

RESOLUTION AGREEMENT
Berkeley County Schools
#03145002

To resolve the above-referenced compliance review initiated by the U.S. Department of Education, Office for Civil Rights (OCR), Berkeley County Schools (the District) agrees to implement the terms of this Agreement. This compliance review was initiated pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504), and its implementing regulation at 34 C.F.R. part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), and its implementing regulation at 28 C.F.R. part 35. OCR conducted the compliance review to determine whether the District discriminates against students with disabilities by subjecting them to the excessive use of restraint and seclusion, and whether students with disabilities are denied a free appropriate public education because of the use of restraint and seclusion.

During the investigation, before OCR made findings, the District indicated its willingness to ensure compliance with Section 504 and Title II. The District's decision to enter into this Agreement is not an admission of liability or wrong-doing, nor shall it be construed as such.

Data Collection

1. The District will develop a system for ensuring that it accurately records the number of restraint and seclusion incidents that occur to allow for accurate reporting to the Civil Rights Data Collection. The District will provide a written description of its proposed system to OCR for review and approval. At minimum, the system will ensure that:
 - restraint and seclusion incidents involving both students with and without disabilities can be recorded;
 - documentation of restraint and seclusion incidents are maintained with sufficient detail to determine if the incident meets the definition of restraint or seclusion;
 - debriefing has been carried out after an incident of restraint;
 - incident(s) are maintained in the student's academic file; and
 - incidents are promptly reported to parent(s), and guardian(s), the Office of Special Education, and the School Board or Legal Department.

REPORTING REQUIREMENT: Within 30 days after the date this Agreement is signed, the District will submit to OCR for review and approval its proposed system for data collection and reporting.

2. The District will consider and respond to any feedback from OCR with respect to the proposed system for data collection and reporting. After obtaining OCR's approval, the District will implement the data collection and reporting system district-wide.

REPORTING REQUIREMENT: Within 30 days of obtaining OCR's approval of the proposed system, the District will provide OCR with documentation showing that the system has been implemented. Annually, on June 15, the District will provide OCR with a report detailing the use of restraint and seclusion in the District during the previous school year.

Training

3. The District will develop training materials, or revise its existing materials, which review the District's policies and procedures for the use of restraint and seclusion, as well as requirements for documenting restraint and seclusion incidents with adequate detail. The District will provide the training materials to OCR for review and approval.

REPORTING REQUIREMENTS: Within 30 days after OCR has approved the District's data collection system pursuant to Paragraph 1 of this Agreement, the District will provide OCR with a copy of the proposed training materials, including the name and title of the trainer, their qualifications, and any handouts or presentations developed.

4. The District will consider and respond to any feedback from OCR with respect to the proposed training materials. After obtaining OCR's approval, the District will provide the training to all School-level administrators and all personnel who are authorized to use restraint or seclusion with students. The training will occur no later than the beginning of the next school year.

REPORTING REQUIREMENT: By September 15, 2018, , the District will submit to OCR the date(s) of the training, the name and title of the trainer, the materials used or disseminated, the sign-in sheets indicating the names and titles of participants, and an affirmation that all required participants receive the training.

Provision of a Free Appropriate Public Education

5. The District will review the records of any student who was subject to five or more incidents of restraint or seclusion during either the 2015-16, 2016-17 or 2017-18 school year (i.e., a multidisciplinary team for students with disabilities and an SAT team for students without disabilities). For students with disabilities, the team will determine whether the student is entitled to compensatory services and whether the student's educational program requires modification (including eligibility for disability-related services). The District will provide the students' parents or guardians with a meaningful opportunity to provide input into these determinations 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. For students without disabilities, the team will consider whether the student needs to be evaluated for disability-related services.

REPORTING REQUIREMENT: Within 60 days of this Agreement, the District will submit to OCR documentation showing implementation of Item 5, including a copy of any meeting minutes, a copy of any IEPs developed for the students, documentation of any input provided by the students' parents and showing that procedural safeguards were provided to them, and any other documentation relevant to the determinations reached in accordance with Item 5. Should the District determine that no compensatory education or other remedial services are necessary, the District will provide a written explanation of the reasons for that determination, along with any supporting documentation. OCR will review the documentation submitted to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.33-104.36, in making these determinations, and notify the District when it has completed this review.

6. After OCR has reviewed and accepted the District determination the District will take steps to implement the compensatory services, if any, agreed upon by the IEP team.

REPORTING REQUIREMENT: Within 30 days from the date of OCR's acceptance of the proposed compensatory services (if any) or other changes to a student's education program, the District will provide documentation that it has provided or is in the process of providing the compensatory services or made other changes to the student's program. The District will provide periodic reports to OCR until the provision of any compensatory education is completed.

The District understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of the Agreement, if necessary, OCR may visit the District, 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 regulation implementing Section 504, at 34 C.F.R. Sections 104.4 and 104.33, and Title II, at 28 C.F.R. Section 35.130, which were at issue in this case. Upon completion of the obligations under this Agreement, OCR shall close and dismiss 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.

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

/s/

4/23/18

Superintendent or Designee

Date