



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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September 28, 2023

Sent via email only to: gandhir@fargo.k12.nd.us

Dr. Rupak Gandhi
Superintendent
Fargo Public Schools

RE: OCR Docket #05-19-5001

Dear Dr. Gandhi:

This letter is to advise you of the outcome of the above-referenced compliance review of the Fargo Public Schools (District), which the U.S. Department of Education, Office for Civil Rights (OCR) initiated on January 29, 2019. OCR's compliance review examined whether the District's use of restraint and seclusion denies students with disabilities who participate in the District's programs a free appropriate public education (FAPE), in violation of 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.

OCR enforces Section 504 and Title II, which prohibit discrimination on the basis of disability by recipients of federal financial assistance from the Department of Education (Department), or by public entities, respectively. The District receives federal financial assistance from the Department and is a public entity. The District is therefore subject to Section 504 and Title II.

Methodology

During this investigation, OCR reviewed District records and documentation, including the District's policies and procedures, all versions of its Student Restraint Report (restraint report) form, which the District uses to document and report each restraint, and records of staff training regarding restraint and seclusion. OCR reviewed education records for all District students who were reported to have been restrained during the 2017-18 and 2018-19 school years. For the 2017-18 school year these records reflected 86 students in all, involving 376 incidents of restraint; for the 2018-19 school year these records reflected 88 students, involving 326 restraints. OCR has also reviewed documentation related to the only incident the District reported as seclusion, as well as several other incidents that may constitute seclusion but were not reported as such. OCR conducted an in-depth review of the cumulative special education records for (b)(6) District students (Selected Students) and restraint reports for the Selected Students from the 2018-19 school year. (b)(6); (b)(7)(A); of the Selected Students are discussed in this letter. OCR identified the Selected Students for comprehensive review because they experienced more than (b)(6); (b)(7) restraints during the 2018-19 school year.

On October 27-30, 2019, OCR conducted in-person site visits to ten elementary, middle, and high schools and interviewed 43 District staff, including: the Superintendent and Director of Special Education (SPED Director), ten principals, special education teachers and staff, paraprofessionals and case managers, as well as counselors and positive behavior interventionists/technicians. OCR also conducted a meeting with over 30 parents and members of the community. OCR requested and reviewed additional documentation related to information obtained during its site visits including documentation on the number of calming rooms used throughout the District during the 2019-2020 school year and the District's use of the Ukeru system. Finally, OCR reviewed documentation and conducted interviews related to three individual cases that were filed with our office during this investigation.

Legal Standards

Definitions

“Mechanical restraint” refers to the use of any device or equipment to restrict a student’s freedom of movement. The term includes the use of handcuffs or similar devices by law enforcement officers or other school security to prevent a student from moving the student’s arms or legs. The term does not include devices used by trained school personnel or 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, such as:

- 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.

“Physical restraint” refers to a personal restriction, imposed by a school staff member or other individual, 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 includes a touching or holding of the hand, wrist, arm, shoulder, or back of a student for the purpose of inducing a student to walk to a safe location, when the contact does not continue after arriving at the safe location. Encouraging, inducing or forcing a student to walk to a safe location in a way that involves methods utilized to maintain physical control of a student should be considered a physical restraint.

“Seclusion” refers to the involuntary confinement of a student in a room or area, with or without adult supervision, from which the student is not permitted to leave. Students who believe or are told by a school staff member that they are not able to leave a room or area, should be considered secluded. The term does not include: a classroom or school environment where, as a general rule, all students need permission to leave the room or area such as to use the restroom; a behavior management technique that is part of an approved program, which involves the monitored separation of a student in an unlocked setting, from which the student is allowed to leave; or

placing a student in a separate location within a classroom with others or with an instructor, so long as the student has the same opportunity to receive and engage in instruction.

Section 504 and Title II

The Section 504 regulation at 34 C.F.R. § 104.33 requires school districts to provide FAPE to all qualified students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. An appropriate education is defined as the provision of 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 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.¹

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;² (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.

OCR interprets the Title II regulation, at 28 C.F.R. §35.130(b)(1)(ii) and (iii), to require districts to provide FAPE to the same extent required under the Section 504 regulation.

¹ 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).

² 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.

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 a teacher, or other district personnel, to suspect that the student has a disability, as defined under Section 504, the 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 in need of special education or related services, a district's repeated use of restraint and 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. If the use of restraint or seclusion has a traumatic impact on a student with a disability, the traumatizing effect could manifest itself in new academic or behavioral difficulties and needs (*e.g.*, new types of misbehavior and/or new diagnoses, impaired concentration, increased absences, or social withdrawal). If district personnel are aware of behaviors that are sufficiently severe to interfere with a student's individual educational needs, and those behaviors remain unaddressed by district personnel, it could result in a denial of FAPE for that student. Examples of proper steps may include re-evaluating the student or making necessary adjustments to the student's Section 504 plan or IEP. Such adjustments may include conducting a functional behavior assessment (FBA) and/or developing a behavior intervention plan (BIP) and adding supports like counseling, a one-on-one aide, or positive behavioral interventions and supports (PBIS) strategies. Further, the repeated restraint or seclusion of a student could impact FAPE if the student does not receive the regular or special education and/or the related aids and services required by the student's IEP or Section 504 Plan; does not receive supplemental services and modifications that the student needs; or is not in an appropriate setting in which to receive those services.

Background

The District is the second largest school district in North Dakota. It serves more than 11,190 students in kindergarten through twelfth grade. The District has 16 elementary schools, three middle schools, and four high schools, which includes one alternative high school.³

According to the District's 2021-2022 annual report, which is most recent report published on the District's website, students with disabilities account for 14.4% of the District's student population.⁴ During the 2018-19 school year, ten of the District's schools offered a Setting C program—where students spend less than 40% of their school day with their general education peers—for students with autism spectrum disorder, who have an intellectual or emotional disability, or who have multiple disabilities. From January through May 2018, the District also operated a Setting D program for elementary school students (grades K through 5) at Agassiz, where, according to the Principal, students with emotional disabilities received all of their instruction—and so spent 100% of their day—in a separate school setting. On November 26,

³ The District's elementary schools are Bennett, Centennial, Clara Barton Hawthorne, Eagles, Ed Clapp, Horace Mann Roosevelt, Jefferson, Kennedy, Lewis and Clark, Lincoln, Longfellow, Madison, McKinley and Washington. The District's middle schools are Ben Franklin, Carl Ben Eielson, and Discovery. The District's high schools are Davis, North, South, and Dakota.

⁴ <https://drive.google.com/file/d/0B1-SQirIj3kjOEtfWmhBVXV4VEE/view?resourcekey=0-eZLBz-xnlvTPKYFvJwYw9w> (last viewed September 26, 2023).

2019, the District's Board of Education approved a proposal to build a Setting D program for elementary students adjacent to Lewis and Clark.

Facts

The District provided OCR a copy of its Student Support Services-Student Restraint Report for the 2017-18 school year. According to the District's report, of the 376 documented incidents of student restraint that school year, 373 were at the elementary level, two at the middle school level, and one at the high school level. Kennedy accounted for the most restraints, with a total of 104, followed by Ed Clapp with 72 restraints and Washington with 64. The District noted that Kennedy and Washington operate Setting C programs for students with behavioral problems. According to the District's data, 21% of the restrained students were in kindergarten, 27% in first grade, 16% in second grade, 21% in third grade, 11% in fourth grade and 5% in fifth grade. Of the students restrained that year, 70% were students with disabilities.

Restraint Report and Policy

The District also provided OCR a copy of its Student Restraint Policy (Restraint Policy), which was in effect as of the 2017-2018 school year. According to that Policy, the District seeks "to ensure that every student in the [District] is free from the unreasonable use of physical restraint, and that physical restraint shall only be used with extreme caution in emergency situations, after other less restrictive alternatives have failed or been deemed inappropriate." The Restraint Policy accordingly provides that:

School personnel shall only administer a physical restraint when it is needed to protect a student and/or a member of the school community from imminent danger of physical injury. When physical restraint needs to be utilized, school personnel shall seek to prevent or minimize any harm to the student as a result of the use of physical restraint.

The Restraint Policy defines "physical restraint" as "the use of physical intervention to hold a student immobile or limit a student's movement by using body contact as the only source of restraint to deescalate dangerous behavior." "Dangerous behavior" is defined under the Restraint Policy as "...behavior which may immediately result, or has resulted in harm to self or others." The Restraint Policy further prohibits the use of mechanical restraint,⁵ as well as the use of restraints while a student is lying on the ground (prone). According to the Policy, only school personnel who have received training in nonviolent crisis intervention (NCI) strategies may administer physical restraints. OCR observed that typically a school's special education teachers, paraprofessionals, crisis intervention staff, and school administrators all receive that training.

The Restraint Policy includes follow-up procedures and reporting requirements after a student has been released from a restraint. The Policy specifically states that a principal or administrative designee must do the following:

⁵ The District defines mechanical restraints as "the use of a device to restrict or limit the movement of a student or the normal function of a portion of his or her body as a means to manage or address student behavior."

- a. review the restraint with the student to address the behavior that precipitated the restraint;
- b. review the incident with school personnel who administered the restraint to discuss whether proper restraint procedures were followed;
- c. consider whether any follow-up is appropriate for the students who witnessed the incident; [and]
- d. notify the parent/guardian of student who was restrained to inform them of the use of physical restraint...of their child.

Finally, under the Restraint Policy, any use of physical restraint must be reported orally and in writing to the building principal or administrative designee as soon as possible, but no later than the next school day. Principals are required to maintain records of all reported restraints, and it is the principal's responsibility to inform parents that their child was restrained on the day of the restraint. Under the Restraint Policy, the only restraints that principals must report to the Office of the Superintendent are those that either result in injury to a student or staff member or a single restraint that lasts 20 minutes or more. The District instructs its staff to use the restraint report form to document and report each restraint. According to the District, because school resource officers (SROs) are not District employees, the District does not train them on NCI strategies and does not require them to comply with the District's Restraint Policy.

The Restraint Policy also prohibits the use of seclusion, which it defines as the involuntary confinement of a student alone in a room or area that he or she is physically prevented from leaving. The Restraint Policy does not prohibit the use of "calming rooms" or spaces to help a student calm if the space is used as a behavior management technique that involves the monitored separation of the student in a non-locked setting for the purpose of calming inappropriate behaviors.

Training for District Staff on Restraint

Nonviolent Crisis Intervention Strategies

The District told OCR that it uses the Crisis Prevention Institute's (CPI) NCI strategies, which educate staff on how and when to use behavioral emergency techniques and interventions with students. The District further indicated that it regularly trains its special education teachers, paraprofessionals, crisis intervention staff, and school administrators on NCI strategies, and provided OCR with the name, title and most recent training dates for 500 NCI-trained District staff who participated in training at some time during the 2018-19 school year. According to the District, it provided NCI training to a greater number of its staff in the three years prior to the initiation of the compliance review, due to an increase in "aggressive student behaviors." As noted above, the District does not consider SROs its employees and does not require them to participate in NCI training. The CPI-certified District employees whom OCR interviewed were current in their training and reported that they participate in training annually.

According to the NCI training documentation, the training addresses prevention and de-escalation strategies, assessing risks with crisis behavior, using disengagement and/or holding

skills, and post-intervention responses. That documentation explains that the training is designed to prepare staff to use certain types of restraints when necessary to prevent students from self-harming or harming others. In most cases, the staff involved in the restraints that OCR reviewed were NCI-trained.

There were exceptions, however. According to the documentation OCR reviewed, in 16 of the 376 restraints documented during the 2017-18 school year, the District reported that a non-NCI trained District employee administered the restraint alone, without the assistance of other District staff who had received NCI training. These restraints involved six staff members at Lewis & Clark, Kennedy, Washington, and Discovery. For the 2018-19 school year, the District reported that in another 15 incidents of the 326 restraints reported that school year a non-NCI trained District employee administered a restraint alone. These restraints involved 8 staff members at Lewis & Clark, Lincoln, Agassiz, Kennedy, Washington, Ben Franklin and Discovery Middle Schools and North High School. Regarding one of these incidents, District witnesses told OCR that a non-NCI trained paraprofessional restrained (b)(6); (b)(7)(A); (b)(7)(C) in a prone position during (b)(6); (b)(7)(A); (b)(7)(C) class. The paraprofessional subsequently was reminded that (b)(6) was not permitted to restrain a student and (b)(6); (b)(7)(A); (b)(7)(C) for the District.

OCR also reviewed documentation showing that in several instances during the 2017-2018 and 2018-2019 school year non-NCI trained employees administered restraints with the assistance of NCI-trained employees. District witnesses told OCR about a restraint that occurred (b)(6); (b)(7)(A); (b)(7)(C). During that incident, a non-NCI trained teacher held (b)(6); (b)(7)(A); (b)(7)(C) (b)(6); (b)(7)(A); (b)(7)(C). The (b)(6); (b)(7)(A); (b)(7)(C) Principal also stated to OCR that he believed that there may have been one incident during the 2019-20 school year when a non-NCI trained employee participated in a restraint at his school. However, he could not recall the details.

Ukeru System

During the 2018-19 school year, the District piloted a “restraint-free crisis management” system called Ukeru. The Program was initially piloted in three schools, namely Roosevelt-Horace Mann, Kennedy and Lewis and Clark. It is now the default crisis intervention method in the district and has been implemented in all elementary schools and some middle schools and one high school. As of the beginning of the 2022-2023 school year, every school in the District has a team with Ukeru-certified staff each with their own trainer. District officials informed OCR that all staff who are currently NCI-trained and certified will eventually be required to be Ukeru-certified.

According to the District, the goal of the Ukeru method is to build an environment focused on comfort rather than control so if there is a crisis, staff de-escalate a student’s behavior by using verbal and non-verbal communication. If the initial interventions are unsuccessful at de-escalating a behavior, Ukeru also teaches physical techniques to minimize the need for physical restraints. The physical techniques include a system of blocking techniques with the use of pads to protect both the student and the staff members during a behavioral incident. District officials assert that restraints are to only be used as a last resort, during incidents where either there is a

risk of imminent physical harm to the student or other students and staff, or the staff is not able to de-escalate the behavior using the Ukeru method.

The District does not require the staff to document every time Ukeru is used to de-escalate a behavior in the same way they are required to report the use of restraints or seclusions. (b)(6); (b)(7)(A)

(b)(6); (b)(7)(A); (b)(7)(C)

(b)(6); (b)(7)(A); (b)(7)(C)

(b)(6); (b)(7)(A); (b)(7)(C)

Despite not requiring staff to document the use of Ukeru, District officials informed OCR that staff often use students' behavior logs to describe the use of Ukeru to de-escalate a student's behavior and added that if a student repeatedly needs Ukeru interventions, District staff may refer the student to his/her IEP team to determine whether the student needs additional services.

District Record Keeping

Documenting Student Restraint

The District primarily documents student restraints by its personnel in what it calls a restraint report. Each report lists a student's name, date of restraint, the time when the restraint began and ended, the site where the restraint occurred, information about staff administering the restraint, the name of any witnesses to the restraint, and whether the student has an IEP. The restraint report does not specifically track other students with disabilities who receive services pursuant to a Section 504 plan, rather than an IEP. The restraint report also contains sections to describe how the student's parent was notified, what precipitated the behavior that resulted in the restraint, a description of the type of restraint used, and further actions to be taken by the restraint team, such as determining whether disciplinary action is required or whether the student's behavior plan needs to be reviewed or amended. Lastly, the restraint report has a place for staff to recommend the student be assessed for an FBA or referred to his or her IEP team for support. District policy requires staff to complete a report whenever they restrain a student. According to the Superintendent, the District uses those reports to identify when staff have improperly restrained a student, in violation of District policy

The District modified the restraint report in December 2018. The modified report now notes that the only justification for initiating a physical restraint is to protect either student or staff from imminent physical injury. It also added a "staff debrief" section in which staff who attended the debrief are listed and can enter a summary of the discussion. And the report now requires staff to describe efforts to deescalate the student.

Apart from the restraint report, OCR found that in some cases District staff would also document a restraint in a behavior log maintained as part of a student's discipline record when the restraint was used in connection with a behavioral incident resulting in student discipline. In addition, staff at both Roosevelt-Horace Mann and Kennedy told OCR that those schools separately document restraints on an internal debrief form that is completed immediately after the incident and before completing the required restraint report.

(b)(6); (b)(7)(A); (b)(7)(C)

Restraint Reports: 2018-19 School Year

OCR reviewed all restraint reports for the 2018-19 school year that the District provided. The behavior of students that triggered a restraint included classroom and building elopement, kicking, hitting, biting, charging at and attacking classmates and staff, and other unsafe behavior such as climbing on and throwing furniture.

OCR interviewed 43 District staff familiar with the restraint report. At most schools, the principal or another designated administrator in the building is responsible for completing the restraint report. General education and special education teachers, paraprofessional staff, behavior interventionists, special education case managers, and school administrators provide information about a restraint incident to the person responsible for completing the restraint report. But they do not thereafter review the report for accuracy or rely on it when discussing the student's educational programming, special education placement and/or services.

The Superintendent told OCR that he assumed the District staff would address improper student restraints through corrective actions and believed that the District's SPED Director or Associate Superintendents would follow up on such incidents. The Superintendent could not confirm that this in fact happens and acknowledged that he did not know whether the District's monitoring of restraint practices through completed restraint reports is a "robust process." The Superintendent stated that he receives an email each time a restraint report is completed and scans the report to see how long the restraint lasted. He stated he uses the information in conversations with staff about alternatives to the use of restraint and said that these conversations resulted in the implementation of new programs such as the Ukeru system described above.

The SPED Director told OCR that she tries to spend approximately an hour a week reviewing restraint reports to ensure they are complete, looking for patterns to see what the student was doing that caused staff to restrain the student and looking to ensure the use of restraint was proper. She stated that after reviewing restraint reports, she occasionally reminded District staff through principals and Area Service Coordinators of the need to reconvene a student's team to determine whether the plan the student had in place at the time of the restraint was appropriate. The SPED Director did not know whether Area Service Coordinators for the District, who report to her, review all restraint reports for schools in their region or follow through with her suggestions. OCR interviewed principals at eight District schools, and only two recalled ever receiving feedback from the SPED Director or an Area Service Coordinator about a restraint report at their school.

OCR requested the District provide a list of administrative staff who review restraint reports, the frequency with which staff review the reports, and what actions staff take to address incomplete, inadequate, or inaccurate reports. The District's response indicated that most of the senior administrators (Superintendent, Associate Superintendents, SPED Director, and SPED Area Service Coordinators) do not review the restraint reports, nor do they address or take any action in response to incomplete, inadequate, or inaccurate reports. The District indicated that most principals review the restraint reports on a regular basis, i.e., after every restraint, daily or weekly, and according to the District, the Principals generally assert that the restraint reports are

complete and accurate. The Principals indicated that if a restraint report was not complete, they would follow up with staff who were involved in the restraint to obtain any missing information and include it in the report.

Most school staff OCR interviewed, including teachers and case managers, told OCR that they did not recall receiving feedback on the restraint reports from the principal or designated administrator who was responsible for completing them. Additionally, except for one school staff member, they all reported that they did not know how the restraint report is used to monitor whether the use of restraint was consistent with District policy and, if not, whether a student's IEP team needed to reconvene.

Of the 326 restraint reports that OCR reviewed from the 2018-19 school year, 115 (35%) were not timely completed. The District's records indicate that 33 of the reports were completed ten or more school days after staff restrained a student and that one report was completed 35 days after the restraint. Moreover, 12 of the 59 restraint reports that included a referral to the student's IEP team were not completed within two days of the restraint.

The District provides the restraint report to parents who request a copy. Some parents informed OCR that the restraint reports the District provides are not adequately completed by District staff. For example, parents reported that they could not always tell what was happening before their child's behavior escalated. Parents also expressed concern that it was not possible to tell from a restraint report whether school staff were following the student's IEP, BIP, and/or crisis plan prior to restraining a student. In the restraint reports, OCR similarly observed that District staff did not consistently include descriptions of what the student and staff were doing before the student's behavior escalated, including whether de-escalation techniques were used. Restraint reports also did not consistently state whether staff first responded to the escalated behavior by implementing specific provisions in the student's IEP, BIP, and/or crisis plan to de-escalate the conduct without having to restrain the student.

Some parents shared that because the District is not required to provide restraint reports to parents who have not requested them, they may not hear that their child was restrained until an assigned paraprofessional calls or sends them a text message to let them know there was an incident that day with their child. Others stated that they may be told that their child "blew up" in school, but they do not have information about the context for the incident, how the school handled it, and whether the child was restrained. These parents noted that District staff are not always forthright about whether a restraint was used, and at times will simply state that the child was "transported" to the office without explaining that the transport was a CPI transport during which the student was restrained.

Although the forms include a section where staff may recommend a student for assessment for an FBA or refer a student to their IEP team, the evidence indicated that staff did not consistently follow up on such recommendations. OCR reviewed several restraint reports concerning students who were repeatedly referred to their IEP team but the evidence did not indicate that their IEP teams met in response to the referrals.

The District's Use of School Resource Officers (SROs)

The District contracts with the Fargo Police Department (FPD), which provides seven SROs to serve in the District's middle and high schools. Although the District and FPD entered into a Memorandum of Understanding (MOU) through which the District pays for 50% of the cost of each school-based SRO, the District does not consider SROs District employees. OCR informed the District that it would like to interview several SROs; the District shared OCR's request with the SROs, but the SROs declined.

Parents and community members reported to OCR that in their experience, SROs do not complete restraint reports following an incident.⁷ The District—including the Superintendent and several principals—later confirmed to OCR that because SROs were not District employees, they were not bound by the District's Restraint Policy and were not required to complete restraint reports following an incident. The Superintendent told OCR that he nevertheless encouraged SROs to follow the District's policies through communications with the SRO supervisor. However, the District does not train SROs on CPI holds or its Restraint Policy.

According to parents, the fact that the District has not viewed SROs as bound by the Restraint Policy has led to the underreporting of restraints and lack of complete data on the District's use of restraint. The SPED Director acknowledged that in the case of high school students, the District may be under-reporting restraints that are used when a student fight is broken up.⁸ OCR found evidence of such underreporting in (b)(6); (b)(7)(A); (b)(7)(C) student's (b)(6); (b)(7)(A); (b)(7)(C) behavior log, which revealed several examples of an SRO and, on several occasions, an officer from the FPD, helping to break up fights in which (b)(6); (b)(7)(C) student was restrained. In one incident, although (b)(6); (b)(7)(A); (b)(7)(C) behavior log notes that on (b)(6); (b)(7)(A); (b)(7)(C) (b)(6); (b)(7)(A); (b)(7)(C) had to be restrained multiple times during an incident at (b)(6); (b)(7)(A); (b)(7)(C) none of the multiple restraints by the SRO were reflected in corresponding restraint reports.

The SPED Director told OCR that the District has communicated during principal meetings that SROs should not physically restrain students and should not be members of a school's restraint team unless there is potential criminal conduct. In the event an SRO physically restrains a student, the SPED Director said she would expect the principal to complete a restraint report. However, the (b)(6); (b)(7)(A) Principal informed OCR that when an SRO or police officer restrained an (b)(6); (b)(7)(A) student, neither the School staff nor the SRO or the police officer completed a restraint report. Instead, the Principal explained, such SRO/police administered restraints were documented in the student's behavior log.⁹

The District also provided documentation showing that five SROs handcuffed (b)(6) different students during the 2018-19 school year, even though the Restraint Policy prohibits the use of such mechanical restraints. The (b)(6) students ranged from (b)(6); (b)(7)(A) to (b)(6); (b)(7)(A) grade and attended

⁷ It is not clear from the documentation whether District staff participate in or witness student restraints by SROs.

⁸ The District reported to OCR in response to our data request that there was only (b)(6) restraint of a high school student in 2017-18 and (b)(6) restraints of high school students in 2018-19.

⁹ Notwithstanding the Principal's assertion, OCR found that (b)(6); (b)(7)(A) staff completed restraint reports on (b)(6) occasions for an (b)(6); (b)(7)(A) student, (b)(6); (b)(7)(A) who was restrained by an SRO at the school.

four different schools; one was a student with a disability. None of those uses of mechanical restraints was documented in a restraint report.

Some parents told OCR that the District is increasingly relying on SROs to handle problematic student behavioral incidents for which a restraint report is not created. Some teachers and administrators acknowledged calling the police when a student's behavior occurred off District property or involved significant injury or threat of injury to students and/or staff. However, the District employees OCR interviewed denied relying on SROs to handle most cases involving challenging student behavior.

FAPE

OCR reviewed the special education records and restraint reports for (b)(6) District students (Selected Students) during the 2018-19 school year. OCR selected those students based on the reported number of times they were restrained; any student restrained more than (b)(6) times during the 2018-19 school year was included in OCR's sample.¹⁰ OCR also reviewed 2017-18 special education records pertinent to this investigation. In all, the Selected Students were restrained 274 times, for a total of 1,274 minutes. Their restraints account for 70% of the restraints that the District reported in the 2018-19 school year.

Failure to evaluate

The special education records and restraint reports for the Selected Students indicate that the District failed to timely evaluate students for special education and related services. In particular, the District did not take into consideration whether the frequent use of restraints to address the students' behavior was appropriate or if additional services or alternative placement was necessary. Among these students, at least (b)(6); (b)(7)(A); (b)(7)(C) students frequently restrained (b)(6); (b)(7)(A); (b)(7)(C) were removed from their general education (b)(6); (b)(7)(A); classroom before (b)(6); (b)(7)(A); (b)(7)(C) and placed (b)(6); (b)(7)(A); (b)(7)(C) setting offered by the District, the (b)(6); Program at (b)(6); (b)(6); (b)(7)(A);'s parents objected to (b)(6) removal from the classroom which they felt "stripped (b)(6); (b)(7)(A); of socialization with (b)(6) peers." The District failed to document whether it changed (b)(6); (b)(7)(A);'s placement at (b)(6); (b)(7)(A); following proper procedural safeguards when (b)(6); (b)(7)(A); was similarly removed from the general education classrooms before (b)(6); (b)(7)(A); (b)(7)(C) because of what the District described as (b)(6) "unsafe behaviors." From the start of the school year until (b)(6); (b)(7)(C) when the District evaluated (b)(6); and determined the student needed an IEP, (b)(6); staff had restrained (b)(6); (b)(7)(A); (b)(7)(C) times.

A general education (b)(6); (b)(7)(A); student, (b)(6); (b)(7)(A);, was restrained (b)(6); (b)(7)(A); times during a (b)(6); (b)(7)(A); month period by (b)(6); (b)(7)(A); staff. Although the first restraint report indicates that a BIP should be created, the District did not complete the special education evaluation process or develop a BIP for four more months during which (b)(6); (b)(7)(A); was restrained (b)(6); (b)(7)(A); times. On an (b)(6); (b)(7)(C) restraint report, school staff indicated (b)(6); (b)(7)(A); (b)(7)(C) needed a

¹⁰ For several of these students OCR also considered documentation of restraints in the 2017-18 school year, as warranted.

special education evaluation. The District's records show that a team was not convened until (b)(6); (b)(7)(A); (b)(7)(C) and the process was not completed until (b)(6); (b)(7)(A); (b)(7)(C). (b)(6); (b)(7)(A); (b)(7)(C) was restrained (b)(6); (b)(7)(A); (b)(7)(C) times during the 2018-19 school year before the District completed (b)(6); (b)(7)(A); (b)(7)(C) evaluation.

Failure to re-evaluate

According to the records OCR reviewed, even after the District had reason to believe that several of the Selected Students needed to be re-evaluated for additional services, the District either failed to do so, or failed to do so timely. In some cases the staff who administered the restraints had referred the students to the "IEP/504 Support Team for decision-making." For example, OCR observed in two of the seven occasions (b)(6); (b)(7)(A); (b)(7)(C), a (b)(6); (b)(7)(A); (b)(7)(C) student at (b)(6); (b)(7)(A); (b)(7)(C) was restrained during the 2018-19 school year the staff referred (b)(6); (b)(7)(A); (b)(7)(C) to his IEP team, but (b)(6); (b)(7)(A); (b)(7)(C) special education records show that the District did not reconvene (b)(6); (b)(7)(A); (b)(7)(C) IEP team to discuss (b)(6); (b)(7)(A); (b)(7)(C) behaviors or restraints during the school year. Likewise, (b)(6); (b)(7)(A); (b)(7)(C), a (b)(6); (b)(7)(A); (b)(7)(C) student at (b)(6); (b)(7)(A); (b)(7)(C), was restrained on (b)(6); (b)(7)(A); (b)(7)(C), and the restraint report of that incident shows staff referred (b)(6); (b)(7)(A); (b)(7)(C) to (b)(6); (b)(7)(A); (b)(7)(C) IEP team, yet (b)(6); (b)(7)(A); (b)(7)(C) special education records show (b)(6); (b)(7)(A); (b)(7)(C) IEP team did not reconvene. The records of (b)(6); (b)(7)(A); (b)(7)(C) and (b)(6); (b)(7)(A); (b)(7)(C) on the other hand, show that although their IEP teams reconvened after staff referred them to their teams to discuss the behaviors that prompted their restraints, those meetings were held several weeks or months after the referral. For example, (b)(6); (b)(7)(A); (b)(7)(C) and (b)(6); (b)(7)(A); (b)(7)(C) were restrained at their respective schools in (b)(6); (b)(7)(A); (b)(7)(C); the reports of those incidents indicated that their IEP teams needed to meet to discuss their behavior and restraints, but their special education records show their teams did not meet until (b)(6); (b)(7)(A); (b)(7)(C). The most egregious example of this problem was (b)(6); (b)(7)(A); (b)(7)(C) case. (b)(6); (b)(7)(A); (b)(7)(C), a (b)(6); (b)(7)(A); (b)(7)(C) student at (b)(6); (b)(7)(A); (b)(7)(C) during the 2018-2019 school year, was restrained on (b)(6); (b)(7)(A); (b)(7)(C); in the restraint report of that incident staff stated that (b)(6); (b)(7)(A); (b)(7)(C) team needed to complete an FBA to address (b)(6); (b)(7)(A); (b)(7)(C) behavior. (b)(6); (b)(7)(A); (b)(7)(C) IEP team did not complete the assessment or create a BIP until (b)(6); (b)(7)(A); (b)(7)(C).

In other cases, the students exhibited escalating behaviors that resulted in frequent restraints, likely indicating their need for a re-evaluation—yet the District never offered one, or it offered a re-evaluation after significant delay. The SPED Director acknowledged that a student's IEP team should reconvene if there is a pattern of escalating behaviors that results in restraints to discuss the student's programming or whether a new FBA or BIP is needed. Nevertheless, among the Selected Students, OCR observed that the IEP teams of several students who exhibited escalating behaviors and were restrained on multiple occasions did not reconvene or they delayed in reconvening. For example, (b)(6); (b)(7)(A); (b)(7)(C), a (b)(6); (b)(7)(A); (b)(7)(C) student who received special education and related services in a (b)(6); (b)(7)(A); (b)(7)(C) program at (b)(6); (b)(7)(A); (b)(7)(C) during the 2018-19 school year, exhibited a pattern of escalating behaviors during the (b)(6); (b)(7)(A); (b)(7)(C) that resulted in (b)(6); (b)(7)(A); (b)(7)(C) restraints during a (b)(6); (b)(7)(A); (b)(7)(C) month period. However, (b)(6); (b)(7)(A); (b)(7)(C)'s IEP team did not meet until (b)(6); (b)(7)(A); (b)(7)(C) to consider additional services. Similarly, (b)(6); (b)(7)(A); (b)(7)(C), a (b)(6); (b)(7)(A); (b)(7)(C) student who received special education and related services at (b)(6); (b)(7)(A); (b)(7)(C), also exhibited a pattern of escalating behaviors that resulted in (b)(6); (b)(7)(A); (b)(7)(C) restraints during (b)(6); (b)(7)(A); (b)(7)(C) and (b)(6); (b)(7)(A); (b)(7)(C), yet (b)(6); (b)(7)(A); (b)(7)(C) IEP team did not meet until (b)(6); (b)(7)(A); (b)(7)(C).

In some cases, the District did not document the reason for a delay in re-evaluating a student, whether it was to try interventions, lack of parental consent, or scheduling issues. In other cases,

the District acknowledged that it failed to re-evaluate a student due to staff oversight. For example, the IEP team of (b)(6); (b)(7)(A); (b)(7)(C), a (b)(6); (b)(7)(A); (b)(7)(C) student at (b)(6); (b)(7)(A); (b)(7)(C) with an IEP and BIP in place for (b)(6); (b)(7)(A); (b)(7)(C), was supposed to reconvene during the (b)(6); (b)(7)(A); (b)(7)(C) of (b)(6); (b)(7)(A); (b)(7)(C) to conduct (b)(6); (b)(7)(A); (b)(7)(C) annual review. (b)(6); (b)(7)(A); (b)(7)(C) IEP states that the team failed to reconvene due to “case manager oversight.” During this delay, the staff at (b)(6); (b)(7)(A); (b)(7)(C) restrained (b)(6); (b)(7)(A); (b)(7)(C) more times.

The SPED Director also told OCR that she expected a student’s IEP team to consider information contained in a restraint report when making determinations about a student’s placement and services. Yet the District did not document that such information was considered when developing or modifying students’ educational programs and could not demonstrate for most students that escalating behavior and frequent restraints were factors that team members considered in assessing student needs. Among the Selected Students, most exhibited escalating behaviors that resulted in multiple restraints, but the District did not document its efforts to address those behaviors or whether the restraints were an effective method to modify behavior. Specifically, the District either did not reconvene the student’s IEP team or, where the student’s team reconvened after the incidents, the team did not document whether they discussed and addressed the student’s behavior or other deescalating techniques that could avoid the need for the restraint.

Two students who received services for (b)(6) did not receive appropriate adjustments to their plans to potentially reduce restraints. In the case of (b)(6); (b)(7)(A); (b)(7)(C), a (b)(6); (b)(7)(A); (b)(7)(C) student who received services for an (b)(6) during the 2018-19 school year, the District provided OCR an (b)(6); (b)(7)(A); (b)(7)(C) prior written notice to conduct an FBA to adjust the student’s “behavior goal” for the year. Although (b)(6); (b)(7)(A); (b)(7)(C) staff restrained (b)(6); (b)(7)(A); (b)(7)(C) times from (b)(6); (b)(7)(A); (b)(7)(C) until the end of the school year, the District did not complete the FBA or revise (b)(6) IEP or services that year and offered no explanation why it failed to do so despite parental participation. Similarly, the District failed to reconvene the IEP team of (b)(6); (b)(7)(A); (b)(7)(C), a (b)(6); (b)(7)(A); (b)(7)(C) student who received services for (b)(6) at (b)(6); (b)(7)(A); (b)(7)(C) to revise (b)(6) BIP or to discuss (b)(6) behaviors at school, despite evidence that (b)(6); (b)(7)(A); (b)(7)(C) s BIP and IEP were not adequate to address escalating behaviors that resulted in (b)(6) restraints during the 2018-19 school year.

Other students, such as (b)(6); (b)(7)(A); (b)(7)(C), who (b)(6); (b)(7)(A); (b)(7)(C) District schools and was restrained (b)(6) times during the 2018-19 school year, did not have a team meeting to consider whether an updated IEP and services were needed, despite information provided to the District about changed circumstances and new diagnoses. In the (b)(6); (b)(7)(A); (b)(7)(C), (b)(6); (b)(7)(A); (b)(7)(C) was diagnosed by a private behavioral clinic with (b)(6); (b)(7)(A); (b)(7)(C), (b)(6); (b)(7)(A); (b)(7)(C), and (b)(6); (b)(7)(A); (b)(7)(C). The new diagnostic information was faxed to the District on (b)(6); (b)(7)(A); (b)(7)(C) with a recommendation that (b)(6); (b)(7)(A); (b)(7)(C) s IEP “should be updated to reflect the diagnosis of (b)(6); (b)(7)(A); (b)(7)(C).” (b)(6); (b)(7)(A); (b)(7)(C) s IEP was not updated until (b)(6); (b)(7)(A); (b)(7)(C) and did not reflect (b)(6); (b)(7)(A); (b)(7)(C) until (b)(6); (b)(7)(A); (b)(7)(C) when services were added to address (b)(6); (b)(7)(A); (b)(7)(C).

Failure to Implement IEP/BIP Provisions to Minimize the Need for Restraints

The special education records and restraint reports of the Selected Students indicate that the District failed to implement specific provisions of some students' IEPs and/or BIPs that aimed to prevent student behaviors from escalating and minimize the need for restraints. OCR observed in the restraint reports that the District did not consistently describe staff efforts to implement a student's IEP, BIP, and/or crisis plan to de-escalate student behavior. Some parents noted that even in cases where the District had not followed a student's IEP, BIP, and/or crisis plan, staff proposed modifications to a plan or a change to the student's placement to a more restrictive setting. These parents were concerned that the District had not exhausted less restrictive alternatives.

The IEPs and/or BIPs of several of the Selected Students included provisions to de-escalate the students' behavior, such as providing the student with frequent breaks, a cooling off period at a place in the classroom or in the special services room, minimal attention to behavior to prevent escalation, and avoiding physical contact with the student. However, the restraint reports for some students did not document staff efforts to implement provisions of these students' respective BIPs to de-escalate the student's behavior prior to a restraint. For example, (b)(6); (b)(7)(A); student, (b)(6); (b)(7)(A);, had a BIP in effect in 2018-19 that directed staff to guide (b)(6); (b)(7)(A); through potentially escalating situations, but restraint reports from (b)(6); (b)(7)(A); incidents in the (b)(6); (b)(7)(A); do not describe staff efforts consistent with (b)(6); (b)(7)(A);'s BIP. Similarly, the BIP of a (b)(6); (b)(7)(A); (b)(6); student (b)(6); (b)(7)(A); provided that as a last resort CPI-trained staff needed to (b)(6); (b)(7)(A); (b)(7)(C) if (b)(6); (b)(7)(A); could not be calmed down with de-escalation strategies and (b)(6); (b)(7)(A); and/or others were not safe. However, the restraint reports of (b)(6); (b)(7)(A); (b)(7)(C) times (b)(6); (b)(7)(A); was restrained during the 2018-19 school year do not describe efforts by staff to de-escalate (b)(6); (b)(7)(A); or indicate whether the staff attempted to (b)(6); (b)(7)(A); (b)(7)(C) before restraining (b)(6); (b)(7)(A); from (b)(6); (b)(7)(A); (b)(7)(C) on each of these occasions.

Missed Instruction

As noted above, during the 2018-19 school year, the Selected Students collectively missed a total of 1,274 instructional minutes while they were restrained by District staff.¹¹ OCR asked multiple District witnesses how they ensure frequently restrained students can meet their goals and are not denied FAPE. The Superintendent stated that in such cases a student's IEP team does not account for minutes but rather considers overall whether the child made progress to meet their instructional and/or other IEP goals. In contrast, the SPED Director acknowledged a concern about missed instruction and services for students who are restrained "frequently." The SPED Director stated that she has directed principals to be "cognizant" of when students may be missing instruction and services. However, the SPED Director was not sure if the District had a specific plan to ensure that students in those circumstances do not miss educational services. The Principals at (b)(6); (b)(7)(A); and (b)(6); (b)(7)(A); believed case managers accounted for missed service minutes. According to the Principal at (b)(6); (b)(7)(A);, case managers keep track of student attendance for services and can detect when a student misses services and needs to make them up. The

¹¹ This total count does not include at least (b)(6) restraint of a Selected Student, (b)(6); (b)(7)(A); that was performed by an SRO and for which a restraint report was not created, or the (b)(6) restraint of (b)(6); (b)(7)(A); described below.

Principal at (b)(6); (b)(7)(A) believed this was a district-wide procedure. The (b)(6); (b)(7)(A); Principal believed that the case manager at (b)(6); (b)(7)(A) maintains a log of meetings with students to make up missed instruction. The Case Manager and the Principal of (b)(6); (b)(7)(A); (b)(7)(C) also indicated that their schools were taking steps to ensure that frequently restrained students do not lose instruction or services necessary to receive FAPE as a result of the restraints. However, the special education records and documentation the District provided regarding (b)(6); (b)(7)(A); (b)(7)(A); and (b)(6); (b)(7)(A); (b)(7)(C) students do not bear out those assertions.

OCR interviewed five case managers at different District schools. None of these witnesses stated that they are keeping track of missed instructional minutes and educational services lost because of restraints, although several indicated that school staff would ensure that students who miss instruction or services due to a restraint make up the lost instruction or services. OCR reviewed the special education records for the Selected Students and did not find a log of missed instruction and educational services for any of the students. OCR's review of the Selected Students' records also found that District staff did not discuss missed instruction due to restraints in the students' IEP meetings, although in some cases the IEP team discussed when a particular student's behavior interfered with the student's learning and progress towards IEP goals.

OCR observed that several students missed significant instructional minutes because of restraints, and the documentation did not indicate whether compensatory services were considered or provided due to missed instructional minutes. For example, (b)(6); (b)(7)(A) was restrained for a total of (b)(6) minutes during a (b)(6); (b)(7)(A); period in the 2018-19 school year, but there is no evidence (b)(6) received compensatory services for the missed instruction. The documentation also does not indicate that (b)(6); (b)(7)(A); a (b)(6); (b)(7)(A); student received compensatory services after (b)(6); (b)(7)(A); received (b)(6); (b)(7)(A); out-of-school suspensions, on (b)(6); (b)(7)(A); (b)(7)(C) for (b)(6) days, and on (b)(6); (b)(7)(A); (b)(7)(C) for (b)(6); day, in connection with behavior that resulted in (b)(6); repeated restraint. As stated above, staff stated in the restraint report of the (b)(6); (b)(7)(A); (b)(7)(C) incident that (b)(6); (b)(7)(A);'s team needed to complete an FBA to address (b)(6) behavior, but the IEP team did not timely complete the assessment and the BIP was not finalized until (b)(6); (b)(7)(A); (b)(7)(C).

School Exclusion

OCR observed in student behavior logs and restraint reports that District staff contacted parents to pick children up early from school on occasions when the child's behavior had become dysregulated although the IEPs of the majority of those students did not document that the team had determined that a shortened school day was appropriate to meet their needs. Some parents shared with OCR their concern that the District excludes students from school when District staff cannot manage their behavior by calling their parents to pick them up before the end of the school day.

The SPED Director informed OCR that she has counseled principals that when their staff call a parent to pick up a child because staff cannot manage the child's behavior, they are essentially issuing an out of school suspension for the student, without documenting it as such. The SPED Director told OCR that she was not aware of how often this practice occurred in the District. But she said that on one occasion, when a parent called her to complain that they were being asked to take their child home, she called the principal of the school and explained that even if the

principal believes the parent agrees to take the child home, doing so is a suspension and should not happen.

The District's standard IEP form includes a section on the length of school day in which the team indicates whether the student will attend school for the full day. If the team determines that a student will attend school "for a shorter or longer school day than peers," the IEP form requires an explanation of why this deviation is necessary. The District did not consistently document in students' special education records that IEP teams first attempted additional supports and services to ensure full-day programming for students with disabilities.

Post-Traumatic Stress Disorder (PTSD) and the Impact of Restraints

Several parents reported to OCR that the District failed to consider the impact of its use of restraints on individual students when considering the array of services and placement options in making IEP determinations. According to the parents, the District has normalized the use of restraint without adequately considering these significant, long-term consequences on the impacted students. OCR found evidence that several students who were repeatedly restrained were diagnosed with PTSD but were not reevaluated or provided services to address this additional diagnosis.

(b)(6); (b)(7)(A); (b)(7)(C) 's Parent provided OCR (b)(6); (b)(7)(A); (b)(7)(C) of a (b)(6); (b)(7)(A); (b)(7)(C) restraint which shows (b)(6); (b)(7)(A); (b)(7)(C) then a (b)(6); (b)(7)(A); (b)(7)(C) student in (b)(6); (b)(7)(A); (b)(7)(C) grade—in a room in the (b)(6); (b)(7)(A); (b)(7)(C) building for (b)(6); (b)(7)(A); (b)(7)(C) minutes, (b)(6); (b)(7)(A); (b)(7)(C) of which (b)(6); (b)(7)(A); (b)(7)(C) spent in (b)(6); (b)(7)(A); (b)(7)(C). The (b)(6); (b)(7)(A); (b)(7)(C) indicates that (b)(6); (b)(7)(A); (b)(7)(C) spent a part of the time (b)(6); (b)(7)(A); (b)(7)(C) on the floor in the room, while the (b)(6); (b)(7)(A); (b)(7)(C) Principal restrained (b)(6); (b)(7)(A); (b)(7)(C). According to his Behavior Log, (b)(6); (b)(7)(A); (b)(7)(C) would not separate from a (b)(6); (b)(7)(A); (b)(7)(C) who was trying to (b)(6); (b)(7)(A); (b)(7)(C) and when the SRO stepped in to (b)(6); (b)(7)(A); (b)(7)(C), (b)(6); (b)(7)(A); (b)(7)(C) school and (b)(6); (b)(7)(A); (b)(7)(C) (b)(6); (b)(7)(A); (b)(7)(C) 's Parent reported that (b)(6); (b)(7)(A); (b)(7)(C) began to experience (b)(6); (b)(7)(A); (b)(7)(C) after the (b)(6); (b)(7)(A); (b)(7)(C) restraint. A behavioral counseling facility diagnosed (b)(6); (b)(7)(A); (b)(7)(C) with PTSD on (b)(6); (b)(7)(A); (b)(7)(C), as a result of "(b)(6); (b)(7)(A); (b)(7)(C)". The Parent informed OCR that (b)(6); (b)(7)(A); (b)(7)(C) gave a copy of the counselor's report to (b)(6); (b)(7)(A); (b)(7)(C) 's Lead Teacher; however, the (b)(6); (b)(7)(A); (b)(7)(C) Principal informed OCR that the District had no record of receiving that diagnosis.¹² (b)(6); (b)(7)(A); (b)(7)(C) 's team did not re-evaluate (b)(6); (b)(7)(A); (b)(7)(C) or modify (b)(6); (b)(7)(A); (b)(7)(C) IEP or placement in (b)(6); (b)(7)(A); (b)(7)(C), nor do (b)(6); (b)(7)(A); (b)(7)(C) special education records indicate whether the team discussed (b)(6); (b)(7)(A); (b)(7)(C) PTSD diagnosis or any additional services for (b)(6); (b)(7)(A); (b)(7)(C). Nearly one year later, (b)(6); (b)(7)(A); (b)(7)(C) IEP notes that an outside agency diagnosed (b)(6); (b)(7)(A); (b)(7)(C) with PTSD on (b)(6); (b)(7)(A); (b)(7)(C). (b)(6); (b)(7)(A); (b)(7)(C) 's special education records do not indicate that the team discussed whether the restraints had caused (b)(6); (b)(7)(A); (b)(7)(C) PTSD, and if so, how to remedy the effects.

OCR's review of (b)(6); (b)(7)(A); (b)(7)(C) 's special education records indicates that (b)(6); (b)(7)(A); (b)(7)(C) 's parent informed (b)(6); (b)(7)(A); (b)(7)(C) IEP team during a (b)(6); (b)(7)(A); (b)(7)(C) meeting that (b)(6); (b)(7)(A); (b)(7)(C) had developed PTSD after being restrained at school. OCR found no documentation indicating that subsequent to the (b)(6); (b)(7)(A); (b)(7)(C) meeting, (b)(6); (b)(7)(A); (b)(7)(C) 's IEP team considered whether (b)(6); (b)(7)(A); (b)(7)(C) had PTSD as a result of school restraints, and if so, whether (b)(6); (b)(7)(A); (b)(7)(C) required compensatory or remedial services to address the trauma.

¹² The District did not provide the report from the counselor to OCR as part of (b)(6); (b)(7)(A); (b)(7)(C) 's special education file.

written into their IEP or BIP as a tool to help the student re-regulate following a behavior incident.

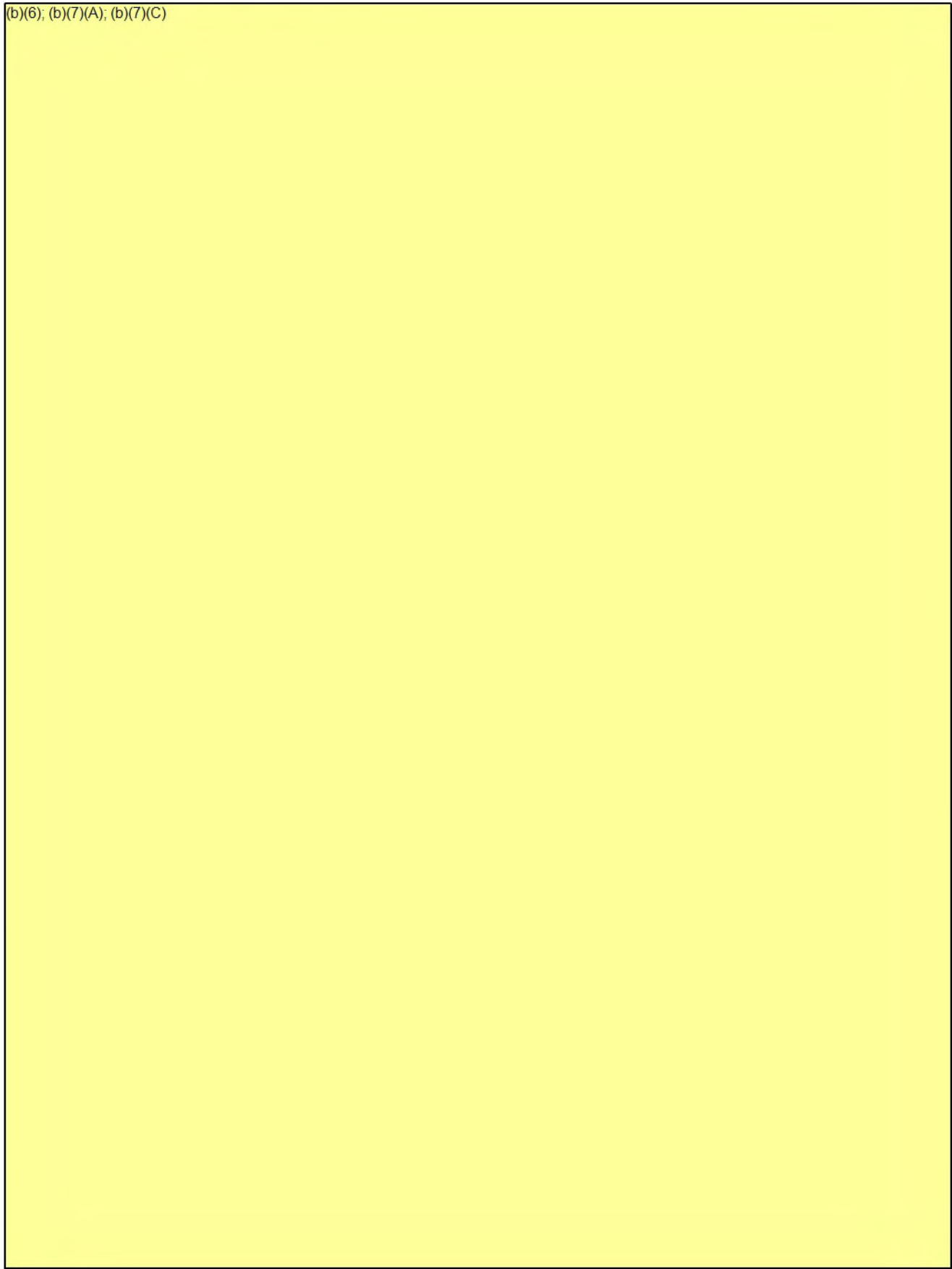
According to updated documentation provided by the District, seven District elementary schools, two District middle schools, and one District high school had a designated calming room during the 2019-20 school year. Only two of the ten schools that have a designated calming room maintain logs documenting when the room was used (b)(6); (b)(7)(A); (b)(7)(C)). The (b)(6); (b)(7)(A); (b)(7)(C)) log indicates that between (b)(6); (b)(7)(A); (b)(7)(C)) and (b)(6); (b)(7)(A); (b)(7)(C)), (b)(6); (b)(7)(A); (b)(7)(C)) different students spent time in the School's calming room on (b)(6); (b)(7)(A); (b)(7)(C)) separate dates for a total of (b)(6); (b)(7)(A); (b)(7)(C)) (b)(6); (b)(7)(A); (b)(7)(C)). The most time any one student spent in the calming room was (b)(6); (b)(7)(A); (b)(7)(C)). In contrast, the log provided for (b)(6); (b)(7)(A); (b)(7)(C)) indicates that for the first (b)(6); (b)(7)(A); (b)(7)(C)) of the 2019-20 school year, the calming room was used (b)(6); (b)(7)(A); (b)(7)(C)) times for (b)(6); (b)(7)(A); (b)(7)(C)). The District did not provide information on how many different students used the calming room at (b)(6); (b)(7)(A); (b)(7)(C)) however, at least (b)(6); (b)(7)(A); (b)(7)(C)) students spent (b)(6); (b)(7)(A); (b)(7)(C)) each in the calming room. The District reported that an additional (b)(6); (b)(7)(A); (b)(7)(C)) utilize calming spaces within classrooms. The District informed OCR that it does not maintain logs for the use of these classroom calming spaces. However, several witnesses interviewed by OCR indicated that individual student behavior logs would reflect whether a student spent time in a calming room or calming space within the classroom. The (b)(6); (b)(7)(A); (b)(7)(C)) Principal stated that while the school does not maintain a log of time students spend in a calming room, when a student is restrained in the school's calming room, the restraint report for the incident would document use of the room. The (b)(6); (b)(7)(A); (b)(7)(C)) Principal reported that there would be "no way to track" how many students were placed in a calming space at the school during a given school year.

Several parents told OCR that they believed the District regularly secludes students with disabilities notwithstanding its written Policy prohibiting the practice. Regardless of the name given to these rooms or spaces, one parent noted that if there is not a doorknob on the inside such that a student cannot leave the room, this amounts to seclusion. Other parents indicated that they are concerned that students are being placed in rooms from which they cannot leave. The (b)(6); (b)(7)(A); (b)(7)(C)) Principal noted that in some cases a student may be prevented from leaving a room, but because they are not alone in the room at that time, the District would not view this as seclusion. OCR was unable to obtain information substantiating the parents' concerns or otherwise confirming whether students were left alone while in these spaces. Moreover, due to the poor record keeping on the use of these rooms and spaces, OCR was unable to fully assess the extent to which these rooms and spaces were used to seclude students in ways that created FAPE evaluation and implementation issues and/or resulted in missed instruction.


Individual OCR Complaints

OCR investigated two individual complaints that were filed with OCR by the parent(s) of two individual District students (b)(6); (b)(7)(A); (b)(7)(C)) after OCR initiated this compliance review.

(b)(6); (b)(7)(A); (b)(7)(C)



(b)(6); (b)(7)(A); (b)(7)(C)



Analysis

FAPE Violations

OCR has determined that the District's use of restraints during the 2017-18 and 2018-19 school years denied students with disabilities who were repeatedly restrained a FAPE, in three respects.

Failure to Timely Evaluate and Re-evaluate

The District failed to timely evaluate students for special education and related services despite their behaviors and/or repeated restraints. The evidence establishes that before the District evaluated three of the Selected Students the students continued to be subjected to restraints to manage their behavior. The District also failed either to re-evaluate or to timely re-evaluate several of the Selected Students to determine whether they were in need of additional services in light of referrals to the IEP teams from staff who administered the restraints and/or evidence that the students exhibited escalating behaviors that resulted in frequent restraints. The evidence establishes that, similar to the students who were not timely evaluated for special education and related services, the students who were either not re-evaluated or not timely re-evaluated

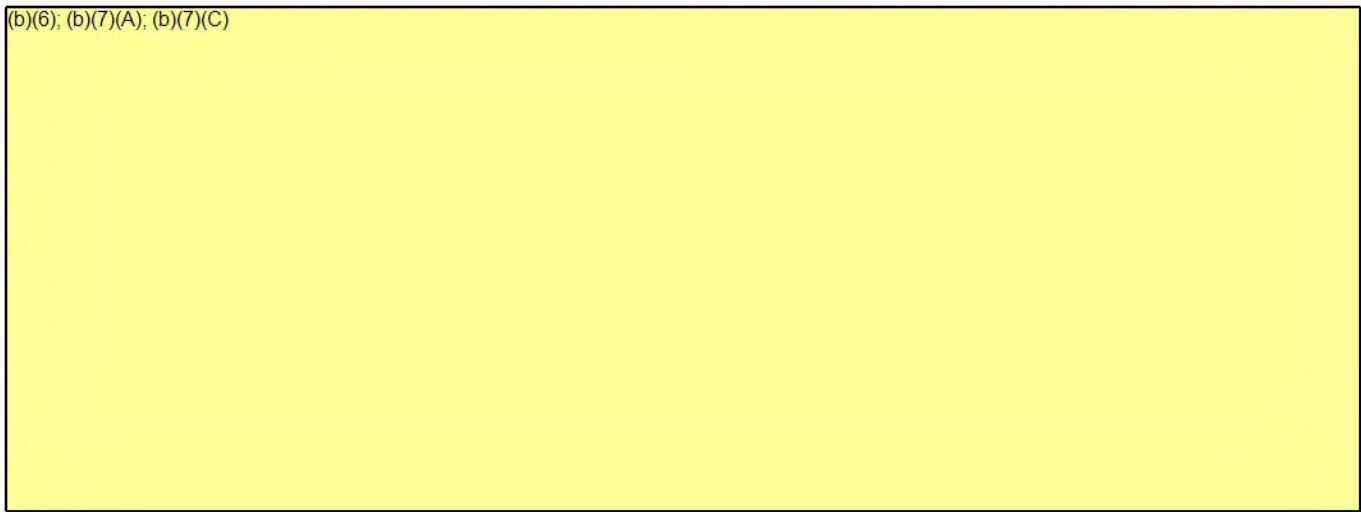
continued to be restrained. Moreover, even when the IEP teams reconvened to re-evaluate students, OCR found that teams did not consistently consider the escalation of students' behaviors resulting in restraints in determining whether the students' current array of regular or special education and related aids and services was sufficient to provide FAPE.

OCR also obtained information indicating that the District failed to consistently re-evaluate some District students who were repeatedly restrained and were diagnosed with PTSD by outside entities to determine whether the restraints to which they were subjected contributed to the new diagnosis and whether they needed additional services. Furthermore, the evidence established that by restraining some of the Selected Students, the District failed to implement provisions of their IEPs and/or BIPs that aimed to prevent student behaviors from escalating and minimize the need for restraints.

Loss of Educational Services

The District also deprived several Selected Students of a FAPE by denying them educational services during and after a restraint. OCR determined that the District was not able to demonstrate that students received services or instruction during, and in some cases after, a restraint. Many students also lost services and instruction when their parents were asked to take them home early from school because of behavior incidents. Although the SPED Director indicated that she has instructed principals to stop this practice, the District's documentation including attendance records, behavior logs, restraint reports, IEPs, and other records demonstrate that students with behavioral challenges continued to be sent home from school early or were provided a shortened school day when staff were not able to consistently manage their behavior. District witnesses provided conflicting testimony as to whether the District considers missed services and instruction for restrained students. The evidence obtained by OCR indicates that the IEP and 504 teams of impacted students did not assess how the loss of services and/or instruction impacted FAPE for the students, and whether additional services, including compensatory or remedial services, were necessary.

(b)(6); (b)(7)(A); (b)(7)(C)



Concerns

In addition to the Section 504 violations described above, OCR has concerns with the inadequate documentation the District kept regarding several matters relevant to this compliance review. For instance, the District does not track or monitor the use of its calming rooms and spaces. Although the information OCR obtained from staff witnesses and from visiting seven calming rooms at five District schools indicates that these rooms and spaces are not intended to be used to seclude students, even when students are directed to the calming room by staff, OCR is concerned that the District's lack of documentation regarding the use of these rooms and spaces prevents OCR and the District from determining whether they are used to seclude students or were used in an excessive and/or unnecessary manner and in ways that may be in violation of Section 504 because it results in the denial of educational services to individual students.

With respect to the documentation of restraints, OCR is concerned that the District's restraint report only tracks students with disabilities who receive services pursuant to an IEP, but not students who receive services through a Section 504 plan. OCR also determined that 35% of the restraint reports the District provided for the 2018-19 school year were not timely completed. Delays in completing restraint reports not only impede the District's ability to timely determine whether a restrained or secluded student was denied FAPE, but also call into question their accuracy and reliability. Moreover, OCR observed that even timely completed restraint reports were deficient because they did not always include a description of a student or staff's precipitating behavior or consistently describe specific measures taken to comply with a student's IEP, BIP or crisis plan to de-escalate and defuse student behavior before resorting to restraint. Furthermore, the evidence OCR obtained establishes that the District did not require staff to complete a restraint report for restraints performed by SROs on District property or in a District program or activity. Without this information, the District cannot effectively rely on restraint reports to monitor staff practices, determine whether a student's current array of services is effective to meet the student's needs, or consider the impact of restraints on individual students' receipt of FAPE.

OCR's investigation found that District administrators and senior staff did not take steps to address incomplete or untimely restraint reports. Additionally, District administrators and staff do not utilize restraint reports to monitor restraint practices in the District on a regular, systemic basis or to consider whether an individual student was properly restrained or was negatively impacted by the restraint. District administrators provided conflicting testimony on how they use the restraint reports to monitor restraints across schools, and school-based staff consistently testified that they have not received feedback or direction from senior administrators outside of their school based on information presented in a restraint report.

OCR observed that the District did not maintain documentation of the instructional minutes and educational services students missed as a result of being subjected to restraints. Additionally, the District did not document the steps its staff took to ensure students were not missing instruction or services as a result of their restraints.

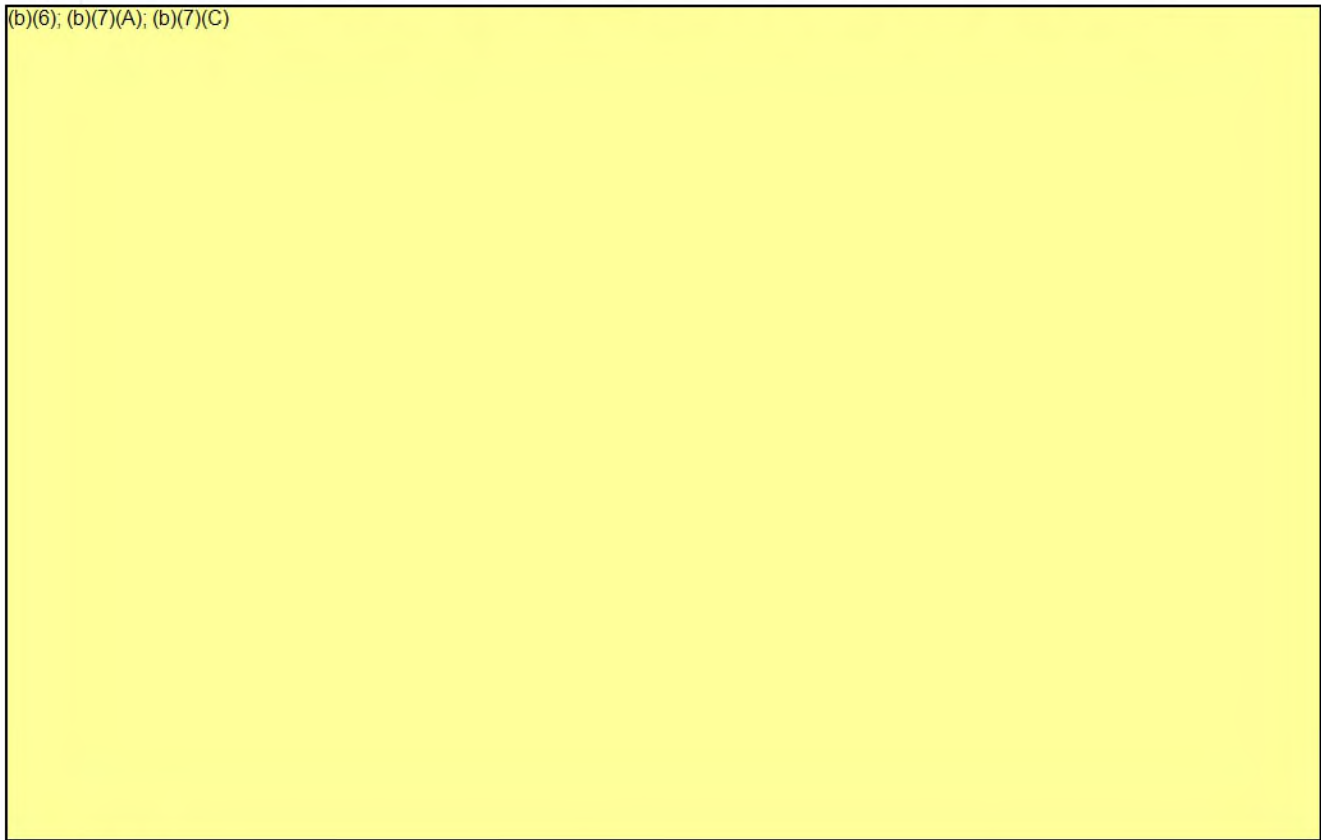
Because of the record-keeping problems identified above, OCR is concerned that the District may not be providing accurate reporting to the Civil Rights Data Collection (CRDC) of such

activities. For instance, OCR observed that the District reported 348 incidents of restraint to the CRDC for 2017-2018, while OCR reviewed 376 incidents for the same school year. Further, the District's 2015 CRDC report disclosed no instances of student restraints or seclusions.

Although the District reported to OCR that staff often use students' behavior logs to document the use of the Ukeru system to de-escalate a student's behavior and to support a referral to the student's IEP team, it clarified that staff are currently not required to document every instance that Ukeru is used. OCR is concerned by this practice because it prevents OCR and the District from accurately determining whether all students who repeatedly require Ukeru interventions are provided a FAPE by being referred in a timely manner for either evaluation or re-evaluation for appropriate special education and related services. Additionally, OCR is concerned that in not documenting every instance the staff uses Ukeru on a student, the District is also not documenting the instructional minutes and educational services the student missed as a result.

Lastly, OCR is concerned that the District may have violated the Section 504 rights of many students with disabilities whose behaviors resulted in restraints by not placing them in the least restrictive environment. OCR observed that the District placed students in more restrictive settings without documenting that the students' IEP and/or BIP had been fully implemented and were nonetheless inadequate to address the students' behavior in a less restrictive setting.

(b)(6); (b)(7)(A); (b)(7)(C)



Conclusion

The District agreed to implement the enclosed Resolution Agreement, which, when fully implemented, will address the evidence obtained and the allegations investigated. The

Agreement requires the District to review and revise its policies and procedures regarding restraint and seclusion, including a statement regarding the limited involvement of SROs in managing student behavior; develop and implement a record-keeping system and procedures to ensure District personnel adequately and accurately documents each restraint and/or seclusion; implement a monitoring program to assess the District's use of restraint and seclusion on a monthly basis; provide effective training on the District's policies and the use of restraint and seclusion; and provide certain individual student remedies. Please review the enclosed Agreement for further details. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue.

This concludes OCR's investigation of this 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 sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

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 against the District 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, OCR will seek to protect, to the extent provided by law, personally identifiable information that, if released, could reasonably be expected to constitute an unwarranted invasion of personal privacy.

We appreciate the District's cooperation in the resolution of this compliance review. If you have any questions, please contact Alonzo Rivas, the OCR attorney assigned to this compliance review, at Alonzo.Rivas@ed.gov.

Sincerely,

(b)(6); (b)(7)(A); (b)(7)(C)

Adele Rapport
Regional Director

(b)(6);
(b)(7)(A);
(b)(7)(C)

Enclosures

cc: Tara Brandner (brandnt@fargo.k12.nd.us)

Withheld pursuant to exemption

(b)(6); (b)(7)(A); (b)(7)(C)

of the Freedom of Information and Privacy Act

RESOLUTION AGREEMENT
Fargo Public Schools
OCR Docket No. 05-19-5001

Fargo Public Schools (District) submits the following Resolution Agreement (Agreement) to the U.S. Department of Education, Office for Civil Rights (OCR) in resolution of OCR Docket #05-19-5001. The District submits this Agreement to ensure its compliance with 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, with respect to the issue raised in this compliance review. The District agrees to the following:

I. STUDENT REMEDIES

1. For students with and without identified disabilities who were subjected to restraints during the compliance review period, which was the 2017-2018 and 2018-2019 school years, as identified on Appendix A of this Agreement, the District will provide OCR with the basis and documentation supporting the District's assessment that it is not necessary to send written notice to the students' parents/guardians and to convene an Individualized Education Program (IEP)/Section 504 team meeting because, subsequent to the compliance review period, these students' needs were evaluated during their case conference meetings, the IEP/Section 504 team determined that the students are progressing academically, and the students have not been subjected to additional restraints.

REPORTING REQUIREMENT: By October 31, 2023, the District will provide OCR the information and documentation required under Item 1 of this section. In the event OCR disagrees with the District's assessment with respect to any of the students, OCR will inform the District of this conclusion and will require the District to provide written notice to said students' parents/guardians and will convene an IEP/Section 504 team meeting within 30 business days of receiving OCR's determination in the manner specified under Item 2 of this section.

2. For students with disabilities who were subjected to restraints from the start of the 2019-2020 School year until the date of this Agreement, as identified on Appendix B to this Agreement, the District will provide written notice to the students' parents/guardians and will convene an IEP/Section 504 team meeting by May 31, 2024. At the meeting, the District will:

- a. Invite the students' parents/guardians to share any concerns with the District's use of restraints;
- b. If needed, revise and/or more clearly define any provisions concerning restraints in the students' IEPs/Section 504 plans as appropriate to be consistent with a Section 504 compliant policy and to meet the individualized needs of students under Section 504;
- c. Determine whether any additional remedies or services are appropriate at this time to provide the students a FAPE under Section 504;

- d. Determine whether the number, duration, and/or nature of the instances of restraints to which the students were subjected from the start of the 2019-2020 school year until the date of this Agreement may have resulted in a denial of FAPE, and if so, what compensatory education and/or remedial services are necessary. In making this determination, the team will also consider:
 - i. the extent of missed instruction and/or related services during restraint incidents; and
 - ii. any instances in which the student was sent home early or required to stay home after a restraint incident;
- e. In the event the team determines that compensatory and/or remedial services are necessary:
 - i. The team will develop written plans for providing the student with any compensatory education and/or other remedial services deemed necessary;
 - ii. Any such plan will identify the type, frequency, and duration of services to be provided at no cost to the student's parents and/or guardians, the title and qualifications of the provider(s), and when the services will be provided;
 - iii. The plan will be included in a separate written agreement executed by the District and the student's parent or guardian and will become part of the student's special education record;
 - iv. The District will promptly offer an Agreement to the student's parent or guardian providing for access to and payment of the compensatory education and/or remedial services, and if the parent or guardian accepts such offer, will authorize the delivery of such services so they are promptly provided and completed within one (1) year.
- f. If applicable, within ten (10) business days of each student's IEP meeting or Section 504 team meeting, the District will provide the student's parents and/or guardians with a written Agreement detailing any written plan for providing the student with compensatory education and/or remedial services, including copies of agreements with outside parties contracted to provide such services, and written notification of the team's decision.

REPORTING REQUIREMENTS: By June 30, 2024, the District will submit to OCR documentation to demonstrate its implementation of Item 2 of this section, including:

- a. The names and titles of the individuals who attended the IEP / Section 504 meetings;
- b. A copy of any District notes of the meeting which shall include details and documentation regarding the team's determination whether any compensatory

education or remedial services are necessary. OCR will review the documentation submitted to ensure that the District met the requirements of the regulation implementing Section 504 at 34 C.F.R. §§ 104.34, 104.35, and 104.36;

- c. Copies of the students' behavior intervention plans (BIPs), if applicable, and IEPs or Section 504 plans;
 - d. A copy of any plans for compensatory education and/or other remedial services;
 - e. Documentation of any input provided by the students' parents and/or guardians;
 - f. Copies of any notifications sent to the students' parents and/or guardians pursuant to Item 1(f) of this section;
 - g. Any other documentation relied on or relevant to the determinations reached in accordance with Item 1 of this section;
 - h. Should a team determine that compensatory education and/or other remedial services for a particular student are necessary, the District will provide OCR by May 31, 2025, with documentation that it provided all services deemed necessary in accordance with Item 1(e) of this section. If the District is not able to deliver the services as required, the District will provide OCR by May 31, 2025, with evidence of the District's reasonable efforts to provide these services to the student.
3. For students without disabilities who were subjected to restraints from the start of the 2019-2020 School year until the date of this Agreement, as identified on Appendix B to this Agreement, the District will refer the student to MTSS or the child-find process by October 31, 2023, to discuss whether the restraints to which the student was subjected warrant an evaluation for special education and related services.

REPORTING REQUIREMENT: By December 31, 2023, the District will provide OCR will submit to OCR documentation to demonstrate its implementation of Item 3 of this section, including:

- a. The names and titles of the individuals who participated during the MTSS or child-find process discussion of a student's case; and
- b. A copy of any District notes of the MTSS or child-find process discussion which shall include details and documentation regarding the determination the District made after that discussion whether the student should be evaluated for special education and related services and the basis of that determination.

II. POLICIES AND PROCEDURES

1. By December 31, 2023, the District will review and revise, if necessary, its current policies and procedures regarding restraint and seclusion to include, at a minimum:

- a. Definitions of key terms, including but not limited to timeouts, physical escort, and safety devices;
- b. An explanation about how seclusion, mechanical restraint, physical restraint, and prone restraint are distinct from safety devices, physical escorts, and timeouts;
- c. A statement that restraint and seclusion will not be used on students with disabilities: (1) for behavior(s) that would not result in restraint or seclusion for students without identified disabilities; or (2) based on assumptions or stereotypes about disabilities or students with disabilities generally;
- d. A statement that the use of restraint and seclusion will not interfere with the right of student with a disability to receive a FAPE;
- e. The title, and contact information (phone number, office address, and e-mail address) of the District's Director of Compliance or qualified designee, and notice regarding the role and duties of the Director of Compliance in reviewing incidents of restraint and seclusion;
- f. A statement that the District's Director of Compliance or a qualified designee will review every incident involving the restraint and/or seclusion of a District student within a designated timeframe no longer than ten (10) business days;
- g. Instructions making clear that when multiple restraints and/or seclusions involving the same student occur on the same date, then any documentation forms and debriefing forms for those incidents must identify all prior incidents of restraint and seclusion of that student that occurred on the same date;
- h. Instructions regarding whether separate documentation forms and debriefing forms must be completed when a single incident involves a restraint and a seclusion of the same student;
- i. How forms will be disseminated and available to staff;
- j. A statement that the person who is primarily responsible for completing the documentation forms and debriefing forms must consult with staff members involved in the restraint and/or seclusion to confirm the accuracy of the information included in both forms;
- k. A statement requiring that notification of each restraint and seclusion be given to the District's Director of Compliance and a provision regarding how and when notification must be given; and
- l. The criteria the District will use to determine when, after instances of restraint or seclusion, the District will (1) refer the student to his/her IEP team or Section 504 team to determine whether the student should be reevaluated and if the student's current

interventions and supports are sufficient or whether any changes are needed or (2) refer a student without an identified disability to MTSS or the child-find process to discuss whether the student should be evaluated for special education and related services. Such criteria can include the following: (a) the number of restraints and/or seclusions the student was subjected to within a month; (b) the number of restraints and/or seclusions that took place in a school year and the timeframe within which they occurred; (c) the nature and length of each restraint and seclusion; (d) changes in the student's behavior(s) that results in the use or increased use of restraint and seclusion; (e) if applicable, the nature of the student's disability; (f) whether the student was restrained and/or secluded in violation of District policy (e.g., mechanical restraint); (g) whether the student requires compensatory services; and (h) any other factor that is relevant to these determination(s).

REPORTING REQUIREMENT: By December 31, 2023, the District will provide to OCR for its review and approval the draft of its revised policies and procedures. The District will fully address any changes OCR requires and will re-submit revisions to the policies and procedures within 30 business days of receiving notice of the required changes from OCR. OCR and the District will continue this process until the District receives OCR's final approval of the revised policies and procedures.

Within 60 business days of receiving OCR's written approval of the revised policies and procedures, the District will provide to OCR documentation demonstrating that it has: (1) adopted the revised policies and procedures; (2) provided notification to students, families, and employees of the revised policies and procedures; and (3) developed a plan to publish the revised policies and procedures in District publications and on the District's website. Inserts may be used pending reprinting of publications.

2. By December 31, 2023, the District will develop or revise its policy and/or written guideline regarding non-disciplinary behavior-related dismissals or stay-home directives following restraint and/or seclusion incidents for students with a disability, consistent with the following:
 - a. The District may not require the parent or guardian to take a student home from school or keep a student home from school (or encourage the parent or guardian to do so) unless the student has been assigned a suspension or expulsion;
 - b. The District will refer the student to their IEP team or Section 504 team to discuss whether the restraint incident and the subsequent dismissal and/or stay-at-home directive warrant a re-evaluation of the student, which may include developing a functional behavioral assessment (FBA) and an accompanying BIP for that student. Any FBA and BIP must be properly completed by an appropriately trained professional and promptly implemented; and

- c. The District will complete a report of the incident no later than the next school day that lists the name and grade of the student and describes the student’s behavior, actions taken by school staff (including de-escalation strategies), why the District requested the parent or guardian come to school and/or keep the student home from school, the result (including whether the parent or guardian took and/or kept the student home, and when and how that occurred), and the District’s action to ensure that the student was provided a reasonable opportunity to make up missed work.

REPORTING REQUIREMENT: By December 31, 2023, the District will provide to OCR for its review and approval the draft of its revised policy and/or written guideline. The District will fully address any changes OCR requires and will re-submit revisions to the policies and procedures within 30 business days of receiving notice of the required changes from OCR. OCR and the District will continue this process until the District receives OCR’s final approval of the revised policies and procedures.

Within 60 business days of receiving OCR’s written approval of the revised policy and/or written guideline, the District will provide to OCR documentation demonstrating that it has: (1) adopted the revised policy and /or guideline; (2) provided notification to students, families, and employees of the revised policies and procedures; and (3) developed a plan to publish the revised policies and procedures in District publications and on the District’s website. Inserts may be used pending reprinting of publications.

III. MAINTENANCE OF RECORDS

1. By December 31, 2023, the District will develop and implement a record-keeping system and procedures to ensure the following is documented with respect to each restraint and/or seclusion incident in an accurate, complete and timely manner:
 - a. The student’s name or other identifier;
 - b. The student’s school;
 - c. The student’s grade level;
 - d. Whether the student is an identified student with a disability (i.e., has an IEP or a Section 504 plan);
 - e. The date of the restraint or seclusion;
 - f. The start time, end time, and total time of the restraint or seclusion;
 - g. Whether the student was secluded, restrained, or both, and a clear identification of the type of restraint, including a description of how the restraint or seclusion was conducted (i.e., for restraints, where staff were positioned and what they did during the restraint; whether the student was sitting, standing, lying down, etc.);
 - h. The name(s) and title(s) of any staff who witnessed, but were not directly involved in, the restraint or seclusion;

- i. Whether the student or staff suffered any injury or required medical treatment as a result of the restraint or seclusion;
- j. The location of the restraint or seclusion (e.g., cafeteria, auditorium, playground, sports field, parking lot, front office, hallway, specific classroom, school bus, etc.);
- k. If the student is a student with a disability, whether the student’s IEP or Section 504 plan, including any Behavior Intervention Plan (BIP), was followed;
- l. The number of prior restraints and seclusions the student was subjected to during the school year;
- m. The activity or activities that the student missed during the restraint or seclusion (e.g., recess, lunch, a related service, special education, a specific general education class, a District or District-sponsored after-school program or activity, etc.);
- n. If the student is not identified as a student with a disability, whether the staff believes the behavior(s) that prompted the implementation of the restraint and/or seclusion warrant(s) referring the student for an evaluation;
- o. If the student is a student with a disability, whether the student’s IEP team or Section 504 team needs to discuss follow-up actions (e.g., reevaluating the student, discussing compensatory education and/or other remedial services for the student, etc.);
- p. The date, time, and method of parent notification;
- q. The date, time, and method of administrator notification;
- r. The name(s) and title(s) of the person(s) completing the form;
- s. The date the form was completed; and
- t. The date when the report was reviewed by the District’s Director of Compliance.

REPORTING REQUIREMENT: By December 31, 2023, the District will provide to OCR for its review and approval the draft of the record-keeping system and procedures developed in accordance with Item 1 of this section. The District will fully address any changes OCR requires and will re-submit revisions to its record-keeping system and procedures within 30 business days of receiving notice of the required changes from OCR. OCR and the District will continue this process until the District receives OCR’s final approval of the record-keeping system and procedures.

2. By December 31, 2023, the District will develop and implement a record-keeping system and procedures to ensure the following occurs and is documented in connection with time students spend in a District calming room:
 - a. A written record is created within 24 hours of the student’s use of the calming room that includes, at a minimum, the following information: (i) the date, time, and duration of the

student’s visit to the calming room; (ii) whether the student elected to use the calming room or was directed to the calming room by District staff, and if so, the name and title of the referring staff member and the reason the student was directed to the calming room; (iii) the name(s) and title(s) of the staff member(s) supervising the student while she/he were in the calming room and the time(s) the staff member(s) supervised the student; and (iv) a description of the student’s behavior and activities while in the calming room; and

- b. The written record is shared with the student’s IEP, Section 504, or MTSS team, if applicable, to consider whether the student’s referral to or use of a calming room indicates that the student’s array of special education and related services, if any, is adequate to address and meet the student’s educational needs, and if the student has not been identified as a student eligible to receive special education and related services, whether the student should be evaluated for such services under Section 504 or IDEA.

REPORTING REQUIREMENT: By December 31, 2023, the District will provide to OCR for its review and approval the draft of the record-keeping system and procedures developed in accordance with Item 2 of this section. The District will fully address any changes OCR requires and will re-submit revisions to its record-keeping system and procedures within 30 business days of receiving notice of the required changes from OCR. OCR and the District will continue this process until the District receives OCR’s final approval of the record-keeping system and procedures.

3. By December 31, 2023, the District will develop and implement a record-keeping system and procedures to ensure the following is documented with respect to the use of behavior interventions prescribed by the Ukeru system to de-escalate a student’s behavior in an accurate, complete and timely manner:
 - a. The student’s name or other identifier;
 - b. The student’s school;
 - c. The student’s grade level;
 - d. Whether the student is an identified student with a disability (i.e., has an IEP or a Section 504 plan);
 - e. The date of the use of Ukeru interventions;
 - f. The start time, end time, and total time of Ukeru interventions;
 - g. The name(s) and title(s) of staff directly involved in implementing the Ukeru interventions;
 - h. The name(s) and title(s) of any staff who witnessed, but were not directly involved in implementing the Ukeru interventions;
 - i. Whether the student or staff suffered any injury or required medical treatment as a result of the implementation of the Ukeru interventions;

- j. The place in the building where the Ukeru interventions were implemented (e.g., cafeteria, auditorium, playground, sports field, parking lot, front office, hallway, specific classroom, school bus, etc.);
- k. Description of the student’s behavior(s) that precipitated staff’s use of Ukeru interventions;
- l. A description of the Ukeru interventions used, including de-escalation strategy or strategies;
- m. If the student is a student with a disability, whether the student’s IEP or Section 504 plan, including any Behavior Intervention Plan (BIP), was followed;
- n. The number of prior instances when staff had to use Ukeru interventions to manage the student’s behavior during the school year;
- o. The activity or activities that the student missed during while Ukeru interventions were implemented to manage his/her behavior (e.g., recess, lunch, a related service, special education, a specific general education class, a District or District-sponsored after-school program or activity, etc.);
- p. If the student is not identified as a student with a disability, whether the staff believes the behavior(s) that prompted the implementation of Ukeru interventions warrant(s) referring the student for an evaluation;
- q. If the student is a student with a disability, whether the student’s IEP team or Section 504 team needs to discuss follow-up actions (e.g., reevaluating the student, discussing compensatory education and/or other remedial services for the student, etc.);
- r. The date, time, and method of parent notification;
- s. The date, time, and method of administrator notification;
- t. The name(s) and title(s) of the person(s) completing the form;
- u. The date the form was completed; and
- v. If applicable, the date when the report was reviewed by the District’s Special Education Director.

REPORTING REQUIREMENT: By January 31, 2024, the District will provide to OCR for its review and approval the draft of the record-keeping system and procedures developed in accordance with Item 3 of this section. The District will fully address any changes OCR requires and will re-submit revisions to its record-keeping system and procedures within 30 business days of receiving notice of the required changes from OCR. OCR and the District will continue this process until the District receives OCR’s final approval of the record-keeping system and procedures.

4. By January 31, 2024, the District will develop and implement a system and procedures to ensure District personnel submit accurate restraint and seclusion data to the CRDC in the future. In the process of the developing this system and procedures, the District will do the following:
 - a. Identify steps that it has taken to ensure data quality;
 - b. Submit written correspondence to the CRDC including the correct data from 2015 and 2017; and
 - c. Ensure that all District personnel charged with reporting data to the CRDC review the CRDC's Restraint & Seclusion Module.

REPORTING REQUIREMENT: By January 31, 2024, the District will provide to OCR for its review and approval the draft of the system and procedures developed in accordance with Item 4 of this section. The District will fully address any changes OCR requires and will re-submit revisions to its record-keeping system and procedures within 30 business days of receiving notice of the required changes from OCR. OCR and the District will continue this process until the District receives OCR's final approval of the record-keeping system and procedures.

IV. MONITORING PROGRAM

1. By January 31, 2024, the District's Director of Compliance, or a qualified designee, will implement a monitoring program to assess the District's use of restraint and seclusion on a monthly basis. Each month, the District's Director of Compliance or a qualified designee will, at a minimum:
 - a. Review all incidents involving the restraint and seclusion of District students to determine if the use of restraint and/or seclusion reflected an individualized determination based on the student's need and was consistent with District policy, written instructions, and related training;
 - b. Analyze whether the behavior(s) that led to the restraint and/or seclusion of a student were part of a pattern of behavior(s) that should have led District staff to seek an evaluation or reevaluation of the student;
 - c. Determine whether District staff considered the impact of the restraint and/or seclusion on the student, and if this impact necessitated an evaluation or reevaluation of the student;
 - d. If applicable, assess if the student's IEP or Section 504 team considered whether the student's current regular or special education and disability-related aids and services provided the student with a FAPE; and whether the restraint and/or seclusion caused missed instruction and/or disability-related services resulting in the denial of a FAPE, and, if so, whether compensatory education and/or remedial services are necessary to address the denial of a FAPE;

- e. Ensure students without identified disabilities subjected to multiple and/or prolonged restraints and/or seclusions are evaluated for disability if appropriate;
- f. Review all restraint and seclusion documentation forms and debriefing forms to ensure that District staff properly complete the required forms;
- g. Compile, evaluate, and analyze data collected (i.e., incidents of restraint and seclusion broken down by school, staff, grade level, program, etc.) to assess whether incidents of restraint and/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 and/or seclusion occurred; and
- h. Identify concerns related to the District's use of restraint and/or seclusion, propose recommendations to address any concerns, and develop timelines for implementation of the recommendations.

REPORTING REQUIREMENT: By January 31, 2024, the District will provide documentation of its proposed monitoring program developed under Item 1 of this section to OCR.

By June 1, 2024, the District will provide documentation to OCR demonstrating that the District's Director of Compliance or a qualified designee, completed the monthly reviews referenced in Item 1 of this section. The District's report will identify all students who were subjected to restraint and/or seclusion during the time period reviewed, and for each such student specify: (a) the student's school, (b) whether the student is identified as having a disability; (c) the number of instances of restraint and/or seclusion, (d) whether any of those instances of restraint and/or seclusion resulted in physical injury to the student; (e) the total number of minutes that each student spent in restraint and/or seclusion during the school year; (f) whether the student was evaluated or reevaluated as a result of the use of restraint and/or seclusion, and if so, the date of the student's evaluation or reevaluation and whether the IEP or Section 504 Team determined the student needed compensatory education and/or other remedial services. If OCR requests any student records for students on the list, the District will provide such records within 30 business days of such request (e.g., documentation forms; debriefing forms; IEPs; Section 504 plans; BIPs; records of whether the incident(s) of restraint and/or seclusion of students without identified disabilities caused an evaluation to determine if the students qualified as individuals with a disability; and records of whether the incident(s) of restraint and/or seclusion of students with disabilities caused the students' IEP teams or Section 504 teams to reevaluate the students, whether the teams determined that the students required compensatory education and/or remedial services to address the denial of a FAPE, and if so, the compensatory education and/or remedial services provided to the students).

- 2. By January 31, 2024, the District's Director of Compliance or a qualified designee, will implement a monitoring program to conduct thorough inspections of, and make any necessary repairs or modifications to, calming rooms and spaces every semester to ensure that they are free of conditions that may result in or contribute to physical harm of students. The inspections will involve, at a minimum: each principal or a qualified designee, District's Director of Compliance or a qualified designee, and the District's Director of Facilities or a qualified designee.

REPORTING REQUIREMENT: By March 31, 2024, the District will provide documentation of its proposed monitoring program developed under Item 2 of this section to OCR.

Within 30 business days of the District conducting the inspections and, if necessary, the repairs, the District will submit to OCR: (i) videos and/or photographs taken during the inspections, including videos and/or photographs showing the rooms' floors, ceilings, walls, doors, windows, light, and door knobs or handles, as well as any other objects or items in the room; (ii) documentation of the inspection, including who was present during the inspections, how the inspection was conducted, and what repairs or modifications were noted; (iii) documentation that any repairs or modifications were made, including videos and/or photographs; and (iv) a written plan to ensure regular, ongoing monitoring of the conditions of the rooms. The District will promptly and fully address OCR's feedback, if any.

V. TRAINING

1. Within 90 business days of OCR's approval of the policies and procedures developed in accordance with Items 1 through 2 of Section II and the record-keeping systems and procedures developed in accordance with Items 1 through 4 of Section III, and every year thereafter, the District will secure or assign trainers with expertise to provide training on the use of restraint and seclusion, and Section 504 and Title II to train the Assistant Director of Special Education, special education area service coordinators, principals, special education staff including teachers, paraprofessionals and case managers, MTSS interventionists, positive behavior interventionists and technicians on the following topics:
 - a. The requirements of Section 504's implementing regulation at 34 C.F.R. §§ 104.33-104.36 regarding the District's obligation to provide a FAPE to students with disabilities;
 - b. The necessity of making individualized determinations for all aspects of students' IEPs or Section 504 plans, as well as the necessity of fully implementing students' Section 504 plans and IEPs, and providing procedural safeguards to parents, including notice;
 - c. The definitions of restraint, seclusion, timeout, physical restraint, prone restraint, physical escort, mechanical restraint, and safety devices, identifying which practices are prohibited;
 - d. How to minimize the use of restraints;
 - e. Alternatives to restraints;
 - f. The safe use of restraints;
 - g. When a student without an identified disability is subjected to repeated and/or prolonged restraints and/or seclusions, how the student must be referred to MTSS or the child-find process to discuss whether the student should be evaluated for special education and related services;
 - h. How the restraint and seclusion of a student with a disability can result in the denial of a FAPE;

- i. When a student’s IEP team or Section 504 team must convene to address the repeated use of restraint to reevaluate the student, identify any additional necessary supports and services for the student, or determine appropriate compensatory services for a student denied a FAPE;
- j. The District’s restraint and seclusion policies and procedures and the record-keeping systems and procedures approved by OCR pursuant to Items 1 through 3 in Section II and Items 1 through 4 in Section III of this Agreement; and
- k. How District staff and parents can report concerns about the use of restraint and/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) to whom concerns should be reported; and how the District will respond.

REPORTING REQUIREMENT: Within 30 business days of providing the training required by Item 1 of this section, the District will provide OCR documentation of the training, including the dates of the training, name(s), title(s) and qualifications of the trainer(s), a copy of the materials used or distributed during the training, and a list of the personnel who attended the training.

2. The District will assess the effectiveness of the training referenced in Item 1 of this section and Item 3 of Section VI by conducting surveys of the individuals who attended the training. The surveys will specifically inquire about the knowledge the attendees acquired regarding the topics covered by the training.

REPORTING REQUIREMENT: By December 31, 2023, the District will provide OCR the surveys it proposes to use to assess the effectiveness of the training referenced in Items 1 of this section and Item 3 of Section VI. Within 30 business days of receiving the approval of OCR, the District will administer the surveys to the individuals who attended the training.

Within 60 business days of administering the surveys, the District will provide documentation to OCR of the results of the surveys and a description of any actions the District proposes to take in response should the results show that the individuals who attended training are not knowledgeable about the topics covered in their respective training.

VI. INVOLVEMENT OF SCHOOL RESOURCE OFFICERS (SRO) IN RESTRAINTS

1. By December 31, 2023, the District will review and revise, if necessary, its current policies and procedures regarding restraints and seclusions to include a statement that SROs or local law enforcement officers may be involved in managing student behavior only after District personnel trained in the use of restraint and seclusion were not able to manage a situation presenting an imminent danger of safety or physical injury to students, District staff or other members of the District community.

REPORTING REQUIREMENT: By January 31, 2024, the District will provide to OCR for its review and approval the draft of its revised policies and procedures. The District will review any changes OCR requires and will re-submit revisions to the policies and procedures within 30

business days of receiving notice of the required changes from OCR. OCR and the District will continue this process until the District receives OCR's final approval of the revised policies and procedures.

Within 60 business days of receiving OCR's written approval of the revised policies and procedures, the District will provide to OCR documentation demonstrating that it has: (1) adopted the revised policies and procedures; (2) provided notification to students, families, and employees of the revised policies and procedures; and (3) developed a plan to publish the revised policies and procedures on the District's website. Inserts may be used pending reprinting of publications.

2. By January 31, 2024, the District will consult with administrators, the Director of Compliance, the current SRO Sergeant, who will have solicited input from all building SROs to share with the District, and the Director of Education Justice, who will have solicited input from parents and students through the existing structure of the District's Education Justice program, to review current practices regarding the relationship with and involvement of the SROs to manage student misconduct, and identify ways to minimize involvement of the SROs in incidents of misconduct that do not involve threats to safety or for conduct that can be safely and appropriately be handled by school personnel, and to provide clear guidance to school personnel on when and how such referrals should occur.

REPORTING REQUIREMENT: By January 31, 2024, the District will provide OCR a report listing ways to minimize involvement of SROs developed in accordance with Item 2 of this section.

3. By January 31, 2024, the District will train the SROs on the District's disciplinary policies and procedures as well as its restraint and seclusion policies and procedures approved by OCR pursuant to Items 1 through 2 in Section II.

REPORTING REQUIREMENT: Within 30 business days of providing the training required by Item 3 of this section, the Corporation will provide OCR documentation of the training, including the dates of the training, name(s), title(s) and qualifications of the trainer(s), a copy of the materials used or distributed during the training, and a list of the individuals who attended the training.

4. By January 31, 2024, the District will consult with the SRO regarding its policy governing SRO access to educational records of students with disabilities, including the portions of the student's IEP, 504 plan, or behavior plan that address accommodations or approaches related to behavioral concerns, under The Family Educational Rights and Privacy ACT (FERPA) (20 U.S.C. § 1232g; 24 CFR Part 99). This will include a discussion of the District's practice that whenever an SRO is anticipated to be involved with a student with a disability, the District will make a staff member available to assist the SRO in understanding this information.

REPORTING REQUIREMENT: By January 31, 2024, the District will provide to OCR materials demonstrating its compliance with Item 4 of this section, including a copy of any policy (revised, if necessary).

GENERAL MONITORING PRINCIPLES

By signing this Agreement, the District understands that it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this 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. Additionally, the District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has demonstrated compliance with all the terms of this Agreement and is in compliance with Section 504 and Title II and their implementing regulations, 34 C.F.R. Part 104 and 28 C.F.R. Part 35, which were at issue in this complaint.

The District understands and acknowledges that OCR may initiate proceedings to enforce the specific terms and obligations of this Agreement and/or Section 504, Title II, and their implementing regulation(s). Before initiating such proceedings, OCR will give the District written notice of the alleged breach and 60 calendar days to cure the alleged breach.

The Agreement will become effective immediately upon the signature of the District’s representative below.

(b)(6), (b)(7)(A), (b)(7)(C)

Superintendent 
Dr. Rupak Gandhi

9-20-2023
Date: _____

Withheld pursuant to exemption

(b)(6); (b)(7)(A); (b)(7)(C)

of the Freedom of Information and Privacy Act

Withheld pursuant to exemption

(b)(6); (b)(7)(A); (b)(7)(C)

of the Freedom of Information and Privacy Act