

RESOLUTION AGREEMENT
Adobe Mountain School
OCR Case Number 08-17-5001

The Arizona Department of Juvenile Corrections (ADJC) and the Adobe Mountain School¹ (AMS) enter into this Agreement to resolve the issues analyzed in the above-referenced compliance review. This Agreement does not constitute an admission of liability, non-compliance, or wrongdoing by ADJC, AMS, or the State of Arizona. The School assures the Office for Civil Rights (OCR) that it will take the following actions, consistent with Arizona statutory requirements regarding the expenditure of public funds, Arizona Procurement Code statutes ARS §§ 41-2501 *et. seq.* and implementing regulations – AAC R2-7-101, *et. seq.* to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (“Section 504”), as amended, 29 United States Code (U.S.C.) Section 794, and its implementing regulation, at 34 Code of Federal Regulations (C.F.R.) Part 104, and Title II of the Americans with Disabilities Act of 1990 (“Title II”), 42 U.S.C. Section 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. AMS is located within the confines of the Adobe Mountain juvenile correctional facility. ADJC represents that, since the inception of the OCR compliance review in 2017, ADJC has initiated several efforts aimed at addressing the concerns raised by OCR.

In reaching the agreement set forth in this Resolution Agreement, the School has relied on representations from OCR that they will promptly, following the signing of this agreement, provide to the School a Letter of Findings pursuant to the OCR *Case Processing Manual* section 303(e). ADJC anticipates that the Letter will include the following information for each alleged violation of law or regulation:

- a statement of the allegations in the case;
- a statement of OCR’s jurisdictional authority, including recipient status and the statutory basis for the investigation;
- a statement of the findings of fact for each allegation, supported by any necessary explanation and/or analysis of the evidence on which the findings are based; and
- conclusions for each allegation that reference the relevant facts, the applicable regulation(s) and OCR policy, and the appropriate legal standards.

I. OUTSIDE EXPERTS AND EXPERT PERSONNEL²

- a. The School will utilize the services of personnel – ADJC employees and/or outside experts – who possess expertise in educating students with disabilities, including students with disabilities *and* limited English proficiency (LEP), in juvenile correctional facilities. Such personnel and/or outside experts will assist the School with complying with all terms of this Agreement, including, but not limited to, developing the monitoring submissions due for each term of this Agreement.³

¹ Where references are made to “the School” or “School staff,” this refers to employees of ADJC who are employed in the provision of education to committed delinquent youth at the Adobe Mountain School educational facility (AMS), which is located within the grounds of the Adobe Mountain secure care facility, operated by the State of Arizona through ADJC. Because ADJC is responsible for the operation of AMS, where appropriate, “the School” may refer to the entire ADJC.

² The School understands that the consultant may be an outside consultant for the School or a School employee.

³ The School may collaborate with multiple consultants, if necessary, to obtain the necessary expertise.

- b. **By November 16, 2018**, the School will submit to OCR the name, contact information, and qualifications for personnel and/or outside expert assigned to this task.
- c. The School will promptly and completely address OCR's concerns, if any, regarding the experience and qualifications of such personnel, until OCR considers the concerns resolved. Final approval of such personnel shall be at the discretion of the Director of ADJC, pursuant to State of Arizona procurement and employment rules.
- d. If it becomes necessary for the School to use outside experts to assist in implementation of the terms of this Agreement, the School may enter into an agreement for services with such experts, if applicable.
- e. The School will promptly and completely address OCR's concerns, if any, regarding the experience and qualifications of any outside experts, until OCR considers the concerns resolved and issues final approval of the outside experts.
- f. Within 30 calendar days of entering an agreement with an outside expert pursuant to section I(d), the School will provide OCR with a copy of the final, executed agreement between the School and outside expert.
- g. **By July 31, 2019**, the School will provide OCR with a:
 - i. copy of all invoices or bills, if any, submitted by the outside experts to the School;
 - ii. copy of all payments, if any, made by the School to the outside experts; and
 - iii. a narrative of the activities of the assigned personnel and any outside experts related to this Agreement.
- h. The School will promptly and completely address OCR's concerns, if any, until OCR considers the concerns resolved.

II. AUDIT

- a. The School will review the educational records of all current students and additional information, as necessary, to determine, for each student, whether the student may:
 - i. have a disability and need to be evaluated to determine eligibility for a Section 504 plan or individualized education program (IEP); or
 - ii. need more or different special education, related services, accommodations, or modifications (for students who already have a Section 504 plan or IEP).
- b. **By November 30, 2018**, the School will submit to OCR a list of all students enrolled in the School as of October 15, 2018. The list will include, for each student:
 - i. first and last name;
 - ii. the date the student arrived and, if applicable, the date the student departed;
 - iii. the educational records reviewed;
 - iv. any additional information considered;
 - v. whether the student has a Section 504 plan;
 - vi. whether the student has an IEP;
 - vii. whether the student has been or will be referred for an evaluation of a suspected disability; and
 - viii. whether a meeting has been or will be convened to change the student's services, accommodations, or modifications (for students who are already identified as having a disability).
- c. The School will promptly and completely address OCR's concerns, if any, until OCR considers the concerns resolved.

- d. The School will conduct evaluations for students identified for Term II(b)(vii) and convene meetings for students identified for Term II(b)(viii).
- e. **By December 31, 2018**, the School will submit to OCR a list of all students identified for Terms II(b)(vii)-(viii) *and* will respond to Term II(b) with respect to all students who enrolled from October 16, 2018 to January 1, 2019. The list will further include:
 - i. first and last name (for each student);
 - ii. the date(s) of the evaluation and the eligibility determination (for students identified for Term II(b)(vii));
 - iii. the meeting date(s) and a summary of any changes to the Section 504 plan or IEP (for students identified for Term II(b)(viii)); and
 - iv. an explanation of why the student was not evaluated or why the student's Section 504 plan or IEP was not changed (if applicable).
- f. The School will promptly and completely address OCR's concerns, if any, until OCR considers the concerns resolved.

III. NEEDS ASSESSMENT AND ACTION PLAN

- a. The School will assess the School's needs and develop an action plan related to providing a free appropriate public education (FAPE) to students with disabilities. Specifically, the assessment and plan will address, but will not be limited to, the School's:
 - i. special education staffing;
 - ii. continuum of placements for students with disabilities;
 - iii. serving students with disabilities who also have LEP;
 - iv. language access for LEP parents of students with disabilities;⁴ and
 - v. provision of special education, related services, accommodations, and modifications.
- b. **By November 30, 2018**, the School will provide OCR with copies of the needs assessment and action plan, for OCR's approval.
- c. The School will promptly and completely address OCR's concerns, if any, until OCR considers the concerns resolved.
- d. Following OCR's approval, the School will implement the action plan.
- e. **By April 30, 2019**, the School will provide OCR with a report about implementation of the action plan. The report will include:
 - i. a description of actions taken, including key dates; and
 - ii. a description of remaining actions to be taken, including planned dates of completion.
- f. The School will promptly and completely address OCR's concerns, if any, until OCR considers the concerns resolved.

IV. POLICIES AND PROCEDURES

- a. **By December 30, 2018**, the School will submit to OCR for approval written policies and/or procedures regarding:
 - i. requesting, reviewing, and taking necessary actions in response to disability-related records from students' previous schools and districts;⁵

⁴ "Parent," as used in this Agreement, is defined as it is in 34 C.F.R. Section 300.30.

- ii. appropriate School staff participation in students' next Section 504 plan or IEP team meeting, if any, after release;
 - iii. referrals, evaluations, and reevaluations of students to determine eligibility for Section 504 plans and IEPs;
 - iv. the provision of special education;⁶
 - v. the provision of related services, including, but not limited to, how services that are provided in the facility, but outside of the School, may be incorporated, as necessary, into IEPs and Section 504 plans;⁷
 - vi. how the School will evaluate whether the provision of extended school year (ESY) services is required, and if so how such services will be implemented;⁸
 - vii. the provision of transition services;⁹
 - viii. the provision of accommodations and modifications, including, but not limited to, on standardized tests such as the Test of Adult Basic Education (TABE), including all pre- and post-versions, and the General Equivalency Diploma (GED);¹⁰
 - ix. serving students with disabilities who also have LEP;¹¹
 - x. language access for LEP parents of students with disabilities;
 - xi. use of restraint on students by ADJC staff;¹²
 - xii. tracking whenever any youth who has an IEP or Section 504 plan is absent from the school due to being sent to, or voluntarily requesting, the Temporary Stabilization Unit, or being retained on their housing unit due to behavioral problems outside of school;¹³
 - xiii. tracking the provision of education and special education services to any students absent from school per section IV(a)(xii);
 - xiv. tracking the number of days absent from school for each student absent per section IV(a)(xii);
 - xv. determining whether a students' absence per section IV(a)(xii) warrants a manifestation determination.
- b. The School will promptly and fully address feedback, if any, from OCR until it receives OCR's final approval of the written policies and/or procedures.
 - c. In the event that new policies or procedures are developed, or existing policies and procedures modified, the School will:
 - i. adopt the policies and/or procedures;

⁵ For purposes of this Agreement, "disability-related records" include, but are not limited to, IEPs, Section 504 plans, prior written notices (PWNs), and records related to evaluations, progress monitoring, manifestation determinations, functional behavioral assessments (FBAs), and behavioral intervention plans (BIPs).

⁶ This section of the policy will include how the provision of such services will be tracked.

⁷ This section of the policy will include how the provision of such services will be tracked.

⁸ This section of the policy will include how the provision of such services will be tracked.

⁹ This section of the policy will include how the provision of such services will be tracked.

¹⁰ This section of the policy will include how the provision of accommodations and modifications will be tracked.

¹¹ This section of the policy will include the pre-referral, referral, evaluation, and placement into special education programs and services of students with LEP, as well as how the provision of language acquisition services to such students as a component of FAPE.

¹² This section of the policy will include how restraints will be tracked and monitored.

¹³ The School does not currently suspend, expel, or otherwise use disciplinary removals. If such removals begin to occur, the School will track the disciplinary removals.

- ii. make available electronically, or in hard copy form distribute, copies of the polices and/or procedures to all School staff;
 - iii. distribute copies of the policies and/or procedures in English and Spanish to all parents of students attending the School;
 - iv. post the policies and procedures on the School's website in English and Spanish; and
 - v. upon the release of any AMS student from ADJC secure care, distribute to the local education agency in Arizona to which the student transfers or enrolls following release, notice aligning with the School's policy developed pursuant to Section IV(a)(ii), regarding appropriate School staff participation in students' next Section 504 plan or IEP team meeting, if any, after release.
- d. **By January 31, 2019**, the School will submit to OCR documentation showing that Term IV(c) has been fulfilled.¹⁴
- e. The School will promptly and completely address OCR's concerns, if any, until OCR considers the concerns resolved.

V. FORMS

- a. **By December 30, 2018**, the School will submit to OCR for approval forms for:¹⁵
- i. referrals of students for evaluation;
 - ii. tracking the provision of special education and related services;
 - iii. tracking the provision of accommodations and modifications;
 - iv. tracking the use of restraint on students by ADJC staff; and
 - v. transmittal with responses to request for records from schools and districts that students attend after release, explaining the availability of appropriate School staff to participate in the student's next Section 504 plan or IEP team meeting.
- b. The School will promptly and fully address feedback, if any, from OCR until it receives OCR's final approval of the forms.
- c. If any forms are updated, revised, or newly adopted pursuant to this agreement, **by January 31, 2019**, the School will submit to OCR:
- i. copies of the final forms; and
 - ii. evidence that the final forms were made available electronically, or if hard copies distributed, to all School staff.¹⁶
- d. The School will promptly and completely address OCR's concerns, if any, until OCR considers the concerns resolved.

VI. STAFF TRAINING

- a. **By January 31, 2019**, the School will submit to OCR for review draft materials to train all staff at the School regarding:
- i. the definitions of "handicapped persons," "physical or mental impairment," and "major life activities;"¹⁷

¹⁴ The evidence may include screenshots, PDFs or print outs, and copies of emails showing recipients.

¹⁵ The forms may be print outs or screenshots from electronic databases.

¹⁶ The evidence may include copies of emails showing the recipients or signatures from staff attesting to the fact that they received the forms.

¹⁷ See 34 C.F.R. Section 104.3(j).

- ii. identifying students with disabilities;¹⁸
 - iii. providing FAPE to students with disabilities;¹⁹
 - iv. evaluation and placement of students with disabilities;²⁰
 - v. development and implementation of IEPs and Section 504 plans;
 - vi. significant changes in placement and manifestation determinations;²¹
 - vii. functional behavioral assessments (FBAs) and behavioral intervention plans (BIPs);
 - viii. key differences between Section 504 and the Individuals with Disabilities Education Act (IDEA);
 - ix. new policies and/or procedures created pursuant to Term IV; and
 - x. use of the forms required by Term V.
- b. **By January 31, 2019**, the School will submit to OCR for review the name(s), title(s) or position(s), and qualifications of one or more proposed qualified individuals to provide the training(s).
- c. The School will promptly and fully address OCR's feedback, if any, until the School receives OCR's final approval of the training materials and trainer(s).
- d. The approved trainer(s) will deliver the approved training to all staff.
- e. **By April 30, 2019**, the School will provide to OCR:
- i. the date(s), time(s), and location(s) of the training(s);
 - ii. confirmation that the approved trainer(s) delivered the training(s);
 - iii. the agenda and materials from the training(s);
 - iv. the names and titles of all individuals who attended the training(s);
 - v. the name(s) and title(s) of all individuals who did not attend the training(s), an explanation for each person's absence, and a plan to train each person (if possible); and
 - vi. a plan to provide on-going training for staff in the future.
- f. The School will promptly and completely address OCR's concerns, if any, until OCR considers the concerns resolved.

VII. COMPENSATORY SERVICES

- a. For each student with a disability who attended the School between July 1, 2017 and June 30, 2018, and who is either still enrolled in the School or who returns to the School between October 31, 2018 and March 31, 2019, the School will discuss, at the student's next regularly scheduled Section 504 or IEP team meeting that takes place at the School, whether the School failed to provide FAPE to the student at any point during 2017-2018.
- b. If any such students are identified, the School will determine, at that same meeting, whether the student is owed any compensatory services as a result of the School's failure to provide FAPE, and if so, what services and on what timeline they will be provided.
- c. **By December 30, 2018**, the School will submit to OCR draft language that will be included in Section 504 or IEP team meeting invitations to parents and guardians, including, but not limited to, OCR's contact information.

¹⁸ See 34 C.F.R. Section 104.32.

¹⁹ See 34 C.F.R. Section 104.33.

²⁰ See 34 C.F.R. Section 104.35.

²¹ See *id.*

- d. The School will promptly and fully address OCR's feedback, if any, until the School receives OCR's final approval of the language.
- e. The School will use the approved language in Section 504 or IEP team meeting invitations.
- f. The School will document the content and outcome of each discussion held pursuant to VII(a) and any compensatory services agreed upon under sections VII(b) and (c).
- g. **By July 31, 2019**, the School will submit to OCR copies of:
 - i. all meeting invitations;
 - ii. documentation showing the content and outcome of the discussion;²² and
 - iii. documentation showing the delivery of compensatory services (as applicable).²³
- h. The School will promptly and completely address OCR's concerns, if any, until OCR considers the concerns resolved.

VIII. CIVIL RIGHTS DATA COLLECTION

- a. **By December 30, 2018**, the School will submit to OCR forms and written procedures to be used to ensure accurate collection, maintenance, and reporting of data for the U.S. Department of Education's Civil Rights Data Collection (CRDC).
- b. The School will promptly and completely address OCR's feedback, if any, until it receives OCR's final approval of the forms and procedures.
- c. The School will use the general OCR-approved forms or procedures to collect, maintain, and submit data for the U.S. Department of Education's CRDC.

The School understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. Sections 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR will give the School written notice of the alleged breach and 60 calendar days to cure the alleged breach. The School and OCR will utilize the procedures in *OCR Case Processing Manual* Section 503, if any modifications to the Agreement become necessary.

The School understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the School understands that, during the monitoring of this Agreement, if necessary, OCR may visit the School, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the School has fulfilled the terms of this Agreement and are in compliance with Section 504, and its implementing regulation, at 34 C.F.R. Section 104.61 as it incorporates 100.7(e), and Title II, and its implementing regulation, at 28 C.F.R. Section 35.134. Upon completion of the obligations under this Agreement, OCR will close this case.

For the Arizona Department of Juvenile Corrections and Adobe Mountain School:

/s/
Jeff Hood, Director

11/15/18
Date

²² The documentation may be PWNs or meeting notes.

²³ The documentation may be provider service-delivery logs.