



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

400 MARYLAND AVENUE, SW
WASHINGTON, DC 20202-1475

REGION XI
NORTH CAROLINA
SOUTH CAROLINA
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WASHINGTON, DC

May 24, 2022

Dr. Rick Maxey
Superintendent
Horry County Schools
335 Four Mile Road
Conway, SC 29526

RE: OCR Case No. 11-19-5002
Resolution Letter

Dear Dr. Maxey:

This letter notifies you of the resolution of the U.S. Department of Education, Office for Civil Rights (OCR) compliance review of restraint or seclusion in Horry County Schools (the District). The compliance review, opened on January 29, 2019, examined whether the District's use of restraint or seclusion denies students with disabilities who participate in the District's programs a free appropriate public education (FAPE), in violation of the District's obligation to comply with Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35.¹

OCR reviewed District records and documentation, including, but not limited to: District procedures and practices; records related to staff training on the use of restraint and the use of seclusion, including training manuals and materials; restraint or seclusion logs and debriefing logs for the 2017-2018 and 2018-2019 school years; and education records for all students with disabilities whom the District reported were restrained or secluded during the 2017-2018 and 2018-2019 school years.² OCR conducted site visits over four days, interviewing 21 staff members and visiting five schools: Waccamaw Elementary, Forestbrook Elementary, Whittemore Park Middle, St. James Intermediate, and the Therapeutic Learning Center (TLC). OCR selected the identified schools because, according to District data, those schools had the most reported incidents involving the use of restraint and the use of seclusion. Finally, OCR conducted a parent survey regarding

¹ Throughout the remainder of this document, the phrase "restraint or seclusion" or the phrase "restraints or seclusions" refers to situations in which there was a restraint, a seclusion, or both a restraint and a seclusion.

² As noted further below, the District reported to OCR that the District did not subject any students to a mechanical restraint during the school years reviewed in this compliance review. Therefore, OCR uses the term "restraint" in the balance of this letter to refer only to physical restraint unless specified otherwise.

the District’s use of restraint and use of seclusion, which garnered 307 responses from parents throughout the District.³

Before OCR completed its investigation, the District expressed an interest in proceeding under Section 302 of OCR’s *Case Processing Manual*, which permits the resolution of an investigation prior to OCR making a determination, if a recipient expresses an interest in resolving the investigation and OCR has identified compliance concerns that can be addressed through a resolution agreement. OCR determined that proceeding under Section 302 would be appropriate because OCR had identified compliance concerns regarding the District’s compliance with Section 504 and Title II. The following is a summary of the evidence OCR obtained and the concerns OCR identified during the investigation to date, as well as of the resolution agreement that addresses those concerns.

LEGAL STANDARDS

A. Definitions

OCR defines “mechanical restraint” as the use of any device or equipment to restrict a student’s freedom of movement. The term does not include devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed.⁴

OCR defines “physical restraint” as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

OCR defines “seclusion” as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. The term does not include a timeout, which is a behavior management technique that is part of an approved program involving monitored separation of the student in a non-locked setting and is implemented for the purpose of calming.

B. Section 504 and Title II

The Section 504 regulation at 34 C.F.R. § 104.33 requires school districts to provide a FAPE to all students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. 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 students without disabilities are met and are based on adherence to procedures that

³ For ease of reference, the term “parent” in this document refers to parents, guardians, custodians, others with legal custody, or others with educational decision-making authority.

⁴ Examples of specific and approved purposes include: adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

satisfy the requirements of 34 C.F.R. §§ 104.34-36. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements.

The Section 504 regulation at 34 C.F.R. § 104.35(a) provides that a district shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. The regulation at 34 C.F.R. § 104.35(b) provides that a district shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services.⁵

Moreover, the Section 504 regulation at 34 C.F.R. § 104.35(c) provides that in interpreting evaluation data and in making placement decisions, a district shall (1) draw upon information from a variety of sources, including physical condition and adaptive behavior;⁶ (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with § 104.34, which requires placement in the regular educational environment to the maximum extent appropriate.

When a student exhibits behavior that interferes with the student's education or the education of other students in a manner that would reasonably cause teachers or other school personnel to suspect that the student has a disability, as defined under Section 504, the school district must evaluate the student to determine if the student has a disability and needs special education or related services because of that disability. For a student who has already been identified as a student with a disability, a school's repeated use of restraint or seclusion may suggest that the student's current array of regular or special education and related aids and services is not sufficient to provide FAPE.

As a general rule, because Title II provides no less protection than Section 504, violations of Section 504 also constitute violations of Title II. 28 C.F.R. § 35.103.

⁵ The procedures must ensure that: (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). 34 C.F.R. § 104.35(b)(1)-(3).

⁶ The regulation at 34 C.F.R. § 104.35(c)(1) also lists the following possible sources: aptitude and achievement tests, teacher recommendations, and social or cultural background.

EVIDENCE OBTAINED TO DATE

With an approximate enrollment of 45,000 students, the District is the third-largest school district in South Carolina. OCR’s 2017 Civil Rights Data Collection (CRDC) indicates that 14.82% of enrolled students in the District are students with disabilities as defined by IDEA and Section 504.⁷ According to the District’s website, the District comprises 54 schools, including 27 elementary schools, 14 middle/intermediate schools, nine high schools, and four charter schools.⁸ The District also operates five special programs: an adult education program, an alternative school for at-risk youth, an environmental education program, a virtual program, and a clinical day program for students with disabilities, which is TLC.

TLC opened in 2010, offering a “comprehensive system of individual and group treatment services provided within a structured educational setting.” The [redacted content] told OCR that TLC was created with the goal of providing a least restrictive environment for students with the most significant emotional disabilities who could not receive educational services in a traditional setting and, in particular, students who exhibited self-injurious and externalized behavior. TLC enrolled 42 students with disabilities during the 2017-2018 school year and 31 students with disabilities during the 2018-2019 school year, with the disability categories of autism, emotional disability, developmental delay, other health impairment, and multiple disabilities.

A. Overview of the District’s Use of Restraint or Seclusion

The District provided OCR with logs for restraint or seclusion for the full 2017-2018 school year and partial data for the 2018-2019 school year.⁹ The District reported to OCR zero mechanical restraint incidents for both school years.

For the 2017-2018 school year, the District recorded 675 restraint incidents, involving 76 students with disabilities at 20 different schools. Of the 675 restraint incidents, 592 (87.7%) occurred at TLC, involving 32 students. For the 2017-2018 school year, the District recorded 362 seclusion incidents at 8 schools, involving 44 students. Of the 362 seclusion incidents, 291 (80.3%) occurred at TLC. The District did not report the use of restraint or seclusion for any students without disabilities during this school year. OCR identified underreporting in the restraint or seclusion data reported to the CRDC compared to the restraint or seclusion data provided to OCR for this compliance review. For example, the 2017-2018 CRDC data indicated that 56 students with disabilities were restrained, and 29 students were secluded; however, the data received in this

⁷ U.S. Department of Education’s Civil Rights Data Collection, *Horry 01 (Survey Year: 2017)*, <https://ocrdata.ed.gov/profile/9/district/31888/summary> (last visited January 20, 2022).

⁸ See, <https://www.horrycountyschools.net/domain/3128> (last visited January 6, 2021).

⁹ The District only provided partial data for the 2018-2019 school year because OCR issued its data request on March 19, 2019, before the school year concluded.

compliance review revealed that 76 students with disabilities were restrained and 44 students were secluded.¹⁰

For the 2018-2019 school year, the District reported 173 restraint incidents, involving 39 students with disabilities in eight different schools. Of the 173 restraint incidents, 145 (83.8%) occurred at TLC. For the 2018-2019 school year, the District reported 94 seclusion incidents at nine schools, involving 31 students. Of the 94 seclusion incidents, 63 (73.4%) occurred at TLC. The District reported two students who were restrained and were not identified as students with disabilities at the time the restraint occurred, but who were subsequently identified as students with disabilities during this school year.

B. District's Procedures and Practices

OCR identified both written procedures and unwritten practices that guide the District's use of restraint or seclusion. The District reported that its Executive Director for Federal Programs (ED for Federal Programs) is responsible for the design of the procedures related to restraint or seclusion, including ensuring that staff is properly trained and certified, if required. The District explained that the ED for Federal Programs also oversees the Department of Special Education (SPED Department), and the SPED Department is responsible for ensuring that staff properly implement the procedures and practices pertaining to the use of restraint or seclusion. The SPED Director manages all staff in the SPED Department, including two District-level Behavior Specialists (Behavior Specialist 1 and Behavior Specialist 2).¹¹

i. Procedures for the Use of Restraint or Seclusion

The Procedures for the Use of Physical Restraint, updated July 1, 2016; Guidance Document for the Use of Physical Restraint, updated 2015; Procedures for the Use of Seclusion, updated December 2016; and Guidance Document for the Use of Seclusion, updated 2015 are the District's only written documents relevant to restraint or seclusion.¹² There are no District written procedures or guidance documents for the use of mechanical restraint. Although the written procedures and guidance documents pertaining to the use of restraint or seclusion are applicable to both regular education and special education students, OCR notes that the documents are located

¹⁰ The 2017-2018 CRDC data survey is the most recent available.

¹¹ District Behavior Specialists are responsible for staff training in various areas related to restraint or seclusion, including annual crisis training, restraint or seclusion training, and how to conduct a functional behavior assessment and develop a behavior intervention plan. They also oversee the special education self-contained programs and frequently visit schools to observe students, especially if school staff have exhausted school resources to address a student's needs. [redacted content] explained that they help support school staff when developing a crisis plan to address the potential use of restraint or seclusion.

¹² The District reported to OCR that around the time these procedures and guidance documents were last updated, the South Carolina Department of Education (SCDE) found that the District violated the IDEA, among other concerns, by failing to ensure that a parent who filed a complaint with the SCDE had an opportunity to actively engage in the decision-making process and to express concerns about the education process regarding the use of "seclusionary time out." In response, the District agreed to, among other remedies, revise its seclusion procedures. While the District was not obligated to revise its restraint procedures, it did so anyway at that time.

within the District’s Special Education Procedures for the SPED Department. The Procedures for the Use of Physical Restraint and the Procedures for the Use of Seclusion set forth definitions of restraint or seclusion, prohibited practices, notification and documentation requirements, and a debriefing requirement for the use of restraint or seclusion.

The Procedures for the Use of Physical Restraint define physical restraint as “nonharmful control and restraint techniques to safely control an individual until he can regain control of his behavior,” noting that physical restraint is to be “only used as a last resort when a (student) is a danger to self or others.”¹³ The Procedures for the Use of Seclusion define seclusion as an instance when a student is “involuntarily confined alone in a room or an area where the student is prevented from leaving, regardless of whether a different title is assigned to the area where the student is involuntarily confined (e.g., seclusion room, original classroom, etc.).”

The Procedures for the Use of Physical Restraint and the Procedures for the Use of Seclusion limit the use of restraint or seclusion “to extraordinary circumstances arising from an emergency crisis where the behavior of a student poses a threat of imminent, serious, physical harm to self or others.” Both procedures require that an administrator be notified during the use of restraint or seclusion or immediately thereafter, and that the administrator notify the student’s parent within 24 hours of the incident both by telephone and in writing. Furthermore, both documents require that all restraint or seclusion incidents be documented on the designated District forms, i.e., a restraint or seclusion log and a debriefing log.

The Procedures for the Use of Physical Restraint and the Procedures for the Use of Seclusion further require that all incidents necessitating the use of restraint or seclusion must be addressed through a process the District refers to as “debriefing.” In a debriefing, staff members involved in an incident of restraint or seclusion, as well as staff with behavior expertise, are required to meet within one school day.¹⁴ Neither document specifies who falls into the category of “staff with behavior expertise.” During the debriefing, staff are to discuss: the behaviors that preceded the restraint or seclusion; the interventions that were used and why they were unsuccessful; if and how the situation could have been handled in a way to prevent the need for restraint or seclusion; how similar events may be avoided in the future; and whether a new functional behavior assessment (FBA) should be conducted or a student’s BIP or IEP should be amended.

The Guidance Document for the Use of Physical Restraint and the Guidance Document for the Use of Seclusion identify 11 elements that a student’s IEP team should consider for a student who was subjected to restraint or seclusion.¹⁵ The guidance documents recommend that IEP teams consider, among other factors, the following: the maximum amount of time a student can be

¹³ OCR’s review of the District’s restraint or seclusion logs showed that there were a few instances when staff used restraint or seclusion to force compliance due to a student disrupting class, being insubordinate to the teacher or staff, or trying to leave a designated area.

¹⁴ OCR notes that this meeting is not considered an IEP meeting, and the student’s parent is not present for this meeting.

¹⁵ This letter uses the term “IEP team” to refer to the group of persons who made placement and other educational decisions concerning students with, or suspected of having, a disability, regardless of whether the decisions were made pursuant to Section 504 or the IDEA.

restrained or secluded during one incident and during any one day; at what point an administrator should be notified; and what is the expected behavior that indicates the student is calm, permitting staff to discontinue the use of restraint or seclusion. Notably, neither guidance document provides information to school teams pertaining to when a student’s IEP team should meet to discuss the use of restraint or seclusion. The Guidance Document for the Use Physical Restraint and the Guidance Document for the Use of Seclusion also outline progress monitoring guidelines, stating that school teams should meet quarterly to review the use of restraint or seclusion in their school.

ii. Implementation of a Restraint or Seclusion

The District has no written procedures or guidance directly addressing how District staff should implement a restraint or seclusion. [redacted content] told OCR that as a matter of practice, restraints, also characterized as holds and escorts, are utilized on students in a seated or standing position.¹⁶ They involve graduated maneuvers that the District classifies as low, medium, or high-level holds.¹⁷ [redacted content] noted that, optimally, two staff members are present when initiating the restraint on a student. Generally, students are restrained wherever the crisis occurs. In instances where other students are present, staff are directed to remove other classmates if possible. [redacted content] indicated that the maximum allowable time to restrain a student is 15 minutes for each instance, and 60 minutes for the daily aggregate. A student is released from a restraint upon evidence of a “decrease in physical emotional energy.” The student is thereafter transitioned back to the classroom.

[redacted content] told OCR that “if [a] student has been restrained for 10 minutes and still is not calming down, still exerting force and putting trauma on their own bodies, then the team might make the decision to move the child to the next location, which is the seclusion room.” [redacted content] further explained that oftentimes the District will place students in a seclusion room with the door open and a staff member standing at the door to determine whether the student can remain safe without showing aggression to self or staff. She reported that in situations where students act aggressively towards staff, staff will close the seclusion door and monitor the student from an observation window. Staff will try to reestablish communication every 10-15 minutes to determine whether the student has de-escalated. If the seclusion has continued for more than one hour without successfully de-escalating the student, staff are expected to call the lead Rehabilitative Behavior Health Services Counselor (RBHS Counselor), school administrator, and the student’s parents.¹⁸ In addition, staff may recommend transporting the student to a hospital emergency room for evaluation to address the underlying crisis.

¹⁶ As noted above, OCR’s definition of physical restraint does not include physical escorts.

¹⁷ A common physical restraint utilized in the District is the Children’s Control Position, which restricts a student’s arms. Staff can cross the student’s arms over his or her chest from behind. Staff then transports the student to another area, either allowing the student to walk on his or her own accord or initiating a full or light escort depending upon the conduct of the student once physically restrained.

¹⁸ According to the District’s website, an RBHS Counselor is designed to serve students who have emotional and/or behavior needs. RBHS services include, but are not limited to screening/assessments, behavior modification, and crisis management. RBHS Counselors operate in 30 schools in the District.

iii. Recordkeeping

The District’s Procedures for the Use of Physical Restraint and the Procedures for the Use of Seclusion, as mentioned above, mandate that all incidents involving the use of restraint or seclusion be documented on designated District forms. As previously noted, there are two types of forms used by the District – a restraint or seclusion log and a debriefing log.¹⁹ These logs are all kept in one centralized online system that is accessible to all staff. The restraint or seclusion log and the debriefing log are separate documents within the centralized online system, and the information in one type of log is not linked to the information in the other type of log. The District explained that staff involved in a restraint or seclusion incident are responsible for inputting the information directly into the restraint or seclusion log and the debriefing log.

The restraint or seclusion log records the following data: the nature of a student’s disability (as well as the option to indicate that the student does not have a disability at all); the duration of the physical restraint or seclusion; the dangerous behavior exhibited by the student which necessitated the restraint or seclusion; the location where the restraint or seclusion occurred; the student’s behavior while restrained or secluded; the injuries sustained by the student and/or staff; the staff present during the behavior incident and the restraint or seclusion; whether the nurse was notified and the nurse’s observations; the administrator responsible for contacting parents; the date and time parents were notified; and the manner in which parents were notified.

The debriefing logs contain data entries that require staff to input information concerning the strategies attempted prior to the restraint or seclusion, as well as a description of the staff’s determination of whether the IEP team needs to reconvene to discuss any necessary changes. Specifically, the debriefing logs record the following data: “Do changes need to be made to the FBA?,” “Describe recommended changes,” “Do changes need to be made to the BIP?,” and “Describe recommended changes to the BIP.” Based on the outcome of the debriefing, the student’s IEP team may be convened to review and, if necessary, revise the student’s IEP and/or BIP, and/or recommend further evaluation.

[redacted content] told OCR that staff at TLC also complete and maintain an internal document titled “TLC Reflection Room Form” to record restraint or seclusion incidents and debriefings. The TLC Reflection Room Form captures the same information required by the restraint or seclusion log and the debriefing log for TLC; however, notably, OCR found that the narrative description of a restraint or seclusion incident in the TLC Reflection Room Form typically provided more current or more detailed information about an incident compared to the abbreviated information that was inputted into the restraint or seclusion log or the debriefing log. This is because TLC staff completed the TLC’s Reflection Room Forms while a restraint or seclusion incident was occurring or immediately after the restraint or seclusion incident occurred.

iv. Monitoring and Oversight

There are no written procedures or guidance concerning how District staff are to review or monitor the restraint or seclusion logs and the debriefing logs for TLC and non-TLC schools discussed above. As mentioned above, the Guidance Document for the Use of Physical Restraint and the

¹⁹ The restraint or seclusion log is a single document that consists of two tabs in an Excel spreadsheet – one tab for restraint, the other for seclusion.

Guidance Document for the Use of Seclusion state that school-based teams should review the use of restraint or seclusion on a quarterly basis in their school and, during the quarterly reviews, the school based team should review each incident, whether the BIP was implemented, any disciplinary records, records related to positive classroom management, and any data that may reveal that the use of seclusion or restraint “is having collateral effects such as increases in aggressive or escape behaviors, health-related effects and/or emotional reactions.”

District administrators reported that the restraint or seclusion logs and the debriefing logs for TLC and non-TLC schools are monitored at the District level to ensure procedural compliance, and to observe and identify any patterns or trends with respect to the repeated use of restraint or seclusion at a particular school or with a particular student. Notably, [redacted content] told OCR that the [redacted content] have access to the centralized online system that contains the restraint or seclusion logs and the debriefing logs, and that they are both responsible for reviewing the information. However, the [redacted content] shared with OCR that she was unsure who monitored the restraint or seclusion log and the debriefing logs, but she believed it may be the [redacted content]. The [redacted content] told OCR that [redacted content] are responsible for monitoring the restraint or seclusion logs and debriefing logs. [redacted content] noted that the [redacted content] is responsible for generating reports pertaining to the use of restraint or seclusion and identifying compliance concerns, then sharing that information with the [redacted content] for their review. Yet, the [redacted content] informed OCR that she was not responsible for oversight or monitoring of the information available online, i.e., restraint or seclusion logs and debriefing logs. [redacted content] explained that she was only responsible for collecting information annually for reporting purposes. However, the District reported to OCR that no annual reports were created or issued relevant to the use of restraint or seclusion.

v. Reevaluations

There are no written procedures or guidance concerning when the use of restraint or seclusion would trigger a student’s reevaluation. Instead, OCR identified different practices across the District.

[redacted content] told OCR that, because the use of restraint or seclusion is included in a student’s crisis plan (which is part of a student’s BIP), the repeated use of restraint or seclusion is addressed throughout the District through the District’s procedures pertaining to BIPs. [redacted content] explained that the District’s BIP procedures require that a student’s progress towards reaching BIP-related goals be reviewed every 45 days or as otherwise specified within the student’s BIP. [redacted content] further explained that because restraint or seclusion are utilized as a “last resort,” the repeated use of these measures suggests that the behavior goals and interventions delineated in a student’s BIP are no longer effective. [redacted content] explained that she and/or a student’s case manager will convene a meeting every 45 days to conduct a BIP review. If, for example, a goal for a student’s BIP is to de-escalate physical aggression, but the student continued to display physical aggression and was restrained on multiple occasions as a result, the data presented may suggest that the student’s BIP is not effective and would trigger an IEP meeting and, if necessary, a reevaluation. The [redacted content] stated that in instances of the repeated use of restraint or seclusion and where the antecedent behavior is the same, the District would convene a BIP review because the intervention(s) outlined in a student’s BIP are not working. The [redacted content] further stated that the focus of the team is to identify the precipitating factors to

assess why de-escalation strategies and interventions did not work and to determine what may be needed to be done differently.

Different schools, however, reported to OCR different practices for when reconvening is required. For example, instead of the BIP reviews described above occurring every 45 days, [redacted content] explained to OCR that staff consider reconvening the IEP team to discuss changes to a student's BIP after three restraint or seclusion incidents, and they communicate concerns regarding the student's behavior to parents to determine whether there is an underlying issue causing the new or escalated behavior. Conversely, [redacted content] told OCR that the District did not have a specific timeline regarding when an IEP team should reconvene to discuss whether any changes to a student's IEP or BIP were necessary.

vi. Training

The Guidance Document for the Use of Physical Restraint notes that staff should be trained, and that staff should be annually certified in the use of nonviolent crisis intervention. There is no similar information related to training noted in the Guidance Document for the Use of Seclusion.

The District provided OCR a copy of its training materials regarding restraint or seclusion. Regarding training on the use of restraint, the District indicated that 10 staff members were trained by a third-party organization and received certification to train other staff on nonviolent crisis intervention. The District explained that the staff who received certification to train staff are then required to receive annual recertification training to continue training staff. According to [redacted content], staff who have received their certification or recertification training then provide the nonviolent crisis intervention training on an annual basis to special education staff, including all TLC staff, RBHS Counselors, and some administrators and general education teachers who are certified to initiate restraints. The training is provided to staff in separate groups (i.e., new staff, paraprofessionals, security officers, and experienced staff). The District indicated that all certified and non-certified instructional staff, not just the groups mentioned above, are required to annually view a PowerPoint presentation regarding the use of seclusion. The District explained that staff view the PowerPoint presentation alone, are required to take a quiz at the end of the presentation and must submit to [redacted content] a signed assurance form that the training was completed.

C. Seclusion Rooms

The District informed OCR that seclusions generally take place in specially designed rooms, which we will refer to as seclusion rooms. OCR toured several seclusion rooms located at Forestbrook Elementary, St. James Intermediate, Whittemore Park Middle, and TLC. Generally, OCR observed when visiting these schools that the seclusion rooms varied in size but were small spaces without furniture. Many of the seclusion rooms observed at non-TLC locations were located within or next to special education classrooms. Each seclusion room had a window and an adjacent door with an observation panel. Although the District stated that the doors are not locked, each door had a pressurized lever that a staff member could depress to lock the door.

At TLC, staff identified several spaces for seclusion. They identified one large open space equipped with a punching bag and no furniture as the "Reflection Room." The Reflection Room had built within it two seclusion rooms, which were small, had no furniture, and had doors, each with an observation panel. The doors had a pressurized lever that a staff member could depress to

lock the door. TLC staff also identified a room outside of the Reflection Room as the Alternative Learning Environment (ALE) room. TLC staff explained that the Reflection Room and the ALE room are used not to seclude students but to provide spaces for students exhibiting agitated and escalating behavior.

D. OCR's Review of the District Data

OCR reviewed the District's restraint or seclusion logs, debriefing logs, TLC Reflection Room forms, and a targeted sample of 35 student files, representing students with disabilities who were enrolled at 10 different schools and experienced 375 (out of 675) restraint incidents and 199 (out of 362) seclusion incidents during the 2017-2018 school year, and 102 (out of 173) restraint incidents and 54 (out of 94) seclusion incidents during the 2018-2019 school year. OCR selected student files across the District for students who had the most and least restraint or seclusion incidents.

As noted above, the District did not identify any students without disabilities who were restrained or secluded during the 2017-2018 school year. It did identify two students during the 2018-2019 school year who were not identified at the time of a restraint, but who were subsequently identified as students with disabilities.

i. Student File Review

OCR identified [redacted content] and all with an IEP, who were each restrained or secluded more than 50 times during the 2017-2018 school year. For example, during the 2017-2018 school year, staff restrained or secluded one student 131 times, totaling 12 hours and 43 minutes, another student 143 times, totaling 27 hours and 38 minutes, and another student 86 times, totaling 10 hours and 18 minutes. OCR's review of each student's file indicated that the IEP team did not record any discussion about the frequent use of restraint or seclusion. There was also no indication that these students were reevaluated at any time during the 2017-2018 school year.

OCR identified [redacted content] and all with an IEP, who were restrained or secluded more than 16 times during the 2018-2019 school year. For example, during the 2018-2019 school year, staff restrained or secluded one student 49 times, totaling about seven and a half hours. OCR's review indicated that the IEP team did not record any discussion about the frequent use of restraint or seclusion. There was no indication that these students were reevaluated at any time during the 2018-2019 school year.

OCR also reviewed files from [redacted content] and identified students who apparently were not reevaluated despite exhibiting new and/or escalating behaviors that resulted in the use of restraint or seclusion. For example, at [redacted content], staff restrained a student twice and secluded the same student 12 times from January to May 2018, but there is no record that staff considered or conducted a reevaluation of the student during this time period.

Moreover, the files for [redacted content] showed that, between the 2017-2018 and 2018-2019 school years, students' BIPs changed from having individualized crisis plans to crisis plans with uniform, standardized language. That is, the language for the crisis plans (which is included in students' BIPs) for students who attended schools with a seclusion room was identical across the

District; similarly, the language for the crisis plans for students who attended schools without a seclusion room was also identical across the District. Specifically, for schools with seclusion rooms, the language required that interventions be used when the behavior presents an imminent threat to self or others and advises staff that, if seclusion is required, that time “in the Seclusion Room should not exceed 1-hour maximum for the day and no more than 15-minute per cycle/visitations.” For schools without seclusion rooms, the language only focused on the use of physical restraint, noting, in part, that “[i]f behaviors continue to escalate and [the student] is not responding to de-escalation strategies, the use of physical management will be utilized to secure his and other’s safety.”

OCR’s review of the students’ special education files between the 2017-2018 and 2018-2019 school years did not identify any information that shows staff documented or discussed the total duration of missed instruction due to the use of restraint or seclusion. OCR’s review of the District’s 2017-2018 and 2018-2019 restraint or seclusion logs, discussed in more detail below, identified the amount of time a specific restraint or seclusion incident lasted but the logs failed to document the total duration of missed instruction. OCR determined that the District’s documentation failed to note the elapsed time for the events preceding or after an incident of restraint or seclusion, in which a student would be subject to missed instructional time. Focusing only on the duration of a time in which a student was actively restrained or secluded, however, OCR found instances involving the repeated use of restraint or seclusion that, in the aggregate, suggested a significant loss of instructional time. For example, during the 2017-2018 school year, the District restrained and secluded one student for a total of 27 hours and 8 minutes, and another student for a total of 9 hours and 24 minutes; and during the 2018-2019 school year, the District restrained and secluded one student for a total of 7 hours and 29 minutes.

Additionally, OCR’s parent survey inquired whether students missed instructional time due to incidents of restraint or seclusion and, if so, whether the missed instructional time was made up. In response, all the parents who indicated their child was restrained or secluded responded that their child missed instructional time, and only about half of those responses indicated that the missed instructional time was made up. The [redacted content] told OCR that missed work may be brought to the student so they can have one-on-one instruction, or a paraprofessional may help the student once the student returns to class. A [redacted content] stated that missed instructional time is always made up because “makeup work times [are] built into [the TLC] schedule.” A [redacted content] explained that students were given the option to complete missed work during lunch or to stay after school. At [redacted content] noted that students, when brought back to the classroom, are expected to “get back on track,” but that staff are available to help. She noted that staff partners with parents and may send missed work home, if appropriate.

Although District staff told OCR that students are able to make-up missed instructional time due to an incident of restraint or seclusion, OCR did not find any corroborating documentary evidence with respect to how and when a student receives compensatory services for missed instruction.²⁰

²⁰ During interviews, the [redacted content] indicated that the District had not identified any students who needed compensatory education as a result missed instruction or services due to the use of restraint or seclusion.

ii. Restraint or Seclusion Logs

OCR reviewed the District’s restraint or seclusion logs for the 2017-2018 and 2018-2019 school years to determine whether staff were recording the information that a student’s IEP team would need to determine when a student might require reevaluation. Specifically, OCR reviewed the District’s data to determine whether incidents of restraint or seclusion were sufficiently documented as individual incidents and debriefed. OCR reviewed the description in the restraint or seclusion logs for the 2017-2018 and 2018-2019 school years and identified multiple restraint or seclusion incidents that were not accurately reported. OCR found restraint or seclusion incidents where staff, in their narrative description of the incident, explained that a student was restrained or secluded multiple times while identifying it as a single restraint or seclusion incident because the incidents occurred during one behavior episode. For example, during the 2017-2018 school year, the District reported to OCR that a student was restrained once in September 2017; however, OCR’s review of the incident revealed that the student was restrained a total of five times during the one incident.

OCR also observed that numerous restraint or seclusion incidents were listed in either the restraint or seclusion log or the debriefing log, but not in both locations. Notably, there were 480 restraint or seclusion incidents that were debriefed but not recorded in the restraint or seclusion log, and 39 restraint or seclusion incidents were identified in the restraint or seclusion log that did not appear in one of the debriefing logs.

During the site visit at [redacted content], OCR observed that staff placed students in [redacted content] Reflection Room and ALE room when their behaviors escalated after being restrained or during a restraint, and that students were not allowed to leave the room. In such circumstances, the District may not have counted the student’s placement in the Reflection Room or ALE room as a seclusion. For example, one incident noted that the student involved was not secluded; however, the description stated that the student was “escorted inside the building and placed in ALE room until he was able to de-escalate and process with staff” after he eloped from the school building. The District counted the “escort” as a restraint but did not identify the placement in the ALE room (which OCR had previously observed typically included restrictions on leaving) as a seclusion.

Additionally, OCR’s file review discovered multiple incidents that showed staff restraining or secluding students with disabilities as punishment to force compliance in response to certain behavior, such as refusing to stay in a designated area, walking out of class, not following instructions, and disrupting class. For example, one student was restrained for “disrupting class by instigating his peers and refusing to stay in [the] designated area;” another student was restrained for walking out of class, standing in the hallway, and refusing to return to class; and a third student was secluded for refusing to sit down while in the Reflection Room.

iii. Parent Notifications

The District submitted a copy of the written notifications provided to parents for restraint or seclusion incidents that occurred during the 2017-2018 and 2018-2019 school years. OCR’s review of the District’s restraint or seclusion logs for the 2017-2018 and 2018-2019 school years

indicates that, during the 2017-2018 school year, staff did not notify a parent in writing in 112 instances, and, during the 2018-2019 school year, staff did not notify a parent in writing in 46 instances. OCR has not determined if oral parent notification occurred in those cases where there was no written notification. OCR's review of the written parent notifications indicated that the District provided minimal information to parents about a restraint or seclusion incident, and only mentioned that the restraint or seclusion was used due to a student exhibiting certain behaviors. Notably, in many instances, the parent notification letters showed that staff did not provide parents any details regarding the student's antecedent behavior, the time the restraint or seclusion started and ended, and recommendations for next steps.

OCR's parent survey resulted in 307 responses. Regarding notification, some parents responded that they were notified of each incident of restraint or seclusion, while others noted that they were never notified of the incidents and only became aware of the incidents through their child. Other parents stated that they were notified of some incidents but not all of them. Notably, one parent noted that she was not notified until she complained about the lack of notification, and another parent noted that she was not notified of each incident but that the use of restraint or seclusion was discussed during IEP meetings.

iv. Debriefing Logs

OCR reviewed 843 debriefing entries from the 2017-2018 and 2018-2019 school years. In reviewing the 778 debriefing entries related to restraint or seclusion incidents that occurred at TLC, OCR found that staff uniformly noted that they tried to use "verbal prompts," "de-escalation strategies," and "positive reinforcement" to address a student's behavior before the use of restraint or seclusion. TLC staff did not provide case-specific information beyond this standard response. TLC staff consistently indicated that nothing could have been done differently and generally noted that "staff followed student's BIP." In contrast, for the non-TLC schools, the debriefing log for the 2017-2018 and 2018-2019 school years recorded 65 debriefing entries and showed that staff provided a detailed description of what interventions were used with students prior to the use of restraint or seclusion and identified other strategies that could have been considered to handle the situation differently, such as, "student could have been sent home earlier," "behavior could have been addressed earlier," and "administration could have been contacted sooner."

OCR's review of the debriefing log for the 2017-2018 and 2018-2019 school years also indicated that staff rarely recommended that the IEP team reconvene, even after multiple physical restraint or seclusion incidents. For the 2017-2018 school year, according to TLC's debriefing log, out of the 633 debriefings that occurred, staff did not indicate that any incidents warranted conducting an FBA and indicated that only one incident warranted changing a BIP. According to the debriefing log for the non-TLC schools, out of the 36 debriefed incidents, staff indicated that five incidents warranted conducting an FBA and nine incidents warranted modifying a BIP. For the 2018-2019 school year, according to TLC's debriefing log, out of the 145 debriefings that occurred, staff indicated that two incidents warranted conducting an FBA and two incidents warranted modifying a BIP. According to the debriefing log for other schools examined, out of the 29 debriefed incidents, staff indicated 10 incidents warranted conducting an FBA and 17 incidents warranted modifying a BIP.

ANALYSIS

OCR is concerned about the staff's use of restraint or seclusion to address non-compliant student behavior. Despite the District's own Procedures and Guidance Documents for the Use of Physical Restraint and the Use of Seclusion, the District's restraint or seclusion logs for the 2017-2018 and 2018-2019 school years revealed that staff did not limit use of restraint or seclusion to emergency situations where necessary to protect a student or other person from imminent, serious physical harm. Specifically, OCR's review identified multiple incidents where staff restrained or secluded a student for behavior such as disrupting class, walking out of class, or refusing to follow directions. This suggests that staff may have unlawfully treated students with disabilities differently than students without disabilities, may have failed to implement IEPs that contained a BIP to address noncompliant behavior, and may have unnecessarily caused students with disabilities to miss instructional time.

OCR is further concerned that the District may be denying a FAPE to students with disabilities by failing to conduct necessary reevaluations when these students are repeatedly restrained or secluded. The evidence reviewed shows that IEP teams do not consistently review whether the current array of regular or special education and related aids and services was sufficient to provide FAPE, or whether and to what extent additional or different interventions or supports and services might be needed as students' behaviors resulting in restraint or seclusion increased in frequency, changed, or intensified. OCR found several examples in which students were repeatedly restrained or secluded but were not reevaluated. Notably, at [redacted content], OCR identified eight students who were restrained or secluded at least 50 times during the 2017-2018 school year without the IEP team conducting a reevaluation. Particularly, OCR's review identified two students during the 2017-2018 school year who were restrained or secluded over 130 times each and a third student during the 2017-2018 and 2018-2019 school years who was restrained or secluded 143 times without reevaluations being conducted. Out of 778 debriefing entries, OCR identified only five incidents where the District recommended that an FBA be conducted and three incidents where the District recommended that the BIP be modified.

OCR is also concerned that the District's procedures and guidance documents for restraint or seclusion are part of the District's Special Education Procedures. So locating the procedures and guidance documents suggests that they apply only for students with disabilities served in special education as distinct from clearly applying whenever restraint or seclusion could be warranted, including for non-disabled students or for students not yet identified as having disabilities. In addition, so locating the procedures and guidance documents renders them less likely to be referenced by general education staff.

OCR is concerned that TLC staff's documentation practices may have delayed or impeded IEP teams from reconvening to carefully consider and meaningfully discuss the implementation and efficacy of the BIPs and/or whether the current array of special education and related aids and serves was sufficient to provide FAPE. Although District staff told OCR that debriefing teams review individual incidents of restraint or seclusion and make individualized recommendations regarding changes to a student's educational program, OCR observed the use of generally identical standardized and overbroad language to document restraint or seclusion incidents in the debriefing log entries. The lack of specificity in TLC's debriefing logs for the 2017-2018 and 2018-2019 school year suggests that staff may not have been reviewing and discussing each incident

individually to determine if the interventions required by a student’s BIP were used, and whether the BIP was implemented properly.

Similarly, OCR is concerned that staff may have failed to develop individualized BIPs when the District incorporated standardized, boilerplate crisis plans into students’ BIPs. OCR identified two sets of boilerplate language, one for schools with seclusion rooms and one for schools without seclusion rooms, that the District utilized as of the 2018-2019 school year. There was no explanation in individual student files for the changes for any specific student, and no information in the District’s data response to indicate whether staff, before adopting the District’s boilerplate language, considered how and whether the needs of each individual student could be addressed by the boilerplate language.

OCR is concerned that the District’s reporting practices may have resulted in a denial of FAPE by denying the IEP teams necessary information to determine the appropriate educational program or placement for a student. OCR’s review of the data showed that staff frequently reported one restraint or seclusion incident even if there were multiple separate incidents during one behavior episode. OCR’s review also identified incidents where, based on the District’s description of the incident, a student was placed involuntarily in a room and may have not been permitted to leave, but staff did not identify the incident as a seclusion incident. Here, without all the information related to each restraint or seclusion incident, IEP teams would be unable to carefully consider and discuss the antecedent behaviors that resulted in the use of restraint or seclusion, and, in the aggregate, its impact on the student. Further, IEP teams would be unable to determine whether a student’s current array of interventions was appropriate, whether a student needed additional and/or different interventions, whether the student’s placement was appropriate, or whether a reevaluation was necessary.

Along the same lines, OCR is concerned that the District may not be sharing with parents sufficient information for them to participate meaningfully as IEP team members. The evidence to date shows that written notification letters to parents were inconsistent across schools, nonexistent at some schools, and provided minimal information. Moreover, in the parent survey, parents relayed concerns to OCR that they were unaware of specific incidents in which the District restrained or secluded their student.

OCR is concerned that some District documentation includes staff suggesting that restraint or seclusion could have been avoided if students had been sent home earlier. This suggestion raises a concern that District staff may not know that this alternative approach could raise separate discrimination concerns: shortening a student’s school day without determining that doing so is necessary to support the student’s educational needs as part of an individualized assessment from the team of persons knowledgeable about the student would violate Section 504.

OCR is concerned that the District’s evidence reviewed to date does not show whether, how, and when staff provided instructional time and educational services missed due to the use of restraint or seclusion. Although staff asserted during interviews that missed instructional time was made up, OCR did not find any documentation to corroborate this witness testimony. This was true even for students who, in the aggregate, were restrained or secluded for hours and thus likely missed a

significant portion of educational time or services prescribed in a student’s IEP, the denial of which would affect the student’s receipt of a FAPE.

OCR is concerned that testimony provided during interviews demonstrate that District staff do not have a shared understanding of who is responsible for monitoring the District’s restraint or seclusion logs and the District’s debriefing logs for TLC and non-TLC schools to ensure procedural compliance and to observe and identify any patterns or trends that could shed light on whether the District is appropriately providing a FAPE. When OCR asked District staff who was responsible for reviewing the information in the logs, District staff identified various individuals, but each individual identified ultimately denied that this was their responsibility, reflecting no District individual taking responsibility for such monitoring and suggesting that the monitoring in fact has not occurred.

OCR is also concerned that the data the District reported to OCR for the CRDC is inaccurate. This inaccurate reporting raises concerns about the effectiveness of the District’s recordkeeping practices, in addition to undermining the effectiveness of the CRDC.

RESOLUTION

In light of the above concerns, OCR determined that resolving this compliance review pursuant to Section 302 would be appropriate. The District signed a resolution agreement (Agreement). The Agreement requires the District to:

- (1) revise the Procedures and Guidance Documents for the Use of Physical Restraint and Use of Seclusion;
- (2) create a document identifying the roles and responsibilities for each individual who is involved in oversight and monitoring of the District’s use of restraint and use of seclusion in the District;
- (3) modify its recordkeeping system;
- (4) train staff on the District’s Procedures and new recordkeeping system;
- (5) review files of students who are currently enrolled and were restrained or secluded between the 2017-2018 school year and the date of signing this Agreement, as appropriate, to (a) determine whether any student requires compensatory education for educational services missed due to incident(s) of restraint or seclusion and, if appropriate, (b) ensure their crisis plans use language appropriate to convey and meet each individual student’s needs;
- (6) implement a monitoring program to assess the District’s use of restraint or seclusion on a quarterly basis; and
- (7) create a plan for OCR’s review and approval to ensure accurate reporting for the CRDC.

Please review the enclosed Agreement for further details. OCR will monitor the District’s implementation of the Agreement until the District has fulfilled the terms of the Agreement.

CONCLUSION

This concludes OCR’s investigation of the compliance review. This letter should not be interpreted to address the District’s compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation 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 personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s/

Emily Frangos
Regional Director
District of Columbia Office
Office for Civil Rights

Enclosure

cc (Via Email): Kenneth Generette, Counsel for the Division