ineffective and inconsistent communication regarding AP test fee waivers might be contributing to the low numbers of Native American students enrolling in AP classes despite the District’s putatively open enrollment status and the informal financial assistance to cover the test fee.
- The District reports that it informs all students when enrolling in AP classes is that fees are required for AP tests. But as explained by the District’s AP coordinator, students and their parents are not informed that in fact the District will cover AP test fees for students who cannot afford them but only after the student goes through a series of steps, which includes first applying for a reduced rate, and ultimately going to the Coordinator for full coverage of fees.
- Finally, the District does not monitor or track students involved in advanced learning. No central tracking system appears to exist and in Central High School, monitoring of AP student progress seems left to individual teachers. The Superintendent also expressed concern over the functioning of the College and Career Readiness office, the District department responsible for overseeing the AP program. Also, the Indian Education Manager is generally left out of the loop on advanced learning matters. District officials, including the Superintendent, confirmed that the District does not consult with the Indian Education

Manager on how the District's practices affect Native American students or on how to improve access to advanced learning for these students.

Following consecutive years of stark disparities in advanced course taking between Native American and white students, the District's failure to describe its practices regarding eligibility for advanced courses as well as for fee waivers in District policies parents and students might access, to provide across District schools equal offering of – or offerings sufficient to meet student interest in – such courses, and ineffective and inconsistent communication of the availability of waivers for fees associated with such courses all raise Title VI compliance concerns for OCR because these failures individually and cumulatively may contribute to the small number of Native American students in advanced courses.

Conclusion

Prior to the conclusion of OCR's investigation and pursuant to Section 302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this compliance review and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will address the evidence obtained and all the concerns investigated. The District's commitments in the resolution agreement include:

- Examining the root causes of racial disparities in the District's discipline and advanced learning programs and implementing corresponding corrective action plans.
- Employing a discipline equity supervisor with expertise in nondiscriminatory discipline practices to help the District implement the corrective action plan and the agreement.
- Employing an advanced learning coordinator with expertise in addressing the underrepresentation of Native American students in advanced learning programs and courses to help the District implement the corrective action plan and the agreement.
- Establishing a standing committee, consisting largely of Native American community members, to inform implementation of the plans.
- Revising its discipline and truancy policies and procedures, including regarding law enforcement involvement in school discipline.
- Revising its advanced learning policies and procedures.
- Regularly analyzing and tracking its student discipline and truancy data, and its advanced learning data to identify and, as needed, address possible areas of discrimination.
- Providing training to staff on the revised policies and practices.
- Reporting disaggregated discipline and advanced learning data.

This concludes OCR's investigation of the review. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues

other than those addressed in this letter. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

Sincerely,

Adele Rapport
Senior Legal Advisor to the Assistant Secretary
and the Deputy Assistant Secretary for Enforcement