

RESOLUTION AGREEMENT
Southwest Vermont Supervisory Union
OCR Complaint No. 01-15-1093

The Southwest Vermont Supervisory Union (District) has voluntarily entered into this agreement to resolve the allegation in the above-referenced complaint. The District voluntarily enters into this AGREEMENT solely for the purposes of resolving a contested complaint. By entering into this AGREEMENT the District makes no admission regarding non-compliance with any obligations the District may have under Section 504 of the Rehabilitation Act of 1973. The District assures the U.S. Department of Education, Office for Civil Rights (OCR) that it will take the following actions pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973(Section 504), as amended, 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. § 12132, and its implementing regulation at 28 C.F.R. Part 35, or any other law enforced by OCR.

Prior to the completion of OCR's investigation, the District agreed to take the following actions to address the issues raised within the complaint of this investigation pursuant to Section 302 of OCR's Case Processing Manual. Accordingly, the District agrees to take the following actions.

Action Item 1

The District will ensure that its restraint and exclusionary time out¹ policies and procedures are equitable to students with disabilities and that appropriate records regarding incidents of restraint and exclusionary time out are maintained, monitored, analyzed, and where necessary, acted upon. The District will revise its policies, procedures and protocols regarding the use of restraint and exclusionary time out in District schools, giving consideration to the District's obligations to provide a free appropriate public education (FAPE) to students with disabilities.² The District's policies, procedures, protocols and practices regarding restraint and exclusionary time out will include:

- A. Maintaining a written policy to be followed whenever a student is physically restrained and developing a written protocol regarding the documentation of a) the use of exclusionary time out with a student with a disability and b) of all exclusionary time outs that exceed 30 minutes, which set forth how the District will:
 1. Monitor reports regarding the manner, frequency, and specific duration (including beginning and end time) of the use of restraint and exclusionary time out.
 2. Analyze the information on the manner, frequency, and duration of restraint or exclusionary time out to determine whether an evaluation of the student's behavior and the convening of an IEP team or Section 504 team meeting to evaluate a student, or to review and revise strategies in place for a student, are necessary.

¹ Exclusionary time-out is defined as the separation of the student from the rest of the class either through complete visual separation or actual physical separation

² As provided at 34 C.F.R. Sections 104.33(a) and (b).

3. Ensure that a comprehensive plan of support is implemented for each student with a disability who is subjected to repeated³ restraint and/or the use of exclusionary time out exceeding 30 minutes, to address identified behaviors, with the goal of eliminating or substantially reducing the use of restraint and/or exclusionary time out, including:
 - i. maintaining a system for continuous monitoring of District staff's implementation of each student's plan, effects of interventions, and impact on student outcomes which will be used to improve the support being provided to the student (the system could consist of a procedure for periodic collection and review of students for whom restraint or exclusionary time outs are used in excess of a certain threshold, and how the Student's team has or will meet to discuss the review of the use of exclusionary time outs or restraint, to reduce the need for such, and ensure the provision of FAPE or the reduction in removal from the classroom environment) If the District chooses to maintain the information about team meetings and effects of intervention and impact on student outcomes through a procedure, rather than a data system, the District will provide a report on its procedure for gathering such information;
 - ii. defining each student's behavior in detail with observable precision (rather than conclusions such as "student engaged in unsafe behavior" or "was being unsafe");
 - iii. determining whether all other appropriate alternative strategies have been identified and attempted, and the effectiveness of each alternative strategy; and
 - iv. requiring that all District staff working directly with the student are trained on implementing the plan of support.
4. Provide prompt notification to parents/guardians of any instances of restraint and/ and exclusionary time out.

B. A formal statement to be distributed to all District staff that the use of doors in exclusionary time out rooms can affect whether a student's placement in such a room is an exclusionary time-out versus. Seclusion, since if a student reasonably believes they are prevented from leaving the "time-out room" (with a closed door), this could constitute seclusion within the meaning of such under Section 504, as interpreted by OCR.

REPORTING REQUIREMENT:

- (a) By August 31, 2018, the District will provide OCR with the District's revised restraint policy and the exclusionary time out protocols for OCR's review and approval.
- (b) Within thirty [30] days of OCR's approval of the District's revised restraint policy and exclusionary time out protocols, the District will submit documentation confirming that the revised restraint policy and exclusionary time out protocols have been officially adopted and implemented by the District. The District will also provide documentation confirming that the additional provisions relating to the use of restraint and exclusionary time out and

³ For purposes of this paragraph, the term "repeated" means three (3) instances of restraint and/or exclusionary time out exceeding 30 (thirty) minutes over an academic school year.

guidance regarding the convening of students' 504 or IEP Teams consistent with Action Item 1(A)(2) and (3) have been incorporated into the District's Section 504 Manual.

- (c) Within thirty [30] days of the District's adoption and implementation of its revised policies and protocol, the District will provide OCR with (i) a link to the online version of its revised restraint policy and exclusionary time out protocol and (ii) documentation demonstrating that the revised restraint policy and exclusionary time out protocol have been disseminated to staff and have been made publicly available to students, parents/guardians, and other interested parties.
- (d) By July 31, 2018, the District will provide to OCR documentation of all restraints, exclusionary time outs of students with disabilities, and all exclusionary time outs that exceeded 30 minutes, as well as any comprehensive plans of support, if any, for the 2017-2018 school year.
- (e) By January 31, 2019, the District will provide to OCR documentation of all restraints, exclusionary time outs of students with disabilities, and all exclusionary time outs that exceeded 30 minutes, as well as any comprehensive plans of support, if any, including all of the information cited in Action Item 1(A)(2), (3) and (4), for the 2018- 2019 school year up to that point.

Action Item 2

- (a) The District will provide training for all of the District's special education administrators, building principals, and building Section 504 coordinators, regarding the District's obligation to provide a Free Appropriate Public Education (FAPE) to students with disabilities who experience restraint and/or exclusionary time out. Such training shall address and be consistent with Section 504, Title II, their implementing regulations, and the revised District policies and procedures developed under Action Item 1, including but not limited to addressing how repeated restraint and/or exclusionary time outs may result in a significant change in placement requiring a re-evaluation of the student involved, pursuant to 34 C.F.R. § 104.35(a). The training shall also include a discussion of the adverse effects that multiple restraint/exclusionary timeouts can have on students. Training is to be conducted by an individual (Trainer) with expertise in FAPE and on the effect of repeated seclusion/restraint on students with disabilities that affect behavior, including ADHD and anxiety disorders.
- (b) The District will further include additional training each school year, beginning with the 2018-2019 school year, for all District staff/faculty relating to the District's obligation to provide a FAPE to students with disabilities who experience restraint and/or exclusionary time out.

REPORTING REQUIREMENT:

- (a) The District will provide the trainer(s)'s credentials and the training materials for the training identified as Action Item 2(a) to OCR for review and approval no fewer than 30 calendar days prior to the training.

- (b) The District will provide OCR with documentation that it conducted the training identified as Action Item 2(a) by August 31, 2018. This documentation will include, but will not be limited to, the date(s) of the training; the agenda; copies of any training materials used, including any handouts, guides, or other materials; and attendance sheets from the training. The attendance sheets shall include the names, titles/positions, and signatures of all staff who attended or participated in the training.
- (c) The District will provide the draft materials for the training identified as Action Item 2(b) to OCR for review and approval no fewer than 10 calendar days prior to implementing the training.
- (d) By June 15, 2020 the District will provide OCR with documentation that it implemented the training identified as Action Item 2(b), for the 2018-2019 and 2019-2020 school years, including the names, titles/positions and signatures of all training participants. By [DATE], The District will provide OCR with documentation that it provided the training identified as Action Item 2(b), to any staff who joined the District after the training was held for either the 2018-2019 or 2019-2020 school years.

Action Item 3

- (a) The District will convene an Individual Education Program (IEP) Team meeting for the Student that complies with the requirements of 34 C.F.R. 300.321(a). The Team will consider whether the repeated use of restraint and/or exclusionary time out during the 2013-2014 school year, if any, resulted in the denial of a FAPE (including consideration of any missed services and of the impact of repeated restraint/ exclusionary time out on each student), and if so, the compensatory services to be provided to the student by the District to compensate for said denial of FAPE. The District will take reasonable steps to obtain parental participation in the meeting, including communicating through multiple methods (by letter, phone, and email) and ensuring that the meeting is held at a reasonable time, during normal school hours, and at a District facility convenient to the parents. The District will provide the student's parents with a meaningful opportunity to provide input into the determination, as well as notice of the determination made, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree. The District must ensure that it meets the requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36.

REPORTING REQUIREMENTS:

- (a) By August 31, 2018, for the IEP Team required by Action Item 3, the District will provide to OCR the following information:
- A list of attendees that includes the names and titles of those at the meeting, and that identifies which person(s) are knowledgeable about the student; his/her disability; the meaning of the student's evaluation data; and the placement options;
 - Minutes of the meeting;

- A report of the Team's:
 - method of quantifying the missed services and considering the effects of restraint/exclusionary time outs on each student;
 - identification of the compensatory services necessary to remedy any denial of FAPE determined by the Team to have resulted from the use of restraint and/or exclusionary time out;
 - methodology for determining the appropriate amount and means for delivering the compensatory services, including identifying staff responsible for the provision of compensatory services; and
 - Schedule for providing the student with all identified compensatory services, if any, during the 2017-2018 and 2018-2019 school years.

(b) By October 1, 2018, the District will provide documentation to OCR of the dates, times, and locations that the identified compensatory education or other remedial services, if any, were provided to the student, including the name(s) and title(s) of the service provider(s).

Action Item 4

(a) After the training referenced in Action Item 2 is concluded, the District will convene a separate meeting attended by the District's special education personnel knowledgeable about Student 2. The attendees will review Student 2's file for school year 2012-2013 (including but not limited to his disability-based needs, behavioral strategies used, instances of restraint/seclusion, and missed instruction) in assessing whether the District should have convened a team earlier in the school year to consider further evaluation of Student 2 and/or modifications to Student 2's placement. The attendees will also consider any impact of incidents of restraint/seclusion on Student 2's receipt of FAPE.

REPORTING REQUIREMENTS:

- (a) By October 1, 2018, for the meeting required by Action Item 4, the District will provide to OCR the following information:
- Minutes of the meeting;
 - A list identifying each attendee's name, title and experience/relationship with Student 2;
 - A description of the information reviewed by the attendees;
 - A detailed explanation of the reasons for the District's findings and conclusions; and
 - Any remedies that are proposed or taken by the District as a result of the review.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner. Further, the District understands that during OCR's monitoring of this Agreement, if necessary, OCR may visit the District to interview District employees and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 of the Rehabilitation Act of 1973 at 34 C.F.R. §§ 104.33(a) and (b), and Title II of the Americans with Disabilities Act, at 28 C.F.R. §35.130, which were at issue in this case.

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990, which were at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. § § 100.9, 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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

/s/
James R. Culkeen
Superintendent, SVSU

April 25, 2018
Date