



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION I
5 POST OFFICE SQUARE, 8th FLOOR
BOSTON, MASSACHUSETTS 02109-3921

November 5, 2021

Jeremy Ray
Interim Superintendent
Saco School Department
By email: jray@sacoschools.org

Re: Compliance Review No. 01-19-5001
Saco School Department

Dear Superintendent Ray:

This letter is to advise you of the outcome of the above-referenced compliance review of the Saco School Department (District), which the U.S. Department of Education, Office for Civil Rights (OCR) initiated in January 2019. OCR's compliance review examined whether the District's use of restraint and seclusion denies a free appropriate public education (FAPE) to students with disabilities who participate in the District's programs, in violation of the District's obligation to comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35. As explained further below, before OCR completed its investigation, the District expressed a willingness to resolve the compliance review by taking the steps set out in the enclosed Resolution Agreement (Agreement).

OCR enforces Section 504 and Title II, which prohibit discrimination on the basis of disability in any education program or activity operated by a recipient of Federal financial assistance or a public entity, 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.

To date, OCR has reviewed District records and documentation, including, but not limited to: District policies and procedures related to the use of restraint and seclusion; records related to staff training regarding restraint and seclusion; and education records for all District students who were reported to have been subjected to restraint and seclusion during the 2017-2018, 2018-2019, and 2019-2020 school years (Review Period). Overall, OCR interviewed at least five employees from each school in the District, including: three District administrators during an in-person site visit on March 12, 2020, and a virtual interview on May 26, 2020; 24 District administrators and staff members during a virtual site visit from November 4-5, 2020; and an administrative assistant and two former staff members in December 2020 and January 2021. OCR also observed certain seclusion spaces during the March 2020 site visit and conducted virtual observations of the remaining seclusion spaces in November 2020.

During its investigation, OCR identified incidents of restraint or seclusion involving 18 students as potentially concerning and warranting in-depth review. After conducting interviews and obtaining additional data, OCR had no concerns about the treatment of 4 of these students. Of the

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18 students, OCR discusses 15 in this letter. To maintain privacy, OCR refers to the students by numbers, specifically Student 1 through Student 15.

Legal Standards

A. Definitions

OCR defines “mechanical restraint” as the use of any device or equipment to restrict a student’s freedom of movement. The term does not include devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed.¹

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

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

B. Section 504 and Title II

The Section 504 regulation at 34 C.F.R. § 104.33 requires school districts to provide a FAPE to all students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met and are based on adherence to procedures that 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

¹ Examples of specific and approved purposes include: adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services.²

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;³ (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with §104.34, which requires placement in the regular educational environment to the maximum extent appropriate.

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

Section 504 applies to school officials, school employees, and everyone over whom a school exercises some control, whether through contract or other arrangement, including school resource officers, whether they are school district employees or work for a non-district law enforcement agency. 34 C.F.R. § 104.4(b)(1). Schools cannot divest themselves of responsibility for the nondiscriminatory administration of school policies, including restraint, by relying on school resource officers, school district police officers, contract or private security companies, security guards or other contractors, or other law enforcement personnel to administer school policies. 34 C.F.R. § 104.4(b).

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

² 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).

³ 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.

Factual Background

The District is located in southern Maine, approximately 90 miles north of Boston, Massachusetts, and 17 miles south of Portland, Maine. The District is comprised of four schools: two elementary schools that serve students in kindergarten through second grade, one elementary school that serves students in third grade through fifth grade, and one middle school that serves students in sixth grade through eighth grade. During the 2017-2018 and 2018-2019 school years, the District reported total enrollment of approximately 1,700 students with and without disabilities. *See* Figure 1. The District does not have its own high school; after eighth grade, the District provides tuition for students to attend Thornton Academy, a private secondary school.

Figure 1: Student population at each District school

School	Grade	2017-2018		2018-2019	
		Students without disabilities	Students with disabilities	Students without disabilities	Students with disabilities
Fairfield	K - 2	242	47	244	48
Young	K - 2	234	40	236	33
C.K. Burns	3-5	527	108	504	107
Saco Middle	6-8	447	105	438	111

A. District Programs

The District has several programs for students with disabilities, with the goal of transitioning students to less intensive programs as the students' needs evolve. Each of the following programs was present in each school in the District during the Review Period:

- **The Behavior Program** was for students with significant social-emotional needs, including a significant history of trauma. Students received support from educational technicians and behavioral specialists. The District discontinued the program after the 2018-2019 school year.
- **The PATHS Program** is an in-district day treatment program that was created in fall 2019 and replaced the prior Behavior Program. The PATHS Program provided more collaborative support than the prior program and serves students who might otherwise need an out-of-district placement.⁴ The PATHS program is limited to ten to thirteen students per school, and a behavioral health professional (BHP) is generally assigned to each student. The students have Positive Behavior Support Plans (PBSPs) and crisis plans. The goal is for students to access the regular education setting for most of the day.
- **The Coast Program** is for students who have significant life skills needs/intellectual challenges. It consists of Applied Behavior Analysis and developmental programs.

⁴ The data for the 2017-2018 and 2018-2019 school years encompass students in the previous Behavior Program, whereas the data for the 2019-2020 school year reflect students in the new PATHS program.

- **The Composite Program** is for students who need assistance (e.g., frequent breaks or organizational skills) to perform at grade level. Students who graduate from the PATHS Program move into the Composite Program. There are Composite Academic Programs and Composite Behavioral Programs. The Composite Program varies based on the individual needs of the student. The goal is to transition students from the Composite Program to the Resource Program, which involves even less support.
- **The Resource Program** is for students who have IEPs or Section 504 plans that require less intensive support, usually for learning disabilities or executive functioning. The structure of the program varies by school. The students spend 80% or more of the day in general education and may receive some push-in or pull-out services. There is a special education teacher embedded in the Resource Program at Saco Middle School.

B. District Restraint and Seclusion Policies

OCR reviewed the District’s policy regarding the use of restraint and seclusion ([Restraint and Seclusion Policy](#)) and the related administrative procedures ([Restraint and Seclusion Procedure](#)), which are both located on the District’s website. The District also follows the applicable state law, Maine Department of Education, 05-071, Chapter 33 – Rule Governing Physical Restraint and Seclusion ([Chapter 33](#)).

The Restraint and Seclusion Policy defines physical restraint as “[a]n intervention that restricts a student’s freedom of movement or normal access to his or her body, and includes physically moving a student who has not moved voluntarily,” and does not consider a physical escort to be a restraint.⁵ Mechanical and chemical restraints are prohibited. The Restraint and Seclusion Policy defines seclusion as “[t]he involuntary confinement of a student alone in a room or clearly defined area from which the student is physically prevented from leaving, with no other person in the room or area with the student.”

The Restraint and Seclusion Procedure requires continuous monitoring during a seclusion and prohibits seclusion from taking place in a locked room. OCR found no significant differences between the OCR definitions shared above and those in applicable District policies and state law, except that the District may interpret seclusion more broadly to include certain conduct (i.e., monitored separation in a non-locked setting) that OCR may consider to be a “timeout.”

The Restraint and Seclusion Procedure states that physical restraint and seclusion should be used “only as an emergency intervention when the behavior of a student presents a risk of injury or harm to the student or others, and only after other less intrusive interventions have failed or been deemed inappropriate.” Only trained staff should administer a restraint or seclusion, though untrained staff may initiate a restraint or seclusion in an emergency. Staff must continuously monitor the student and must end the restraint or seclusion as soon as possible.

After each incident of restraint or seclusion, a staff member must notify an administrator, who notifies the parent or guardian. Each incident must be documented in an incident report, which is reviewed by the principal, the Director of Instructional Support and/or the Director of Special Services, and the Superintendent (on a monthly basis). In addition, an administrator (or

⁵ The Restraint and Seclusion Policy does not govern restraints by law enforcement or school resource officers.

designee) meets with the student and separately with the staff involved to discuss the incident and how to reduce the need for restraint or seclusion in the future. The Superintendent must review aggregate data on a quarterly and annual basis to identify ways to reduce the use of restraint and seclusion.

State law mandates that, for students with disabilities, the IEP or 504 team must meet within ten school days of the third incident of restraint or seclusion occurring within the school year to discuss the incidents and consider the need to conduct a functional behavioral assessment (FBA) and/or develop a behavior intervention plan (BIP). These are often referred to as Chapter 33 meetings. For students who are not identified as having a disability, the District must convene a team consisting of the parent/guardian, a teacher, a staff member involved in the incident, and any other appropriate staff to meet within ten school days to discuss the incidents and consider whether to conduct an FBA, develop a BIP, or refer the student to special education.

C. Restraint Certification Program

The District currently uses a third-party vendor program (vendor program) for its restraint training and certification. The vendor program focuses on prevention, safety, evidence-based interventions, and the least coercive approaches to address a particular situation. The vendor program includes training on de-escalation strategies and how to safely restrain a student.

During the 2019-2020 school year, 124 staff members and administrators were certified by the vendor program, with more than 25 certified individuals at each school in the District. During the Review Period, the District had on staff at least one vendor program trainer at each school. These staff members conduct annual trainings for other staff, offer refresher sessions as needed, and are available as a resource throughout the District.

D. Incidents of Restraint and Seclusion During the Review Period

The District provided restraint and seclusion data to OCR for the Review Period. The District initially provided a spreadsheet listing each incident of restraint or seclusion for the 2017-2018 and 2018-2019 school years. At OCR's request, the District produced a similar spreadsheet for the 2019-2020 school year. These spreadsheets indicate the number of incidents at each school during each school year, as well as the number of students who experienced restraint and/or seclusion.⁶ See Figure 2.

⁶ The District also reported one incident at Thornton Academy and seven incidents at out-of-district placements.

Figure 2: Number of students restrained and/or secluded and number of incidents of restraint and/or seclusion by school, as reported to OCR.

School	Grade	2017-2018		2018-2019		2019-2020	
		Total # of Students Restrained and/or Secluded (with disability)	Total # of Incidents of Restraint and/or Seclusion	Total # of Students Restrained and/or Secluded (with disability)	Total # of Incidents of Restraint and/or Seclusion	Total # of Students Restrained and/or Secluded (with disability)	Total # of Incidents of Restraint and/or Seclusion
Fairfield	K - 2	15 (15) ⁷	209	8 (5)	39	7 (7)	26
Young	K - 2	5 (5) ⁸	67	8 (7)	26	8 (8)	62
C.K. Burns	3-5	8 (8)	20	4 (4)	7	5 (5)	38
Saco Middle	6-8	3 (3)	16	2 (2) ⁹	2	3 (3)	12
District Total	K - 8	32 (32)	312	22 (18)	74	23 (23)	138

OCR reviewed records of every student restrained and/or secluded in the District during the Review Period, including: all incident reports, IEPs, Section 504 plans, PBSPs, BIPs, FBAs, IEP team meeting notes, and Chapter 33 meeting notes submitted by the District. OCR also interviewed District staff about selected students, representing several grade levels and programs across each District school, whose restraints or seclusions raised concerns about potential FAPE denial (e.g., incidents resulting in a disciplinary removal, resulting in significant loss of classroom time, and/or lasting for a significant duration). In addition, OCR interviewed staff to assess their understanding of FAPE obligations. Notable information about some of the students, which OCR found to be representative of the other student files reviewed, is discussed below.

1. Mechanical Restraint

The District reported no instances of mechanical restraint to OCR during the Review Period. Based on OCR’s interviews, student record review, and observations, OCR did not find any indication that mechanical restraints had been used.¹⁰ OCR also reviewed the mechanical restraint data that the District submitted to OCR’s Civil Rights Data Collection (CRDC), a nation-wide data collection of key civil rights data. Although the District’s CRDC data states that 66 mechanical restraints occurred during the 2017-2018 school year, the District represented to OCR that the CRDC “data are clearly erroneous.”

⁷ The District indicated that it was “unable to identify [the] student name” on one Fairfield incident report. OCR assumes that this form is for a unique student, but it is possible that this overstates the number of unique students by one.

⁸ One student received an IEP during the 2017-2018 school year and is counted as a student with a disability for purposes of this chart.

⁹ One student received an IEP during the 2018-2019 school year and is counted as a student with a disability for purposes of this chart.

¹⁰ During interviews, witnesses told OCR that they did not know what a mechanical restraint was, that mechanical restraints are illegal, or that mechanical restraints are never used by the District.

2. Physical Restraint

According to data provided to OCR, during the 2017-2018 school year, District staff physically restrained 20 students a total of 204 times (19 of these students had disabilities); during the 2018-2019 school year, District staff restrained 12 students a total of 38 times (11 of these students were students with disabilities); and during the 2019-2020 school year, District staff physically restrained 15 students a total of 61 times (all of these students had disabilities). *See Figure 3.*

Figure 3: Number of students restrained and number of restraints by school, as reported to OCR.

School	Grade	2017-2018		2018-2019		2019-2020	
		Total # of Students Restrained (with disability)	Total # of Restraints	Total # of Students Restrained (with disability)	Total # of Restraints	Total # of Students Restrained (with disability)	Total # of Restraints
Fairfield	K - 2	12 (11) ¹¹	143	2 (2)	10	2 (2)	4
Young	K - 2	4 (4) ¹²	54	7 (6)	24	5 (5)	24
C.K. Burns	3-5	3 (3)	3	2 (2)	3	5 (5)	25
Saco Middle	6-8	1 (1)	4	1 (1) ¹³	1	3 (3)	8
District Total	K - 8	20 (19)	204	12 (11)	38	15 (15)	61

When reviewing the number of restraints reported by the District, OCR noted that the spreadsheet for the 2017-2019 school years classified certain incidents as involving a “movement.” The District told OCR that a “movement” is synonymous with a physical escort or a forward or reverse transport, and that the District does not consider a movement to be a restraint. OCR did not count incidents listed as “movements” as physical restraints. OCR notes that this approach potentially understates the number of physical restraints since some incidents recorded as “movements” may have involved conduct that would constitute a physical restraint under OCR’s definition. For example, a 2018 incident involving Student 12 was recorded on the spreadsheet as a movement even though the corresponding incident report characterized the incident as a physical restraint and included a description of a four-minute restraint by the principal and school resource officer.

Although the District’s CRDC data states that no physical restraints occurred during the 2017-2018 school year, the District represented to OCR that the CRDC data is incorrect.

¹¹ The District indicated that it was “unable to identify [the] student name” on one Fairfield incident report. OCR assumes that this form is for a unique student, but it is possible that the chart overstates the number of unique students by one student.

¹² One student received an IEP during the 2017-2018 school year and is counted as a student with a disability for purposes of this chart.

¹³ This student received an IEP during the 2018-2019 school year and is counted as a student with a disability for purposes of this chart.

3. Seclusion

According to data provided to OCR, during the 2017-2018 school year, District staff secluded 27 students a total of 247 times (26 of these students had disabilities); during the 2018-2019 school year, District staff secluded 19 students a total of 47 times (15 of these students had disabilities); and during the 2019-2020 school year, District staff secluded 22 students a total of 98 times (all of these students had disabilities).¹⁴ See Figure 4.

Figure 4: Number of students secluded and number of seclusions by school, as reported to OCR.

School	Grade	2017-2018		2018-2019		2019-2020	
		Total # of Students Secluded (with disability)	Total # of Seclusions	Total # of Students Secluded (with disability)	Total # of Seclusions	Total # of Students Secluded (with disability)	Total # of Seclusions
Fairfield	K - 2	14 (14) ¹⁵	172	7 (4)	30	7 (7)	25
Young	K - 2	5 (5) ¹⁶	42	7 (6)	11	8 (8)	44
C.K. Burns	3-5	5 (5)	17	4 (4)	5	4 (4)	22
Saco Middle	6-8	3 (3)	16	1 (1)	1	3 (3)	7
District Total	K - 8	27 (26)	247	19 (15)	47	22 (22)	98

District staff referred to seclusion rooms as safe rooms, safe spaces, quiet rooms, blue rooms, Life Space, or break spaces. Several witnesses explained to OCR that staff would attempt to stay in the seclusion room with the student. If staff could not remain in the room safely, they would leave. Witnesses told OCR that staff would continuously monitor the student during a seclusion by watching through the window in the door. Witnesses told OCR that students could also choose to go to a seclusion space as a quiet area; these instances are not recorded as seclusions.¹⁷

a. *Fairfield Elementary School*

There are two seclusion spaces at Fairfield Elementary School, both located within the PATHS/day treatment space. The seclusion rooms are approximately 6.5 x 10 feet, contain an uncovered window, and have a doorknob on the inside. Neither door has a lock. Both rooms are well-lit and do not contain any furniture or other objects. Quiet Room 1 has a carpeted floor, padded walls, and an unpadded door. Quiet Room 2 has a padded floor, padded walls, and a padded door. Quiet Room 2 has two pipes that stretch across the room, just below the ceiling. OCR reviewed a 2019 incident report that described a student climbing on the pipes in the room while in seclusion.

¹⁴ It is possible that some incidents that the District considered to be seclusions would not be considered seclusions under OCR's definition because students were continuously monitored in a non-locked setting.

¹⁵ The District could not read the name written on one incident report. OCR assumes that this form is for a unique student, but it is possible that this overstates the number of unique students by one student.

¹⁶ One student received an IEP during the 2017-2018 school year and is counted as a student with a disability for purposes of this chart.

¹⁷ In these situations, the door is kept open, the student has access to staff, and the student can leave voluntarily.

b. Young Elementary School

There is one seclusion room at Young Elementary School, which is located within the PATHS/day treatment space. The room is approximately 6 x 9.75 feet. The door has a doorknob on the inside and a window with a removable curtain. The door does not lock. The walls are not padded, and the floor is carpeted. The room is well-lit and does not contain any furniture or other objects.

c. Burns Elementary School

There are two seclusion spaces at Burns Elementary School, both of which are located in PATHS classrooms. One seclusion room is approximately 7 x 8 feet. The door does not lock and contains a window and an interior doorknob. The walls are padded up to 6 feet with brick above that height. The floor is also padded. The room is well-lit and does not contain any furniture or other objects. There are pipes across the ceiling that are covered with padding, which OCR observed to be partially shredded. A witness told OCR that a student was recently able to climb up the walls to reach the pipes. Staff monitored the student and determined that he was safe, so they did not intervene as he ripped the padding.

The other seclusion room is located in a classroom that was previously used as a COAST classroom and is presently being used as a PATHS classroom. The District told OCR that this room is primarily used as a quiet room for students who self-select to go there. The seclusion room is approximately 5.5 x 9.5 feet. The door contains a window and a lever handle on both sides of the door. The door does not lock. The walls are padded up to 6 feet high, and the floor is also padded. There is a grate that runs the length of the wall well above the wall padding. The ceiling contains unpadded piping. The room is well-lit and does not contain any furniture or other objects. OCR reviewed an IEP in which the parent asked the school to evaluate the Burns break space due to the presence of potentially dangerous brick walls, heater vents, and a window.

d. Saco Middle School

There are two current seclusion rooms and one former seclusion room at Saco Middle School. One of the seclusion rooms is located in a wing that is used by the PATHS program. The seclusion room is approximately 7 x 10 feet. The door has a window and a handle on both sides. There is no lock on the door. The floor is carpeted, the walls are drywall, and there is a metal vent across the ceiling. A witness told OCR that this seclusion room has frequently been used as a self-selected break space.¹⁸

Typically, there is a seclusion room in the back of the COAST classroom; however, during the 2020-2021 school year, the classroom was used as a nurse's office, and the seclusion room was used as an isolation room for students with COVID-like symptoms. This seclusion room is known as the Break Space. The room is approximately 3 x 12 feet. The door contains a window and a handle on both sides. The door does not lock. The walls are padded up to 6 feet high, and the floor is also padded. The room is well-lit, and there is a blue cover over the light to dim it.

¹⁸ The wing also contains a quiet workspace (with no door) and a student office area.

The room does not contain any furniture. A witness told OCR that the Break Space was used both for seclusion and for 1:1 instruction. He did not recall the Break Space being used often.

During the 2020-2021 school year, the COAST program was situated in a portable classroom across the parking lot from the school. The portable classroom contains a seclusion room that is approximately 8 x 8 feet. The door to the seclusion room has a handle on both sides. At the time of OCR's virtual observation, the door did have a lock; however, the District informed OCR that the handle would be switched to one that does not have a lock. The walls of the seclusion room are plywood, and there is an outlet on the wall with a removable outlet cover. A witness told OCR that the room has only been used for self-selected breaks and not for seclusion.

E. FAPE-Related Observations for [Redacted] 2017-2018 [Redacted] Classroom

OCR observed that there were significantly more incidents of restraint and/or seclusion during the 2017-2018 school year [Redacted], than in the following years ([Redacted] in 2018-2019; [Redacted] in 2019-2020) and that the incidents at [Redacted] in 2017-2018 accounted for nearly 40% of all incidents Districtwide through the entire Review Period ([Redacted] of 524 total incidents). OCR examined student records and interviewed employees regarding the practice of restraint and seclusion in [Redacted] during the 2017-2018 school year, and OCR found that most of the students who experienced the highest numbers of incidents were in [Redacted].

Multiple witnesses expressed concerns with the frequent use of restraint and/or seclusion by the teacher in [Redacted] during the 2017-2018 school year ([Redacted] Teacher), and one witness told OCR that certain guardians had expressed concerns as well. Witnesses also told OCR that, during the 2017-2018 school year, the students in this classroom had very high needs and many had a history of trauma. The [Redacted] Teacher told OCR that the District did not have enough behavior programs to spread out the high needs students and that it was challenging to have [Redacted]. Another staff member noted that many students were in crisis that spring, and that students started mimicking unsafe behavior. Two witnesses stated that the class did not have sufficient staffing, and one felt unsafe conducting restraints in the "chaotic environment." A staff member described the [Redacted] Teacher as a "hands-on" person who did not follow the vendor program protocol.

As noted above, OCR found that a number of students in [Redacted] 2017-2018 [Redacted] classroom were subjected to high numbers of restraints and/or seclusions. Student 1, a [Redacted], was subjected to approximately 61 incidents of restraint and/or seclusion. These incidents amounted to more than 400 minutes, with several incident reports failing to note an end time. Student 1 was [Redacted] due to increased unsafe behaviors, and he has a history of significant trauma ([Redacted]). Student 2 was a [Redacted] student who had an IEP classification of [Redacted]. Student 2 was subjected to approximately 39 incidents of restraint and/or seclusion. He acted aggressively, engaged in self-harming behavior, and was also [Redacted]. Student 3, [Redacted], and Student 4, a [Redacted]. Student 3 had an IEP classification of [Redacted]. She was subjected to approximately 34 incidents of restraint and/or seclusion. She hit and bit staff members. Student 4 had an IEP classification of [Redacted], and he was subjected to approximately 22 incidents of restraint and/or seclusion. One witness stated that changes at home might have contributed to an increase in [Redacted] behavioral incidents. A staff member told OCR that the [Redacted] Teacher instructed her to carry Student 4 when he

was having an outburst. When the staff member refused because she felt it was inappropriate, the [Redacted] Teacher would pick him up herself. The staff member also recalled a time when Student 4 was banging his head on the wall, and the [Redacted] Teacher told her to leave him and that he would “stop when it hurts.”

Students in [Redacted] classroom during the 2017-2018 school year may have been subjected to additional incidents of restraint and/or seclusion that District staff did not formally document on incident reports. Witnesses told OCR that the [Redacted] Teacher did not consistently complete incident reports and discouraged other staff members in the classroom from completing them as well.¹⁹ The [Redacted] Teacher told OCR that the staff members in her classroom were very sensitive and would write up every incident, even if it was very brief.

OCR does not have detailed data regarding whether students received educational and related services during periods of restraint or seclusion, or whether they made up any missed instruction or services. While OCR received documentation indicating that IEP teams convened for certain students in [Redacted] classroom (e.g., Student 1), OCR did not receive documentation indicating that the District reevaluated several other students in [Redacted] classroom who experienced numerous incidents of restraint and/or seclusion (e.g., Student 2 and Student 4) to determine whether the students needed additional or different services to receive FAPE. Likewise, despite the District requirement to hold debrief meetings with staff after incidents of restraint and/or seclusion, two staff members in [Redacted] classroom told OCR that there were no such meetings during the 2017-2018 school year.²⁰ One of those witnesses expressed to OCR that she felt unable to effectively advocate for the needs of her students. In addition, these staff members told OCR that they were not invited to (and did not attend) team meetings.

In an interview with OCR, the Superintendent acknowledged that it was “pretty bad” at [Redacted] School during the 2017-2018 school year. However, the District represented that its regular monitoring of restraint and seclusion data resulted in the creation of [Redacted]. The District represented that the [Redacted] Teacher left the District [Redacted], and the District subsequently hired a new behavior specialist to redesign and run the classroom for the next school year. In the summer of 2018, the District also hired a new Assistant Director of Special Services (subsequently promoted to Director of Instructional Support) to assess and improve the former behavioral programs throughout the District. Witnesses discussed a shift in mentality to “waiting out” students, focusing on de-escalation practices, and using the least restrictive response (such as remaining in the seclusion space with the student). Witnesses described several actions taken by the District to decrease incidents of restraint and seclusion, including staff trainings, increased staff for preventative work (e.g., social workers and counselors), close contact with students and their families, and the creation of a mental health team. One witness who had previously worked in [Redacted] in 2017-2018 described these changes as a “revamping of the program by qualified people who had the best interests of the children in mind.”

¹⁹ According to one witness, the [Redacted] Teacher told other staff members that they were “making more work” for her by filling out incident reports, in reference to the state requirement to convene meetings after three incidents of restraint and/or seclusion.

²⁰ One of these witnesses stated that debrief meetings did occur during the 2018-2019 and 2019-2020 school years.

The following school year, the number of incidents of restraint and/or seclusion at [Redacted] School dropped by more than 80% – from 209 incidents in the 2017-2018 school year to 39 incidents in the 2018-2019 school year, followed by an additional 33% decline in the 2019-2020 school year, down to 26 incidents total.

F. FAPE-Related Observations Outside of [Redacted] 2017-2018 [Redacted] Classroom

While [Redacted] classroom during the 2017-2018 school year accounted for a significant portion of the District’s incidents, and witnesses raised concerns specific to that classroom, OCR also observed other practices related to the use of restraint and/or seclusion during the rest of the Review Period and in the other schools in the District.

1. Notable Restraints and/or Seclusions

OCR noted several students in other schools who experienced notable restraints and/or seclusions. For example, Student 5 was a [Redacted]. During the 2017-2018 school year, he was subjected to approximately 41 incidents of restraint and/or seclusion, many of which consisted of multiple or lengthy restraints. Student 5 engaged in aggressive and self-injurious behaviors.

Student 6, who has an IEP for a [Redacted], attended [Redacted] School during the 2019-2020 school year.²¹ He experienced approximately 10 incidents of restraint and/or seclusion, at least six of which involved a supine hold. Student 6 engaged in self-injurious behavior, and his [Redacted] expressed concerns in his 2019 IEP about the District’s use of physical movements and the quiet room. Another student (Student 14) briefly attended the same program until the [Redacted] discharged him after he was subjected to seven incidents of restraint and/or seclusion in September 2019.

Student 1 experienced 29 incidents of restraint and/or seclusion at [Redacted] School during the 2019-2020 school year, amounting to more than 600 minutes with 3 seclusions that each lasted more than one hour.²² Student 7, who was in the [Redacted] School, experienced at least 11 incidents of restraint and/or seclusion during the 2018-2019 school year; however, he did not receive his first IEP until [Redacted]. In addition, OCR reviewed certain records that referenced incidents of restraint and/or seclusion for which OCR did not receive incident reports—thus, other students may also have experienced frequent or notable restraints and/or seclusions during the Review Period.²³

²¹ This was the only school year in which the District had a [Redacted].

²² At the suggestion of the District’s behavior specialist, Student 1 [Redacted] starting in the 2018-2019 school year. A witness described Student 1 as very successful at [Redacted] and attributed a spike in incidents in early 2020 to [Redacted].

²³ For example, OCR reviewed notes from a Chapter 33 meeting for Student 7 that referenced three restraints, but the District did not provide any incident reports to OCR for that timeframe. Likewise, notes from a Chapter 33 meeting for Student 8 referenced three incidents during a timeframe in which the District only provided one report to OCR. In addition, Student 9’s discipline log and IEP referenced a restraint for which OCR did not receive an incident report.

OCR does not have documentation as to whether students received educational and related services during periods of restraint or seclusion, or whether they made up instruction or services afterwards. Several witnesses told OCR about the difficulty of making up instruction and rescheduling related services following incidents of restraint and/or seclusion. However, OCR noted that many other staff members indicated that students would generally make up missed instruction, work, or services once the students had calmed down.

One teacher told OCR that students would make up the work because they do not want students to miss anything, and they want students to be able to seamlessly rejoin their programs. Two other staff members emphasized that part of the debriefing process with the student involved coming up with a plan to transition back to class and make up missed work. As one example, a witness told OCR that staff was adamant that Student 8 would make up her missed work, and another witness stated that they would build in times during the day to help her catch up and would make sure that Student 8's family knew what she needed to do to catch up.²⁴ Student 5's teacher would make sure that Student 5 received 1:1 time with staff as well as time with his regular education teacher to catch up on his work. The same teacher taught Student 1 during the 2018-2019 school year—she told OCR that staff kept a folder of Student 1's missed work, that they coordinated with his regular education teacher to prioritize assignments to make up, and that he would catch up on his missed work at school and at home. In addition, three witnesses told OCR that specialists kept track of any missed sessions and would reschedule the sessions or come back when the student was de-escalated. Finally, one witness expressed to OCR that talking through the behavior incident is a way of working on a student's social-emotional goals.

In contrast to the lack of meeting records provided for students in [Redacted] classroom during the 2017-2018 school year, as noted above, OCR received substantial evidence for students who attended other schools or who attended [Redacted] during a later year that suggests that their teams did meet in response to changes in the nature or frequency of behaviors to evaluate or reevaluate whether additional or different services were needed.

For example, Student 10 was subjected to 39 incidents of restraint and/or seclusion while at [Redacted]. Her IEP team met often to discuss her behavior, and [Redacted] staff discussed her at weekly meetings. Student 10's IEP team changed her eligibility category, added services to her IEP, and revised her PBSP partially in response to behavioral incidents.²⁵ Student 9 was a student at [Redacted] with an IEP classification of [Redacted]. OCR reviewed documents indicating that Student 9's PBSP was updated at least eight times during the Review Period. Student 11, who has a [Redacted], experienced 8 restraints while attending [Redacted] School in fall 2018. A witness told OCR that Student 11's IEP team met frequently during this timeframe, and documents reflect that the IEP team added services in fall 2018 and later [Redacted] due to increasing self-injurious behaviors. Student 1 experienced 29 incidents during the 2019-2020 school year while he was attending [Redacted] School. His teacher told OCR that Student 1's IEP team convened multiple times, reflected on behavior data, consulted with the social worker, and made changes to his program. Records confirm that Student 1's team changed his IEP services, updated his PBSP, and moved up his triennial evaluation. Student 5 experienced 41

²⁴ Student 8 attended the [Redacted] School during the 2017-2018 and 2018-2019 school years. She had an IEP with classifications of [Redacted].

²⁵ Student 10's PBSP includes a Crisis Plan that identifies when and how to use physical restraint.

incidents of restraint and/or seclusion at [Redacted] School in the 2017-2018 school year, followed by 7 incidents in the next year. Records reflect that his IEP team met frequently to review and adjust his IEP and PBSP in response to behavioral concerns, and a behavioral specialist was also involved. District staff worked with his parent to develop a release protocol after noticing a re-aggression trend, and they created an individualized transition approach for Student 5 to gradually move to [Redacted] School.

2. Early Dismissals and Stay-Home Directives

Several witnesses shared with OCR that after certain incidents of restraint or seclusion, administrators would send students home early or require them to stay home for a few days. OCR also found student records that corroborated these statements.

For example, OCR reviewed numerous incident reports indicating that Student 9, a student at [Redacted] School, was dismissed early after an incident of restraint and/or seclusion. While Student 9's IEP included [Redacted], his IEP was amended to discontinue this provision in October 2017. However, witnesses recalled Student 9 being sent home early relatively frequently, quite a few times, or roughly once every other month. Student 9 was unable to deescalate, and staff felt that it was not safe to keep a student in a prolonged restraint or seclusion. One staff member told OCR that staff felt that they could handle Student 9, but that administrators would send him home. An administrator told OCR that, around 2017, his reaction would be to call Student 9's parent to pick him up early. Two witnesses recalled that Student 9's parent would come to the school upset and would choose to take him home.

Additionally, OCR reviewed evidence about early dismissals for Student 12, a student at [Redacted] School. Student 12's 2017 IEP included a statement that her parent did not want to pick Student 12 up from school when she was escalated because her parent felt that it was disruptive for her to be dismissed from school and that it violated her rights. Witnesses also told OCR about other students who were occasionally sent home early due to behavioral incidents, including Student 6, Student 13, and Student 8.²⁶ None of these students had an IEP that included a shortened school day.

In addition to sending students home early after incidents involving restraint and/or seclusion, the District asked certain students to stay home for a few days after a significant behavioral incident. A Burns administrator told OCR that after a significant incident occurs, they would sometimes ask parents to "hold the student up" for a couple of days. This administrator identified one situation in which the District asked the student to stay home while they were figuring out a plan for him. Another witness reported that, in rare circumstances, the Fairfield principal would tell a student to stay home for a few days following a behavior incident due to a safety risk.

²⁶ The [Redacted] Teacher told OCR that when a student was not regrouping after a behavioral incident and it was no longer therapeutic to continue a seclusion, the principal would call the parent to pick up the student. A Burns teacher told OCR that the timing of the incident was relevant to the decision of whether to send a student home early—if a student was escalated close to dismissal time, it might not be safe for the student to ride the bus.

The District did not formally track early dismissals and stay home orders, so OCR is unable to assess the frequency of these occurrences or whether any missed instruction and/or services were made up afterwards.

3. School Resource Officer

The District has one school resource officer (SRO) who serves all four schools. According to documents provided to OCR and interviews with District staff, the SRO who worked in the District during the Review Period was not certified by the vendor program but was involved in certain incidents of restraint. One staff member recalled two restraints by the SRO at Saco Middle School involving Student 9, and an administrator likewise told OCR about an incident in which the SRO inserted [Redacted] into a situation and restrained Student 9. The administrator felt that the SRO's involvement escalated the incident and resulted in Student 9 being sent to the hospital for a crisis assessment. OCR also reviewed a Burns incident report that described the SRO and the principal restraining Student 12 for four minutes, and another Burns incident report that stated that the SRO briefly restrained Student 15 on the floor.²⁷

Relatedly, staff at both Burns and Saco Middle School told OCR that they tried to avoid calling the SRO because [Redacted] tended to cause students to further escalate. A Saco Middle School staff member told OCR that staff would try everything that they could before calling the SRO because, as soon as the SRO arrived, "the kids would go through the roof" and staff were unable to "get the kids back," sometimes resulting in school administrators asking parents to pick up these students. A Saco Middle School administrator told OCR that he was so concerned by the SRO's intervention that he created a document to track when the SRO was not following behavior plans when responding to an incident. OCR reviewed this document and noted four incidents in which the SRO was reported to not have followed a student's behavior plan and another two incidents in which the SRO inserted [Redacted] without being asked to intervene. In one of these incidents, the SRO initiated a hold that a staff member reportedly believed to be inappropriate.

The SRO no longer works for the District or for the local police department, and OCR was unable to locate the SRO to conduct an interview with [Redacted]. OCR noted that one witness told OCR that she observed a restraint by the current SRO in October 2020.

Analysis

OCR's investigation to date raises concerns about whether a number of students in [Redacted] classroom, who experienced frequent or lengthy restraints and/or seclusions, received a FAPE during the 2017-2018 school year. Data and interviews raise questions about whether these students were receiving educational services during periods of restraint or seclusion and whether their 504 and/or IEP teams consistently assessed if and how their time away impacted the receipt of FAPE. OCR is also concerned that despite behaviors that increased in frequency or intensity, the District may not have reevaluated each of these students to determine whether their current array of regular or special education and related aids and services was sufficient to provide a FAPE. Further, the evidence reviewed to date raises questions about whether, in assessing these

²⁷ This incident with Student 15 may have involved the high school's SRO rather than the District SRO.

students and their needs, 504 and/or IEP teams included persons with knowledge about the evaluation data, or carefully considered information from a variety of sources. These concerns are based in part on information indicating that the educational technicians did not have the opportunity to provide input at 504 and/or IEP meetings or staff debrief meetings that followed behavioral incidents. These concerns are also based on evidence suggesting that the [Redacted] Teacher may not have consistently recorded incidents and may have discouraged staff from submitting incident reports that would have been relevant to understanding the students' needs.

In addition to OCR's FAPE concerns with [Redacted] classroom in 2017-2018, evidence reviewed to date raises concerns about whether other students in the District received a FAPE due to frequent or notable restraints and/or seclusions. While evidence suggests that the 504 and/or IEP teams generally reevaluated these students to determine whether their current array of regular or special education and related aids and services was sufficient, OCR does not have sufficient evidence as to whether 504 and/or IEP teams consistently assessed any impact of the time away (i.e., missed services during periods of restraint or seclusion) on the receipt of FAPE.

Also, evidence reviewed thus far suggests that students may have experienced additional incidents of restraint and/or seclusion for which the District did not provide records to OCR, which interferes with OCR's ability to identify the full scope of the compliance concerns. Similarly, OCR is concerned that the District's inaccurate reporting to the CRDC may indicate internal recordkeeping deficiencies that may have prevented the District from tracking students who were experiencing severe or recurring behavioral incidents.

Furthermore, evidence reviewed to date raises concerns that after certain incidents of restraint or seclusion, administrators sent students home early and/or required them to stay home for a few days. OCR is concerned that these students missed services that were not made up, which may have interfered with their ability to receive a FAPE. In addition, OCR is concerned that the District may not have consistently reevaluated these students even though informal dismissals and unofficial suspensions may have interfered with the students' receipt of FAPE, or put the District on notice that the students' educational programs might not be meeting their needs.

Evidence reviewed thus far also raises concerns about the SRO, including her failure to adhere to students' behavior plans, and concerns about whether her involvement interfered with students' access to their educational services in a manner that denied them a FAPE.

Finally, based on data review and observations, OCR questions the safety of the seclusion spaces. Students have climbed on the pipes in Fairfield and Burns seclusion rooms, some of the rooms have unpadded walls, and a former seclusion room at Saco Middle School was very small. During OCR's observation, the temporary seclusion space at Saco Middle School contained a door with a lock and had an accessible outlet.

Resolution Agreement

Notwithstanding the concerns, above, OCR notes that the District has made significant changes, including the hiring of additional behavior staff and the development of a new in-District day treatment program, which has contributed to a significant decline in the number of incidents of restraint and seclusion. Prior to the conclusion of OCR's investigation and pursuant to Section

302 of OCR's *Case Processing Manual*, the District expressed an interest in resolving this compliance review and OCR determined that a voluntary resolution is appropriate. Subsequent discussions between OCR and the District resulted in the District signing the enclosed Agreement which, when fully implemented, will resolve this compliance review. OCR will monitor the District's implementation of the Agreement.

Conclusion

This concludes OCR's compliance review of the District. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District must not harass, coerce, intimidate, discriminate, or otherwise retaliate against an individual because that individual asserts a right or privilege under a law enforced by OCR or files a complaint, testifies, assists, or participates in a proceeding under a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect personally identifiable information that could reasonably be expected to constitute an unwarranted invasion of personal privacy if released, to the extent provided by law.

Sincerely,

/s Adrienne Mundy-Shephard
Acting Regional Director

Enclosure

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