



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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April 14, 2023

Dr. Kevin Mendivil, Superintendent
Tempe Union High School District
500 W Guadalupe Road
Tempe, AZ 85283

By email only to: xxxxxxxx

Re: Tempe Union High School District
OCR Case No. 08-23-1043

Dear Superintendent Mendivil:

This letter is to notify you of the disposition of the above-captioned complaint, received by the United States Department of Education's Office for Civil Rights (OCR) on October 17, 2022, alleging that the Tempe Union High School District (District) discriminates against students with disabilities.

The complaint alleges (1) that the District discriminated against the Complainants' son (Student), a student at Mountain Pointe High School (School), when it unilaterally changed his placement. In addition, the complaint alleges that the District discriminates against students with disabilities, including the Student, because:

2. Disabled students with the Service Code C at the School are treated differently than their non-disabled peers in that they are not allowed to select their elective courses;
3. Disabled students with the Service Code C are not provided with a free appropriate public education (FAPE) in that the School does not provide a regular or special education program that is designed to meet individual educational needs but instead makes determinations regarding the education program of disabled students with the Service Code C on a group or class basis;
4. Disabled students with Service Code C are not placed in the least restrictive environment (LRE) in that the School requires them to share a schedule, which has resulted in purported general education courses filled primarily with disabled students with the Service Code C;
5. Disabled students with the Service Code C are segregated with a partition from non-disabled students during lunch time and also required to enter the School via a separate entrance; and
6. Disabled students with the Service Code C are not provided an equal opportunity to participate in non-academic and extracurricular activities because the School and District do not provide reasonable modifications to or accommodations for the non-academic and extracurricular activities and because the School does not provide timely communication to such students' parents about extracurricular opportunities.

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

OCR enforces Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination based on disability by recipients of federal financial assistance. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. §§ 12131-12134, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination based on disability by public entities. Because the District receives Federal financial assistance from the Department and is a public entity, OCR has jurisdiction over it pursuant to Section 504 and Title II.

During the initial stages of the investigation, OCR reviewed information provided by the District and the Complainants, and also interviewed the Complainants. Based on the preliminary information gathered and before the completion of OCR’s investigation, on January 11, 2023, the District expressed an interest in voluntarily resolving the complaint. OCR determined that there were potential compliance concerns with respect to Allegations 2-5, and the District signed the enclosed Resolution Agreement to address those allegations. OCR completed its investigation of allegations 1 and 6 and determined that there was insufficient evidence to conclude that the District violated Section 504 as alleged.

Factual Background

OCR learned the following during its investigation:

Factual Background - Allegation 1

At the outset of the 2022-23 school year, the Student was a xxxxxxx student enrolled at the School. The Student’s IEP team met in xxxxxx 2022 to develop the IEP that was in effect at the outset of the 2022-23 school year. 2022. During the development of the xxxxxx 2022 IEP, the Complainants emailed the Student’s Case Manager to state their concern that 4/6 courses in a self-contained classroom does not provide sufficient opportunity for the Student to be integrated with non-disabled peers. The xxxxxx 2022 IEP documentation indicates that the Team discussed this concern.

The Demographic Information page of the xxxxxx 2022 IEP indicates that the Least Restrictive Environment is “Level C,” meaning the Student was in a regular education classroom less than 40% of the day. Consistent with this LRE designation, in a portion of the IEP dedicated to Transition Services, under a subheading for “Projected Course of Study Planning,” the xxxxxx 2022 IEP indicates that the Student would “participate in the [School’s] “Life Skills Program” (Program) as well as 1-2 elective courses and physical education amongst his general education peers. The xxxxxx 2022 had a planned 2022-23 schedule that included: Functional English Language Arts, Functional Math, Daily Living Skills, Functional Workplace, xxxxxx, and xxxxxx, the first four of which were part of the Program and taught in a self-contained classroom.

However, at the conclusion of the xxxxxxxx 2022 IEP, in a section supporting the LRE, the xxxxxxxx 2022 IEP indicates that the Student would be placed with non-disabled peers in 3 of 6 classes, which would have the Student spend 50% of the time outside of the special education

classroom.

The Complainants told OCR that immediately before the beginning of the 2022-23 school year, the School provided them with the Student’s schedule, which contained only 2 elective courses and not 3 as they believed had been agreed to during the xxxxxxx 2022 IEP meeting. The Student was in the self-contained classroom 66.67% of the day and in a general education classroom 33.33% of the day.

The Student’s schedule was:

Period	Course	Classroom
1	Functional English Language Arts	Self-Contained
2	XXXXXXXX	General
3	XXXXXXXXXX	General
4	Functional Math	Self-Contained
5	Lunch	Lunch
6	Functional Science	Self-Contained
7	Functional Workplace Skills	Self-Contained

Upon learning of the Student’s schedule, the Complainants emailed School staff and requested a meeting. The Complainants stated they met on xxxxxxx, 2022, but the School did not make changes to the Student’s schedule at that time. Throughout xxxxxxx 2022, Complainants expressed concerns via email to School staff 2022 IEP indicated, in the subsection “Projected Course of Study Planning,” that the Student would “participate in the [School’s] “Life Skills Program” (Program) as well as 1-2 elective courses and physical education amongst his general education peers.” Similarly, the LRE was described on the cover sheet as “Level C,” inside the general education classroom less than 40% of the day. The explanation for the LRE in the XXXXXXX 2022 IEP differed from the explanation in the XXXXXXX 2022 IEP in that it stated the Student would be in the self-contained classroom for 4 of 6 periods during the day.

The XXXXXXX 2022 IEP addressed the Complainants’ desire for, and the XXXXXXX 2022 IEPs statement that the Student would be enrolled in 3 and not 2 elective courses. The XXXXXXX 2022 IEP also addressed the Complainants’ concern to enroll the Student in electives other than xxxxxx and xxxxxxx. The XXXXXXX IEP noted that xxxxxxx allows for the Student to both participate in xxxxxxxx and xxxxxxx with peers outside of his current peer group. In addition, the XXXXXXX IEP noted that “the timing of additional electives interferes with access to functional academics,” the curriculum in the Student’s special education classroom. It also noted that the Student would be allowed to participate in xxxx with a paraprofessional, without modifying the Student’s schedule.¹ Finally, the XXXXXXX 2022 IEP noted that the Complainants had received a message from the School on or about August 25, 2022, that stated “due to current staffing shortages and Special Education staffing changes from the previous year, student and parent input to identify course of interest related to post-secondary goals was not sought by the

¹ Emails exchanged by the Complainants and District suggest that the Student would, during the fall 2022 semester, occasionally attend a 6th period xxxx course, but remain enrolled in a functional academic course in the self-contained classroom for that period.

school, nor by the District.”

Emails exchanged between the Complainant and the District’s Director of Special Education clarify the nature of the dispute between the Complainant and District over the interpretation of the XXXXXXXX 2022 IEP that led to the XXXXXXXX 2022 IEP meeting. The emails indicate that the Complainants asserted, at the XXXXXXXX 2022 IEP meeting, that the “Projected Course of Study” portion of the IEP operated as a commitment by the District to allow the Student to enroll in three general education courses. The Director’s responses to the Complainant indicate that the District asserted that the Complainants were “misinformed” at the XXXXXXXX 2022 IEP about the Student’s potential schedule. Further, the Director stated “[w]e are looking into more ways to include our students in more courses outside the Life Skills program” and that a student’s “actual schedule is determined each year by number of students and availability . . . As you know staffing shortages can limit the number of choices, we may have for students causing less variety of choices, but this is an area we are working to improve upon as a District.”

In fall 2022, the Complainants requested a re-evaluation of the Student, which was not set to be completed until August 2023. The District completed the re-evaluation and held an IEP meeting on XXXXXXXX, 2022. The XXXXXXXX 2022 IEP retained the Level C LRE placement as described in the XXXXXXXX 2022 and XXXXXXXX 2022 IEPs. However, the XXXXXXXX 2022 IEP noted that the IEP team agreed to change the Student’s schedule for the second semester – enrolling the Student in 3 electives, XXXXXXXX, XXXXXXXX, and XXXXX, and dropping one Functional Academics course in the self-contained classroom (Physical Science).

On XXXXXXXXX, 2023, the Complainants informed OCR that due to an “immediate situation,” the Student would not be returning to the District and also stating a possible intent to file a due process complaint with the Arizona Department of Education. To date, neither the District nor the Complainants have provided OCR with a copy of any due process complaint.

Factual Background - Allegations 2-4

Allegations 2-4 center around the Complainants’ observation that students who are designated in a “Level C” placement (hereafter Level C students) share the same schedule. The Complainants told OCR that, although they requested electives other than what the Student was assigned, the School enrolled the Student in XXXXXXXX and XXXXXXXX instead. The Complainants stated in their complaint that when they attended a School Curriculum Night at the outset of the 2022-23 school year, they noted that all of the students in the Students self-contained classroom shared the same schedule and that, further, all of the students in another self-contained classroom shared the same 2 electives as the Student and his classmates. The Complainants emailed these concerns to the District on XXXXXXXX, 2022, and again on XXXXXX, 2022. The Complainants noted that the Student had already completed one year of XXXX, as was required to graduate. The School’s Student Services Coordinator responded to the Complainants’ XXXXXXXXX concern that all of the students in the Student’s self-contained classroom had the same schedule by stating “as a District, we are always wanting parents and students to let us know their preferred electives. As special educators we need to ensure students are supported properly per their IEP. We are always

working to improve the opportunities for students to have more choices.”²

The District provided OCR the class rosters for the courses the Student was enrolled in at the outset of the 2022-23 school year. The School enrolled the Student in xxxxxxxx for Period 2 and xxxxxxxx. for Period 3. The information provided by the District shows that there are 11 Level C students in the Student’s classroom. Of these 11, 9 share the same electives as the Student. The two students who do not share these electives remain in the self-contained classroom for periods 2 and 3. Further, OCR examined the class roster for xxxxxxxxxx and xxxxxxxx. There were 30 students enrolled in xxxxxxxxxxxxxxxx. Of these 30, 17 were Level C students (9 from the Student’s classroom and 8 from another self-contained classroom). There were 12 non-disabled students in the class. There were 38 students enrolled in xxxxxxxxxx Of these, 18 were Level C students (9 from the Student’s classroom and 9 from another self-contained classroom). There were 15 non-disabled students in the class. In sum, just over and just under half of the students in xxxxxxxx and xxxxxxxxxxxxxxxx. were Level C students, from xxxxxx self-contained, non-behavioral Level C classrooms at the School. None of the students in the Student’s self-contained classroom had electives other than xxxxxxxxxxxxxx or xxxxxxxxxxxxxx.

The District asserted in its response to OCR that parent(s)/guardian(s) of students with disabilities are provided the “same registration form to choose courses” as students without disabilities. The District, however, did not provide copies of the forms completed by the students in the Student’s self-contained classroom to corroborate this assertion. The District further asserted that, for students with an IEP, the School determines a student’s schedule based on the registration form, the student’s IEP, and staff and course availability and makes an individualized assessment whether a student can “safely take a course” with appropriate support and services based on each student’s unique needs. The District did not provide any documentation to support this assertion, or otherwise provide an explanation as to how the entirety of the Level C students in two separate self-contained classrooms ended with the same electives (excluding those students who were not enrolled in electives outside the self-contained classroom). More, the District did not explain how the 18-20 Level C students had contact with only 27 unique non-disabled students (in a school of over 2300 students) in those two electives.

Factual Background - Allegation 5

The Complainants allege that Level C students are segregated in the School’s cafeteria and also required to enter the School in a separate entrance. The Complainants told OCR that Level C students are seated in a corner of the cafeteria, away from students without disabilities.

The District asserted that Level C students eat their lunches in multiple areas in the cafeteria but acknowledged that some of them (along with other students with disabilities) sit at round tables in a particular area of the cafeteria because they require feeding and mobility support. The District asserted that other Level C students sit at long tables near an outdoor facing glass wall. The District acknowledged that the cafeteria has several pillars and a glass partition. The District provided photos of the area where Level C students are generally located.

² This response, however, appears to have been drafted by the District’s Director of Special Education.

OCR cannot determine from the photographs the location of the partition; however, it appears from the photos that the area where Level C students generally sit is in a corner of the cafeteria, where multiple pillars create separation from other cafeteria space.

The District also asserted that Level C students are not required to enter through any specific entrance. The District provided a map of the School, which indicates there are three primary entrances to the School. The District stated in its narrative response that parents who bring their children to School generally enter through the front door, on the east side of the school. The District acknowledged that students utilizing District-offered specialized transportation, children in an early childhood program and some students who walk to school, enter through a door on the south side of the School, where the bus drops them off. Finally, the District asserted that additional students using specialized transportation, including the Students in level C programs, along with other students using general transportation, enter through a door on the west side of the School.

Factual Background - Allegation 6

District Policy IHB-R provides that the District will provide an equal opportunity for participation in nonacademic and extracurricular services and activities, including through the provision of supplementary aids and services. The District also asserted that it provides notice to all families and information on its website about extracurricular activities.³ The District also noted that it does not monitor attendance at extracurricular activities, it provided OCR a spreadsheet indicating that a number of Level C students had participated in extracurricular activities. The spreadsheet indicated that, with the exception of one Level C student who participated in xxxxxxxx, Level C students participated only in “xxxxxxxxxx,” and not other extracurricular activities. The spreadsheet also indicated that other students with disabilities participated in a variety of extracurricular activities. Finally, OCR observed, in at least one Level C student’s IEP, that the IEP team discussed the student’s possible participation in xxxxxxxxxxxx, noting that the School offered to provide modifications but that the parents of the student declined to participate in an after-school program for personal reasons unrelated to the provision of any modifications or accommodations.

Legal Standards

Disability Discrimination Generally

The regulation implementing Section 504 at 34 C.F.R. § 104.4(a) provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a recipient, or be subjected to discrimination by a recipient of Federal financial assistance. The Title II implementing regulation at 28 C.F.R. § 35.130(a), provides that no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any public entity. The standards adopted by Title II were designed not to restrict the rights or

³ <https://www.tempeunion.org/domain/256>

remedies available under Section 504. OCR has determined that the Title II regulations applicable to the issues raised in the complaint do not provide greater protection than the applicable Section 504 regulations. Therefore, the relevant Section 504 standards apply in analyzing the Title II issues raised in the allegations.

Different Treatment

Pursuant to the Section 504 regulation at 34 C.F.R. § 104.4(b)(1)(ii), a school district may not afford a student with a disability an opportunity to participate in or benefit from the district's aid, benefit, or service that is not equal to that afforded others. The regulation also specifies, at 34 C.F.R. § 104.4(b)(1)(iv), that a school district may not provide different or separate aid, benefits, or services to students with disabilities unless such action is necessary to provide the students with aids, benefits, or services that are as effective as those provided to others.

To determine whether an individual has been discriminated against on the basis of disability, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals 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 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 District's actions were based on the individual's disability. OCR also examines whether there was any evidence to suggest that the recipient treated the student in a manner that was inconsistent with its established policies and procedures or whether there was any other evidence of prohibited discrimination.

Least Restrictive Environment

Pursuant to 34 C.F.R. § 104.34(a), a student with a disability must be educated with students without disabilities to the maximum extent appropriate to the needs of the student with a disability. Recipient schools must place students with disabilities in the regular educational environment unless it can be demonstrated that education in the regular setting with the use of supplementary aids and services cannot be achieved satisfactorily.

When making placement decisions, the team, which could be the IEP team, should consider the full range of options that might be appropriate based on the individual needs of the student and the environment in which the student will most likely make progress. The IEP team must document the reasons for any decision that results in the student's services being delivered outside of the general education classroom.

The IEP team must not make placement decisions based on available resources, including budgetary considerations and the ability of the school system to hire and recruit qualified staff, see 71 Fed Reg. 46539, 46588 (comments to the IDEA regulation 34 C.F.R. §§ 300.115-116).

FAPE

The Section 504 implementing regulation at 34 C.F.R. § 104.33(a), states that a recipient that operates a public elementary or secondary education program or activity shall provide a free and appropriate public education (FAPE) to each qualified person with a disability who is in the recipient's jurisdiction, regardless of the nature or severity of the person's disability. The regulation at 34 C.F.R. § 104.33(b) provides that the provision of an appropriate education is the provision of regular or special education and related aids and services that are designed to meet individual educational needs of disabled persons as adequately as the needs of non-disabled persons are met and are based upon adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34, 104.35, and 104.36. OCR generally does not review the results of individual placement and other educational decisions as long as the district complies with the "process" requirements concerning identification, location of services, evaluation, and due process procedures.

Implementation of an Individualized Education Program (IEP) developed in accordance with the IDEA is one means of meeting these requirements. In analyzing a claim regarding whether a school district has failed to implement the student's plan which may have resulted in a denial of FAPE, OCR will first determine whether a school district has met its FAPE obligation by considering whether it provided the services required by the IEP or Section 504 plan.

Evaluation and Placement

The Section 504 regulation 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. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. A procedure consistent with the IDEA is one means of meeting this requirement.

Placement is an individual student's educational program, or the type of setting where the program is administered. Although it may include a variety of classroom types, with different levels of support, a particular location, teacher, or course, is not ordinarily a component of a student's placement.

Extracurricular Activities

In general, OCR would view a school district's failure to address participation or requests for participation in extracurricular athletics for a qualified student with a disability with an IEP in a manner consistent with IDEA requirements as a failure to ensure Section 504 FAPE and an equal opportunity for participation. OCR notes that the regulations implementing IDEA include the requirement that a student's IEP address the special education, related services, supplementary aids and services, program modifications, and supports for school personnel to be provided to

enable the student to, among other things, participate in extracurricular and other nonacademic activities. 34 C.F.R. § 300.320(a)(4)(ii).

Analysis

Allegation 1- Insufficient Evidence of a Violation

The Complainants asserted that the District unilaterally changed the Student's placement when the School enrolled the Student in two general education courses and not three. OCR notes that in one section of the Student's XXXXXXXX 2022 IEP, the team included language suggesting that the Student would benefit from taking three general education courses instead of two. However, throughout the XXXXXXXX 2022 IEP, the team describes the Student's placement as "Level C," explaining that the student would be in a general education classroom less than 40% of the school day.

The Student was in general education classrooms 33% of the school day. Had the Student been enrolled in three general education courses, he would have been in a general education classroom 50% of the school day, and arguably not receiving the requisite special education and related services required by his IEP.

OCR noted that the Complainants' desire to enroll the Student in particular courses is not, itself, a placement decision. Placement refers to the educational program or setting for the Student. To the extent that the Complainants offer a different interpretation of what the Student's IEP requires for his placement that is a dispute more appropriate to resolve in the context of a team meeting or in a due process proceeding. OCR found that the School held two team meetings during XXXXX 2022 to address the dispute about what the XXXXXXXX 2022 required for the Student's educational program.

OCR therefore concluded that in developing the Student's schedule, the School did not unilaterally alter the Student's placement.

Further, once the Complainants informed the School that they believed the Student's 2022-23 schedule was not consistent with the Student's XXXXXXXX 2022 IEP, the School promptly convened an IEP team to review the Student's placement. The XXXXXXXX 2022 IEP team did not amend the language regarding the Student's placement. The XXXXXXXX 2022 IEP team did address the Complainant's desire to allow the Student to participate in other general education courses – allowing the Student to attend XXXX with supports and modifications. The information gathered during investigation suggests the Complainants remained unsatisfied with the *ad hoc* arrangement for the Student to attend XXXXX and the School held another IEP meeting in XXXXXXXX 2022, in which it altered the Student's schedule to allow the student to attend different general education courses.

Based on consideration of the information obtained, OCR found that there is insufficient evidence to conclude that the District discriminated against the Student by unilaterally changing his placement when it developed his schedule. OCR therefore is closing allegation 1 pursuant to Section 303(a) of OCR's *Case Processing Manual*.

Allegations 2-5 – Resolution Agreement Pursuant to Section 302

The District expressed interest in resolving the complaint in a telephone conversation on January 11, 2022. OCR’s review of the information provided by the District suggested potential compliance concerns related to allegations 2-5 in that:

- although the District asserts that Level C students are afforded the same opportunity as non-disabled and differently disabled students to select electives, the District did not provide OCR with any Level C student’s elective request form;
- the information shows that 17 Level C students, across two self-contained classrooms who are in general education classrooms for 2 periods a day share the same general education classrooms;
- there are 27 total non-disabled students in those two classrooms and thus the 17 Level C students share a general education classroom with only 1.2% of the school population;
- one of the general education classrooms in which the 17 Level C students participate is “xxxxxxx,” and the Student, and possibly other Level C students, have already taken the requisite xxxxxx courses;
- the IEPs of the Level C students indicate interests other than xxxxx and xxxxx (the two general education courses in which they are placed); and
- emails from the District’s Director suggest that the absence of diversity in Level C students’ schedules may, in part, be due to availability of resources.

The fact that Level C students, as a group, travel to the same two general education classrooms, and not to different general education classrooms, tends to show that Level C students are not placed in the LRE in that they are not educated to the maximum extent possible with non-disabled peers, and raises a potential compliance concern with respect to 34 C.F.R. § 104.34(a). The information suggesting that Level C students are not being afforded the same opportunity to select elective courses as non-disabled students raises a potential compliance concern with respect to 34 C.F.R. § 104.4(b)(1)(ii). The District’s practices relating to assigning Level C students to a limited number of general education courses suggests that decisions may not be made based on the individualized needs of each student and may not result in the students receiving education in the LRE or receiving FAPE, which raises potential compliance concerns with respect to 34 C.F.R. § 104.33(b), 34 C.F.R. § 104.34(a), and 34 C.F.R. § 104.35.

In addition, the information provided by the District shows that Level C students eat in a portion of the School’s cafeteria that appears isolated from other portions of the cafeteria, separated by both pillars and possibly partitions, and without additional space for non-disabled students to sit, if they like. This raises a potential compliance concern with respect to 34 C.F.R. § 104.4(b)(1)(iv).

The Agreement to address these potential compliance concerns requires the District to:

- develop a policy or protocol to ensure that staff determine schedules for Level C students on an individualized basis and not based on stereotypes about what courses Level C students can participate in or availability of resources;
- disseminate the policy or protocol to District staff;

- review and audit the schedules of Level C students at the School and other schools;
- convene IEP teams for any student impacted by scheduling Level C students in the same general education classrooms; and
- reconfigure or relocate Level C students in the School’s cafeteria and provide space for non-disabled students to set with Level C students if they like.

Allegation 6 - Insufficient Evidence of a Violation

The Complainants asserted that they did not receive notification about the School’s extracurricular activities and programs and that the School did not offer modifications to these programs for students with disabilities. The information the Complainants provided in support is the assertion that in a previous school year, the Student did not receive appropriate modifications in a xxxxxxxx program.

OCR’s investigation revealed that the School publishes information about its extracurricular programs and activities on its website, in a manner that is easy to find and access. Further, District policies provide a process to provide modifications and supplementary services to students with disabilities to enable them to participate in extracurricular activities. OCR observed that in at least one instance a Level C student’s IEP team discussed participation in extracurricular activities and further that multiple Level C students participated in extracurricular activities, including one student who participated in xxxxxxxx.

The Complainants offered no additional evidence from which OCR could conclude that the District treated Level C students differently than non-disabled students in communicating about extra-curricular activities or that the District failed to offer appropriate modifications or supplementary services to Level C students who desired to participate in extra-curricular activities on an individualized, case-by-case basis.

Based on consideration of the information obtain, OCR found that there is insufficient evidence to conclude that the District discriminated against the Student or against students with disabilities generally in providing access to the School’s extracurricular activities. OCR therefore is closing allegation 6 pursuant to Section 303(a) of OCR’s *Case Processing Manual*.

Conclusion

OCR will monitor the District’s implementation of the Agreement, related to OCR’s compliance concerns regarding allegations 2-5, until the District is in compliance with the statute and regulations at issue in the case. Failure to implement the Agreement could result in OCR reopening the complaint. OCR will promptly provide written notice of any deficiencies with respect to the implementation of the terms of the Agreement and will promptly require actions to address such deficiencies. If the District fails to implement the Agreement, we will take appropriate action, which may include enforcement actions.

OCR is closing the investigative phase of the case effective the date of this letter. The case is now in the monitoring phase. The monitoring phase of the case will be completed when OCR determines that the District has fulfilled all of the terms of the Agreement and is in compliance

with the Section 504 and Title II regulations that were at issue in this case. When the monitoring phase of the case is complete, OCR will close case number 08-23-1043, and will send a letter to the District stating that the case is closed.

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

Recipients of Federal funds are prohibited from intimidation, harassment, or retaliation against individuals filing a complaint with OCR and those participating in a complaint investigation. complainants and participants who feel that such actions have occurred may file a separate complaint with OCR.

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

We thank the District for being willing to voluntarily address allegations 2-5. We appreciate the District’s attention to this matter and look forward to working with the District to meet the terms of the Agreement.

If you have any questions regarding this complaint, please contact xxxxxxxxxx, the attorney assigned to this case, at xxxxxxxx or xxxxxxxx.

Sincerely,

/s/

xxxxxxxxxx
Supervisory Attorney

Enclosure: Resolution Agreement

cc: Brittany Reed, Counsel, *via email to xxxxxxxxxxxx*
Tom Horne, Arizona Superintendent of Public Instruction