



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS, REGION IV

61 FORSYTH ST., SOUTHWEST, SUITE 19T10
ATLANTA, GA 30303-8927

REGION IV
ALABAMA
FLORIDA
GEORGIA
TENNESSEE

June 4, 2021

Mr. Robert Thomas,
Superintendent
Knox County School District
912 S. Gay Street
Knoxville, TN 37902

Re: OCR Compliance Review Docket No. 04-19-5001

Dear Superintendent Thomas:

On January 29, 2019, the U.S. Department of Education (Department), Office for Civil Rights (OCR), notified Knox County School District (District) that OCR had selected the District for a compliance review. The 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 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.

OCR is responsible for enforcing Section 504 and Title II, which prohibit discrimination on the basis of disability in any program or activity receiving Federal financial assistance from the Department or by 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.

During the investigation, OCR reviewed documents produced by the District in response to OCR's requests for data relevant to the review, including: District policies and procedures; staff training materials related to restraint and isolation; documents related to evaluating and providing services to students with disabilities; education records, evaluation records, and other documents concerning District students with disabilities who were reported to have been restrained or secluded during the 2017-2018 and 2018-2019 school years (the Review Period); education records, evaluation records, and other documents concerning District, non-disabled students who were reported to have been restrained or secluded during the Review Period; documents related to

*The Department of Education's mission is to promote student achievement and preparation for global competitiveness
by fostering educational excellence and ensuring equal access.*

www.ed.gov

behavior intervention; restraint and seclusion records; discipline records; S-team¹ records; and employee discipline procedures.

OCR interviewed over 60 District staff members, including: the District's current and former exceptional student education (ESE) executives, the special education supervisor, principals and assistant principals of ten of the District's schools, behavior liaisons, the District's two board certified behavior analysts (BCBAs), several special education teachers, several special education teaching assistants, members of ten of the District's schools' therapeutic crisis intervention (TCI) response teams, TCI trainers for the District, the District's special education ombudsman, the District's director of employee relations, one of the District's employee misconduct investigators, and the psychological services Supervisor.²

OCR also conducted two onsite visits in this matter. During the first onsite, in July 2019, OCR interviewed District staff and visited the seclusion rooms in the District's two special day schools—Knox Adaptive Education Center (KAEC) and Ridgedale Alternative School (Ridgedale), which are the sites where the most restraints and seclusions physically occurred in the District during the Review Period.

During the second onsite, in September 2019, OCR visited KAEC and Ridgedale, as well as the following schools: Dogwood Elementary School, Emerald Academy, Mooreland Heights Elementary School, A.L. Lotts Elementary School, Sarah Moore Greene Elementary School, Amherst Elementary School, Powell Middle School, and Karns High School. During this onsite, OCR interviewed multiple staff at each school, toured each school, and viewed seclusion rooms.³ OCR also held two public forums for parents⁴ in the District whose students had experienced restraint or seclusion. OCR also conducted an online survey for parents of students with disabilities.⁵ Finally, OCR interviewed parents of students who had experienced restraint or seclusion in the District.

¹ An S-team is a "Student Team" in the District and includes key school staff as well as parents/guardians who meet to discuss issues concerning a particular student.

² These witnesses included staff who were at the schools in the District where restraints and seclusion appeared to be used most frequently, and/or appeared to have participated most frequently in restraint and seclusion episodes in the District.

³ Not all schools contained seclusion rooms.

⁴ For ease of reference, the term "parent" in this document refers to any and all parents, guardians, custodians, or others with legal custody and/or educational decision-making authority.

⁵ Nearly all of the survey respondents indicated that their child has an individualized education program or Section 504 plan.

LEGAL STANDARDS

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.⁶

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.

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 procedures for the

⁶ 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.

evaluation and placement of persons who, because of disability, need or are believed to need special education or related services.⁷

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;⁸ (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.

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.

FACTS

The District is one of the largest school districts in Tennessee with a 2019-2020 total student enrollment of 60,752 students, including 7,759 students with disabilities, and approximately 8,000 staff.⁹ The District has a total of 88 schools; it has fifty-one elementary schools, sixteen middle schools, sixteen high schools, and five other centers or schools, two of which are special day schools for children whose disabilities affect their behavior.¹⁰

⁷ 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).

⁸ 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.

⁹ <https://www.knoxschools.org/Page5504> (Last accessed by OCR January 16, 2020.)

¹⁰

<https://www.knoxschools.org/site/default.aspx?PageType=3&DomainID=4&ModuleInstanceID=53860&ViewID=6>

District's Special Day Schools

The District has two day schools that specifically serve student with disabilities -- KAEC and Ridgedale. KAEC is an intervention program that serves K-12 students that have a suspected or diagnosed emotional and behavior disorder (EBD). KAEC includes a self-contained school with its own building and premises, and "satellite" classes located in several other schools throughout the District. KAEC is comprised of three elementary, three middle, and seven high school classrooms, with a separate wing for each school level.¹¹

Students are assigned to KAEC after the school is identified as an appropriate placement for the students by their IEP teams.¹² The amount of time that a student remains at KAEC varies depending on the student's needs. Classes at KAEC are taught by a teacher and teacher's assistant, in addition to receiving assistance from paraprofessionals, therapists, and other staff throughout the school. KAEC also retains an intervention consultant, and a mental health team consisting of mental health professionals. The school has three isolation rooms. According to the District, KAEC serves approximately 100 students or less at any given time.

Ridgedale has a day program for students in kindergarten through age 22.¹³ Ridgedale serves students who receive special education services and students who are suspected of having a disability under IDEA and need behavior support. The determination to place a student at Ridgedale is made by a student's IEP team.

Overview of District Use of Restraint or Seclusion¹⁴ During Review Period

During the 2017-2018 school year, there were 1,344 restraint incidents involving 204 unique District students across 51 schools. In this same year there were 494 seclusion incidents involving 86 unique students across 19 schools. During the 2018-2019 school year, there were 1,115 restraint incidents involving 191 unique students across 53 schools. In this second year there were also 458 seclusion incidents involving 86 unique students across 24 schools. More than 40% of the instances of restraint or seclusion occurred while the student was attending KAEC or Ridgedale.

[446EE88-D30C-497E-9316-3F8874B3E108&RenderLoc=0&FlexDataID=95024&PageID=1](https://www.knoxschools.org/domain/2500) (Last accessed by OCR January 16, 2020.)

¹¹ <https://www.knoxschools.org/domain/2500> (Last accessed by OCR April 20, 2020.)

¹² This letter uses the term "IEP team" to refer to the group of persons who made placement and other educational decisions concerning students with, or suspected of having, a disability, regardless of whether the decisions were made pursuant to Section 504 or IDEA.

¹³ The school also houses an alternative middle school for general education students with disciplinary issues. This school and the day school are on different floors of the two-story school building.

¹⁴ Throughout this document the phrase "restraint or seclusion" or the phrase "restraints or seclusions" refers to situations in which there was a restraint, a seclusion, or both a restraint and a seclusion.

Fifty-four students -- all of whom were students with disabilities -- had at least 15 restraint or seclusion incidents cumulatively during the Review Period (Selected Students). Thirty-one students who had not been identified as a student with a disability experienced three or more restraint or seclusion incidents cumulatively during the Review Period.

Restraint times ranged from 1 minute up to approximately 126 minutes. Some students experienced ten or more under-fifteen-minute restraints during a period of approximately ninety minutes. Seclusion times ranged from 1 minute to approximately 315 minutes.

Board Policy J-191, titled “Misbehaviors and Disciplinary Options,” is the District’s behavior code. The behavior code has only one paragraph that addresses restraint or seclusion; it provides:

In accordance with T.C.A. § 49-10-1305¹⁵, a teacher, principal, school employee may: use a physical holding restraint for a brief holding of a student in order to calm or comfort; the minimum contact necessary to physically escort a student from one area to another; assist student in completing a task or response if the student does not resist, or resistance is minimal in intensity or duration; or may hold a student for a brief time in order to prevent any impulsive behavior that threatens the student’s immediate safety or to prevent bodily harm or death to another person.

The District does not have other written policies or procedures regarding restraint or seclusion.

According to several District witnesses, the District applies the provisions of Tennessee law concerning restraint and seclusion.¹⁶ During their OCR interviews, District witnesses stated they interpreted Tennessee law to only allow restraint or seclusion, which District witnesses refer to as “isolation,”¹⁷ in an emergency situation when someone would be harmed without staff intervention

¹⁵ See Tenn. Code § 49-10-1301 *et seq.* titled “Special Education Isolation and Restraint Modernization and Positive Behavioral Supports Act.” Board Policy J-191 cites Tennessee Code Section 49-10-1305 titled “Restrictions on administration of, or use of, isolation or restraint.” Tennessee Code Section 49-10-1305(3)(A)(i)-(iv) states that the following “uses of physical holding restraint” are “not prohibited”: “(i) The brief holding by an adult in order to calm or comfort; (ii) The minimum contact necessary to physically escort a student from one area to another; (iii) Assisting a student in completing a task or response if the student does not resist, or resistance is minimal in intensity or duration; or (iv) Holding a student for a brief time in order to prevent any impulsive behavior that threatens the student’s immediate safety.” A “physical holding restraint” is defined as “the use of body contact by school personnel with a student to restrict freedom of movement or normal access to the student’s body.” Tenn. Code § 49-10-1303. Tennessee Code Section 49-10-1305 prohibits the use of certain types of restraints, including chemical restraints, mechanical restraints, and “any form of life threatening restraints” on students receiving “special education services.” See Tenn. Code § 49-10-1305(a)(c) & (d). Tennessee Code Section 49-10-1305 also prohibits “the use of isolation or physical holding restraint as a means of coercion, punishment, convenience, or retaliation on any student receiving special education services.” See Tenn. Code § 49-10-1305(e)(1).

¹⁶ See Tenn. Code § 49-10-1301 *et seq.*

¹⁷ Tennessee law defines isolation and seclusion as synonymous terms. Tenn. Code § 40-10-1303(4). Herein, the words are used interchangeably.

to prevent that harm.¹⁸ The files of the Selected Students and of the thirty-one nondisabled students who were subjected to three or more restraints or seclusions reflected that generally District staff used restraint or seclusion in response to violent behaviors such as hitting, kicking, and biting, or attempts to elope.

District witnesses also reported that the District applies Tennessee law concerning the requirements for isolation rooms. The special education supervisor is the sole person in charge of certifying that isolation rooms in the District meet these Tennessee standards, and must certify the room before a school can use it for isolation.

District witnesses reported that the District's practice is to only permit restraints and isolations by staff who have participated in a specific university-designed training program delivered through a series of modules. As of July 16, 2019, the District had trained approximately 730 of its staff through these training modules. All KAEC and Ridgedale classroom and support staff have received this training. The training addresses: (1) de-escalation measures, (2) debriefs with students/staff, (3) guidance on when a restraint is necessary, and (4) instructions on how to perform restraints. The initial training consists of a four-day session. Afterwards, staff undergo one-day refresher trainings every 6 months. At the school level, a principal's recommendation is usually required for a staff member to receive this training. At each of the schools OCR visited, there were multiple staff -- ranging from teaching assistants and support staff to teachers to administrators -- who had received this training. The District's documentation regarding restraints and seclusions consistently showed that there were at least two trained staff members participating in the interventions.

According to District witnesses, staff must report each use of restraint or seclusion in writing on the day of the incident.¹⁹ School personnel are required to submit a handwritten form, which a District-level employee uses to prepare a separate form (State Form) for submission to the Tennessee Department of Education (TDOE) pursuant to Tennessee law.

District witnesses reported that the District's Crisis Intervention Review Committee (CIRC²⁰) has authority over and responsibility for the use of restraint and seclusion in the District. As of July 2019, the CIRC met monthly and its task was to review all of the restraint or seclusion incidents that have occurred in the District that month outside of KAEC or Ridgedale, to see if any

¹⁸ Tennessee Code Section 49-10-1304(a) states that "[a] student receiving special education services as defined by [Tennessee Code] § 49-10-102, may be restrained or isolated only in emergency situations." In turn, Tennessee Code Section §49-10-1303(3) states that "'emergency situation' means that a child's behavior poses a threat to the physical safety of the student or others nearby." Tennessee Code Section 49-10-1021(A)&(B) defines "child with disabilities" and includes various categories of disabilities.

¹⁹ The District's behavior code requires documentation of any "intervention." The code does not define "intervention" but appears to use the term broadly, referencing "intervention support" as well as consequences such as out of school suspension or assignment to an alternate in-school learning location.

²⁰ The CIRC is comprised of the Executive Director of Student Supports, the Elementary ESE Program Supervisor, the Middle and High School Special Education Supervisors, representatives of KAEC and Ridgedale, Behavior Liaisons, behavior analysts, and the District's Special Education Supervisor, who serves as Lead TCI Trainer.

pattern emerges, to discuss the students and personnel involved, and to apportion extra TCI-trained staff to schools or students that may need extra help. KAEC and Ridgedale are considered largely self-monitoring because 99% of staff at both of these schools are TCI trained and certified. Ridgedale's special education facilitator, who participated in CIRC meetings, said that on a weekly or biweekly basis she reviewed restraint and isolation reports to check for, among other things, the antecedent behavior that led to the restraint or seclusion.

FAPE-Related Observations

For most of the Selected Students, the IEPs included behavioral interventions and in most instances use of restraint or seclusion, or both. Generally, those interventions were identified in a Behavior Intervention Plan (BIP) which was incorporated into the IEP.²¹ In some instances a BIP and/or IEP specified a maximum duration of restraint or seclusion. In response to OCR's inquiry about how the District determines what restraint or seclusion duration to specify in a BIP or IEP, the District's psychological services supervisor told OCR that they attempt to begin with short restraint periods -- maybe up to five minutes -- and the BIP or IEP can be changed if needed. A District staff member noted that at KAEC and Ridgedale restraint times were often set at a maximum of 15 minutes for restraint or 60 minutes for seclusion.

The District's documentation reflected that the specification of a maximum 15-minute restraint and/or 60-minute seclusion was not limited to KAEC and Ridgedale. Across all schools, nearly half of the 54 Selected Students had a maximum 15-minute restraint and 60-minute isolation written into their IEP or BIP.

BIPs for some Selected Students at Ridgedale included a restraint time of up to 15 minutes and/or a 60-minute isolation maximum. However, there were also BIPs established at Ridgedale that specified different maximum times for one or both of these interventions. In one example the maximum seclusion time in the Ridgedale BIP was 30 minutes, while there had been a 60-minute maximum time in the BIP at the school from which the student had transferred. Two students had BIPs that allowed restraints or seclusions, but no maximum time was listed in the BIP.

For 16 of the Selected Students, OCR conducted an in-depth review of documents related to the processes through which IEP teams identified behavioral interventions (Student Files). Generally, the District's process involved drafting a Functional Behavioral Analysis (FBA) in addition to a separate BIP.²² Often, IEP meeting notes reflected discussion of FBAs and BIPs at IEP meetings. The meeting participants included a parent²³ except in instances in which the parent had stated that

²¹ Often the BIPs used the phrase "physical intervention" instead of the word "restraint."

²² In some instances, documents within the file referred to the FBA, but the FBA was not included in the file.

²³ OCR interviewed several parents of students who had experienced restraint, seclusion, or both in the District during the Review Period. The majority of these parents stated that they did not feel they had a choice as to whether restraints or seclusion were used with their child. In an interview one parent who felt he did have an option stated that he did object at an IEP meeting and was then told that if he did not assent to the use of "therapeutic holds" then the police would be called, at which point he "backed off." In addition, the majority of respondents on the parent-guardian survey stated that they did not have the option to decline the use of restraint and seclusion for their children.

the meeting should proceed in his/her absence. Other participants consistently included regular and/or special education teachers and a District representative. In some -- but not all -- instances, the attendees included service providers such as speech/language therapists, special education facilitators, an individual described as an “Interpreter of Evaluation Results” and/or behavior liaisons; in two instances a school psychologist participated in the meeting.²⁴

Ridgedale administrators told OCR that the school’s behavior liaison was on leave for much of the 2018-2019 school year. The Student Files included files of six students who attended Ridgedale at some point during the Review Period (Ridgedale students). The files reflected that there was a behavior liaison present at an IEP meeting for one of the Ridgedale students in March 2018 and for another Ridgedale student in October 2018. Generally, the FBAs and BIPs – which bore the same date – were signed by the members of the IEP team; occasionally the BIP did not include the signature of a behavior liaison.

Generally, when the IEP notes showed that teams discussed an increase or change in behaviors, the file did not reflect the team’s consideration of additional or updated assessments or evaluation materials, other than the FBAs prepared by staff, and in some instances the FBAs were not included in the file. One exception was that a team considered a recent psychoeducational report in an instance in which the parent advised that the student had recently been diagnosed with an additional condition.²⁵ The IEP meeting notes and FBAs in Student Files only occasionally reflected the frequency of the need to use restraint or seclusion to address behaviors or the duration of such interventions. Further, it is not clear that teams always had information that presented a complete picture regarding the extent of the use of restraint because some staff members did not report the use of restraints that were five minutes or less in duration (Brief Holds). Moreover, for some students the available District records included printed records of State Forms regarding restraints, but did not include handwritten forms, which captured more complete information about restraints that were started, temporarily released, and then resumed.²⁶

Some Student Files reflected that the students received counseling services, social/emotional support, autism support and/or Therapeutic Professional Partnership (TPP) services and in some

²⁴ In one instance, the School Psychologist attended a student’s fifth meeting at the school during the review period. At the time of that fifth meeting, which occurred in December 2018, the student had experienced 41 restraints since April 2018.

²⁵ The team later added a second disability category to the student’s classification.

²⁶ The handwritten form includes space to indicate beginning and end times for a restraint. It also asks whether staff temporarily released the student, or “paused” the restraint, and provides space for entering each time that the restraint began or was re-implemented and each time a restraint was paused or ended. For example, for one restraint of a student, the handwritten form listed a start time of 10:50 a.m. and an end time of 11:24 a.m., and also reflected that the restraint started at 10:50 a.m., was paused at 11:05 a.m., restarted at 11:10 a.m. and ended at 11:24 a.m. The State Form regarding this incident includes only the time frame of 10:50 a.m. to 11:24 a.m.

instances those services were modified in an addendum or during an annual update to an IEP.²⁷ Also, some of the students had aides assigned to them for all or part of the day. Generally, the meeting notes in the files did not reflect that the teams discussed the effectiveness of such services or the possible addition or enhancement of services that might address students' needs. Further, for students who were not already receiving services such as counseling, social/emotional support, or aides as a listed related service or "direct special education," the files did not consistently reflect discussion of the adequacy of the student's current array of services and whether the particular student needed additional or different services to meet their disability-related needs related to behavior.

The Student Files of the students who experienced restraint or seclusion at KAEC or Ridgedale reflected that they were referred to KAEC and Ridgedale by their IEP teams.²⁸ Their IEPs included a specific determination that they needed services that were not available at their zoned schools. Further, where available, meeting notes in the Student Files reflected that when teams agreed to a transfer to a special day school a representative from the special day school attended the IEP meeting to describe the school and the services it could provide.

Repeated restraints or seclusions resulted in some Selected Students accumulating multiple hours of time in restraint or seclusion during the Review Period and accordingly not receiving educational or other services during these periods. Among the highest recorded cumulative times in the records OCR reviewed are those of three students who spent more than 40 hours, 30 hours, and 18 hours in restraint or seclusion. Some District teachers described their efforts to assist students in making up work missed during periods of restraint or seclusion. However, IEP files of the Selected Students did not reflect team discussions about how these interventions impacted students' receipt of educational or supplemental services or whether existing services were adequate in light of a student having missed educational or other services. Moreover, the three students discussed above were among those for whom the Student Files did not consistently reflect an assessment of whether existing services met the students' needs. For one student, District records show an agreement to do an FBA when behaviors escalated after having previously improved, but there is no record of completion of the FBA or discussion of the effectiveness of the array of current services after that date. For another student, District records do not show any team discussion after the student's behaviors escalated following previous improvement in his behavior and expiration of his most recent BIP. For the third student, the records show that during a manifestation determination meeting there was a reference to strategies that had been successful, but otherwise, this student's records do not show a discussion of the effectiveness of the student's current array of services.

OCR's investigation to date did not include interviewing District staff regarding whether specific individual students received all of the interventions required by their IEPs or behavior plans prior to

²⁷ According to the District's supervisor of psychological services, the District employs assessment specialists, special educational personnel who are therapists, 14 counselors for students who have emotional needs or need mental health services, 39 psychologists and 14 TPPs.

²⁸ An additional student was already attending Ridgedale at the beginning of the Review Period and his file did not include the information related to his transfer to Ridgedale.

use of restraint or seclusion. However, witnesses did emphasize that de-escalation was always preferable to a restraint or seclusion and they also noted that trained staff are encouraged to constructively correct each other and to monitor safety during a restraint or isolation procedure. With regard to implementation of BIP or IEP provisions concerning the duration of a restraint, while restraint times were typically under the maximum amount specified in the BIP or IEP, on some occasions Selected Students were restrained longer than their maximum restraint time. For example, District documents reflected an instance in which a student was restrained for two nine-minute periods, while his BIP stated that he could be restrained for up to five minutes²⁹ Also, the documents reflected several instances when a student was secluded beyond the maximum amount of time called for in the student's BIP or IEP. These instances occurred across the District in multiple schools including Ridgedale, Karns Elementary, and KAEC.³⁰

OCR also reviewed files of the 31 students who were not classified as students with disabilities, but who experienced three or more restraints or seclusions during the review period.³¹ While many of these students were evaluated for disabilities, more than half of them were not. In many of these cases, the students were given an FBA or BIP, and discussed by an S-team, though not evaluated for a Section 504 Plan or IEP. Generally, the documents in the files of the students who were not evaluated did not include enough information to ascertain the reasons for not proceeding to an evaluation.

ANALYSIS

In light of the data reviewed by OCR, there are indications that students' IEP teams were not consistently making an individualized determination of students' maximum restraint and seclusion times. As discussed above, the District seems to default to 15 minutes/restraint and 60 minutes/seclusion in forty-eight percent of cases. A slight majority of the files reviewed by OCR reflected that individualized determinations were made for students with disabilities with regard to maximum restraint and seclusion times.

Further, the evidence reviewed to date raises questions about whether teams that met to make or revise plans consistently included or consulted persons with knowledge about the evaluation data or considered updated or comprehensive data. The teams did not always include a person identified as an interpreter of the evaluation results. Moreover, the one evaluation document that appears to

²⁹ For four other students, State Forms reflected restraints that exceeded the amount of time specified in the IEP or BIP; however, the District did not provide handwritten forms concerning those incidents and OCR therefore could not determine whether the total time in the State forms reflected two or more shorter restraints that fell within the times specified in the student's BIP or IEP.

³⁰ Several of the student files reviewed by OCR contained documentation of seclusions that had exceeded the time limits for physical interventions set forth in a student's IEP or BIP—in some cases doubling the time allowed, in other cases multiplying the time allowed by three to six times the allowable amount.

³¹ OCR selected these files for review with the expectation that given the number of instances of restraint or seclusion that each student experienced, the files would provide an opportunity to assess whether the District was evaluating students for a possible disability when their patterns of behavior reflected a possible need for regular or special education or related services because of a disability.

have been updated most regularly for students – the FBA – typically did not reference how frequently behaviors had resulted in restraint or seclusion or the duration of such interventions, and in some instances, although IEP documents referenced an FBA, the FBA was not included in the IEP file. Also, when restraint frequency was mentioned, the information may not have provided a complete or accurate picture of what was occurring with a student because of staff inconsistencies about documenting Brief Holds and the apparent failure to consistently retain the handwritten forms, which contained information about restraints that involved a temporary release. The absence of evidence reflecting consideration of information about the frequency or duration of restraints and seclusions in FBAs or at meetings, coupled with inconsistencies about reporting Brief Holds, also raises a question about whether parents were consistently provided sufficient information to have a meaningful opportunity to participate on IEP teams. Based on conversations OCR staff had with parents at OCR-hosted forums, OCR interviews of parents in the District, and information gathered from District parents through OCR's online survey about restraint and seclusion, most parents reported that the District informed them when their child was restrained or secluded, but some parents stated that they did not feel they were being notified of every restraint or seclusion in a reliable way.

Moreover, the evidence reviewed thus far does not show that as students' behaviors increased, changed, or intensified, their teams consistently reviewed whether the current array of regular or special education and related aids and services was sufficient to provide FAPE, or whether and to what extent additional or different interventions or supports and services might be needed. To the contrary, IEP notes in the Student Files did not reflect discussions of the effectiveness of services and rarely reflected whether additional supports or types of services would enable the District to better meet the students' needs. Similarly, with respect to more than half the students who were not classified as students with disabilities, but who experienced three or more restraints or seclusions during the review period, OCR found a lack of evidence whether they were evaluated for disabilities.

Finally, Selected Students were not receiving educational services during periods of restraint or seclusion, and the evidence raises a question as to whether their educational teams consistently assessed how the time away from educational services impacted the students' receipt of FAPE and what further services or other adjustments, if any, were appropriate to ensure that the students in fact received a FAPE.

RESOLUTION AGREEMENT

The District expressed an interest in resolving this compliance review pursuant to Section 302 of the CPM, and OCR determined that it would be appropriate to resolve this compliance review pursuant to Section 302. The District signed the enclosed Agreement that, when fully implemented, will resolve the compliance review. The Agreement will require the District to take certain actions related to the following: determining individualized maximum seclusion or restraint times when deemed appropriate by an IEP team; assessment of the adequacy of students' current interventions and supports in light of uses of restraint or seclusion and making adjustments when needed, as well as a review of the files of certain students listed in an attachment provided by OCR; production of information and if requested files, related to restraint and seclusion of students

with disabilities during the 2020-2021 school year; evaluation of students subject to restraint or seclusion under circumstances that provide a reason to believe the student may need special education and related services because of a disability, including a review of files of certain students listed in an attachment provided by OCR; recordkeeping; and training.

CONCLUSION

This concludes OCR's compliance review of the District. 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 duly authorized OCR officials and made available to the public. 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.

Please be advised that the District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint with the District or with OCR, or participated in any complaint resolution process. If this happens, the individual subjected to such treatment may file a complaint alleging such treatment.

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

Sincerely,



Melanie Velez
Regional Director