

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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DENVER, CO 80204-3582

REGION VIII
ARIZONA
COLORADO
NEW MEXICO
UTAH
WYOMING

April 18, 2012

Mr. Silverio Garcia, Jr.

Re: Tucson Unified School District
Case Number: 08-12-1080

Arizona Department of Education
Case Number 08-12-1119

Dear Mr. Garcia:

On January 17, 2012, we received your complaint alleging the Tucson Unified School District discriminated on the basis of national origin. Specifically, you allege that the District: 1) discriminated against Latinos by attempting to limit their participation at Board meetings of particular interest to the Latino community, including by selecting a meeting room that the District knew could not accommodate all of the individuals interested in attending; and 2) discriminated against national origin minority individuals on the basis of their limited English proficiency (LEP) by failing to provide them with meaningful access to District Board meetings, the District's website, and Board policies that are available to non-LEP individuals. We have determined that we have the authority to investigate these allegations consistent with our complaint procedures and applicable law.

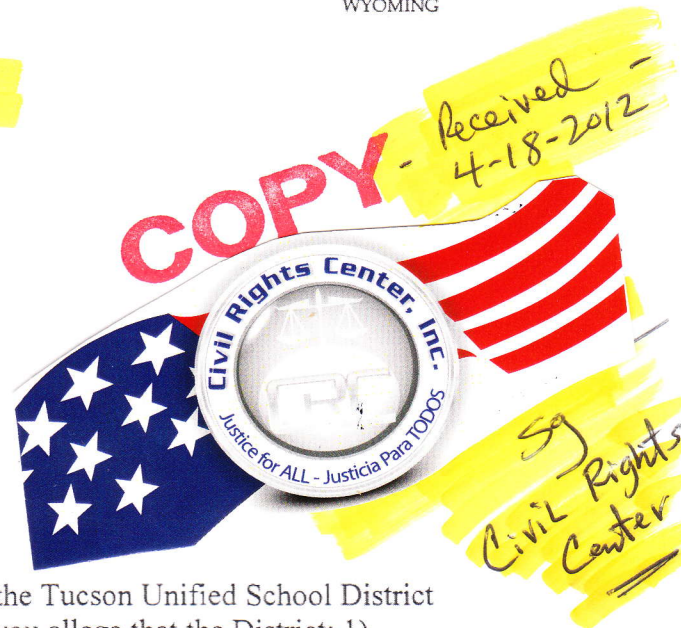
We are responsible for enforcing Title VI of the Civil Rights Act of 1964 and its implementing regulation at 34 Code of Federal Regulations Part 100, which prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the U.S. Department of Education. As a recipient of Federal financial assistance from the Department, the District is subject to this law and 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 allegations above were 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*.

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.

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

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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.

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.

You also allege that the District's decision to suspend its Mexican-American Studies (MAS) Program – and not suspend any of its other ethnic studies programs – and the Arizona Department of Education's (ADE) determination that the MAS Program violates Arizona Revised Statutes (ARS) § 15-112 both violate Title VI.¹ We are still evaluating these allegations and will notify you once we have made a decision on whether to open these for investigation.

In addition, you allege the District discriminated against Latinos when it rescheduled a Board meeting in May 2011 that was of particular interest to the Latino community from a large auditorium to a small meeting room that the Board knew could not accommodate all of the individuals interested in attending. In an e-mail to you on February 10, 2012, we explained that discriminatory acts that occurred more than 180 days before the date that we receive a complaint, in this instance, July 21, 2011, are considered untimely and would be dismissed unless a waiver of the time limit is applicable, and we explained the circumstances in which a waiver would be granted. In response, you asserted that a waiver should be granted for your allegations regarding the May 2011 Board meeting because you could not reasonably be expected to know the act was discriminatory within the 180-day period, which is one of the circumstances in which a waiver may be granted. In support, you allege that you were not aware of the alleged discriminatory acts because you were not looking into the situation and did not learn of the discrimination until recently. We do not agree that you could not have reasonably known of the alleged discrimination in a timely manner because nothing prevented you from learning about your allegations regarding the May 2011 Board meeting in a timely manner, and the information regarding that meeting was publicly available. As a result, we are denying your waiver request and are dismissing your allegation regarding the May 2011 Board meeting effective the date of this letter.²

Further, in an email on April 11, 2012, you allege that the District discriminated by not renewing the employment contract of the MAS Program Director. As we explained to you on the phone

¹ Although you filed your complaint against the District, you also allege that ADE's determination regarding the District's MAS Program also violates Title VI. As a result, we have considered your complaint to be against both the District and ADE, and we have added the ADE as a party to your complaint. We have assigned case number 08-12-1119 to this, and, again, we are evaluating these allegations and will notify you once we have made a decision on whether to open these for investigation.

² Although we are dismissing your allegation regarding the Board meeting in May 2011, the Board's action in scheduling that meeting will still be examined in our investigation to the extent it is relevant to evaluating the first allegation accepted above.

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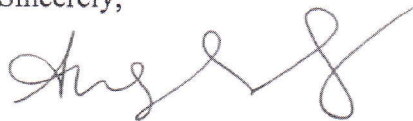
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on April 18, 2012, in general, we cannot investigate alleged discrimination against an individual without that individual's consent. As a result, we are closing this allegation effective the date of this letter. Please feel free, however, to inform the MAS Program Director that he may file his own complaint with our office if he wishes.

This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

We are committed to prompt and effective service. If you have any questions regarding your complaint, please contact Jacob Smiles, Attorney Advisor and the primary contact for this case, at (303) 844-0745 or by e-mail at Jacob.Smiles@ed.gov. You may also contact me at (303) 844-6083.

Sincerely,



Angela Martinez-Gonzalez
Supervisory General Attorney

Silverio Garcia, Jr.
Founder & Executive Director

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