

**Resolution Agreement
Tempe Union High School District
Complaint Number 08-23-1043**

In order to resolve allegations 2-5 in Case Number 08-23-1043, filed against the Tempe Union High School District (District) with the Office for Civil Rights (OCR) of the U.S. Department of Education, pursuant to 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, and 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, the District agrees to implement the following Resolution Agreement.

During the investigation, OCR identified compliance concerns related to allegations 2-5, which involve the District’s practices relating to the configuration of the lunchroom and scheduling of elective courses for students with disabilities that may not be the least restrictive environment. Prior to completion of OCR’s investigation, the District expressed an interest in voluntarily resolving the complaint pursuant to Section 302 of OCR’s *Case Processing Manual* to address the identified compliance concerns. This agreement does not constitute an admission of liability, non-compliance, or wrongdoing by the District.

The District agrees to take the actions in this Agreement to ensure compliance with the requirements of Section 504 and its implementing regulation, 34 C.F.R. Part 104, and Title II and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of federal financial assistance and public entities, respectively.

Protocol and Policy

1. The District will develop an internal protocol and/or formal policies and procedures to ensure that course schedules for students with a “Level C” placement (hereafter Level C students), including and particularly student selection of elective courses, are based on an individualized determination of a student’s needs and interests and not based on general assumptions about the courses a Level C student can participate in or benefit from, the availability of resources to support the student in a particular course, or administrative convenience.¹

The protocol should include a process that documents the input provided by the students and parent(s)/guardian(s), the schedule-making process, including any decisions made at the school level, any discussion and determination of appropriate courses/electives made in the context of an IEP meeting, and any other factor utilized to make an individualized determination.

2. The District will send an email to all building-level administrators, all District special education staff, and any other District staff responsible for determining student schedules alerting staff of the protocol or policy developed pursuant to Item 1 and

¹ Nothing in this item is to be construed to require the District to enroll students with disabilities in particular courses that do not meet a student’s individualized needs or align with a student’s individually-determined abilities to complete with appropriate supports or services.

that informs staff that the District does not determine schedules for students with disabilities based on general assumptions about the courses a Level C student can participate in or benefit from, the availability of resources to support the student in a particular course, or administrative convenience.

REPORTING REQUIREMENTS:

- 1(A) Within ninety (30) calendar days of this Agreement being signed, the District will submit to OCR evidence that it has fulfilled the terms of Item 1, which shall include a draft of the protocol or policy developed and any forms used to document the course scheduling process. The District will promptly and fully address OCR’s feedback, if any, until the District receives approval from OCR regarding the protocol or policy.

- 2(A) Within fourteen (14) calendar days of the approval of the protocol or policy described in Item 1, the District will submit to documentation to show that it has provided the information required by this Item to appropriate staff.

Audit and Review

- 3. The District’s Special Education Director shall conduct an audit of the course schedules for all Level C students in the District for the 2021-22, 2022-23, and 2023-24 school years. The Director shall create a written report regarding each school year in which the Director:
 - a. determines whether a school or school staff enrolled a cohort of Level C students who share time in a self-contained special-education classroom in substantially the same courses in general education classrooms;
 - b. if appropriate, determines whether the reasons the cohort of Level C students share substantially the same the courses in general education classrooms were appropriate (i.e. made on an individualized basis); and
 - i. if determined that a school or school staff assigned Level C students to share substantially the courses in general education classrooms outside of a self-contained special education classroom for inappropriate reasons (e.g. availability of support resources, administrative convenience), describes the steps the District shall take to eliminate the practice or procedure.

REPORTING REQUIREMENTS:

- 3(A) By June 30, 2023, and June 30, 2024, the District will provide OCR a copy of the Director’s report described in this Item. The report should consider, at minimum, whether there is sufficient documentation (i.e. consideration in an IEP, course selection forms, emails) to show that any determination was made on an individualized basis, considering a student’s individualized needs, abilities, and interests, whether Level C students are educated with general education students to the maximum extent appropriate to their needs, and whether there is any information

that suggests course scheduling decisions were based on availability of resources to provide support to students in general education classroom.

- 3(B) To the extent the Director determines that a school or school staff made scheduling decisions based on inappropriate reasons, the District will provide documentation within 60 days of the conclusion of the District's audit, to show that it has taken steps to eliminate the practice or procedure. The District will promptly and fully address OCR's feedback, if any, until the District receives approval from OCR regarding the steps taken.

Individual Remedies

4. The District shall offer to convene the IEP teams of all Level C students at Mountain Pointe High School (School), and any other school identified by the audit described in Item 3, to determine whether any student for whom the School enrolled in substantially the same courses in general education classrooms as other Level C students was denied, as a result of the School's practice, a free appropriate public education or a placement that did not provide education to the maximum extent possible with non-disabled students and thus should receive compensatory educational services.

REPORTING REQUIREMENTS:

- 4(A) By June 30, 2023, for students at Mountain Pointe High School, or within 90 days after the completion of any audit that identifies additional students for whom this Item requires action, the District shall provide OCR documentation to show that it offered to convene an IEP team, the parent(s)/guardian(s) response to the offer, and the result of and all documentation related to any IEP meeting held.

Lunchroom

5. The District shall re-configure² the lunchroom at Mountain Pointe High School so that Level C students and other students who need support during lunch are integrated to the maximum extent possible with non-disabled students. This item shall require the District to consider moving the space where support is provided to these students to another area of the lunchroom that allows for more integration with non-disabled students and reserving spots at tables where students who need support are seated for non-disabled students to sit.³

REPORTING REQUIREMENTS:

² Nothing in this Item shall be construed to require the District to renovate the lunchroom, including removing existing pillars or partitions.

³ Nothing in this Item shall be construed to require the District to solicit volunteers or require students to sit at the tables described; only that the School shall ensure sufficient space at the tables for students requiring support during lunch for non-disabled students to join those tables.

4(A) By June 30, 2023, the District shall provide OCR documentation to show the steps taken to implement this Item, including any photographs that show how tables have been re-configures.

By signing this Agreement, the District agree to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. During the monitoring of this Agreement, OCR may visit the District to interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with Section 504, and its implementing regulation, at 34 C.F.R. Part 104, and Title II, and its implementing regulation, at 28 C.F.R. Part 35.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District is in compliance with the terms of the Agreement and is in compliance with the regulations implementing Section 504 and Title II, which were at issue in this case.

The District understands and acknowledges that OCR may initiate administrative enforcement proceedings or refer this case to the Department of Justice (DOJ) for judicial proceedings to enforce the specific terms and obligations of the Agreement and the applicable statutes and regulations. Before initiating such proceedings, OCR will give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

This agreement will become effective upon the signature(s) of the representative for the District.

For Tempe Union High School District:

Dr. Kevin Mendivil
Superintendent

Date