



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VIII
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November 16, 2018

XXXX, Interim Superintendent
Adobe Mountain School
Arizona Department of Juvenile Corrections
2800 West Pinnacle Peak Road
Phoenix, Arizona 85027

Via email only to XXXX@XXXX

Re: **Adobe Mountain School**
OCR Case Number: 08-17-5001

Dear Superintendent XXXX:

The Office for Civil Rights (OCR) of the U.S. Department of Education (“Department”) has completed its compliance review investigation of Adobe Mountain School (“School”) to determine whether the School discriminates against students with disabilities by treating them differently on the basis of disability or denying them a free appropriate public education (FAPE).

OCR investigated these issues to determine whether the School’s services are consistent with the requirements of Section 504 of the Rehabilitation Act of 1973, 29 United States Code (U.S.C.) § 794 *et seq.* (“Section 504”), Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et seq.* (“Title II”), and their implementing regulations. The School is a recipient of Federal financial assistance from the Department and a public entity. Accordingly, OCR has jurisdiction to investigate and resolve the issues.¹

OCR’s investigation consisted of reviewing voluminous records and conducting extensive interviews, including, but not limited to:

- reviewing the special education files of over 100 students, including all available files for students with disabilities who attended the School during its fiscal year (FY) 2017;²
- reviewing all purchase orders for private providers of school psychological services and related services during FY 2017;
- reviewing the School’s most recent audit conducted by the Arizona Department of Education (ADE);
- reviewing all of the School’s relevant policies;
- touring the School;
- conducting in-person interviews with 19 education staff members, including the Interim Superintendent, an Education Program Administrator (effectively, a principal), the School’s primary Special Education Teacher, 13 teachers, and three support staff; the

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private speech-language pathologist with whom the School contracts to provide services to students; and 12 additional staff members, including the Juvenile Ombuds and Medical Director;

- conducting phone interviews with the former interim superintendent (who served from approximately January 2017 to October 2017) and the former guidance counselor/ Section 504 Coordinator (who served for much of FY 2017);³ and
- conducting outreach interviews with 11 external stakeholders.

Based on this investigation, OCR finds that the School discriminated against students with disabilities, in violation of Section 504, Title II, and their implementing regulations. The bases for our findings are summarized in this letter.

We note as an important overview that we also found throughout our investigation that the School comprises many dedicated staff, including two new administrators (the Interim Superintendent and Education Program Administrator/Principal) about whom teachers expressed great confidence and optimism. Through these new administrators and otherwise, the School was amidst many positive changes, including hiring more special education staff, establishing a process to create individualized learning plans for all students, enhancing the integration of psychological services with educational services, expanding staff training opportunities, streamlining the individualized education program (IEP) process via the purchase and use of IEP Pro software, and realizing the benefits of an improved process to request students' educational records from their previous school.

OCR recognizes the difficulty of providing education in a juvenile residential facility environment and recognizes that the student population in the facility comprises many students who have experienced trauma, educational gaps, and substandard educational services in the past. We also observe that the School has been operating under significantly inadequate and decreasing resources for some years and in many instances education staff – special education staff in particular – seek to make up for inadequate resources with commitment to their jobs and to the School's students. We commend the staff for their dedication under these circumstances, thank them for their cooperation throughout our investigation, and look forward to working with them as we monitor the Resolution Agreement in this case.

I. BACKGROUND

a. State Law

Pursuant to state law,⁴ the Arizona Department of Juvenile Corrections (ADJC) operates and maintains Adobe Mountain School (AMS), a secure care juvenile correctional facility for the custody, treatment, rehabilitation, and education of committed youth. Committed youth may be age 14 to 18.⁵ AMS is the only juvenile prison in Arizona.

Under Arizona law, “Each youth who is placed in a secure care facility shall receive rehabilitative services appropriate to the youth’s age, needs and abilities, including education, counseling, mental health services, recreation and vocational training.”⁶ Additionally, “a committed youth who is confined in a secure care facility and has not received a high school diploma, a high school certificate of equivalency or an exception from the director shall attend school full time and make satisfactory progress in educational classes.”⁷ “A committed youth who is confined in a secure care facility and has achieved a high school diploma or a high school certificate of equivalency may attend or participate in regular classes or the educational programming established or provided by [ADJC] as [ADJC] deems appropriate.”⁸ Finally, state law requires ADJC to “establish a state educational system for committed youth for the common and high school education of committed youth.”⁹ The system must “provide appropriate education to all committed youth as required by state and federal law.”¹⁰ In short, ADJC acts as a local education agency (LEA) and operates AMS. In this letter, we use AMS to refer to the juvenile prison as a whole, “School” to refer to the LEA within AMS, and ADJC to refer to the State department that operates and maintains AMS.

b. Relevant Previous Inquiries

Several legal proceedings relevant to the provision of education to students with disabilities at the School have transpired over the past 30 years. As those proceedings relate to the topics at issue in this compliance review, they are summarized here.

i. Johnson v. Upchurch Lawsuit

In 1986, Mathew Davey Johnson, a youth held at the Catalina Mountain School, operated by ADJC, and other plaintiffs filed a lawsuit in U.S. District Court alleging unconstitutional conditions of confinement. Included in the complaint was an allegation that there was a lack of special education services. In the wake of the lawsuit and eventual consent decree, there was greater emphasis on the provision of educational services to juveniles. In 1993, Judge Richard Bilby signed a consent decree settling the case. The decree contained provisions that mandated reforms in education. A three-member panel – known as the “Committee of Consultants” – was appointed to monitor departmental compliance. The consent decree expired in 1997.

ii. U.S. Department of Justice Investigation

In 2002, pursuant to the Civil Rights of Institutionalized Persons Act (CRIPA), the U.S. Department of Justice (DOJ) opened an investigation of ADJC for civil rights violations after a third suicide death occurred at AMS. The investigation included all three Arizona juvenile prisons in existence at the time: AMS, Black Canyon School, and Catalina Mountain School. In 2004, DOJ issued its report, which found, in part, that the facilities failed to provide required education services pursuant to the Individuals with Disabilities Education Act (IDEA) and Section 504.¹¹ Specifically, DOJ wrote:

- “Youth who enter the facilities we examined are not sufficiently screened for identification of special education needs.”¹²
- “Key education staff acknowledged that Adobe had under-identified the number of youth in need of special education services.”¹³
- “The facilities fail to develop adequate IEPs for each youth determined to be eligible for special education services. Facility IEPs were not individually tailored to address the special education needs of youth. Rather, the IEPs had generic and broadly stated goals and objectives, making progress on these goals difficult if not impossible to assess. Nor were related services described in the IEPs.”¹⁴
- “At ADJC, rather than appoint a surrogate when a youth’s parents cannot or will not participate in the IEP process, the facilities simply have adults who have never even met the youth sign the IEP.”¹⁵
- “The facilities fail to provide necessary related services to help special education students benefit from their educational experiences.”¹⁶
- “Throughout the facilities, we could find no student for whom a Section 504 accommodation plan was provided, although many youth would qualify for such plans. There is no formal process or identified coordinator to facilitate development or implementation of Section 504 accommodation plans and, as a result, accommodation plans are not developed for students, which reduces their potential benefit from the education program.”

In its report, DOJ recommended remedial measures, including: “Provide adequate special education services in all facilities, including complying with all requirements of the IDEA”; and “Comply with all requirements of Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.”¹⁷

In September 2004, a memorandum of agreement (MOA) was signed between the State of Arizona and DOJ. The MOA included over 120 mandatory provisions and addressed a variety of issues, including a superintendent of education position, adequacy of resources, development and implementation of policies and procedures, adequacy and qualifications of staff, staff professional development, psychologist involvement, collaboration with ADE, developing and implementing IEPs, surrogate parents, improving parent involvement, developing and implementing Section 504 plans, and a quality assurance program.¹⁸ In 2007, the CRIPA lawsuit was dismissed because the Court determined that ADJC had substantially complied with all of the MOA provisions.

iii. Arizona Department of Education Audit

In July 2015, ADE initiated an audit of the School’s special education program for the 2015-2016 SY.¹⁹ Among ADE’s findings were:

1. Child Find forms and the process related to Child Find needs revision. There were inconsistent dates listed on screenings, and in some cases, screenings

appeared to happen previous to enrollment. 45 day screenings did not happen within 45 days in many cases.

2. MET/IEP paperwork program does not meet State or Federal guidelines and statutes, and there is no opportunity for team members to add needed areas. ...

3. There is a lack of child specific data being provided to [special education] teachers. Much of the data provided is subjective, with no actual data to support it. ...

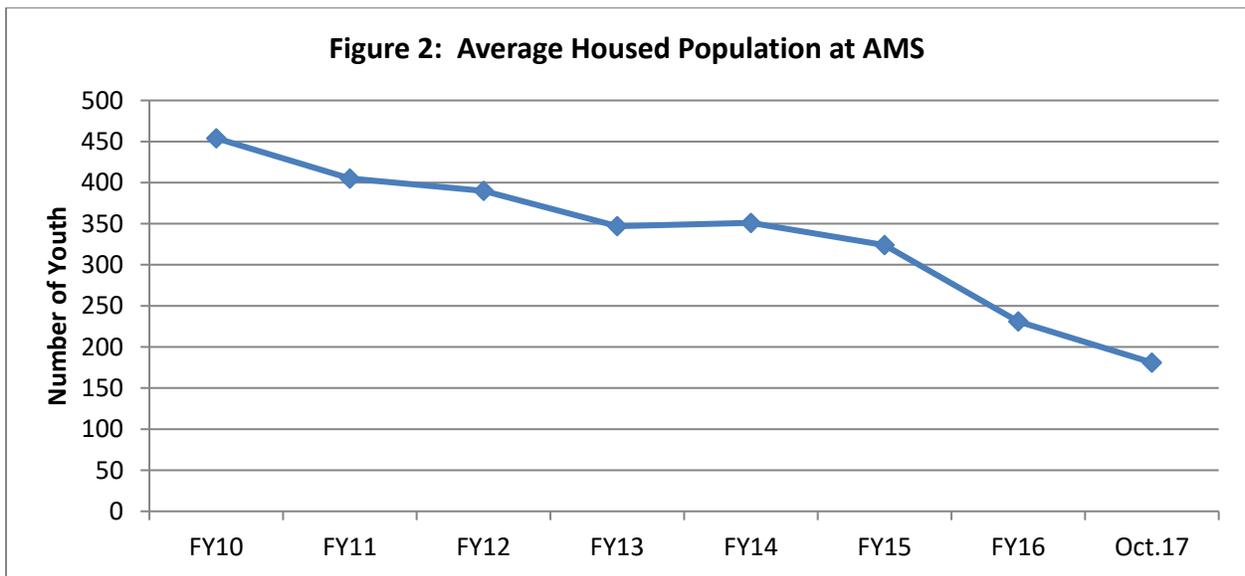
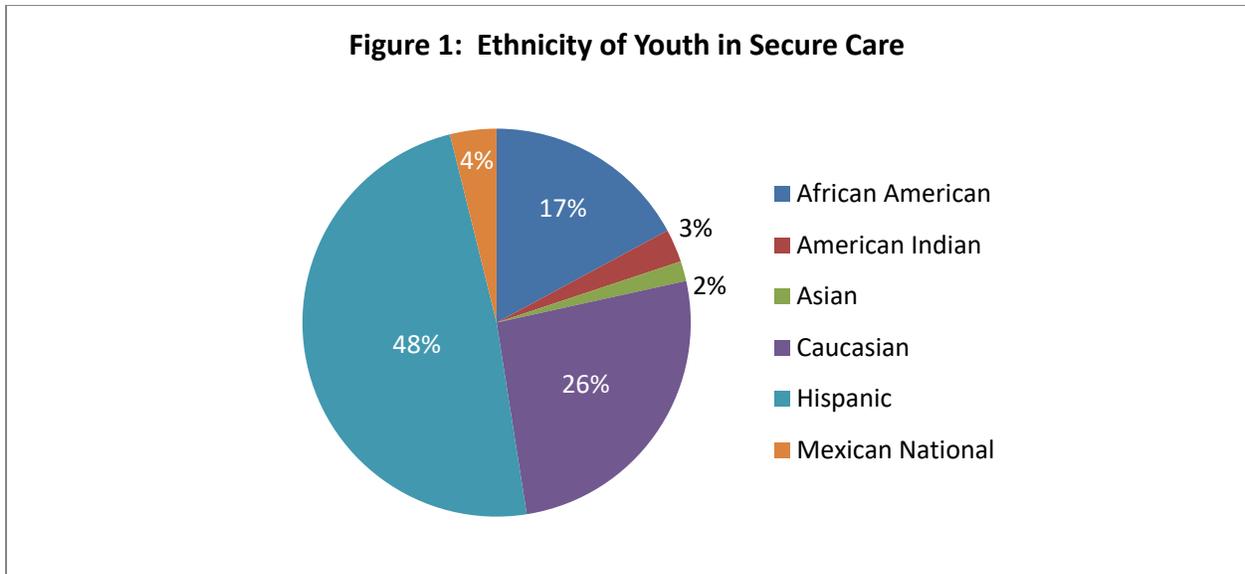
4. Information silos exist which make it difficult for [special education] teachers to get a full picture of the student.

In March 2016, ADE and the School initiated a corrective action plan with 14 items to be corrected. The items involved "Child Find," evaluations, re-evaluations, development and implementation of IEPs, dissemination of prior written notices, and parental involvement. In a letter dated March 15, 2017, ADE notified the School of its determination that it was "now in compliance with state and federal statutes related to services to students with disabilities."

c. Youth²⁰ Population

As of October 2017, AMS housed 181 youths. Over the preceding year, the population fluctuated between 159 and 184 youths. The population was primarily male (91.2%) youth of color (74.0%). See Figure 1. Youths are age 14 to 17. ADJC's jurisdiction over youth is terminated and youth are discharged no later than their eighteenth birthday. More than half of youth (52.49%) were age 17. The average time served was 7.2 months. Nearly half of the youth (48.07%) were from Maricopa County (encompassing Phoenix, Arizona); the rest were spread over 14 counties.

The population at AMS, which has a capacity of 450 youths, has decreased significantly over the past decade. See Figure 2. ADJC reported to the state legislature that this decline has been due to a reduction in the number of committed youth, an increase in the age of the average offender resulting in shorter incarceration periods, and statutory changes to admissions requirements.²¹ The decline also appears to be attributable to declining referrals and petitions. The Eagle Point School and Catalina Mountain School, two other juvenile facilities in the state, closed in 2009 and 2011, respectively. In 2013, the Black Canyon School, another juvenile facility, became part of AMS. ADJC projects that, by 2020, its average daily secure care population will be 152 youths.



All youth committed to ADJC are enrolled in the School, except youths who have already graduated high school. As of October 2017, all but 11 of the youths were enrolled in the School. Among the 170 youths enrolled in the School in October 2017, 52 (30.6%) were “enrolled in Special Education.” Among the new commitments to ADJC from FY 2012 to FY 2016, 21.0% to 27.0% arrived having been known to have been in special education.

From July 1, 2016 to August 31, 2017, the School served a total of 436 students and the average daily population at the School was approximately 175 students. Students may enter or exit the School during a single school year as a result of being released on or violating parole, being dropped off or picked up by Immigration and Customs Enforcement (ICE), or reaching their eighteenth birthday. Average class sizes are 14 students in core academic classes and 10 students in career and technical education (CTE) classes.

d. Staffing

The School is led by a superintendent and an education program administrator. Since the beginning of FY 2017, the School has had three superintendents, three education program administrators, and four Section 504 coordinators. See Figures 3, 4, and 5. The education program administrator position was vacant for, in total, over nine months. Each class is taught by one content-certified teacher, with at least one corrections officer present, depending on class size and staff availability. The School has three support staff: one is responsible for regular education records; one is responsible for special education records; and one is responsible for academic testing, such as GED testing.

Figure 3: School’s superintendents from August 2016 to April 2018

Name	Title	Start Date	End Date
Superintendent 1	Interim Superintendent	Feb. 9, 2013	Aug. 2, 2014
Superintendent 1 (same individual)	Superintendent	Aug. 3, 2014	Dec. 31, 2016
Superintendent 2	Special Assignment Interim Superintendent	Dec. 31, 2016	Oct. 25, 2017
Superintendent 3	Special Assignment Interim Superintendent	Oct. 26, 2017	Present

Figure 4: School’s education program administrators from August 2016 to April 2018

Name	Start Date	End Date
<i>Vacant</i>	Aug. 1, 2016	Aug. 26, 2016
Principal 1	Aug. 27, 2016	Jun. 30, 2017
<i>Vacant</i>	Aug. 1, 2017	Aug. 16, 2017
Principal 2 (became Superintendent 2)	Aug. 17, 2013	Dec. 30, 2016
<i>Vacant</i>	Dec. 31, 2016	Aug. 27, 2017
Principal 3	Aug. 28, 2017	Present

Figure 5: School’s Section 504 coordinators from August 2016 to April 2018

Name	Start Date	End Date
Guidance Counselor	Prior to Aug. 1, 2016	Approx. Oct. 24, 2017
Special Education Teacher & Superintend. 3	Approx. Oct. 25, 2017	Approx. Feb. or Mar. 2017
General Education Teacher	Approx. Feb. or Mar. 2017	Present

ADJC’s education staffing has declined alongside its student population. The Department’s FY 2019 Operating Budget Request reads, in part:

Between FY 2015 and FY 2018, ADJC has reduced the amount of Education staff from 42 [full-time employees] FTEs to 22.5 FTEs. In doing so, we have reduced supervisory staff, teachers in core classes (Math, Science and English) and a librarian. We have also moved to a contracted part-time school psychologist. The reductions have resulted in only 1-2 teachers available in each of the following subjects: English, Math, Science and Special Education.

e. Curriculum, Instruction, and Scheduling

All new students complete a half-a-credit Reception, Assessment, and Classification (RAC) course prior to enrolling in traditional classes. Course objectives include career exploration, Occupational Safety and Health Administration (OSHA) health and safety guidelines, Education and Career Action Plans (ECAP), and orientation to education at AMS. RAC lasts 23 days, and, like the courses discussed in the next paragraph, the RAC class time is not a full day and, as the RAC teacher explained in his OCR interview, RAC can be cancelled up to two or three times per week if the RAC teacher is called to substitute-teach for other teachers. During RAC, students also complete an academic assessment and staff request their educational records from their previous schools.

The School’s academic year has 200 instructional school days, divided into seven six-week terms, each separated by approximately a one-week break. See Figure 7. Each term offers two courses, each a half credit, allowing youth to earn one credit per term. The School operates on a block schedule. Students typically are enrolled in two classes during each term. On Mondays, Tuesdays, and Fridays, the two courses run from 7:45 a.m. to 10:20 a.m., and from 12:45 p.m. to 3:20 p.m. Wednesdays and Thursdays are half-days on which students only have the 7:45 a.m. to 10:20 a.m. block – with one class on Wednesdays and the other class on Thursdays. These block times include 15 to 30 minutes of time for transition to class and 15 to 30 minutes of time for transition out of class. Transition includes housing units of students walking, one-unit-at-a-time, to the education buildings,²² lining up outside of classrooms, and having the barcodes on their wristbands scanned before entering the classroom. Thus, each course is taught for approximately two hours during each block. If a student were to spend an entire fiscal year at the School, and attend all classes, he or she would have up to approximately 628 hours of instruction (7.2% of the total time youths spend in 24-7 confinement).²³ See Figure 7. Students must be in class for at last 20 days in order to have the possibility of earning credit.

Figure 6: Course offerings at the School during FY 2017

Academic Courses		Career Technical Education	
Course	Credits	Course (Examples)	Credits
English	U.S./Arizona History	Automotive Tech.	Culinary Arts
Mathematics	Arizona Government	Build Trades	Computer Animation
Science	Economics	Cosmetology	
World History			

Figure 7: Course schedule at the School during FY 2017

Term	Start Date	End Date	Full Days	Half Days	Instructional Hrs.
1	Jul. 6, 2016	Aug. 19, 2016	16	12	88
2	Aug. 29, 2016	Oct. 6, 2016	15	11	82
3	Oct. 14, 2016	Nov. 23, 2016	17	11	90
4	Dec. 1, 2016	Jan. 24, 2017	17	12	92
5	Feb. 1, 2017	Mar. 14, 2017	17	12	92
6	Mar. 22, 2017	May 2, 2017	18	11	94
7	May 10, 2017	Jun. 22, 2017	16	13	90
Total	July 6, 2016	June 22, 2017	116	82	628

The vast majority of classes are taught through direct instruction. The remaining classes are online using “A+ Courseware.” The online option is used to meet specific needs or as a credit recovery tool. Online courses are supervised by a classroom teacher and done in a traditional classroom environment on a laptop.

The School is also a designated General Equivalency Diploma (GED) test site. Students may elect to take the GED exam during their commitment. Parent or guardian permission must be on file before a student can begin this program. Students age 16 and older who successfully pass a pre-GED assessment are allowed to sign up for the official GED. The GED is administered through computer-based testing. Students who earn their GED continue to attend high school courses.

II. DIFFERENT TREATMENT ON THE BASIS OF DISABILITY AND DENIAL OF FAPE

Under the Section 504 regulations, at 34 Code of Federal Regulations (C.F.R.) § 104.4(a) and (b), no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. The Title II regulations, at 28 C.F.R. § 35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. *See also* 34 C.F.R. § 104.4(b)(1); 28 C.F.R. § 35.130(b)(1). To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than individuals without disabilities under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination. For OCR to find a violation, the preponderance of the evidence must establish that the school district’s actions were based on the individual’s disability.

Additionally, the Section 504 regulations, at 34 C.F.R. § 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed *to meet the individual needs of students with disabilities* as adequately as the needs of non-disabled

students are met, and that are developed in accordance with the procedural requirements of §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. Implementation of an IEP developed in accordance with IDEA is one means of meeting the requirements of 34 C.F.R. § 104.33(b)(1)(ii).²⁴ During the course of our investigation, we did not find any students who had Section 504 plans, and therefore, looked closely at IEPs and their implementation to determine compliance with Section 504. OCR interprets the Title II regulations, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide FAPE at least to the same extent required under the Section 504 regulations.

OCR's and DOJ's joint *Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities* confirms that public school districts in juvenile justice residential facilities are held to the same standards. With respect to the provision of FAPE in particular, "Under Section 504, every juvenile justice residential facility or other agency that receives Federal funds from the Department – either directly or indirectly through another state or local agency – and that provides youth in such a facility elementary or secondary education, must provide each student with a disability a free appropriate public education (FAPE)[.]"²⁵

The information described below, taken in totality, amounts to a preponderance of evidence that the School: (1) treats students differently on the basis of disability without any legitimate, non-pretexual, nondiscriminatory reason; and (2) is not providing an appropriate education because it is not providing special education, related services, and accommodations that are designed to *meet the individual needs of students with disabilities (i.e., services for students with disabilities are not sufficiently individualized to provide them FAPE)*.

a. Appropriate Education of Students with Disabilities

i. Limited Special Education Services

The School maintains a limited continuum of placements for students with disabilities. The School does not have "self-contained" classrooms or programs.²⁶ Additionally, the School does not provide pull-out services (*i.e., services provided one-on-one or in a small group in a setting separate from the regular classroom*), which the School asserts is due to security concerns and staffing limitations. The one and only type of special education the School provides is "push-in" services – *i.e., a special education teacher goes into general education classrooms to provide one-on-one or small group assistance to students – and even those services are, at times, not individualized or in conformity with students' IEPs.*

School staff rewrite IEPs to accommodate the School's design and resources, rather than ensuring IEPs are individually tailored to students' needs. Specifically, School staff rewrite students' IEPs in order to reduce or eliminate special education and/or related services and to move students from more restrictive settings (*e.g., self-contained classrooms*) to the only setting the School offers (*i.e., 80% or more in "general education"*). Many students enter the School with IEPs that require multiple hours of special education services per day; however, as

the School's Special Education Teacher explained to OCR, the School is not designed or staffed to provide even 60 minutes of special education per day. She also shared that some related services are eliminated from students' IEPs because services are not offered by the School. Similarly, the Interim Superintendent explained that IEPs are amended because the School "can't provide as much" and is "not a regular public school placement." These witnesses' reports are supported by language in students' IEPs. For example, one student's prior written notice read, "Changes to existing special education services and supports include reduced duration given the structure of the program at Adobe Mountain." Another student's IEP read, "Given the options for non-disabled and disabled students, the behavior is not more significant than non-disabled students that requires a more restrictive environment."

The evidence in witnesses' reports and student records is also supported by communications among staff. A staff member wrote, "[The student] did have an IEP meeting in April ... to accommodate the IEP to secure care." One staff member wrote to another, "Mom was really worked up about it. She said at the last staffing, the teacher had just said he could not get one of the things he is allowed per his IEP because we did not do it at Adobe." The reply read, "Even [the student] has told her that the IEP has to be adjusted to a secure care setting." The following email exchange between two AMS employees occurred in 2017:

- Employee 1: "So, mom says that he has a current IEP at [Redacted] High School. Does AMS request a copy of that, or does she need to get a copy of it to provide?"
- Employee 2: "AMS will request"
- Employee 1: "Sure they will LOL"
- Employee 1: "Ok, I take that back. They might request it, just not implement it."
- Employee 2: "How can you impliment [sic] it if almost all your SPED teacher left / Total inclusion, that's how!"
- Employee 1: "Hope DOE never finds out. We don't need that kind of press!"

Some IEPs even acknowledge that the across-the-board reduction in services may set students back. For instance, the following quotes are directly from students' IEPs:

- "This placement may potentially be harmful in the sense that [the student] won't be pulled out for intensive, one on one services[.]"
- "[The student] may not receive the level of intense help that could be achieved in a pull out situation, but the benefits outweigh any potential harmful effect."
- "[The student] may miss out on intense instruction by not getting pulled out for services, but the benefits outweigh any potential harmful effect of this placement."
- "[The student] will not get the intense support of a resource setting, but the benefits outweigh any potential harmful effect."
- "He may miss out on more intense one on one instruction, but the benefits outweigh any potential harmful effects."

- “[The student] may not get the intensity of individual instruction that a self contained setting would involve, but the benefits of the least restrictive environment outweigh any potential harmful effect.”
- “[The student] may miss out on individualized instruction that could occur in a pull out situation, but the benefits outweigh any potential harmful effect.”

The following are examples of students whose School-written IEPs caused them to experience a dramatic reduction in services in comparison to their previous schools’ IEPs:

- The IEP for a student with autism listed, as his entire special education services, 40 minutes per week in math and 40 minutes per week in reading – both in “regular education.” The student’s special education records from his prior school district notes, “He receives his special educational services in the life skills setting. . . . He receives services in the resource setting.”
- The School’s IEP for a student with a specific learning disability (SLD) specified 30 minutes bi-weekly in reading (in regular education). His IEP from his previous school district, written less than a year before the School’s IEP was written, specified that the student was to receive 800 minutes per month of special education services in reading in a special education classroom.
- The IEP for a student with an emotional disability specified 20 minutes per week of “support services to ensure work completion” (in regular education) as the entirety of the special education services he was to receive in the School. The IEP that was in place for the student prior to him entering the School specified that he was to receive 1,470 minutes per week of special education services in behavior support, math, and counseling (in a residential treatment facility).
- The School’s IEP for a student eligible under the “other health impairment” area of eligibility (for ADHD, obsessive compulsive disorder, and a tic disorder) listed 20 minutes per week of special education services for behavior support services (in regular education). Before arriving at the School, his placement was 300 minutes per day of special education at a private day school.
- The IEP for a student with a SLD specified 20 minutes per week of special education services in reading (in regular education) as the entirety of his special education services. His IEP prior to entering AMS specified 285 minutes per week of pull-out special education services.
- The School’s IEP for a student with an intellectual disability listed 30 minutes per week of special education services in reading, in writing, and in math, and 10 minutes per week of special education services in “Check-in/Check-out/Monitor” – for a total of 100 minutes per week. His IEP prior to entering AMS specified 190 minutes per week of special education in reading, in writing, and in math, and 30 minutes per week of special education in behavior support – for a total of 600 minutes per week.
- The School’s IEP for a student with an emotional disability specified 10 minutes per week of special education services in math, in reading, and for behavior (in regular education) – for a total of 30 minutes per week. His IEP prior to entering AMS specified

that the Student would be in a self-contained special education classroom for 1,762 minutes per week, along with 30 minutes per week of psychological services and eight minutes per week of social work services.

- The School's IEP for a student with an emotional disability specified 30 minutes per week of special education services in "Teacher and monitor strategies" and "Check-In/Check-Out" (in regular education) – for a total of 60 minutes per week. His IEP prior to entering AMS specified 900 minutes per week of special education services in math, writing, and academic support in a special education classroom.

Additionally, *all* students with IEPs at the School – including those who enter the School with IEPs mandating a full-time special education placement – are in general education 80% or more of the time. Among 104 IEPs reviewed by OCR, more than half specified an hour or less of special education services per week for the student. The total amount of services for each student ranged from 2.5 minutes per week to 160 minutes per week. The median amount of services for each student was 60 minutes per week; and the mean was 64 minutes per week.

The following are notable examples of students receiving special education services that were *likely* well-below the levels necessitated by their individual needs:

- The IEP for a student with attention-deficit hyperactivity disorder (ADHD) and bipolar disorder (with "other health impairment" (OHI) as his area of eligibility) specified only 10 minutes per *month* of special education.
- The IEPs for three students with emotional disabilities specified "Check-In/Check-Out/Monitor" (for 10, 20, and 45 minutes per week, specifically) as the only special education service for the students. The IEP for the student who was to receive 10 minutes per week read, "[The student] has a history of placement in a self-contained setting."
- The IEP for a student with an SLD read, "[The student] has history of diagnosis for, more specifically, a reading disability. ... Based on the discrepancy model, simple method, there is a 30 point different between [the student]'s cognitive ability and reading achievement." The student was in twelfth grade, but his reading level on a standardized test was at a 5.7 grade level. Yet, the School's IEP for him specified only 15 minutes bi-weekly for special education services in reading.

Moreover, our review of students' IEPs revealed additional indications that IEPs are not sufficiently individualized. For example, the area(s) of eligibility did not align with the special education services specified in some students' IEPs.

- The IEP for a student with an emotional disability as his only area of eligibility listed 60 minutes per week of special education services in math, which was the highest level of services provided in math of all IEPs reviewed, including for students with a learning disability in the area of math.

- The IEP for a student with an SLD and speech-language impairment did not list any special education services in academic content areas; instead, it only provided the student with 120 minutes per month of speech-language therapy services.
- The IEP for a student with an emotional disability and an SLD did not list any special education services in academic content areas; instead, it only provided the student with 30 minutes per month of behavior services.
- The IEP for a student listed his only area of eligibility as OHI (for ADHD and bipolar disorder). However, his IEP read, “The Multidisciplinary Evaluation Team (MET) agrees that [the student] continued to meet the criteria of a student with an Emotional Disability[.]” The student’s IEP listed 15 minutes per week in math, reading, and writing. His IEP from his previous school district, created less than a year before he entered the School, described his primary needs as being in the area of behavior and listed his special education services as 60 minutes per week of behavior support in a special education classroom.

Finally, identical special education services for dissimilar students raised concerns. Three students – one eligible under emotional disability, one eligible under OHI, and one eligible under intellectual disability – all received the exact same special education services – 20 minutes per week in math, reading, writing, and behavior.

ii. Missing Information about Special Education Services

Some students had critical information missing from their IEPs – information that would have been necessary for delivering individualized special education services. For instance:

- The IEP for a student with a speech-language impairment specified monthly speech-language therapy, but did not specify an amount of time.
- The IEP for a student listed special education services in writing, math, social skills, and communication skills, but did not specify the frequency or location of the services.
- The IEP for a student with an emotional disability specified two types of special education, both for 20 minutes per week, but did not specify the types of special education to be provided.
- The IEPs for two students with an emotional disability specified a special education service for 20 minutes per week, but did not specify the type of service to be provided.

iii. Limited Related Services

Related services are developmental, corrective, and other supportive services that are required to assist a student with a disability to benefit from special education. Examples of related services are speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, counseling services, orientation and mobility services, medical services for diagnostic or evaluation purposes, school health services, school nurse services, social work services, and parent counseling and training.

The only related service the School provided in FY 2017 was speech-language therapy, which was provided through payments to a private provider, Eleutheria. The contract speech therapist reported to OCR that she goes to the School once or twice per month and that students often “refuse” services. We asked the therapist to give examples of why students “refuse” services. Two examples she provided were that the students were in counseling sessions or watching television. We requested copies of invoices and payments to Eleutheria for FY 2017. Four of the six invoices provided did not include any service delivery; instead, they just included IEP team meetings, file reviews, evaluations, and meeting preparation. The remaining two invoices included 5.75 hours for “SLP service delivery” and 3.5 hours for “file reviews, IEP writing, and SLP service delivery and logging.”

The Special Education Teacher reported to OCR that she rewrites IEPs to account for the fact that School does not provide other related services. Among the 104 IEPs we reviewed, six students received speech-language therapy, with the amount of services ranging from 30 minutes to two hours per month. The other 98 students’ IEPs simply read, “considered not needed” or “Related services were considered but not necessary to provide special education.” OCR asked teachers whether related service providers ever go into classrooms; none of them answered “yes.”

The School argued that it does not provide students with related services because other similar services are provided in other areas of AMS. For example, a student’s IEP read, “He currently receives counseling on the unit and therefore will not be included in the IEP.” Notably, the Special Education Teacher also stated that corrections officers are like one-on-one paraprofessionals that might be a related service in a traditional LEA.

iv. No Extended School Year Services

Extended school year (ESY) services are special education and related services that are provided to a student with a disability, beyond the normal school year of the public agency, in accordance with the child's IEP, at no cost to the parents of the student, and consistent with the standards of the state education agency. ADJC Policy 4420 (“Special Education”) reads, “Even though this agency provides educational services throughout the entire year, extended school year services are determined on an individual basis.” However, in practice, the School does not consider or provide ESY services for students with disabilities. Some students’ IEPs indicated that they were not “at a critical stage of development.” Most students’ IEPs contain one of the following statements:

- “[S]tudent is not eligible for ESY.”
- “Adobe Mountain operates on a 12 month calendar.”
- “Adobe Mountain High School is a year round school program.”
- “Adobe Mountain School is a year-round school, therefore data is collected on an on-going basis and schedules are based on current needs.”

- “Adobe Mountain School (AMS) operates year round with six week terms that are complete unto themselves. There are one-week breaks between the terms and a three week break between school years.”

When asked if ESY services are available, the Interim Superintendent and Special Education Teacher both answered “no,” explaining that the School is on a year-round schedule.

Typically, ESY services are provided during the summer months to ensure that a student with a disability does not regress academically during that time. However, nothing in applicable regulations prohibit an LEA from providing ESY services to a student with a disability during times other than the summer, such as before and after regular school hours, during school vacations, or in the case of the School, during the week-long breaks between terms, if the student’s IEP team determines that the student requires ESY services during those time periods in order to receive FAPE. Regulations give IEP teams the flexibility to determine when ESY services are appropriate, depending on the circumstances of the individual child.

v. No Functional Behavioral Assessments or Behavioral Intervention Plans

The School does not conduct functional behavioral assessments (FBAs). An FBA is a process that searches for an explanation of the purpose(s) behind a problem behavior. Also, the School does not create or implement behavioral intervention plans (BIPs). A BIP is a set of positive behavioral interventions and supports, along with other strategies, designed to assist a student whose behavior impedes his own learning or the learning of others. Multiple staff members stated, during interviews with OCR, that “those” (*i.e.*, FBAs and BIPs) happen on the units – *i.e.*, inside of AMS, but outside of the School. Other staff were not familiar with FBAs or BIPs at all.

vi. Limited or No Transition Services

Transition services are a coordinated set of activities for a child with a disability that are designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. Transition services must be based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.

For many students with disabilities at the School, their IEPs read, “Considered Not Needed” for multiple transition areas – typically for “Adult Living,” “Community Experience,” “Daily Living,” “Functional/Vocational,” and “Related Services.” In fact, for most students, the only transition areas for which any activities or strategies were specified were “Education/Instruction” and “Employment.” Additionally, for many students, the column for “Person and/or Agency

Responsible” is either blank and puts 100% of the responsibility on the student (*i.e.*, does not specify any assistance from School staff). Moreover, the transition services sections for some students do not specify any actual services for the students; instead, the section simply lists the students’ goal(s) (*e.g.*, “I will attend college to pursue a career in business;” “I enroll in a college or vocational program to become a barber;” and “I will find full time employment working as a barber”). Finally, for some students, the transition services section of their IEPs were not updated, and thus, were nonsensical for commitment to AMS and attendance at the School. For example, IEPs read:

- Student “will attend community college for classes” or “will enroll in a truck driving program” or “will work part-time in the clothing industry;”
- Student “will work part-time” or “needs to obtain a part-time job;”
- Student “will live at home with Grandmother” or “will live at home;”
- Student “will learn how to travel in the community using public transportation.”

vii. Conclusion as to Appropriate Education of Students with Disabilities

In summary, the School’s limited special education services, missing information about special education services, limited related services, lack of ESY services, lack of FBAs and BIPs, and limited or lack of transition services cause us to conclude that the preponderance of the evidence establishes that the School does not provide an appropriate education to students with disabilities. In turn, this is one factor in our conclusion that the preponderance of evidence establishes that the School discriminates against students with disabilities by treating them differently on the basis of disability and denying them a FAPE, in violation of Section 504 and Title II.

b. Implementation of IEPs and Section 504 Plans

Implementation of an IEP developed in accordance with the IDEA is one means of meeting the FAPE requirement. OCR considers a school district’s failure to implement a student’s IEP to amount to a denial of FAPE and a violation of Section 504 and Title II.

i. Special Education Records

For the most part, the School promptly requests new students’ education records from their previous school(s) and/or district(s). Then, if records are not received in response to the first request, School staff follow up with the previous schools and/or districts. If a student returns to the School after a parole violation, the School again requests the student’s education records.

However, the School staff member responsible for records requests reported that schools and districts sometimes do not respond in a timely manner or at all. The Special Education Teacher expressed frustration about long delays in the School receiving special education records.

During reviews of student files, we noted that some of them included only records from county detention facilities, and not from students' most recent traditional LEA.

The RAC teacher reported to OCR that IEPs are not implemented in RAC because students' records from their previous school or district have not yet been provided to the School. According to the Interim Superintendent, students in RAC are not technically "in education," and therefore, do not receive any educational services. Emails among staff also indicate that there are lengthy delays in implementing students' IEPs. For example, an AMS family services coordinator wrote to a special education teacher, in November 2016, "I know part of [the parent's] concern is that [the student] has been there since the end of September and this IEP still isn't in place and adjusted for him in secure care."

School staff do not consistently maintain service delivery logs for special education and related services, which makes precise monitoring of compliance with IEPs impossible.

ii. Course Scheduling

The School's course scheduling did not always align with students' IEPs; specifically, the subjects in which students with disabilities are enrolled each term are not necessarily the same as the subjects in which they are supposed to receive special education pursuant to their IEPs. When this is the case, the School simply does not follow the IEP as it relates to the subject(s) in which the student is not enrolled. For example, if a student's IEP requires 40 minutes per week of special education in math, but that student is not enrolled in math, then the student does not receive special education in math. One student's IEP read, "[The student]'s teachers will have a team teacher or consultation with a special education teacher twenty minutes weekly. Due to the modified block scheduling. [The student] will receive supports and services in the area of math when he is scheduled into a math class."

iii. Special Education Staffing

The School's special education staffing levels (*i.e.*, numbers of special education teachers) were insufficient to deliver the amount of special education specified in students' IEPs. In recent years, the number of special education staff at the School has fluctuated between one and three staff members.²⁷ See Figures 8 and 9. The one to three staff members were insufficient to provide all of the services mandated in students' IEPs – even the reduced level of services created through IEP amendments and revisions. This is especially clear when considering the staff members other responsibilities, including, but not limited to, such as convening and participating in IEP team meetings, drafting IEPs, and maintaining documentation.

Figure 8: The School's special education staff members from August 2016 to February 2018

Name	Start Date	End Date	Name	Start Date	End Date
Teacher 1	Dec. 15, 2003	Jul. 5, 2017	Teacher 4 (then Interim Superintendent)	Aug. 28, 2017	Oct. 26, 2017
Teacher 2	Jul. 22, 2013	n/a	Teacher 5	Jan. 16, 2018	n/a
Teacher 3	Aug. 3, 2015	Aug. 4, 2017	Teacher 6	Feb. 20, 2018	n/a

Figure 9: The School’s special education staffing levels from August 2016 to February 2018

Start	End	Total Staff	Staff Names
Aug. 2016	Nov. 2016	3	Teachers 1, 2, 3
Nov. 2016	Jan. 2017	2	Teachers 1, 3 (Teacher 2 on leave)
Jan. 2017	Jul. 2017	3	Teachers 1, 2, 3
Jul. 2017	Aug. 2017	2	Teachers 2, 3
Aug. 2017	Oct. 2017	1, then 2	Teacher 2 (only one from Aug. 5-27, 2017), Teacher 4
Oct. 2017	Jan. 2018	1	Teacher 2 (only one from Oct. 27, 2017 to Jan. 15, 2018)
Jan. 2018	Feb. 2018	2	Teachers 2, 5
Feb. 2018	Present	3	Teachers 2, 5, 6

According to a spreadsheet provided by the School to OCR, the School had 37 students with IEPs on December 1, 2016. Those students’ IEPs specified a total of at least (three IEPs were not provided) 2,000 minutes (or 33 hours and 20 minutes) of special education services per week. However, as of that date, the School had only two special education staff members who were not only in charge of service delivery, but also had to attend IEP team meetings, draft IEPs, and perform other duties. Additionally, services were generally only delivered during class time, which totals only approximately 16 hours per week. Finally, the special education staff members were entitled to sick and vacation leave, but there was no substitute special education staffing for such eventualities.

Emails among School staff provide more evidence of under-staffing. A former special education staff member wrote:

We really don’t “team teach” here because every six weeks we randomly end up with different teachers, etc. The lack of continuity is a problem. It makes it impossible for the special education and general education teachers to plan lessons in a manner that enables the special education teacher to participate in a more meaningful and targeted way. ... As I explained, we need 4 special education teachers. ... Once our special education department is staffed, we can begin to address changes that enable Adobe Mountain teaching personnel to thrive and provide exceptional services to exceptional students.

The same staff member also wrote:

- “Yeah, we are so swamped with new commits whose reports are out of compliance that, with the new directive from ADE, well, it’s been challenging. We also went from 5 special education personnel to 3, but we have more work now. Our numbers have not dropped.”
- “I can’t do more. I’m maxed. I’ll likely burnout, eventually, as it is. That’s feedback. One solution is we need adequate personnel to do the all that is needed to be done to maintain compliance.”
- “If they hired you as a special education person, we’d not be so terminally shorthanded. I’m exhausted. ... We’re definitely running on fumes without a fourth person.”

During interviews with OCR, staff acknowledged the lack of appropriate special education staffing. One teacher called the special education staffing “criminal” and said that the “state needs to pony up some money.” Another teacher noted concerns about how the Special Education Teacher (the one special education teacher at the time) had to write IEPs, schedule IEP team meetings, and collect progress monitoring information from staff, all on top of service delivery. A teacher said about the Special Education Teacher, “That poor thing, she needs help.” The teacher noted that the Special Education Teacher “could write IEPs all day” and that he has seen her lose weight and become ill as a result of the demands of her job. Another teacher said about the Special Education Teacher, the School is “running her a wreck.” When asked by OCR what the School could do better with special education, three teachers answered: get the Special Education Teacher more help.

iv. Testing Accommodations

Our investigation established deficiencies with regard to implementation of one IEP provision in particular, that of accommodations for the TABE (Test of Adult Basic Education) and/or GED tests. ADJC Procedure 4411.01 (“Pre and Post Assessment”) requires the designation of a TABE Administrator who is a teacher, guidance counselor, or diagnostician and who “shall ensure that all tests are timed and accommodations are given to students who qualify.” This Procedure also requires TABE testing upon intake and as “regularly scheduled,” including within 45 days prior to any student’s parole board if the student’s stay has been at least six months, for the parole board to consider “gains made.” The Procedure provides that the parole board may deny release if no gains are shown. Additionally, School staff explained in interviews that TABE scores are one metric used to determine class placement, academic progress, and present levels of performance in IEPs.

The School’s Testing Coordinator fills the role of TABE Administrator; though (as OCR observed in her interview) dedicated to her job, she is not a teacher, guidance counselor, or diagnostician. In her interview, she described that she administers the TABE test for students new to the School, the post-TABE test thereafter every six months, and the pre-GED and GED. She, and the Former Interim Superintendent, noted that for the new students, the School does not yet know if the student has an IEP, meaning that they would not know whether any accommodations are needed on the initial TABE test. In any event, the Testing Coordinator relies on being informed by special education staff as to if a student is entitled to accommodations on TABE tests. The Testing Coordinator estimated that such students had arisen only “a couple of times” in the five years she has been in her role. OCR requested that the School provide all records related to TABE accommodations, and the School provided none.

As to the GED, though the testing service would ultimately be responsible for approving accommodations on the GED itself, we investigated whether the School works with students to seek those accommodations. The School explained that if a student or teacher wanted to request an accommodation, they would need to email the testing service and, if approved, provide medical documentation. OCR requested that the School provide all records related to GED accommodations, and the School provided none (for example, no emails to the testing

service and no explanation of staff or students who had actually made requests for accommodations).

Our review of IEPs also showed students frequently had accommodations, such as extra time, calculator use, or preferential seating, as well as similar accommodations on district and state assessments. Some students' IEPs also included accommodations for the GED, for such things as extra time. The volume of students whose IEPs contained such accommodations is inconsistent with the "couple of times" accommodations were provided in TABE or GED testing, as well as inconsistent with zero records relating to such accommodations being produced. Because "gains made" on TABE testing is a consideration for parole, this is a particular important setting for accommodations to be known and implemented with fidelity.

v. Conclusion as to Implementation of IEPs and Section 504 Plans

In summary, the School's inconsistent receipt of students' special education records, inconsistent maintenance of service delivery logs for special education and related services, course scheduling not always aligning with students' IEPs, insufficient special education staffing levels, and deficiencies with regard to implementation of testing accommodations cause us to conclude that the preponderance of the evidence establishes that the School does not consistently implement IEPs and Section 504 plans. In turn, this is one factor in our conclusion that the preponderance of evidence establishes that the School discriminates against students with disabilities by treating them differently on the basis of disability and denying them a FAPE, in violation of Section 504 and Title II.

c. Identification and Evaluation of Students with Disabilities

The Section 504 regulations, at 34 C.F.R. § 104.32(a), require school districts to provide FAPE to each qualified individual with a disability who is in its jurisdiction. Section 104.35(a) requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement.

i. Screening

Two forms completed for new students include information to help identify students with disabilities. During RAC, most students complete an "Education History/Child Find Screening" form for themselves. The form requests the name, location, and dates of attendance for each prior school, as well as the last grade passed. The form also asks, "Were you ever in Special Education classes?" For students who answer "yes," the form then asks, "What school?"; "What grade?"; "Do you have an IEP?"; "Reason: Reading, math, writing, Behavior, other?"; and "Classroom: self contained, regular, or class pull out?" Completed forms are given to the School's Education Program Administrator.

The second form – a “Child Find Screening Form” (also known as a “45-day screener”) – is completed by the RAC teacher at the end of RAC. The form has seven categories of concerns: “Vision;” “Psychomotor Skills;” “Social/Behavioral;” “Adaptive Development;” “Communication Skills;” “Hearing;” and “Academic Progress.” There is also an eighth section that is a “Primary Language Assessment.” Within each category is a list of concerns, with the option to mark “yes” or “no.” There are 34 concerns listed in total. Under the categories and language assessment are three boxes for conclusions:

- “No Problem noted at this time.”
- “Problem Noted – Is already identified as a student with special needs.”²⁸
- “Problem Notes – Refer to Student Study Team.”

There are problems with implementation of the “Child Find Screening Form.” First, the RAC teacher was never trained on how to use the form, and special education staff do not play a role in completing the form. Second, students spend, at the very most, 23 non-full school days in RAC, and likely significantly less, given that RAC is cancelled up to two to three times per week when the RAC teacher is called to substitute teach. Yet, the RAC teacher is expected to evaluate students in 34 areas of possible disability-related challenges. Third, the RAC teacher has never referred a student for an evaluation to determine eligibility for an IEP or Section 504 plan. Notably, we reviewed 226 screening forms that were in students’ files at the School. Despite the nature of the student population, more than one-quarter of forms had *no* issues checked at all. Sixty-one percent of the forms had *only* academic concerns noted. Only eight percent of the forms – for students in a juvenile prison – checked “Social/Behavioral” concerns.

ii. Referrals by Staff

School staff do not refer students for evaluations to determine eligibility under IDEA or Section 504. During interviews with OCR, the Interim Superintendent, Education Program Administrator, Special Education Teacher, and two teachers all reported they had neither made nor heard of any such referrals for evaluation. One teacher thought she *might* have referred students a couple of times. The School’s 504 Coordinator (a guidance counselor) who served intermittently from approximately October 2016 to October 2017 could not recall the last time she had seen a Section 504 referral; she also indicated that she did not receive any 45-day screenings and opined that staff were not trained on Section 504 and hardly any staff knew the difference between the IDEA and Section 504.

iii. Section 504 Plans

Evidence shows that the School rarely, if ever, develops or implements Section 504 plans. For OCR’s 2013-2014 SY and 2015-2016 SY Civil Rights Data Collection (CRDC), the School reported having zero students with Section 504 plans. A teacher who has worked at the School for seven years reported never having had a student with a Section 504 plan. Three other teachers similarly reported never having had a student with a Section 504 plan. Four teachers said they did not know whether they have ever had a student with a Section 504 plan. Only two teachers

indicated that they have ever had a student with a Section 504 plan, and they indicated that such a student is rare. We note that these findings are consistent with DOJ's 2004 report, which "could find no student for whom a Section 504 accommodation plan was provided, although many youth would qualify for such plans."

iv. Conclusion as to Identification and Evaluation of Students with Disabilities

In summary, the School's inadequate screening of students for disabilities, lack of referrals for evaluations to determine eligibility under IDEA or Section 504, and rare use of Section 504 plans cause us to conclude that the preponderance of the evidence establishes that the School does not identify or evaluate students with disabilities. In turn, this is one factor in our conclusion that the preponderance of evidence establishes that the School discriminates against students with disabilities by treating them differently on the basis of disability and denying them a FAPE, in violation of Section 504 and Title II.

d. Special Education and Students who have Limited-English Proficiency (LEP)/are English Learners (EL)

Title VI of the Civil Rights Act of 1964, and its implementing regulation at 34 C.F.R. Part 100 ("Title VI"), prohibit discrimination on the basis of race, color, or national origin in programs and activities that receive Federal financial assistance from the Department. The Title VI implementing regulation, at 34 C.F.R. § 100.3(a) and (b), provides that recipients of Federal financial assistance may not, directly or through contractual or other arrangements, on the ground of race, color, or national origin, exclude persons from participation in its programs, deny them any service or the benefits of its programs, or subject them to separate treatment.

With respect to the issue of LEP students, the Departmental Policy Memorandum issued on May 25, 1970, titled "Identification of Discrimination and Denial of Services on the Basis of National Origin" (the "May 1970 Memorandum"), 35 Fed. Reg. 11,595, clarifies OCR policy under Title VI on issues concerning the responsibility of school districts to provide equal educational opportunity to language minority students. The May 1970 Memorandum states in part: "Where the inability to speak and understand the English language excludes national origin minority group children from effective participation in the educational program offered by a school district, the district must take affirmative steps to rectify the language deficiency in order to open its instructional program to these students." The May 1970 Memorandum, as affirmed by the U.S. Supreme Court in *Lau v. Nichols*, 414 U.S. 563 (1974), continues to provide the legal standard for the Department's Title VI policy concerning discrimination on the basis of national origin against language-minority students.

OCR's and DOJ's joint *Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities* confirms that, here too, juvenile justice facilities are no different: "Under Title VI and the [Equal Educational Opportunities Act] EEOA, juvenile justice residential facilities that provide educational services, like all public schools, must take 'affirmative steps' to address, and take

‘appropriate action’ to overcome, the language barriers of English learner (EL) students so that they can participate meaningfully in their schools’ educational programs.”²⁹

OCR’s investigation did *not* encompass the School’s compliance with Title VI in general, but focused on the more narrow issue of LEP students in special education.³⁰ With respect to that issue, the regulation implementing Section 504, at 34 C.F.R. § 104.35(a), requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student’s initial placement and before any subsequent significant change in placement. The May 1970 Memorandum states that school districts may not assign students to special education programs on the basis of criteria that essentially measure and evaluate English-language skills. Accordingly, a district must employ standards and procedures for the evaluation and placement of language-minority students that reliably identify students’ educational disabilities, rather than the students’ English proficiency skills. Additionally, 34 C.F.R. § 104.35(c) requires that, in interpreting evaluation data and in making placement decisions, school districts must draw information from a variety of sources, including cultural background, which OCR interprets to include linguistic background. Information from all sources must be carefully considered and documented. Placement decisions must be made by a group of persons knowledgeable about the student, including about the student’s language background, the meaning of the evaluation data, and placement options. In determining an appropriate placement for a student with a disability who is an English learner, the placement team must consider the student’s educational needs with respect to English language acquisition, as well as access to the core curriculum.

Therefore, OCR reviewed the School’s treatment of LEP students in special education. Typically that review would have included students’ pre-referral, referral, evaluation, and placement into special education programs and services. However, as described in Section II(C)(ii) above, the School does not refer students – English-speaking or otherwise – for evaluations to determine eligibility under the IDEA or Section 504. Further, the Interim Superintendent told OCR that no students identified for special education services are LEP students. The Special Education Teacher (who does not speak Spanish) stated that, at the time of her interview in January 2018, she was not working with any Spanish-speaking students, though she used to work with such students. Therefore, there were technically no students to review with respect to formal pre-referral, referral, evaluation, or placement into special education.

However, this was not for an absence of LEP/EL students. Though in OCR’s CRDC for both the 2013-2014 and 2015-2016 school years, the School reported zero LEP students, OCR’s investigation contradicted this number. Witnesses uniformly described the School’s population as including EL students. The Interim Superintendent and Special Education Teacher each estimated, in their OCR interviews, the number of EL students in the facility at any given time to be existent but small. The Interim Superintendent offered five as a specific estimate, and the RAC teacher estimated the number to be between 10 and 15. Several witnesses described how support staff work with EL students to fill out the “Education History/Child Find Screening.” One teacher told OCR he had two EL students in one of his classes that term and has had others

in the past. The Physical Plant Director, who supervises a work crew of students who receive vocational credit, stated that his crew consists of some EL students every semester, usually totaling about half of his approximately eight students.

Documents also showed a small but not negligible EL student population. For example, the "Education History/Child Find Screening" form is available in Spanish and several students' filled theirs out in Spanish, including indicating that their primary language was Spanish. One student filled out the English version and wrote in a section asking to describe strengths and weaknesses, "Weakness don't speak English" [sic], and, in the section asking which classes would help achieve career goals, checked English to the exclusion of math, science, social studies, and vocational classes. In addition, twelve of the Child Find Screening Forms that OCR reviewed indicated that students were EL. Other documents, such as emails from staff at the Cochise County Detention Center (a county that borders Mexico) and the cover sheet of information in students' education file known as a "face sheet," indicate that specific students were Mexican nationals³¹ and/or EL.

The School's failure to refer students for evaluations to determine eligibility under IDEA or Section 504 has even further negative implications for EL students as compared to their English-speaking peers. Additional shortcomings with respect to screening procedures make it even less likely that the School would identify an EL student for a possible referral, because the School simply gathers less data on, or misses the opportunity to gather data on, EL students.

First, the "Child Find Screening Form" contains a section for "Primary Language Assessment." Questions in this section are: "The language most spoken in the home: English/Spanish;" "The language most spoken by the Student is: English/Spanish;" and "The child's first spoken language was: English/Spanish." The RAC teacher does not speak Spanish. He estimated that he had two or three EL students per month in his class, and he confirmed that he also fills out the "Child Find Screening Form" for EL students. He stated that despite not speaking the same language as these students, he believed he still obtained a good sense of them sufficient to fill out the forms. As explained above, the RAC teacher has never referred a student for an evaluation to determine eligibility for an IEP or Section 504 plan. Of the 226 forms that OCR reviewed, the Primary Language Assessment was entirely blank in 126, and for five of those, the section on Academic Progress was also entirely blank. Twelve students' screening forms had notes to the effect that they were ELs or "Spanish speakers," only some of which indicated that the School would "monitor progress." For at least an additional six of these 126 students, other documents established that the student was EL.

Second, OCR's investigation established some evidence that EL students are not given the TABE, at least not during intake. Six students' forms had post-it notes on them to the effect of "Spanish speaker, no TABE scores." TABE is a consideration for class placement, academic progress, IEP data, and, ultimately, parole. Excluding EL students from the TABE leaves staff (educators and parole boards alike) without a data point that plays a critical role at the School.

Third, the School provides EL students with minimal substantive language acquisition services, which necessarily prevents educators from having an accurate picture of each child on which to base any decisions about special education or referrals for evaluation. EL students do undergo RAC, where, as the RAC teacher explained in his OCR interview, though he does not speak Spanish, he occasionally uses other students as interpreters, provides some schoolwork in Spanish, and has the class watch “videos” that are in “English and Spanish.” Once out of RAC, EL students are not necessarily more comprehensively served. The School identified one teacher who is certified to provide EL services. Her endorsements are in Structured English Immersion and English as a Second Language. She stated that the School has a “separate” EL class only when there are “enough” kids. The former Interim Superintendent provided a similar account. The current Interim Superintendent explained that the School provides “ELL support” with the certified teacher, a CTE teacher who is bilingual (who also has an endorsement in Structured English Immersion), and the Physical Plant Director and work-crew supervisor Edward Rodriguez, who does not have a background in education but “help[s] with language acquisition.” The School attempts to place EL students in these settings. With respect to the CTE teacher’s class, he explained that he teaches Spanish in addition to “a little Electrical” (his actual substantive course). However, EL students do end up in other classrooms. Another non-bilingual teacher described having EL students in his class and doing his best to serve them, by for example providing a Spanish-English dictionary and having them look up vocabulary words, drawing pictures, and speaking “in Spanglish.” Two teachers told OCR that the School needs to do more for EL students.

Fourth, OCR’s review of IEPs established that the School does not consistently identify students as LEP/EL or consider students’ educational needs with respect to English language acquisition, as well as access to the core curriculum. Our review of 104 students’ IEPs identified 11 students whose IEPs contained evidence of language acquisition needs (*e.g.*, a history as an EL or a designation of Spanish as the student’s own primary language).³² None of the 104 IEPs identified language acquisition services among the services to be delivered, or specifically identified any IEP team member knowledgeable about language acquisition. Additionally, the School’s form IEP contains a check-box section to consider language needs,³³ and this section was marked in the negative for eight of the 11 students. Of these eight, three students’ IEPs contained opposing information as to the student’s own primary language or language proficiency. For one of these eight, the student’s IEP from a separate school district six months earlier indicated that his participation in the IEP team meeting only after one of his counselors translated and encouraged him to participate.

In conclusion, the information described in this section cause us to conclude that the preponderance of evidence establishes that the School does not adequately serve LEP students with respect to special education. The School’s treatment of this subset of students with disabilities, in turn, is one factor in our conclusion that the preponderance of evidence establishes that the School discriminates against students with disabilities by treating them differently on the basis of disability and denying them a FAPE, in violation of Section 504 and Title II.

III. ADDITIONAL CONCERNS RELATED TO STUDENTS WITH DISABILITIES

a. Discipline

The Section 504 regulations, at 34 C.F.R. §§ 104.33(a), 104.35(a), and 104.36, prohibit a school district from taking disciplinary action that results in a significant change in the placement of a student with a disability without reevaluating the student and affording due process procedures. OCR interprets the Title II regulations, at 28 C.F.R. §§ 35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to act consistent with the Section 504 regulations in disciplining students with disabilities. The exclusion of a student with a disability from his or her program for more than 10 consecutive days, or for a total of 10 or more cumulative days under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, school districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability – called a “manifestation determination.” If so, the school district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for students without disabilities.

The School reported that it does not suspend or expel students. However, during the 2016-2017 SY, students experienced two other types of disciplinary removals. The first was called “Containment.” Students were sent there for being disruptive and not completing work. The School reported that a teacher was assigned to work with the one to seven students in Containment at any given time. The School wrote, “Students continue to receive regular and special education services while in Containment. They are provided work for their assigned classes to complete.” Some students spent a lot of time in Containment. For example, an email from a teacher to the Special Education Teacher read, “[The student] was in Containment for 5 out of the 6 weeks of term 6.” According to the Interim Superintendent, the School no longer uses Containment (although she could not specify when it stopped being used).

The second type of removal was called “separation” and located in AMS' Temporary Stabilization Unit (TSU). TSU is a short-term crisis management unit, staffed by mental health staff. Students may be admitted if they are a danger to self or others, or if they self-report. Although ADJC Policy 4061 (“Temporary Stabilization Unit”) requires that TSU “programming [] not violate a juvenile's right to . . . (FAPE),” the policy only requires educational services be provided to those in TSU “for more than 24 hours.” The policy contains a further caveat, in that it permits educational services not to be provided for youth whose “behavior indicates an immediate threat to the safety and security of themselves or others.” In such circumstances, this Policy requires “the inability to provide education services” to be documented in the TSU Tracking Log.

In terms of frequency of TSU use, OCR was not able to review TSU logs, as the School refused to provide OCR with unredacted copies, claiming that they are not education records, and thus, OCR is not entitled to unredacted copies. One teacher reported, “Some kids are there every

day.” The face sheet for one student with an IEP identified his “Physical Location” as “Separation (Boys).” Another student’s IEP indicated that he was not present at his own IEP team meeting because he “was in separation and not able to attend.”

During interviews with staff, we received conflicting information about if and how education services are provided in the TSU. Two staff members reported that students do not receive any educational services while in separation; seven staff members reported that students just have the option to complete makeup work when they return to class; and one staff member said students can take work with them (when allowed) and may attempt to make up work when they return to class. The Education Program Administrator said work is taken to the TSU for students. A teacher (not a special education teacher) told OCR that he goes to the TSU every day to collect work, and for students who are in separation for more than 24 hours, to provide education. According to the Special Education Teacher, she learns which students with IEPs are in separation when she sees attendance records. If she sees that there are students with disabilities in the TSU, she goes to speak with them. However, she also said that providing educational services to the students is “pretty much out of the question.” A mental health team coordinator told OCR that School staff have not provided services in separation, but if a student stayed more than 24 hours, they would have a teacher come to the TSU. No one interviewed said that special education services are provided in the TSU.

The School’s attorney argued that the TSU is used for de-escalation, not for discipline. However, the two are not mutually exclusive. Additionally, one student’s IEP read, “On the first day of the new school year (17-18), [student] missed his morning class because he got into a fight and was sent to TSU. This type of behavior could interfere with his education by keeping him away from school.”

The School does not track what special education or related services students miss while in the TSU. Therefore, it is possible that a student may experience a significant change in the placement – *i.e.*, exclusion of a student with a disability from his or her program for more than 10 consecutive school days, or for a total of 10 or more cumulative school days under circumstances that show a pattern of exclusion – and the School may fail, in turn, to conduct a manifestation determination. During interviews with OCR, two teachers indicated that they were unfamiliar with the term “manifestation determination;” and six other staff members reported that the School does not conduct manifestation determinations.

b. Restraint

In broad terms, restraint of a student means restricting the student’s ability to move his or her torso, arms, legs, or head freely, and seclusion of a student is confining a student alone in a room or area that he or she is not permitted to leave. Physical restraint refers to a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. Restraint of a student with a disability may indicate that his or her needs are not being appropriately met. Thus, restraint of a student may be evidence of a need to take action, such as re-evaluating the student, modifying the student’s IEP, or creating or modifying

the student's BIP. If a recipient fails to take such action, when necessary, it denies a student FAPE in violation of Section 504 and Title II. A recipient may also violate Section 504 and Title II if it treats students with disabilities differently than students without disabilities in the use of restraint. Finally, a student who misses special education or related services while being restrained may also be denied FAPE in violation of Section 504 and Title II.

The Department requires recipients, including the School, to report on the use of restraint for OCR's CRDC. CRDC data for the School raises questions about the accuracy of the School's reporting. For the 2013-2014 SY, the School reported 1,007 restraints; however, for the 2015-2016 SY, the School report zero restraints.

During interviews with OCR, staff reported that students are restrained in the School – typically by correctional officers, though some staff reported having assisted occasionally. Some staff reported having witnessed the use of mechanical restraints – specifically, handcuffs. When restraints occur, staff are supposed to complete incident reports.

During our investigation, we were unable to determine the exact frequency and nature of restraint in the School. The School refused to provide OCR with unredacted copies of incident reports, claiming that they are not education records, and thus, OCR is not entitled to unredacted copies.

c. Civil Rights Data Collection

As noted in Sections II(c)(iii) and (d), OCR's investigation established anomalies in the data regarding the School's population of students with Section 504 plans and population of students with LEP that are reported in OCR's CRDC.

d. Conclusion as to Additional Concerns Related to Students with Disabilities

The Resolution Agreement addresses our additional concerns related to discipline and restraint of students, as well as CRDC reporting.

IV. ADDITIONAL DISABILITY DISCRIMINATION VIOLATIONS

a. Communication with National-Origin-Minority LEP Parents on Special Education Matters

The May 1970 Memorandum also provides that school districts have the responsibility to adequately notify national-origin minority group, LEP parents of school activities that are called to the attention of other parents, and that such notice, in order to be adequate, may have to be provided in a language other than English.³⁴ Recipients must provide language assistance to LEP parents effectively with appropriate, competent staff – or appropriate and competent outside resources. It is not sufficient for staff merely to be bilingual. Recipients should ensure that interpreters and translators have knowledge in both languages of any specialized terms or

concepts to be used in the communication at issue and are trained in their role of an interpreter or translator, the ethics of interpreting and translating, and the need to maintain confidentiality. In addition, interpreters should be able to demonstrate proficiency in and ability to communicate information accurately in both English and in the other language, and be knowledgeable of any particularized vocabulary and phraseology used by the LEP person.³⁵

OCR's and DOJ's joint *Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities* reaffirms that this responsibility applies to juvenile justice facilities:

Family and community engagement is a key component in the rehabilitation process for committed students and helps facilitate the transition back to their homes and schools after release. . . . [F]acilities that provide educational services have an obligation to ensure meaningful communication with parents who have . . . (LEP) and others in a language they can understand, and to adequately notify LEP parents of information about a facility's educational programs, services, and activities that is called to the attention of non-LEP parents (such as through interpreters or translations).³⁶

Our investigation established that the School's parent population includes LEP parents. As noted above, twelve students' RAC screening forms had notes to the effect that they were ELs or "Spanish speakers," which suggests that at least some of these students' parents, too, may have language needs. The Interim Superintendent acknowledged that a "handful" of LEP parents are among the School's parent population, but was not able to provide an estimate of the number. She explained that the School uses the CTE teacher who is bilingual and the certified interpreter-translator, to provide interpretation or translation services. The CTE teacher explained that he provides Spanish interpretation for most of the School's needs, including most IEP team meetings, and for the monthly staffings that occur on housing units, where he serves as the School's representative for the unit that houses primarily male students who do not speak English.³⁷

The certified interpreter-translator explained that she also provides interpretation for IEP team or MET meetings, and makes phone calls to parents (such as to notify them of IEP team meetings). She also translates case plans, letters, forms, and other documents, and provides interpretation or translation for non-education tasks, such as for phone calls from parole officers to parents, or home visits with parole officers or social workers. The Special Education Teacher confirmed that she uses either the certified interpreter-translator or the CTE teacher to assist her.

In terms of activities that are called to the attention of parents, the facility has a Family Handbook, which is available in English and Spanish (as is a Youth Handbook). Parents also receive a "Juvenile Orientation Parent Packet," available in English and Spanish, which includes questions about health history that would be relevant to identifying students for referrals for evaluation for special education services.

In addition to the frequent use of the CTE teacher (whose willingness to assist is admirable but, because he is not certified, nevertheless non-compliant), our review of IEPs established that the School has not consistently ensured that LEP parents are consistently provided information about special-education-related matters in a language they understand. Our review of 104 students' IEPs identified 14 students whose IEP documents contained evidence that their parents may have had language needs. Of these, for example:

- For three of these students, their special education records identified their primary home language as English, yet an interpreter participated in their IEP team meetings. For one of these students, a prior written notice was translated into Spanish. For another, the student's October 2015 and August 2016 IEPs designate English as the primary home language, but his November 2017 IEP leaves the section on primary home language blank and identifies Spanish in the section for primary language survey results. His 2015 prior written notice is in English, a 2016 prior written notice is in English and Spanish, a September 2017 prior written notice and meeting notice are in English, and a November 2017 meeting notice is in English while a prior written notice is in English and Spanish. A fourth student's lists his primary home language as English, but a prior written notice indicates that prior to the IEP team meeting, the School contacted the student's mother and "[i]t was discovered that she needs a translator." The prior written notice is in English and Spanish, but the Spanish version omits this discovery.
- Three students had interpreters present at their IEP team meetings, but prior written notices in English. Only two of these three had meeting notices in Spanish.
- Two students had Spanish designated as their primary home language and translated documents in their IEP files, but no interpreter identified among IEP team meeting participants.
- Three students had inconsistently or partially translated documents in their special education records.
- For one student, his IEP from his previous school district six months earlier indicated that his primary home language was Spanish and an interpreter had participated at his last IEP team meeting. The student identified Spanish as his home language on his RAC intake form. His September 2016 MET mentioned his "history of English language learner" and indicated that he reported the language his parents speak most is Spanish and his mother was interviewed with an interpreter. Yet, his September 2016 and September 2017 IEPs indicate that his primary home language is English, and meeting notices for both these meetings are in English. The prior written notice for September 2016 is in Spanish, but the 2017 prior written notice is primarily in English, but partially Spanish.

This inconsistency is confirmed by an email that a special education teacher sent, seeking translation, in December 2016. The teacher wrote, "Okay, there are some requirements that we should have done in the past but did not These notices must be in the parent's language. I've started following IDEA mandates, but this means that I'll need the translations when the parent does not speak English. . . . Please translate each section to Spanish and type it on the form below it."

Therefore, we find that the preponderance of the evidence supports a conclusion that the School does not adequately provide notice of special education school-related matters to national-origin language-minority parents in a language that they understand.

b. Section 504 Policies

The School's Section 504 policies and procedures are contained in ADJC Procedure 4407.01, ("Section 504").³⁸ In January 2018, the School approved a new version of Procedure 4407.01, described below. Prior to January 2018, this procedure was last updated in March 2012. The AMS's Policy Manager, whose role includes managing and revising policies, explained that the revisions to this procedure began around September 2017 and were likely spurred by OCR's compliance review.

Because the two policies are substantially similar, there is no evidence that during the time period OCR is reviewing that any students were referred for a Section 504 evaluation under this policy, and the former policy is now mooted by the new policy, OCR reviewed the new policy. As the substantially similar former policy did, the new policy raises a number of compliance concerns, including that:

- The policy lacks any description of the circumstances under which a student will be referred for evaluation (*i.e.*, per 34 C.F.R. § 104.35, a student who, because of disability, needs or is believed to need special education or related services). (We note that ADJC Policy 4420 ("Special Education") and related procedures address referrals and evaluations under the IDEA, but Procedure 4407.01 does not reference them.)
- It is not clear that an evaluation will include the administration of appropriate tests or that in interpreting evaluation data and in making placement decisions, the School: (1) draws upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) ensures that information obtained from all such sources is documented and carefully considered; and (3) ensures that placement decisions are made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, as required by 34 C.F.R. § 104.35(b) and (c). The policy's definitions section and Section 1(b) refer to a "pre-referral team" or "504 review committee" to be convened when "students who are not making satisfactory progress in the general education program." The team participants are identified as "parents, teachers, site administration, support staff, and student when appropriate." This appears to omit any ADJC (or other) behavioral, psychiatric, or psychological staff. The policy lacks any description of the circumstances of when such a team will be formed, or any clarification of any differences between the "pre-referral team" and "504 review committee."
 - The 504 Coordinator is tasked to "[w]ork with other team members to develop in writing the early intervention plan and provide a copy of those plans to the parent(s)." This does not describe the role of any parental input in the plan.

- The 504 Coordinator is tasked to “[p]ropose mitigating measure [sic] to help correct the difficulties,” but it is not clear what this entails.
- The 504 Coordinator is tasked to “continue and monitor for progress” or complete the referral form. This does not make clear any other team members’, including parent(s)’, role in progress monitoring and referrals.
- Section 1(c) provides that referrals for evaluation are made only to the Education Administrator or designee, who alone approves or denies the referral. Yet there is no indication that this individual would have individual knowledge of the student, and there is no explanation of any recourse (or even notification) if the referral is denied.
- The policy inconsistently and/or inaccurately states the standard for evaluation in several places (*e.g.*, Sections 1(d)(i)(1) “[s]uspects their child has a present disabling condition that: (a) Substantially limits a major life activity; and (b) Creates a barrier to accessing the same educational opportunities afforded to non-disabled students;” 1(d)(i)(2) “Desires to evaluate their child for possible accommodations;” 1(d)(i)(3) “and requiring special accommodations and/or services;” 1(d)(iv) “eligibility for Section 504 accommodations or services.” In monitoring the Resolution Agreement of this case, we will suggest revising to the language of 34 C.F.R. § 104.35, for “because of [disability], needs or is believed to need special education or related services.”
- The process for evaluations, at Section 1(d)(iii), lacked detail, described only as “EDUCATION PERSONNEL OR A [Qualified Health Care Professional] QHCP shall complete an evaluation,” raising questions as to whether evaluations would comply with the Section 504 requirements for evaluations at 34 C.F.R. § 104.35(b).³⁹
- Section 1(d)(iv) requires a Section 504 team to convene to review data and determine eligibility.
 - The members of the Section 504 are not identified here (though they are identified at Procedure 4407.01C (“Section 504 Accommodation Plan”). It is thus not clear that the procedure complies with 34 C.F.R. § 104.35(c)(3), which requires that placement decisions be “by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options.”
 - This section indicates that an “accommodation plan” may result from the meeting, but (in this section and in Section 1(e)) does not expressly state that any Section 504 Plan is developed as a team at that meeting.
 - This section also provides that the plan will “contain all pertinent data, to include: (1) Medical reports; (2) Educational records; (3) Juvenile’s response to intervention; (4) Teacher data; (5) Standardized assessments; and (6) Any other evaluation materials from the evaluation process.” 34 C.F.R. § 104.35(c) requires that, “[i]n interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior.” At a minimum, this procedure omits data that would inform as to a student’s social or cultural background and adaptive behavior.

- Section 1(e)(iii) requires review at least annually but does not specify that review will be by the Section 504 team.
- The procedure appended, as 4407.01A, is a Referral Form, but there is no indication that this form was generally available. For example, it was not referenced or appended to either the Family Handbook or Youth Handbook or on the School's website. In fact, both handbooks and the website omit any mention of Section 504.
- As described in greater detail below with respect to "Section 504/Title II Grievance Procedures," the policy is unclear as to parental consent to, or disagreement, with the actions described. Section 1(d)(i) provides that procedural safeguards are to be provided when parental consent is sought. But the policy is unclear as to the role of parental consent or disagreement with the eligibility determination or plan itself. Procedural safeguards are mentioned but not appended to the policy and the School has not been able to provide these safeguards after OCR requested them. The Section 504 procedural safeguards are differentiated from the special education/IDEA procedural safeguards at 4420.06 "Special Education: Procedural Safeguards with Respect to the Provision of FAPE." The form for a standard Section 504 Plan, at 4407.01C, allows only for parental consent and agreement. A "dispute resolution" procedure (analyzed below) applies to parental disagreement with "identification, evaluation, or placement of a juvenile with disabilities," but as described below, this procedure is insufficient.

For these reasons, we find by a preponderance of the evidence that the School's Section 504 policy does not comply with Section 504.

c. Section 504/Title II Procedural Requirements

The Section 504 and Title II regulations establish procedural requirements that are important for the prevention and correction of disability discrimination. These requirements include: (1) designation of at least one employee to coordinate compliance with the regulations, including coordination of investigations of complaints alleging noncompliance (34 C.F.R. § 104.7(a) and 28 C.F.R. § 35.107(a)); (2) issuance of notice that disability discrimination is prohibited and contact information for designated compliance coordinators (34 C.F.R. § 104.8 and 28 C.F.R. § 35.106); and (3) adoption and publication of grievance procedures that incorporate appropriate due process standards and provide for the prompt and equitable resolution of complaints alleging disability discrimination (34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b)).

i. Section 504/ADA Title II Coordinator

The School's policies designate a Section 504 Coordinator. Procedure 4407.02 ("Basic Education Needs") designates a Section 504 Coordinator in that it provides that the Guidance Counselor shall ensure educational needs are assessed upon enrolling, including "[a]ssigning an academic program schedule that meets the student's assessed educational needs, including . . . [s]pecial education" and "[c]ollaborating with the Education Principal to see that all State and Federal regulations involving 504 plan services for identified students are followed." The

former Policy 4407.01 (“Section 504”) ascribed some job duties to a Section 504 Coordinator, but it did not define that coordinator; the new version of this policy, approved in January 2018, adds a definition of the Section 504 Coordinator, as the “[d]esignated education employee that coordinates the district’s efforts to comply under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act, Amendments Act of 2008 (ADA).”

As to whether an employee filled the role of a Section 504 Coordinator, it appears that for at least some of FY2017, the role was filled. According to the School, its Guidance Counselor, was the Section 504 Coordinator until October 2017. See Figure 5. The Guidance Counselor indicated that she was a state-certified counselor and former teacher and came into her job at the School with some training related to Section 504; however, she had not received any training related to her Section 504 duties while at the School. Her own description of her job duties did not encompass any Section 504-related tasks, and the job description for the guidance counselor/Section 504 coordinator indicated that only five percent of time was to be spent on “coordinat[ing] Section 504 Accommodation Plans and/or student study team meetings as required.” The School further explained that after the Guidance Counselor left the School, at first temporarily and later, permanently, the one Special Education Teacher or the Interim Superintendent fulfilled the Section 504 Coordinator role. After the Guidance Counselor formally submitted her resignation in approximately January 2018, a general education teacher took over. See Figure 5.

The only mention of an ADA/Title II Coordinator that OCR has established is a statement in the Youth Handbook and Family Handbook that “ADJC does not discriminate on the basis of disability in the operation of its programs, delivery of services, or activities” along with a telephone number for “the ADJC ADA Coordinator” to contact “[i]f you have questions, concerns, complaints, or requests for reasonable accommodations due to a disability or would like information.”

Despite some concerns over the continuity of designation of the Section 504 Coordinator, we find that the preponderance of the evidence establishes the School has designated a Section 504 coordinator in compliance with 34 C.F.R. § 104.7(a). However, because a separate ADA Coordinator was listed in a handbook, but we did not find any other evidence of such a coordinator’s existence, we also find by a preponderance of the evidence that the School has not appropriately designated an ADA/Title II compliance coordinator (28 C.F.R. § 35.107(a)). Our compliance concerns as to the School’s notification efforts as to these employees is analyzed in the next section.

ii. Notice of Non-discrimination

The School’s Family Handbook and Youth Handbook each contain, in separate locations: (1) among a list of rights for youth, the right “to not be discriminated against for any reason;” (2) a statement that “ADJC does not discriminate on the basis of disability in the operation of its programs, delivery of services, or activities,” along with a telephone number for “the ADJC ADA Coordinator” to contact “[i]f you have questions, concerns, complaints, or requests for

reasonable accommodations due to a disability or would like information.” Each handbook also identifies the “guidance counselor” as a contact person for questions about education, including, for example, “conflicts in school, career opportunities, and college or vocational training.” However, the handbooks do not identify the guidance counselor as the Section 504 Coordinator or contain any other references to Section 504. OCR requested, but the School did not provide, any information on its website relating to nondiscrimination. The ADJC also has Policy 2022 (“Americans with Disabilities Act,”), and associate procedure(s), but these appear to apply only to employees and applicants. In that a Section 504 Coordinator is not identified at all and has changed several times over the past several months, and the only information on nondiscrimination is not easily locatable or effective in that it appears several pages into each handbook and is contained in multiple locations, we find that the preponderance of the evidence establishes School has not taken appropriate steps to notify program participants and others that it does not discriminate on the basis of disability, in violation of 34 C.F.R. § 104.8 and 28 C.F.R. § 35.106.⁴⁰

iii. Section 504/ADA Title II Grievance Procedures

The former and current ADJC Procedure 4407.01 (“Section 504”), each contain a substantially similar, brief section titled, “Section 504 Dispute Resolution.” In its entirety in the current Procedure 4407.01, this section states:

- [1]f. Section 504 Dispute Resolution:
 - i. The SECTION 504 COORDINATOR OR DESIGNEE shall ensure parents/guardians who disagree with the identification, evaluation, or placement of a juvenile with disabilities, shall notify the district’s 504 Coordinator and attempt to resolve the differences informally. If informal process fails, the parents/guardians may request due process.
 - ii. Due process to include:
 - (1) Filing a written grievance directly with the Section 504 Coordinator;
 - (2) An in-person meeting with the Section 504 Coordinator;
 - (3) Mediation with a Section 504 Hearing Officer in which the parent/guardian has the right to: (a) Participate in person; and (b) Be represented by counsel; or[]
 - (4) Filing a written complaint with the United States Department of Justice – Office of Civil Rights

Separately, ADJC Procedure 2304.01 (“Juvenile Grievances”) provides for juvenile grievances, including those related to “Education” and “Discrimination against a protected class.” The text of this policy is not clear that it applies to special education or Section 504 or other disability discrimination. The ADJC’s Youth Rights/Juvenile Ombuds, whose role includes assisting youth with grievances, shared in her interview that this procedure does not encompass concerns from parents or staff. The ADJC’s counsel confirmed this during this interview.

OCR examines a number of factors in evaluating whether grievance procedures are prompt and equitable, including whether the procedures provide for the following: notice of the procedure to students, parents of elementary and secondary school students, and employees, including where to file complaints; application of the procedure to complaints alleging discrimination by employees, other students, or third parties; adequate, reliable, and impartial investigation of complaints, including the opportunity to present witnesses and other evidence; designated and reasonably prompt timeframes for major stages of the complaint process; notice to the parties of the outcome of the complaint; and an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

The grievance procedure contained in ADJC Procedure 4407.01 (“Section 504”) is not compliant using these factors. It is not clear where notice is provided to students, parents, or employees, as it is not clear where or if this policy is available. For example, the Family Handbook, Youth Handbook, and website do not mention Section 504. The policy does not indicate that it applies to complaints alleging discrimination by employees, other students, or third parties. The policy contains no procedures for investigation of complaints, no timeframes for any part of the process, no provision for notice to the parties of the outcome of the complaint, and no assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects. Additionally, the procedure incorrectly combines OCR with DOJ and does not provide contact information for either entity.

Similarly, the Juvenile Grievance Procedure 2304.01 is not compliant using these factors. Though this procedure is more widely available (for example, referred to in both the Family and Youth Handbooks) and contains more detail as to investigations than Procedure 4407.01, it still lacks important factors. Specifically, it does not apply to complaints from either parents or staff, and omits an assurance that steps will be taken to prevent recurrence of any discrimination and to correct its effects.

For the foregoing reasons, we find by a preponderance of the evidence that the School has not adopted and published grievance procedures that comply with 34 C.F.R. § 104.7(b) and 28 C.F.R. § 35.107(b).

V. CONCLUSION

In order to resolve the issues identified in this compliance review, the School agreed to the enclosed *Resolution Agreement* (“Agreement”). When the Agreement is fully implemented, all review issues will be resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. A failure to implement the Agreement according to its terms would require us to re-open the review for further proceedings.

This letter addresses only the issues identified above and should not be interpreted as a determination of the School’s compliance, in any other respect, with Section 504 or Title II, any other regulatory provision.

Individuals filing a complaint or participating in an investigation are protected by Federal law against harassment, retaliation, or intimidation.

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

Thank you for the courtesy and cooperation you and your staff extended to us during the investigation. If you have any questions, please contact the attorneys who conducted the compliance review, Jason Langberg and Sarah Morris, at (XXX) XXX-XXXX or XXXX@XXXX.

Sincerely,

/s/

J. Aaron Romine
Regional Director

Attachment: Resolution Agreement

cc: Diane Douglas, Arizona Superintendent of Public Instruction
Alissa Trollinger, Deputy Assoc. Super., Exceptional Student Services, ADE
Tamara Gallett, Bureau Administrator, ADJC
Frank Burnsed, Education Program Administrator, School
Jeff Hood, Director, ADJC
Eryn McCarthy, Arizona Assistant Attorney General
James Mapp, Attorney, ADJC

¹ “Juvenile justice residential facilities and any other entities that receive Federal funds from the Departments—either directly or indirectly through another State or local agency—and that provide educational services in such facilities are subject to [Section 504 and Title II].” *Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities*, U.S. Department of Education, Office for Civil Rights (Dec. 8, 2014), <https://www2.ed.gov/policy/gen/guid/correctional-education/cr-letter.pdf> (hereinafter “*Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities*”), at 2.

² FY 2017 consisted of July 1, 2016 to June 30, 2017.

³ We visited the School from January 29, 2018 to February 2, 2018. There were only two education staff members who we did not interview at that time: the then-guidance counselor/Section 504 Coordinator, whom OCR subsequently interviewed; and a teacher who was absent due to illness.

⁴ Ariz. Rev. Stat. § 41-2816(A).

⁵ *Id.* § 41-2801(1) (“‘Committed youth’ or ‘youth’ means a person who is fourteen years of age or older but who has not yet attained the age of eighteen years and who has been committed according to law to the department of juvenile corrections for supervision, rehabilitation, treatment and education.”).

⁶ Ariz. Rev. Stat. § 41-2816(B).

⁷ *Id.* § 41-2822.01(A).

⁸ *Id.*

⁹ *Id.* § 41-2831(A).

¹⁰ *Id.* § 41-2831(E).

¹¹ U.S. Dep’t of Justice, Civil Rights Div., CRIPA Investigation of Adobe Mountain School and Black Canyon School in Phoenix, Arizona; and Catalina Mountain School in Tucson, Arizona (Jan. 23, 2004), https://www.justice.gov/sites/default/files/crt/legacy/2011/04/13/ariz_findings.pdf, at 2.

¹² *Id.* at 21.

¹³ *Id.* at 22.

¹⁴ *Id.*

¹⁵ *Id.* at 22-23.

¹⁶ *Id.* at 23.

¹⁷ *Id.* at 36.

¹⁸ Memorandum of Agreement Between the United States Department of Justice and the State of Arizona Concerning Adobe Mountain School, Black Canyon School, and Catalina Mountain School, https://www.justice.gov/sites/default/files/crt/legacy/2010/12/15/split_az_schools_moa.pdf.

¹⁹ According to ADE staff, the ADE conducts regular audits of all local education agencies in the state, and this audit was part of its regular auditing cycle.

²⁰ OCR uses the term “youth” as that is the term most often used by the ADJC to refer to the young men and women in its custody.

²¹ The ADJC’s report explained that these changes include an increase in the minimum admission age to 14, the requirement that juveniles who are admitted must have committed a felony in the past, and the allowance for those that are adjudicated as seriously mentally ill to be allowed admission if they have only committed a misdemeanor. its report also noted that, prior to this bill, the minimum age for admission was 8 years and individuals who had committed a misdemeanor were allowed entrance.

²² There are two education buildings: Esperanza and Discovery.

²³ Notably, Arizona law requires 720 hours of class per school year for high school students. Ariz. Rev. Stat. § 15-901.

²⁴ See 34 C.F.R. § 104.33(b)(2).

²⁵ *Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities*, at 7.

²⁶ AMS/the School argued that its design essentially produces education in a self-contained environment anyway.

²⁷ As of approximately July 15, 2016, when the School’s most recent full-time School Psychologist left and was not replaced, the School does not have in-house staff to provide students with psychological evaluations or related services. Instead, the School contracts with Eleutheria, a private company, to conduct evaluations and provide

speech-language therapy. Eleutheria also has the capacity to provide occupational therapy (OT), although our investigation established that no OT was provided in FY 2017.

²⁸ Typically, school staff would not be able to check the second box for a student because the School would not yet have received records from a student's previous school.

²⁹ *Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities*, at 5.

³⁰ We note that the violations established with respect to LEP students in special education and, as discussed later in this letter, with respect to communication with national-origin-minority LEP parents on special education matters, suggest that the School may have broader issues related to compliance with Title VI of the Civil Rights Act of 1964. That law was not at issue in this compliance review. We encourage the School to review its compliance with this law.

³¹ *Cf. Dear Colleague Letter: School Enrollment Procedures*, U.S. Dep't of Educ., Office for Civil Rights & U.S. Dep't of Justice, Civil Rights Div. (May 8, 2014), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405.pdf>, at 2 ("As *Plyler v. Doe*, 457 U.S. 202 (1982)] makes clear, the undocumented or non-citizen status of a student . . . is irrelevant to that student's entitlement to an elementary and secondary public education.").

³² This count does not include IEPs that indicated a primary home language other than English, of which there were more.

³³ Two versions of this section appeared in the IEPs that OCR reviewed. One version was titled "Consideration of Language, Hearing and Visual Impairments," with options for "Student is LEP" and "Not Needed." The second version was titled "Statement of Language Needs in the Case of a Child with [LEP]," with options for "Considered Not Needed" and "Included."

³⁴ *See also* Executive Order 13166, Improving Access for Persons with Limited-English Proficiency, Exec. Order No. 13166, 3 C.F.R. § 13166 (2001); U.S. Dep't of Justice Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 67 Fed. Reg. 41455 (June 18, 2002) (hereinafter "DOJ Recipient LEP Guidance").

³⁵ *See* DOJ Recipient LEP Guidance, 67 Fed. Reg. at 41461.

³⁶ *Dear Colleague Letter: Civil Rights in Juvenile Justice Residential Facilities*, at 5.

³⁷ Though not covered in this Section 504 and Title II compliance review, OCR notes that such segregation of EL students might raise compliance concerns under Title VI of the Civil Rights Act of 1964.

³⁸ A separate policy, Policy 4420 ("Special Education"), and a number of associated procedures, address the School's provision of special education under the IDEA.

³⁹ A separate process for "pre-referral" evaluations is set forth, requiring that referral forms were sent "to the Psychologist, Psychiatrist, or Medical Doctor for an evaluation to be performed by a group of qualified persons, to include: Parents; Qualified Health Care Professionals (QHCP); and Other Education personnel, as required."

⁴⁰ We further note that the School has not provided evidence that it complies with the notice of non-discrimination requirements of additional laws that OCR enforces. More information on notices of non-discrimination is available at <https://www2.ed.gov/about/offices/list/ocr/docs/nondisc.html>.