

**RESOLUTION AGREEMENT**  
**Horry County Schools**  
**OCR Case No. 11-19-5002**

Horry County Schools (the District) agrees to resolve the above-referenced compliance review initiated by the U.S. Department of Education, Office for Civil Rights (OCR) by voluntarily entering into this Resolution Agreement (Agreement) to address the concerns that OCR identified in the accompanying letter of resolution. In this compliance review, OCR investigated 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. Nothing in this Agreement constitutes an admission by the District that it failed to comply with any relevant law.

The District assures OCR that it will take the following actions to ensure compliance with the requirements of Section 504 and its implementing regulation, and Title II and its implementing regulation, which prohibit discrimination on the basis of disability by recipients of federal financial assistance and public entities, respectively.

**Action Item I: Procedures and Guidance Documents for the Use of Restraint and the Use of Seclusion**

1. The District will revise its Procedures for the Use for 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 (collectively, the Procedures). The Revised Procedures will be located in the policies and procedures applicable to all students, not just students with disabilities. The Revised Procedures will, at a minimum:
  - a. define key terms, including but not limited to seclusion, timeout, physical restraint, prone restraint, physical escort, mechanical restraint, and safety devices;
  - b. explain how seclusion, restraint, physical restraint, and prone restraint are distinct from safety devices, physical escorts, and timeouts;
  - c. explain what restraint or seclusion practices are prohibited;
  - d. explain that alternative approaches, i.e., shortening a student's day, to address a student's behavior may raise separate discrimination concerns;
  - e. include a description of the District's Monitoring Program for the Use of Restraint and the Use of Seclusion, described in Action Item VI;
  - f. require staff to document separately each incident when multiple restraints or seclusions involving the same student occur on the same date; and
  - g. establish criteria the District will use to determine when, after instances of restraint or seclusion, the District will reconvene a student's Individualized Education Program (IEP)/Section 504 team to assess a student's current interventions and supports, whether any changes are needed to those interventions and supports, whether the student was denied a FAPE, and/or whether the student needs compensatory services.

Reporting Requirements: By July 1, 2022, the District will provide to OCR, for OCR’s review and approval, copies of the Revised Procedures and Guidance Documents developed in accordance with Action Item I.

Within 30 calendar days of OCR’s approval of the Revised Procedures and Guidance Documents, the District will (1) update all printed publications and online publications with the developed and/or revised documents (inserts may be used pending reprinting of these publications); (2) electronically or otherwise disseminate the Revised Procedures and Guidance Documents to District administrators, District staff, District parents, and non-District personnel contracted by the District to provide educational services to District students; and (3) provide OCR with evidence that is has published and disseminated the Revised Procedures and Guidance Documents.

### **Action Item II: Responsibilities for Oversight and Monitoring**

1. The District will clarify who is responsible for the oversight and monitoring of the District’s use of restraint and the use of seclusion. The District will create a document (e.g., flowchart or organizational chart) that identifies the names and/or titles of the individuals involved in receiving reports, documenting, and/or overseeing the use of restraint and use of seclusion in the District. The document will delineate the roles and responsibilities of each District staff member/administrator included and will include the name and/or title of the administrator who will implement the monitoring program discussed in Action Item VII below.

Reporting Requirement: By July 1, 2022, the District will provide to OCR a copy of the document referenced in Action Item II above.

### **Action Item III: Recordkeeping and Access to Records**

1. The District will record as “restraint” or “seclusion” all such incidents that fall within the definitions of the terms “physical restraint,” “mechanical restraint,” or “seclusion” in the directions for completing OCR’s Civil Rights Data Collection (CRDC), regardless of the duration of those incidents or how those terms are defined in the Revised Procedures. The District will ensure that its records concerning the use of restraint and use of seclusion are revised as necessary to accurately capture all data that it is required to submit through the CRDC survey. The District will assess how and why it submitted incorrect restraint or seclusion data to the CRDC for the 2017-2018 school year, and the District will develop a plan to ensure its employees submit accurate restraint or seclusion data to the CRDC in the future. The District will:
  - a. identify steps that it has taken to ensure data quality,
  - b. submit written correspondence to the CRDC including the correct data from the 2017-2018 school year, and
  - c. ensure that all employees charged with reporting data to the CRDC review the CRDC’s [Restraint & Seclusion Module](#).
2. The District will modify its recordkeeping system (e.g., restraint or seclusion logs and debriefing logs) pertaining to the use of restraint or seclusion to ensure the inclusion and documentation of all pertinent information necessary to consider whether a student’s current



array of special education or related aids and services are appropriate in providing a FAPE. The modified recordkeeping system will include, at a minimum, the following: separate and accurate identification of each restraint or seclusion incident arising from a single episode; accurate identification as seclusion each incident in which a student is placed involuntarily in a room and not permitted to leave; individualized information about each restraint or seclusion incident rather than resort to uniform documentation; and notation of total missed instructional time and/or educational services, including pre- and post-restraint or seclusion times.

3. The District will develop written instructions to staff explaining how to document individual restraint or seclusion incidents and the total missed instructional time and/or educational services. The instructions will also state that a student's complete and accurate record related to the use of restraint or seclusion will be made available to all members of a student's IEP/Section 504 team, including the parents or guardians, in advance of or at any IEP/Section 504 team meeting.
4. The District will develop a parent notification letter that must be shared with a parent or guardian after each restraint or seclusion incident. The parent notification letter will identify the information staff must share with parents or guardians concerning the specific restraint or seclusion incident. At a minimum, the parent notification letter will identify the date, the individuals involved, the duration of the incident, the total amount of missed instructional time and/or educational services, the behaviors that prompted the use of restraint or seclusion, and the interventions used by staff prior to restraining or secluding the student. If the student is a student with a disability, the parent notification will indicate whether staff is recommending the student's IEP/Section 504 team meet to discuss the incident to determine appropriate next steps, e.g., whether a reevaluation is needed, whether additional or different services are necessary, or whether compensatory services are required due to missed instructional time and/or educational services.

Reporting Requirements: By September 1, 2022, the District will provide OCR with a written description of the steps that it has taken to ensure accurate reporting to the CRDC, and confirmation that all employees charged with reporting data to the CRDC have reviewed the CRDC's [Restraint & Seclusion Module](#).

By July 1, 2022, the District will provide to OCR, for OCR's review and approval, a template of each element in the modified recordkeeping system, a copy of the written instructions, and a copy of the form parent notification letter, in accordance with Action Item III, Provisions (3), (4), and (5), respectively. Within 30 days of receiving OCR's approval, the District will implement the modified recordkeeping system and parent notification letter and circulate to staff the written instructions; and within 45 days of receiving OCR's approval, the District will provide evidence to OCR that it has taken these steps.

#### **Action Item IV: Training**

1. The District will augment its existing annual training for all relevant staff (i.e., principals, assistant principals, counselors, behavior interventionists, special education teachers, paraprofessionals, etc.), and all staff assigned to the Therapeutic Learning Center (TLC), by including, at a minimum, the following topics:

- a. The District's Revised Procedures and Guidance Documents, modified recordkeeping system, written instructions, and parent notification letter.
  - b. The importance of recording information about incidents of restraint or seclusion that is accurate, individualized, and not based on aggregated incidents.
  - c. How District staff and parents or guardians can report concerns about the use of restraint or seclusion, including how and whether this use is being documented; the name(s), title(s), and contact information (phone number, office address, and e-mail address) of individuals to whom concerns should be reported; and how the District will respond.
  - d. An explanation identifying when restraint or seclusion is permitted and is prohibited, while emphasizing that restraint or seclusion is to be only used as a last resort when in emergency situations where necessary to protect a student or other person from imminent, serious physical harm.
  - e. An explanation noting that shortening a student's day as an alternative approach to address a student's behavior may raise separate discrimination concern and that a student's IEP/Section 504 team should first conduct an individualized assessment to determine whether this alternative approach is necessary to support the student's educational needs.
  - f. How to accurately calculate and document the total missed instructional time and/or educational services when a student is restrained or secluded.
  - g. The procedural requirements of Section 504 and the District's obligations to provide FAPE, as described in 34 C.F.R. §§ 104.33-104.36, as they relate to restraint or seclusion.
  - h. The necessity of making individualized determinations for all aspects of students' IEPs/Section 504 plans, such as a behavior intervention plan, as well as the necessity of fully implementing students' IEPs/Section 504 plans, and providing procedural safeguards to parents, including notice.
  - i. An explanation of when a student's IEP/Section 504 team must convene to address the use of restraint or use of seclusion of the student, e.g., to reevaluate a student, identify any additional necessary supports and services for the student, or determine appropriate compensatory services for a student denied a FAPE.
  - j. A review of how restraint or seclusion may deny a student FAPE, and the District's obligation to: (a) determine if current interventions and supports are being properly implemented; (b) determine the extent to which additional or different interventions or supports and services, including positive behavior interventions and supports and other behavior strategies may be needed, and, if necessary, reevaluate the student; (c) determine whether any compensatory services are appropriate; (d) ensure that any needed changes are made promptly; and (e) remedy the denial of FAPE.
2. The District will provide TLC staff an additional training mid school-year that provides an overview of the TLC's use of restraint or use of seclusion and recordkeeping, identifies notable trends presented by the data, provides a refresher on the provisions noted in Action Item 3, Provision (1), and provides TLC staff an opportunity to ask questions and engage in a discussion about their experiences using restraint or seclusion at TLC.

Reporting Requirements: By July 15, 2022, the District will provide to OCR, for OCR’s review and approval, a copy of the training materials it will use in Action Item IV, Provision (1), as well as the name and professional qualifications of the trainer/presenter.

By August 1, 2022, the District will supply OCR the date(s) of the training(s), and a sign-in sheet that includes a list of attendees, their professional titles, and their signatures.

By February 1, 2023, the District will provide OCR with information regarding the mid school-year training for TLC staff. The District will supply OCR the date of the training, an agenda, a copy of any training materials, and a sign-in sheet that includes a list of attendees, their professional titles, and their signatures.

**Action Item V: Compensatory Education Services and Remedial Measures**

1. For all currently enrolled students with a disability who were restrained or secluded from the start of the 2017-2018 school year until the date of this Agreement, the District will provide proper written notice to each student’s parent or guardian informing him/her that the District is convening an IEP/Section 504 team to discuss restraint or seclusion incidents the student was subjected to, whether the student was denied a FAPE, and, if so, whether the student needs compensatory services and remedial measures. The District will convene an IEP/Section 504 team meeting by September 1, 2022. The District will make all reasonable efforts to include the parents or guardians. The District will ensure that the team convened is a group of persons knowledgeable about each student, the evaluation data, and the placement options, including the student’s parent or guardian. At the meeting, each team will:
  - a. Review the record of all restraints or seclusions the student was subjected to from the start of the 2017-2018 school year until the date this Agreement is signed.
  - b. Determine if the student’s current interventions and supports are sufficient or whether any changes are needed.
  - c. If needed, revise and/or more clearly define in the student’s IEPs/Section 504 plans any provisions concerning future use of restraint or use of seclusion (e.g., the number of restraint or seclusion incidents or the duration of single restraint or seclusion incident that would trigger the reconvening of the IEP/Section 504 team) to meet the student’s needs under Section 504.
  - d. Determine whether the number, duration, and/or nature of the restraints or seclusions the student was subjected to between the start of the 2017-2018 school year and the date this Agreement is signed may have resulted in the student being denied FAPE, and, if so, what compensatory education and/or remedial services are necessary. In making this determination, the team will consider the extent of missed instructional time and/or educational services as a result of the staff restraining or secluding the student. If any compensatory and/or remedial services are necessary, the team
    - i. will develop written plans for the compensatory education and/or remedial services;
    - ii. will identify the type, frequency, and duration of services to be provided at no cost to the student’s parents or guardians, the title and qualifications of the provider(s), and when the services will be provided; and

- iii. will make the plan a part of the student’s IEP/Section 504 plan directly and/or incorporated by reference.
- e. The District will commence promptly to provide such services and will complete the delivery of such services by the end of the 2022-2023 school year.
- f. Determine whether the student has a crisis plan, and, if yes, determine whether the provisions in the crisis plan are appropriate to address the student’s individualized needs or whether the team must develop a new plan to address the student’s individualized needs.
- g. Provide the student’s parents or guardians with a meaningful opportunity to provide input into these determinations, written notice of the determinations made (including a copy of any written plan for providing the student with compensatory education and/or remedial services), and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree with the team’s determinations.

Reporting Requirements: By October 1, 2022, the District will submit to OCR an Excel spreadsheet to demonstrate its implementation of Action Item V. The spreadsheet should contain, at a minimum, the information identified below. OCR will review the spreadsheet to ensure the District’s compliance with Action Item V and the procedural requirements of the regulation implementing Section 504 at 34 C.F.R. §§ 104.34, 104.35, and 104.36. OCR may request additional documentation concerning specific students as necessary, in which case the District will provide the requested information within 10 calendar days of OCR’s request. The spreadsheet should include the following:

- a. the name of the student;
- b. whether the student has an IEP/Section 504 plan;
- c. the date the student was identified as a student with a disability;
- d. the number of restraint or seclusion incidents for each school year, starting from the 2017-2018 school year;
- e. the date the IEP/Section 504 team convened;
- f. whether the parent or guardian attended the meeting;
- g. whether the team determined that compensatory education and/or related services were deemed necessary;
- h. whether the team determined the current interventions and supports are sufficient or whether any changes are needed;
- i. a description of next steps if the team determine compensatory education and/or related services were warranted;
- j. if the Student’s Section 504 Plan/IEP included a crisis plan, whether the team determined if the plan’s language was sufficient or whether any changes were needed; and
- k. whether procedural safeguards were provided to the parent or guardian.

By June 1, 2023, if the District determined compensatory and/or remedial services were necessary for a student, the District will provide OCR with documentation that it provided all services deemed necessary. If services cannot be delivered as required, the District will provide evidence to OCR of its reasonable efforts to provide these services to the student and an explanation as to why the services could not be provided.

**Action Item VI: Crisis Plans**

1. For any students with an IEP/Section 504 Plan that includes a crisis plan who were not subject to restraint or seclusion during the 2017-2018 school year or in any subsequent school year, the District will review the educational records of the students to determine whether they have a behavior intervention plan that incorporates the District’s uniform crisis plan language identified during OCR’s investigation. For each such student, the District will convene a group of persons knowledgeable about the student, the meaning of the evaluation data, and the education placement options to determine whether the language is appropriate to address the student’s individualized needs or whether the group must develop a new plan to address the student’s needs.

**Reporting Requirement:** By October 1, 2022, the District will submit to OCR an Excel spreadsheet to demonstrate its implementation of Action Item VI. OCR will review the spreadsheet to ensure the District’s compliance with Action Item VI and the procedural requirements of the regulation implementing Section 504 at 34 C.F.R. §§ 104.34, 104.35, and 104.36. OCR may request additional documentation concerning specific students as necessary, in which case the District will provide the requested information within 10 calendar days of OCR’s request. The spreadsheet should include the following:

- a. student name;
- b. the date the IEP/Section 504 team convened;
- c. whether the parent or guardian attended the meeting;
- d. whether the team determined if the crisis plan language was sufficient or whether any changes were needed; and
- e. whether procedural safeguards were provided to the parent or guardian.

**Action Item VII: Monitoring Program for the Use of Restraint and Use of Seclusion**

1. The District will designate a qualified administrator knowledgeable about the Revised Procedures and Guidance Documents to implement a monitoring program to assess, on a quarterly basis, the District’s use of restraint and use of seclusion. Each quarter, the District’s qualified designee will, at a minimum:
  - a. review all restraint or seclusion incidents to determine whether the use of restraint or use of seclusion was appropriate (e.g., the use of restraint or use of seclusion was used only for emergency situations where necessary to protect a student or other person from imminent, serious physical harm);
  - b. review all restraint or seclusion incidents to ensure the District is not using restraint or seclusion for students with disabilities in a manner that is discriminatory;
  - c. review all restraint or seclusion incidents to determine whether the use of restraint or use of seclusion was based on an individualized determination of the student’s needs and was consistent with District’s Revised Procedures and Guidance Documents, written instructions, and related training;
  - d. analyze whether District staff should have evaluated or reevaluated a student either because the behavior(s) that led to the restraint or seclusion of a student was part of a



- pattern of behavior(s), or because of the impact of the restraint or seclusion on the student;
- e. assess whether the restraint or seclusion caused missed instructional time and/or educational services resulting in the denial of FAPE, and, if so, whether compensatory education and/or remedial services are necessary to address the denial of FAPE;
  - f. ensure students without identified disabilities subjected to multiple and/or prolonged restraints or seclusions are evaluated for disability, if appropriate;
  - g. review all entries in the restraint or seclusion logs and debriefing logs for the TLC and non-TLC schools to ensure that District staff properly submit the information into each log;
  - h. compile, evaluate, and analyze data collected (i.e., incidents of restraint or seclusion broken down by school, staff, grade level, program, etc.) to assess whether incidents of restraint or seclusion have increased or decreased in number and duration and whether there are any particular location(s) or program(s) at the District where numerous incidents of restraint or seclusion occurred;
  - i. identify concerns related to the District’s use of restraint and use of seclusion, propose recommendations to address any concerns, develop timelines for implementation of the recommendations, and review and explain this information with administrators and staff responsible for implementing the remedies to address the identified concerns; and
  - j. create a report detailing the findings identified during the quarterly review of the District’s use of restraint and use of seclusion.

Reporting Requirements: Within 30 calendar days of each quarter ending during the 2022-2023 school year, the District will provide OCR a copy of the District’s restraint or seclusion logs and the debriefing logs for TLC and non-TLC schools for each quarter; and a copy of the quarterly report required by Action Item VII, Provisions (1)(j).

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, 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 and obligations of this Agreement and is in compliance with the regulations implementing Section 504, at 34 C.F.R. Part 104, and Title II, at 28 C.F.R. Part 35, which were at issue in this case. Upon the District’s satisfaction of the commitments made under this Agreement, OCR will close this case.

The District understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this Agreement and/or the applicable statute(s) and regulation(s). 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.

By:



Rick Maxey, Ph.D., Superintendent  
Horry County Schools

Date:

*May 23, 2022*