



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

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REGION VI
ARKANSAS
LOUISIANA
MISSISSIPPI
TEXAS

Re: OCR Docket No. 06145002

Mr. Gary Patterson, Superintendent
Pflugerville Independent School District
1401 W. Pecan Street
Pflugerville, Texas 78660

Dear Mr. Patterson:

The purpose of this letter is to advise you of the resolution of the above-referenced compliance review of the Pflugerville Independent School District (PISD or District), in Pflugerville, Texas. The U.S. Department of Education (Department), Office for Civil Rights (OCR) initiated the compliance review on September 26, 2014, under Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12132. The compliance review examined the District's policies, procedures, and practices as they relate to the administration of restraint and seclusion for students with disabilities enrolled in the District.

OCR is responsible for enforcing Section 504 and its implementing regulation, 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities operated by recipients of Federal financial assistance. OCR also enforces Title II and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. PISD receives Federal funds from the Department, and its schools are public entities. Therefore, OCR had jurisdictional authority to conduct this compliance review under Section 504, Title II, and their respective implementing regulations.

This letter summarizes the legal standards applicable to the review, the information gathered during the review, and how the review was resolved.

Legal Standards

Under Section 504, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives Federal financial assistance. 34 C.F.R. § 104.4(a). Under Title II, no qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the services, programs

or activities of a public entity, or be subjected to discrimination by any public entity. 28 C.F.R. § 35.130(a). Both Section 504 and Title II prohibit measures that have the effect of subjecting qualified persons with disabilities to discrimination on the basis of disability. 34 C.F.R. § 104.4(b)(4); 28 C.F.R. § 35.130(b)(3).

A school district discriminates on the basis of disability in its use of restraint or seclusion by (a) unnecessarily treating students with disabilities differently from students without disabilities; (b) implementing policies, practices, procedures, or criteria that have an effect of discriminating against students on the basis of disability or defeating or substantially impairing accomplishment of the objectives of the school district's program or activity with respect to students with disabilities; or (c) denying the right to a free appropriate public education (FAPE).

A. Different Treatment

Absent direct evidence that a district discriminates on the basis of disability, OCR generally applies a different treatment analysis. Under this analysis, a recipient violates Section 504 and Title II if it has treated a student differently on the basis of disability in the context of an educational program or activity without a legitimate, nondiscriminatory reason so as to limit or deny the ability of the student to participate in or benefit from the education program or activity. In applying the different treatment analysis, OCR addresses the following questions:

1. Did the recipient deny or limit the ability of one or more students with disabilities to participate in or benefit from the education program or activity of the recipient by treating them differently than one or more similarly situated students without disabilities?
2. Does the recipient have a legitimate, nondiscriminatory reason(s) for the different treatment?
3. If so, is the reason(s) a pretext for discrimination?

B. Disparate Impact

Districts also violate Federal law when they evenhandedly implement facially neutral policies or practices that, although not adopted with the intent to discriminate, nonetheless have an unjustified effect of discriminating against students on the basis of disability. The resulting discriminatory effect is referred to as "disparate impact." In determining whether a facially neutral student policy has an unlawful disparate impact on the basis of disability, OCR engages in the following three-part inquiry:

1. Has the policy resulted in an adverse impact on students with disabilities as compared to students without disabilities?
2. Is the policy necessary to meet an important educational goal?
3. Even in situations where a district can demonstrate that a policy is necessary to meet an important educational goal, are there comparably effective alternative policies available that would meet the district's stated educational goal with less of a burden or adverse impact on the disproportionately affected group or is the district's proffered justification a pretext for discrimination?

C. FAPE

The regulations implementing Section 504 require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. 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 non-disabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. The Section 504 regulation at 34 C.F.R. § 104.35(a) requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services before taking any action with respect to the student's initial placement in regular or special education and any subsequent significant change in placement.

Background Information

PISD is located in Pflugerville, Texas, and comprises 20 elementary schools, 6 middle schools, and 3 traditional high schools.¹ PISD also has a kindergarten through 12th grade alternative school and a school identified as a “full-time high school diploma program” for students who have dropped out of school or who are “highly at risk for such reasons as being over age for grade level, pregnancy, and parenting.”²

Data reported by PISD to the Department’s Civil Rights Data Collection (CRDC) reflects that during the 2012-13 school year, 23,302 students were enrolled in PISD; 9.9% were classified as students with disabilities. During the 2013-14 school year, 23,564 students were enrolled in PISD; 10.0% were classified as students with disabilities

During the course of this investigation, OCR requested and reviewed the District’s policies and procedures for implementing Section 504 Plans and Individualized Education Programs (IEPs); policies and procedures related to restraint and seclusion; documentation of incidents of restraint; documentation regarding use of rooms for seclusion, time-outs, respite, isolation, “processing,” or other related reasons; descriptions of training provided to staff regarding restraint and seclusion methods; and copies of the Section 504 Plans, IEPs, or other disability-related plans [such as Behavioral Intervention Plans (BIPs)] for students subjected to restraint during the 2012-13, 2013-14, 2014-15, and 2015-16 school years.

¹ High Schools: Connally High School (CHS); Hendrickson High School (HHS); Pflugerville High School (PHS)
Middle Schools: Cele Middle School (CMS); Dessau Middle School (DMS); Kelly Lane Middle School (KLMS); Park Crest Middle School (PCMS); Pflugerville Middle School (PMS); Westview Middle School (WMS)
Elementary Schools: Brookhollow Elementary School (BHES); Caldwell Elementary School (CES); Copperfield Elementary School (CFES); Dearing Elementary School (DRES); Delco Primary School (DPS); Dessau Elementary School (DES); Highland Park Elementary School (HPES); Murchison Elementary School (MES); Northwest Elementary School (NWES); Parmer Lane Elementary School (PLES); Pflugerville Elementary School (PES); Riojas Elementary School (RES); River Oaks Elementary School (ROES); Rowe Lane Elementary School (RLES); Ruth Barron Elementary School (RBES); Spring Hill Elementary School (SHES); Timmerman Elementary School (TES); Wieland Elementary School (WES); Windermere Elementary School (WMES); Windermere Primary School (WPS)

² The alternative school is the Provan Opportunity Center (OC), and the diploma program is the Pflugerville Academic Center for Excellence (PACE).

OCR also conducted an on-site investigation of the District in May 2015. During the on-site, OCR conducted visual inspection of cool-down or sensory rooms (hereinafter generally referred to as cool-down rooms) at 18 of the District’s 29 campuses (including all campuses that reported having stand-alone cool-down rooms). Additionally, OCR staff interviewed 44 witnesses (including teachers, administrators, teaching assistants, school nurses, and behavior specialists) at the administration building and on 8 selected campuses that had the highest numbers of incidents of restraint that occurred during the 2013-14 school year.³ The interviews addressed District and campus policies and practices for restraint and seclusion of students with and without disabilities, and also covered actual employee experiences and observations of occurrences of restraint and use of cool-down rooms. In May 2015, OCR issued district-wide Survey Monkey questionnaires to PISD administrators, police officers, and teaching staff who were not interviewed during the on-site. Finally, OCR contacted parents of students subjected to the highest numbers of physical restraint during the 2015-16 school year.

Prior to the conclusion of OCR’s investigation, PISD expressed an interest in voluntarily resolving the review and OCR determined that it was appropriate to resolve the review with an agreement prior to the conclusion of the investigation. PISD signed an agreement in December 2016.

Investigative Findings

I. Policies and Procedures

The District has two policies regarding the use of restraint and seclusion: Policy FO, entitled “Student Discipline,” which applies to all students generally, and Policy FOF, entitled “Student Discipline: Students with Disabilities.” Both policies incorporate the requirements set forth in Chapter 37 (“Discipline”) of the Texas Education Code (Education Code), which specifies the circumstances under which a student may be removed from a classroom, campus, disciplinary alternative education program, school bus, or vehicle owned or operated by the district. In particular, with regard to the use of restraint, seclusion, and time-out, Policy FO and Policy FOF incorporate the provisions of Education Code § 37.0021 (“Use of Confinement, Restraint, Seclusion, and Time-Out”). Policy FOF also incorporates provisions regarding restraint and seclusion from Chapter 19 of the Texas Administrative Code (TAC), at § 89.1053 (“Procedures for Use of Restraint and Time-Out”). Policies FO and FOF are available to parents and students on the District website.

In addition, while the official written policy of the District regarding restraint remained unchanged during the course of OCR’s compliance review, OCR found that the form used by the PISD to report incidents of physical restraint of students with disabilities changed during the 2015-16 school year to reflect a change in the District’s practice, namely to disallow restraint of a student based on property damage/destruction. Accordingly, the District removed “property damage/destruction” from the section of the form requesting a description of the student’s behavior that prompted the restraint, though the reference remains in both PISD Policy FO (Local) and FOF (Legal) as of March 9, 2017.

³ The eight campuses were NWES, PES, HPES, KLMS, CMS, PCMS, PHS, and HHS.

A. Policy FO (Student Discipline).

Restraint

Consistent with the requirements of Education Code § 37.0021(b)(1), Policy FO defines restraint as “. . . the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student’s body.” Policy FO states that, within the scope of an employee’s duties, a District employee may physically restrain a student if the employee reasonably believes restraint is necessary in order to: (1) protect a person, including the person using physical restraint, from physical injury; (2) obtain possession of a weapon or other dangerous object; (3) control an irrational student; or (4) protect property from serious damage.

Policy FO further states that a peace officer performing law enforcement duties (activities related to the “investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure”) on school property or during a school-sponsored or school-related activity may use restraint.

Documentation requirements.

Use of restraint by a peace officer performing law enforcement duties must be reported electronically to the Texas Education Agency (TEA). (Education Code § 37.0021(i)).

Seclusion

Pursuant to Education Code § 37.0021(c), Policy FO provides that “[A] district employee or volunteer or an independent contractor of a district may not place a student in seclusion.” Pursuant to Education Code § 37.0021(b)(2), Policy FO defines seclusion as “. . . a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that: (1) is designed solely to seclude a person; and (2) contains less than 50 square feet of space.”

Policy FO states that “any rules or procedures adopted [concerning seclusion] apply to a peace officer only if the peace officer (1) is employed or commissioned by a school district; or (2) provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency.” (Education Code § 37.0021(h)).

B. Policy FOF (Student Discipline: Students with Disabilities)

The provisions of Policy FOF concerning the use of restraint and seclusion with students with disabilities “apply only to students eligible for special education and related services under the Individuals with Disabilities Education Act (IDEA).”

Restraint

Consistent with the provisions of Education Code § 37.0021(b)(2), Policy FOF defines restraint as “. . . the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student’s body.” Restraint does not include (1) physical contact or appropriately prescribed adaptive equipment to promote normative body position and/or physical functioning; (2) limited physical contact with a student to promote safety (e.g. holding a student’s hand), prevent a potentially harmful action (e.g., running into the street), teach a skill, redirect attention, provide guidance to a location, or provide comfort; (3) limited physical contact or appropriately prescribed adaptive equipment to prevent a student from engaging in on-going, repetitive self-injurious behaviors, with the expectation that instruction will be reflected in the individualized education program (IEP) as required by 34 C.F.R. § 300.324(a)(2)(i) to promote student learning and reduce and/or prevent the need for ongoing intervention; or (4) seat belts and other safety equipment used to secure students during transportation.

Pursuant to 19 TAC § 89.1053(c), Policy FOF states that “[A] school employee, volunteer, or independent contractor may use restraint only in an emergency and with the following limitations: (1) Restraint shall be limited to the use of such reasonable force as is necessary to address the emergency. (2) Restraint shall be discontinued at the point at which the emergency no longer exists. (3) Restraint shall be implemented in such a way as to protect the health and safety of the student and others. (4) Restraint shall not deprive the student of basic human necessities. Policy FOF provides that “[E]mergency means a situation in which a student’s behavior poses a threat of: (1) imminent, serious physical harm to the student or others; or (2) imminent, serious property destruction. (19 TAC § 89.1053(b)(1)-(2)).

Policy FOF further provides that its provisions regarding the use of confinement, seclusion, restraint, and time-out do not apply to “(1) a peace officer, while performing law enforcement duties (activities related to the “investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure”); (2) juvenile probation, detention, or corrections personnel; or (3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.”

Documentation requirements.

Policy FOF requires that in a case where restraint is used, school employees, volunteers, or independent contractors shall implement the documentation requirement set forth at 19 TAC 89.1053(e).⁴ Use of restraint by a peace officer performing law enforcement duties must be reported electronically to the TEA. (Education Code § 37.0021(i)).

⁴ See 19 TAC 89.1053(e), which requires the following: (1) On the day restraint is utilized, the campus administrator or designee must be notified verbally or in writing regarding the use of restraint. (2) On the day restraint is utilized, a good faith effort must be made to verbally notify the parent(s) regarding the use of restraint. (3) Written notification of the use of restraint must be placed in the mail or otherwise provided to the parent within one school day of the use of restraint. (4) Written documentation regarding the use of restraint must be placed in the student’s special education eligibility folder in a timely manner so the information is available to the admission, review, and dismissal (ARD) committee when it considers the impact of the student’s behavior on the student’s learning and/or the creation or revision of a behavioral intervention plan (BIP). (5) Written notification to the

Although not specified in written policy, PISD staff reported to OCR that it was the District’s practice for a school nurse to examine students with disabilities who had been restrained prior to their reintroduction to class. The forms used by PISD to document restraints of student with disabilities included signature lines for the administrator and nurse.

Seclusion

Consistent with the provision of Education Code § 37.0021(b)(2), Policy FOF defines seclusion as “a behavior management technique in which a student is confined in a locked box, locked closet, or locked room that (1) is designed solely to seclude a person; and (2) contains less than 50 square feet of space.” Policy FOF further states that “[A] student with a disability who receives special education services may not be confined in a locked box, locked closet, or other specially designed locked space as either a discipline management practice or a behavior management technique,” and prohibits a district employee or an independent contractor from placing a student in seclusion. (Education Code § 37.0021(a)).

Policy FOF further provides that its provisions regarding the use of confinement, seclusion, restraint, and time-out do not apply to “(1) a peace officer, while performing law enforcement duties (activities related to the ‘investigation and enforcement of state criminal laws and other duties authorized by the Code of Criminal Procedure’) unless the peace officer is employed or commissioned by a school district or provides, as a school resource officer, a regular police presence on a school district campus under a memorandum of understanding between the district and a local law enforcement agency; (2) juvenile probation, detention, or corrections personnel; or (3) an educational services provider with whom a student is placed by a judicial authority, unless the services are provided in an educational program of a school district.” Furthermore, Policy FOF provides that “Education Code 37.0021 does not prevent a student’s locked, unattended confinement in an emergency situation while awaiting the arrival of law enforcement personnel if: (1) the student possesses a weapon; and (2) the confinement is necessary to prevent the student from causing bodily harm to the student or another person.”

Time-Out

Policy FOF permits the use of “time-out,” which it defines as “a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in a setting: (1) that is not locked; and (2) from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object.” (19 TAC § 89.1053(b)(3)).

Policy FOF provides that “[A] school employee, volunteer, or independent contractor may use time-out with the following limitations: (1) Physical force or threat of physical force shall not be

parent(s) and documentation to the student’s special education eligibility folder must include the following: (A) name of the student; (B) name of the staff member(s) administering the restraint; (C) date of the restraint and the time the restraint began and ended; (D) location of the restraint; (E) nature of the restraint; (F) a description of the activity in which the student was engaged immediately preceding the use of restraint; (G) the behavior that prompted the restraint; (H) the efforts made to de-escalate the situation and alternatives to restraint that were attempted; and (I) information documenting parent contact and notification.

used to place a student in time-out. (2) Time-out may only be used in conjunction with an array of positive behavior intervention strategies and techniques and must be included in the student’s IEP and/or BIP if it is utilized on a recurrent basis to increase or decrease targeted behavior. (3) Use of time-out shall not be implemented in a fashion that precludes the ability of the student to be involved in and progress in the general curriculum and advance appropriately toward attaining the annual goals specified in the student’s IEP.” (19 TAC § 89.1053(g)).

Documentation requirements.

Policy FOF states as follows: “Necessary documentation of data collection regarding the use of time-out, if any, must be addressed in the IEP or BIP. The ARD committee must use any collected data to judge the effectiveness of the intervention and provide a basis for making determinations regarding its continued use.” (19 TAC 89.1053(i)).

Training requirements.

Policy FOF incorporates the training requirements set forth in 19 TAC 89.1053(d): “Training for school employees, volunteers, or independent contractors must be provided according to the following requirements: (1) A core team of personnel on each campus must be trained in the use of restraint, and the team must include a campus administrator or designee and any general or special education personnel likely to use restraint. (2) Personnel called upon to use restraint in an emergency and who have not received prior training must receive training within 30 school days following the use of restraint. (3) Training on use of restraint must include prevention and de-escalation techniques and provide alternatives to the use of restraint. (4) All trained personnel must receive instruction in current professionally accepted practices and standards regarding behavior management and the use of restraint.”

C. *Operational Guidelines for Section 504.*

District policy requires the District to adopt procedures for periodic re-evaluation of students who have been provided special education and related services. The District’s “Operational Guidelines for Section 504” provides that periodic reevaluations of students on Section 504 plans, as well as those students who are eligible under Section 504 but not currently receiving services under a plan, should be conducted at least every three years. The Operational Guidelines for Section 504 also provide that it is the District’s practice to conduct annual reviews when no periodic re-evaluation is required.

D. *Crisis intervention methodology: Satori Alternatives to Managing Aggression.*

The District has adopted the Satori Alternatives to Managing Aggression (SAMA) methodology, which is one of the methodologies approved by the TEA. The SAMA process employs four major techniques: (1) verbal de-escalation (the “assisting process”); (2) protection of self and others; (3) containment; and (4) object retrieval.

Training regarding verbal de-escalation includes directions for the staff member to: (a) prepare himself/herself (by becoming calm and aware and by feeling respectful); (b) “join and follow to

lead” (by observing what the other person is doing and sharing the observation); (c) identify the source of the feeling (by asking for information about the source of the feeling, listening for the response, paraphrasing it and combining it with the feeling, and asking for confirmation); and (d) assist the person to develop a plan of action (by determining what the person wants, listening and acknowledging the person’s desire, asking how the person has tried to attain the desire, discussing options for action if appropriate, and, if appropriate, rehearsing the corrective actions with the person and giving feedback and coaching).

SAMA training regarding protection of self and others includes instruction on protective stances and defensive postures such as avoiding strikes, avoiding kicks, and avoiding pushes; protection from wrist grasps (straight grasp release, cross body grasp release, two on one release, and one on each release); protection from life threatening grasps (bear hug neutralization, bear hug release, front choke release, back choke release, forearm choke neutralization, and second person choke release); protection from hair pulls; protection from bites; and protection on the ground. SAMA training concludes with instruction regarding “containment” and object retrieval (when a person is threatening to use an object aggressively).

SAMA uses the term “containment” to present methods of limiting a person's movement to protect the person or others. According to SAMA, the term “restraint” brings to mind mechanical devices that immobilize a person’s limbs. In contrast, SAMA uses “containment” to describe the process of limiting a person’s movement for reasons of protection but not trying to eliminate movement, which could cause greater injury. According to SAMA training materials, containment should feel comforting and not punishing, and is only justifiable if the person is causing harm to himself/herself or others. The containment procedures taught by SAMA include a hug containment, elbow-to-hip containment, two-person containment/escort, follow to ground containment, assist to ground containment, and release from ground containment. None of the containment methods taught by SAMA involve restraining all of a student’s limbs. The focus is on using the least restrictive option available.

Additionally, the District training materials provide that “no child is to be placed in a face down containment (restraint) or any type of containment (restraint) that puts pressure on the child’s back,” that there are no seated basket containment or chair holds utilized in SAMA training, and the District does not “support the use of the two-person escort” (although that is one of the techniques taught by SAMA). Consistent with its use of the SAMA methodology, the District uses the term “containment” rather than “restraint” in much of its documentation. For consistency and ease of reference, however, OCR is using only the term “restraint.”

The District conducts multiple SAMA training sessions every year (at the beginning of each school year and multiple times throughout the school year). According to SAMA standards, training is effective for two years, after which re-training must occur for an individual to retain SAMA certification. The District submitted to OCR a list of SAMA-certified personnel, which included administrators, counselors, and teachers. In April 2015, the District represented that approximately 27.9% of District employees were trained in SAMA. The District also indicated that if a member of District personnel who had not previously received SAMA training is involved with an incident of physical restraint, he/she would receive SAMA training within 30 days of the incident.

II. Restraint and Time-out Data.

As noted above, the District is required to report to the TEA all incidents of restraint of (1) students with disabilities who receive services under the IDEA and (2) students both with and without disabilities restrained by law enforcement personnel (as opposed to teachers or other District personnel). This information is maintained in the Public Education Information Management System (PEIMS). There is no state requirement to report the use of physical restraint of students who are not receiving services under the IDEA unless the restraint is conducted by law enforcement personnel. As a result, except for those students restrained by law enforcement personnel, the District does not maintain records relating to the physical restraint of students without disabilities, or students with disabilities who receive services only under Section 504.

A. Restraint data.

The District utilizes a modified version of a physical restraint form recommended by the TEA to document the use of physical restraint on students with disabilities served under IDEA (TEA form). The TEA form includes prompts to record the date, time (beginning and ending times of restraint), nature of restraint, location of restraint, staff involved, a description of the restraint used, a description of the student's behavior that prompted the restraint,⁵ a description of all efforts made to de-escalate the situation prior to the use of restraint,⁶ alternatives to restraint that were attempted,⁷ and observations made at the end of the restraint. The District provided OCR with 2,348 TEA forms for the 2012-13, 2013-14, and 2015-16 school years. Of the 2,348 TEA forms provided by the District, OCR found that all of the forms reported at least one form of de-escalation attempted, as well as at least one alternative to restraint attempted prior to the use of restraint.

For the 2014-15 school year, the District provided OCR with a spreadsheet documenting restraint incidents instead of the TEA forms.⁸ For the 2015-16 school year, the District submitted 657 TEA forms as well as a spreadsheet reporting 683 restraints; the District did not provide OCR with an explanation with regard to this discrepancy between the number of forms versus the number of reported restraints. Further, OCR's review of the documentation submitted by the

⁵ For all years except 2015-16, the pre-printed boxes included: imminent serious physical harm to themselves, imminent serious physical harm to others, imminent serious physical harm to themselves and others, imminent serious property destruction, imminent serious physical harm to themselves and serious property destruction, imminent serious physical harm to others and serious property destruction, and imminent serious physical harm to themselves and others and serious property destruction; the box pertaining to property damage was deleted on the 2015-16 forms. All forms provided additional space to explain/elaborate.

⁶ Those efforts included: provided choices, verbal redirection, calming techniques, reduced demands, reduced verbal interaction, or other (with space to explain).

⁷ Those alternatives included: removal of other students, request for assistance, voluntary removal of student to another location, or other (with space to explain).

⁸ The spreadsheet included information regarding the date, time (beginning and ending times of restraint), nature of restraint, location of restraint, staff involved, a description of the restraint used, and a description of the student's behavior that prompted the restraint, but did not include information regarding de-escalation efforts, alternatives to restraint attempted, or post-restraint observations. The spreadsheet also included a column indicating that the TEA form was completed and a column describing any deficiencies (e.g., TEA form not filled out correctly, restraint released too soon, etc.) found upon review of the TEA form by the behavioral specialist.

District revealed that not all incidents of physical restraint during the four school years that OCR reviewed were recorded on the recommended TEA form. Specifically, OCR found one incident that was documented in an email, three incidents that were documented in typed notes, and six incidents that were documented in handwritten notes.

The completed TEA forms provided by the District to OCR included start and stop times for each restraint. Data recorded in the 2012-13 school year reflected that there were 6 restraints that lasted an hour or more: 1 at CHS (119 minutes); 3 at HPES (90, 68, and 65 minutes); 1 at DES (75 minutes); and 1 at CES (60 minutes). Data recorded in the 2013-14 school year reflected 7 incidents of restraint lasting an hour or more: 1 at DMS (83 minutes); 2 at HPES (80 and 60 minutes); 1 at CHS (67 minutes); 2 at DES (66 and 60 minutes); and 1 at CES (60 minutes). During the 2014-15 school year, there were no reported restraints that lasted 60 minutes; the highest restraint times were recorded at HPES (58 minutes) and WMES (45 minutes). In 2015-16, the data reflected two restraints that lasted 60 minutes or more: 1 at CHS (67 minutes) and 1 at PCMS (61 minutes).⁹

Table A contains information about the restraint of students with disabilities derived from the TEA forms and other documents provided by the District to OCR. The headings in Table A indicate the following for each referenced academic year: the total number of students who experienced restraint (# of Stds Rest), and the maximum number of restraint incidents any one of those students experienced over the year (Max # of Rest).

Table A: Restraint Data provided by PISD to OCR

Campus	2015 - 2016	# of Stds Rest	Max # of Rest	2014 - 2015	# of Stds Rest	Max # of Rest	2013 - 2014	# of Stds Rest	Max # of rest	2012 - 2013	# of Stds Rest	Max # of Rest
CHS	96	8	46	11	4	8	27	7	21	53	2	52
PHS	6	2	5	0	0	0	59	6	34	41	5	10
HHS	16	6	4	11	6	4	61	16	25	16	5	8
Total HS	118	16	--	22	10	--	147	29	--	110	12	--
PMS	2	1	2	63	4	54	22	6	16	34	7	19
WMS	17	6	5	20	5	6	34	2	32	33	6	19
PCMS	77	7	47	5	2	3	44	3	39	63	4	28
DMS	44	8	12	9	3	5	19	3	11	10	5	5
KLMS	8	2	6	9	2	8	40	7	13	16	7	4
CMS	27	8	9	24	7	9	49	6	15	0	0	0
Total MS	175	32	--	130	23	--	208	27	--	156	29	--

⁹ Had OCR and PISD not negotiated a resolution agreement, OCR would have taken a number of additional investigative steps based on the data described in this letter, including further inquiry into the circumstances of these restraints.

Table A: Restraint Data provided by PISD to OCR – cont'd

Campus	2015 - 2016	# of Stds Rest	Max # of Rest	2014 - 2015	# of Stds Rest	Max # of Rest	2013 - 2014	# of Stds Rest	Max # of rest	2012 - 2013	# of Stds Rest	Max # of Rest
PES	0	0	0	1	1	1	135	2	132	126	3	68
PLES	0	0	0	0	0	0	0	0	0	3	2	2
TES	16	2	13	87	2	83	19	3	9	0	0	0
NWES	32	6	18	6	1	6	94	6	37	107	7	67
DES	0	0	0	13	2	9	18	3	10	54	7	14
WMES	98	8	71	39	4	26	15	5	9	3	1	3
BHES	66	7	19	22	3	16	12	6	4	14	8	4
SHES	0	0	0	3	1	3	11	2	8	46	4	31
WPS	0	0	0	1	1	1	0	0	0	5	2	3
CFES	27	6	16	19	2	16	14	3	6	29	4	15
MES	2	2	1	25	2	22	29	3	21	15	4	11
DPS	41	4	28	31	3	19	0	0	0	8	1	8
CES	0	0	0	4	1	4	4	1	4	2	1	2
RLES	23	7	10	18	5	6	10	3	8	23	4	20
HPES	1	1	1	17	2	16	158	8	81	146	6	84
WES	0	0	0	12	4	5	12	5	8	13	4	9
RBES	3	1	3	7	2	6	7	2	4	10	3	6
DES	7	2	5	1	1	1	0	0	0	0	0	0
ROES	40	10	9	2	1	2	0	0	0	3	1	3
RES	1	1	1	0	0	0	3	2	2	1	1	1
Total ES	357	57	--	308	38	--	541	54	--	608	63	--
Overall Totals	650 ¹⁰	105	--	460	71	--	896	110	--	874	104	--

OCR compared information about restraint incidents contained in the TEA forms and other documents to information supplied directly by the District to TEA for the 2014-15 school year.¹¹ OCR had complete data for 25 schools; for 4 schools, there was no data reported to TEA. Based on the data for 25 schools, OCR determined that the number of restraint incidents reported to OCR matched the number for restraint incidents reported to TEA in 6 instances.

For the 2012-13 school year, the District reported a total number of 25 restraints by SROs against 19 students. Nine of the students restrained by SROs had a documented disability. For the 2013-14 school year, the District reported a total number of 78 restraints by SROs against 33

¹⁰ The overall total of 650 restraints for the 2015-16 school year differs from the totals discussed above, i.e., 657 TEA forms and 683 incidents on the spreadsheet, because Table A does not include data for IBC, OC and ESY.

¹¹ Information for the 2015-16 school year was not available as of November 30, 2016, when OCR last sought to obtain such data.

students. Twenty-three of those students restrained by SROs had a documented disability.¹² The District also provided logs completed by SROs each month, which documented SRO restraints during the 2012-13 and 2013-14 school years.¹³ In 2013-14, the forms included spaces for the SROs to designate use of mechanical or physical restraint. The SROs logged 34 instances of mechanical restraint in the 2013-14 forms against 18 students, including mechanical restraints against 8 students with documented disabilities. The forms do not include information regarding use of de-escalating efforts or alternatives to restraint that may have been attempted. Only 4 out of 22 SROs responded to OCR's survey. Of these 4 responses, 2 SROs indicated that they had received SAMA training, though one had received this training when he was an educational assistant.

Based on PISD staff interviews, OCR determined that all teachers were required to complete the TEA form following the implementation of restraint and, beginning in the 2014-15 school year, submit the forms to a Behavior Specialist for review. In OCR interviews, the Behavior Specialists identified concerns based on reviewing forms, including: staff members not holding students long enough; questionable interpretation of "imminent harm"; students subjected to repeated restraints, which could indicate a need to modify behavior plans; and use of restraint for "attempts" rather than actual behavior. The Behavior Specialists reported to OCR that when they saw problems, they followed up with the appropriate staff members to provide support and coaching.

OCR also reviewed Excel spreadsheets of restraint data that documented the review of TEA forms by Behavior Specialists for the 2014-15 and 2015-16 school years. In one column of the spreadsheet, Behavior Specialists identified any problems or concerns related to the incident of restraint. Among the problems/concerns identified, some were administrative (e.g., incomplete form, missing student identification number, missing nurse's signature, etc.) and some were more substantive (e.g., wrong restraint method identified, restraints occurring too frequently or for too long, etc.). In each case, the spreadsheet indicated that, for administrative concerns, the form was returned to the District staff for correction, and for substantive concerns, meetings were held to discuss the concerns. The forms also indicated if a member of PISD personnel not SAMA-certified was involved in the restraint, and the date that staff member subsequently received SAMA training.

OCR received 1149 responses to its Survey Monkey questionnaire administered to teachers, aides, and counselors.

- In response to the question of when it was appropriate to use physical restraint or containment,¹⁴ 928 answered when the student is causing imminent serious physical harm to himself/herself and or to others, 268 answered when the student is causing imminent

¹² At the time of initiating negotiations for an agreement, OCR had not yet received from the District documentation of 2014-2015 or 2015-2016 SRO restraints.

¹³ The logs document the officer badge number and name, the student's campus, campus of restraint, student identification number and name, date of restraint, and restraint reason code (including imminent serious physical harm to others, imminent serious harm to themselves, and imminent serious property destruction).

¹⁴ Respondents were instructed to select all appropriate circumstances for use of physical restraint or containment; therefore, some respondents selected multiple reasons for using restraint/containment.

serious property destruction, 20 answered when the student is causing great distraction/disruption to other students in the classroom, 7 answered when the student is using foul/vulgar language in the presence of other students and/or staff, 12 answered when the student is lying on the floor/ground and refuses to get up, 134 answered when the student is attempting to leave campus despite being told not to leave, and 23 answered when the student is attempting to leave the classroom despite being told not to leave.

- When asked whether behavior intervention or calming techniques were used prior to the implementation of physical restraint or containment of students with disabilities, 776 (67.54%) answered yes, 5 (0.44%) answered no, and 368 (32.03%) answered “I don’t know.” When posed the same question with respect to general education students, 654 (57.27%) answered yes, 10 (0.88%) answered no, and 478 (41.86%) responded “I don’t know.”
- Eighty-four stated that they had been involved in or assisted with the restraint/containment of a general education student; 176 stated that they had been involved in or assisted with the physical restraint/containment of a student with a disability.
- Nineteen of 85 members of PISD personnel responded affirmatively to the question regarding whether they maintained any sort of log (personal or discipline) regarding the use of physical restraint/containment of general education students. (However, PISD maintains that it does not have any such logs regarding the physical restraint/containment of general education students other than those restrained by SROs.)
- Of the 180 responses to the question regarding a student(s) complaint of restricted breathing, 44 teachers responded affirmatively that a student had complained of not being able to breathe or that he or she was in pain. Of the same 180 respondents, 9 responded affirmatively that a student sustained an injury (e.g., bruise, cut, abrasion, fracture, contusion, etc.) from a physical restraint/containment in which they participated.

While District policy requires that the District take reasonable steps to verbally notify parents of incidents of restraint on the day of the incident and follow up with written notification within one day, one parent interviewed by OCR stated that her student (with a disability) was restrained repeatedly, and she was not notified. She had concerns about these occurrences, and stated that the only way she found out was when her student informed her. Another parent stated that she was notified via letter when her student was restrained, but in years past, she had been notified by phone on the day that the restraint happened and then received the letter. During the 2015-16 school year, she only received letters after the fact. Another parent stated that she was notified of some of the incidents of restraint but not all.

OCR analyzed the restraint data for all campuses for the 2015-16 school year and identified 17 students who were restrained 10 or more times. The data reflected, for example, that one student was subjected to physical restraint 46 times in a 5½ month period (she enrolled in PISD in January 2016 and transferred at the end of the school year). Another student was physically restrained 71 times during 2015-16. A third student was physically restrained 17 times in 2015-

16. OCR requested and analyzed the 17 students' individual special education files, reviewing the students' IEPs or 504 Plans applicable for that year, as well as any evaluation or re-evaluation documentation available. None of the plans provided for restraint, nor was there an associated BIP that referenced the use of restraint.

B. *Time-out data.*

The District maintains that it does not use seclusion, but it does utilize time-outs for students with and without disabilities. Time-outs may occur in designated areas of classrooms or “cool-down” or “sensory”¹⁵ rooms or areas where students can go to reduce their anxiety and minimize attention from others while they work through managing their behavior with an adult. The District contends that the time-out or cool-down behavior techniques utilized do not constitute seclusion because time-outs are always monitored by an adult and occur in a non-locked setting. Because there is no legal requirement to record the use of time-out, the District maintains that it has no records regarding the frequency or circumstances of its use.

As noted above, 19 TAC § 89.1053(h) requires that all general education and special education personnel who “implement time-out based on requirements established in a student’s IEP and/or BIP must be trained in the use of time-out” through “a program which addresses a full continuum of positive behavioral intervention strategies.” As noted above, the District provides such training through the SAMA sessions, including training within 30 days of an incident anyone who was involved in a physical restraint/containment situation and was not already SAMA certified.

Some District campuses are also equipped with sensory rooms for eligible students (students with disabilities who have this provision in their IEPs or 504 Plans and general education students “in crisis”) for therapeutic rather than behavioral purposes. In these rooms, those students with sensory needs can utilize equipment such as exercise bands, ball pits, swings, mats, trampolines, or stationary bikes as part of their educational program and services.

The District identified 29 campuses with a cool-down area, located typically within a behavior or Preschool Program for Children with Disabilities (PPCD) classroom.¹⁶ At two campuses, there was a separate cool-down room.¹⁷ The District also identified 11 campuses with a separate sensory room¹⁸ and 15 campuses with a sensory room space, typically located in a behavior or PPCD classroom.¹⁹ During its May 2015 on-site, OCR inspected cool-down rooms/areas at 18 campuses. OCR observed that some of the rooms/areas shared commonalities such as no padding, utilization of air ventilation systems (but no fans), fluorescent lighting, and doors made of either wood or steel. OCR also observed several differences among the rooms, including the size of the room; the existence and placement of windows, peepholes or observation areas; the type of flooring (concrete, wood, tile, carpet, etc.); and the type and amount of furniture in the rooms. One room could be locked from the inside, but all others had push-bar or lever handles.

¹⁵ The District uses the terms “cool down” and “sensory” interchangeably.

¹⁶ RBES, BES, CWES, CES, DRES, DPS, DES, HPES, MES, NWES, PLES, PES, RES, ROES, RLES, SHES, TES, TLES, WES, WPS, CMS, DMS, KLMS, PCMS, PMS, WMS, CHS, HHS, and PHS.

¹⁷ DMS and PHS.

¹⁸ RBES, BES, CES, DES, DRES, HPES, NWES, PLES, DMS, HHS, and PHS.

¹⁹ CWES, DPS, MES, PES, RES, RLES, SHES, TES, WLES, WES, WPS, PCMS, PMS, WMS, and CHS.

Time-out areas within a classroom were not closed off from the rest of the classroom. All were well-lit and well-ventilated, and some included devices to address students' sensory needs (e.g., ball pits, balance balls, various toys and art supplies, etc.). Students (both with and without disabilities) were not left alone in the cool-down rooms.

The only records that the District provided to OCR documenting the use of sensory rooms consisted of two sets of log-in sheets for the sensory room used at one elementary school, HPES. One set covered the sensory room for the 2014-15 school year (entitled "Sensory Room Sign In/Out"). The log reflected a total of 2,743 instances of the sensory room used by students between August 28, 2014, and February 4, 2015; it included handwritten student initials and columns for documenting log-in and log-out times. On each page were numerous lines (27 pre-printed lines but some sheets had additional lines handwritten at the bottom) on which there was a sign-in time, but for 571 instances there was no sign-out time. OCR could not discern any pattern to the absence of log-out times on the sensory room log sheet (e.g., similar times, students, days of the week, etc.). The student initials sometimes appeared as a single initial, two initials, or an abbreviated student name; therefore, there was no way to track which students utilized the sensory room and whether the same student was utilizing the sensory room multiple times per day. According to the 2,172 instances where both log-in and log-out times were provided, no student was in the sensory room for more than 15 minutes. The majority of students utilized the sensory room for 5 minutes or less (1,729 occurrences), with the remainder using the room between 5 minutes and 15 minutes (443 occurrences).

The other set of pre-printed logs indicated sensory room breaks and snack breaks (entitled "Sensory Break/Snack Log"). The students' names were printed on the forms and all forms included the same names. The log included 1 student in kindergarten, 1 in first grade, 5 in second grade, 4 in third grade, 3 in fourth grade, and 4 in fifth grade. All of these logs reflected break and snack times for the same students for February 11, 2015, through June 2, 2015. A handwritten note across the top of the February 11, 2015, log indicated that all students were entitled to three breaks per day.

Based on the logs provided, OCR could not determine if the use of the sensory room, scheduled room breaks, and snack breaks were only for students with documented disabilities, were part of IEPs, or followed a set or consistent schedule.

Of the 1149 responses to the Survey Monkey, several questions pertained to the use of seclusion.

- 19 respondents indicated they would like additional communication and/or training from the District regarding policies and procedures with respect to the use of the time-out or sensory rooms.
- Out of 100 sample responses to the question, "Under what circumstances are students placed/sent/taken into the Cool-Down rooms?" 41 responded that they did not know or that they were unaware of any cool-down rooms on campus. Other responses included "when a student is on the verge of an emotional outburst," "when a student needs a quiet area where they [sic] feel comfortable in effort to calm down and relax," "if student requests, or a disruptive situation arises which causes the student to become

violent/aggressive,” and “if he/she is harmful to others or themselves.” Several teachers expressed concerns that the cool-down rooms were being used as a “get-out-of-jail-free-card” or reward for bad behavior in that the student could go to the cool-down room for extended periods and use his/her personal electronic devices or get out of doing classwork.

- 103 respondents indicated that logs or records of cool-down room use were kept. They identified Resource Intensive Needs (RIN) personnel, different members of administration, and various teachers as those who kept records or logs of cool-down room referrals. Additionally, 12 administrators indicated in the administrator survey that their campuses kept such logs. (However, as noted above, PISD maintained that it did not have such logs other than the two sets of records discussed above.)

One parent interviewed by OCR stated that, while the District never forced her student (with a disability) to utilize a cool-down room, she had concerns regarding the amount of time the student was spending in the cool-down room. She complimented the District on the facilities, stating that the student had an entire classroom to herself, which was equipped with art supplies for the student’s use. She stated that the student always had 2 to 3 members of the District’s personnel assigned to her while she was in the cool-down room. However, the parent stated that the District did not notify the parent on a daily basis of the use of the cool-down room (which was how often the student said she was utilizing the cool-down room). Additionally, the student reported to the parent that she was spending as much as half of the school day in the cool-down room. The parent believed that the student was using the cool-down room in order to get direct one-to-one attention and to avoid classwork. The parent also stated that she did not believe that the District made any effort to make up the instructional time the student missed while utilizing the cool-down room. OCR reviewed the student’s file, which did not reflect any tracking or documentation of this student’s use of the cool-down room in order to assess the potential need for a re-evaluation or change to her existing IEP.

OCR inspected files for the 2015-16 school year for 51 students.²⁰ All had plans (either IEPs or 504 Plans) in place that provided for the use of cool-down rooms (restraint is not included in any IEPs or 504 Plans). The files reflected that many were either evaluated upon transferring into the District or re-evaluated (whether upon request or at a regularly scheduled re-evaluation period) during the 2015-16 school year. None of the student files indicated that students were re-evaluated based on the frequency or length of time that they were restrained or utilized cool-down rooms.

Analysis

OCR has concerns regarding the District’s written policies. First, even though the District has indicated that property damage no longer is a basis for restraint, the policies relating to the use of restraint [FOF (Legal) and FO (Local)] still expressly state that property damage is a justifiable basis for initiating restraint. Additionally, the language in FO (Local) permitting restraint to

²⁰ The 51 files represented all students who had been subjected to restraint 4 or more times during the 2015-16 school year.

“control an irrational student” would allow for restraint of students who do not pose a threat to themselves or others, and it could be broadly interpreted to allow restraint in situations that could be addressed with verbal de-escalation or other less severe interventions. OCR also notes that although District policy prohibits seclusion, its definition of seclusion is limited to seclusion in a “locked box, locked closet, or locked room” that “is designed solely to seclude a person; and contains less than 50 square feet of space.” Thus, District policy could be interpreted as permitting involuntary confinement of a student in a locked room that is larger than 50 square feet or a room not designed solely to seclude a person, which would still constitute seclusion. Furthermore, OCR has a concern that District policy defines permissible restraint to include use of “a mechanical device” and does not otherwise clarify when the use of mechanical restraint is appropriate.

The District had no policies or procedures in place to address when multiple restraints of a student should trigger a review or revision of strategies to address behavior. In a few interviews, PISD personnel stated that, upon multiple incidents of physical restraint, they would review a student’s plan to determine if a Functional Behavioral Assessment should be performed or if the student’s BIP should be modified. However, there was no guidance on how to determine when the use of physical restraint should trigger review or re-evaluation of a student with disabilities.

During the period of OCR’s investigation, the District regularly trained teachers and other personnel on the appropriate use of effective alternatives to physical restraint and seclusion, such as positive behavioral interventions and supports and the safe use of physical restraint and seclusion through the utilization of the SAMA method, including providing as-needed training for staff members involved in incidents of physical restraint but who had not previously received training. OCR notes that the District reported in 2015 that less than one-third of staff was trained. Moreover, although property considerations supposedly had been eliminated as a valid reason for restraint, 268 out of 928 survey responses still identified avoiding property damage as a reason for restraint; 196 responses provided an array of other reasons inconsistent with PISD’s written policies; 53 survey responses indicated possible harm to restrained students inconsistent with PISD stated policy and SAMA methodology; and out of 100 sampled survey responses regarding seclusion, 41 responses indicated a lack of knowledge about the existence of cool-down rooms.

The District does not regularly record information about restraint of general education students (or students with disabilities served only under Section 504), except those restrained by law enforcement personnel. A student’s behavioral challenges, such as those that lead to an emergency situation in which a school believes restraint is a justified response, could be a sign that the student has a disability and needs special education and related services. For a student already identified as a student with a disability, a school’s use of restraint or seclusion could be evidence that the student’s current array of regular or special education and related aids and services is not addressing the student’s needs. Because the Section 504 FAPE obligation is ongoing, when a school district has reason to believe that the student’s educational needs are not being met, it must consider different or additional approaches or services to address the student’s behavioral needs, and if necessary, reevaluate the student, which could include evaluating the need for positive behavioral interventions and supports and other strategies to address the student’s behavior that could mitigate or eliminate the need for restraint and seclusion. The lack of records makes it difficult for the District to satisfy its ongoing obligation to determine whether

a student's IEP or 504 Plan is effective with respect to the use of cool-down rooms and to ensure that a student is in his/her least restrictive environment. Similarly, record-keeping for unscheduled use of rooms by general education students could reveal patterns of behavior that indicate a need for evaluation.²¹

OCR also found discrepancies in the data that the District provided during the course of this investigation as compared to the data that the District reported to TEA. Out of restraint data provided for the 2014-15 school year, the numbers that the District provided to TEA matched the numbers reflected in the data provided to OCR in only 6 out of 25 instances. Similarly, 2015-16 numbers reflected in TEA forms and a spreadsheet did not match.

Finally, OCR notes the following information. First, when OCR commenced this compliance review in the 2014-15 school year, the total number of students with disabilities being restrained and the number of incidents of restraint fell at all school levels for that year. As Table A reveals, in the 2012-13 and 2013-14 school years, the overall total number of students was 104 and 110, respectively, while the number of incidents was 874 and 896, respectively. Then, in 2014-15, the overall total number of students dropped to 71 while incidents dropped to 460, and both climbed in 2015-16. That same pattern is reflected at each school level, with the high school level being most dramatic. Overall high school restraint totals for the 2012-13 and 2013-14 school years were 110 and 147, respectively; fell to 22 in the 2014-15 school year; and then rose to 118 in the 2015-16 school year. The consistent drop in restraint numbers for the 2014-15 school year suggests the District could take steps to subject fewer students with disabilities to restraint.

Second, data from the SROs, which cover both students with and without disabilities, suggests disproportionate use of restraint for students with disabilities. Section 504 covers school officials, school employees, and everyone over whom a school exercises some control, whether through contract or other arrangement, including SROs regardless of whether they are school district employees or work for a non-district law enforcement agency. Schools cannot divest themselves of responsibility for the nondiscriminatory administration of school policies, including restraint, by relying on SROs.²²

In the 2012-13 school year, students with disabilities constituted 9.9% or 2,307 of the total student body, and in the 2013-14 school year, students with disabilities constituted 10% or 2356. In the 2012-13 school year, however, SROs reported restraining 10 students without disabilities and 9 students with documented disabilities, leading to a restraint ratio for students with disabilities that was 8.19 times larger than the restraint ratio for students without disabilities. This 8.19 risk ratio indicates that a student with a documented disability was over 8 times as likely to be restrained as a student with no documented disability. In the 2013-14 school year, that risk ratio grew to 20.7. Similarly, in the 2013-14 school year, SROs logged 34 instances of mechanical restraint against 18 students, including 8 students with documented disabilities. The risk of students with disabilities being mechanically restrained by SROs relative to the risk of

²¹ Since the information provided by the District with respect to the utilization of physical restraint and cool-down rooms addressed only students with disabilities, all of the students identified as having been restrained and utilizing cool-down rooms for the applicable time period had previously been identified as students with disabilities and had either IEPs or 504 Plans in place.

²² 34 C.F.R. § 104.4(b).

students without disabilities being so restrained was 7.35.

Similarly, out of the 1149 respondents to the teacher/aid/counselor survey issued in May 2015, only 84 identified instances where they had been involved in or assisted with restraining or containing a general education student, while 176, more than twice as many, identified instances when they were involved in or assisted with restraining students with disabilities. This doubling of reported involvement regarding students with disabilities is particularly striking given that, at least based on enrollment data for the 2013-14 and 2014-15 school years, students with disabilities accounted for only approximately 10% of the student body.

OCR identified a number of students each year who were subjected to numerous incidents of physical restraint. There are no records to indicate that these students were re-evaluated based on the frequency of the restraints. Further, many of the students restrained multiple times also utilized cool-down or sensory rooms, thus removing them from the classroom setting for additional periods of time. Without any tracking mechanism in place monitoring the total amount of time that these students were spending out of the classroom environment, OCR has concern regarding the receipt of FAPE by the students with disabilities. OCR also has a concern that since the District did not track the use of cool-down rooms by students who did not have documented disabilities, the District may have failed to identify students who needed to be evaluated for a disability, and absent an appropriate evaluation and response, also were missing class time to their detriment. Relatedly, survey responses and interviews indicated PISD's communications with parents about the use of restraint and seclusion may prevent parents from knowing all the facts and advocating for initial assessments and re-assessments of students.

Resolution Agreement

Prior to the conclusion of OCR's investigation, PISD expressed an interest in resolving the compliance review with a resolution agreement. OCR determined that agreeing to PISD's request would be appropriate. Accordingly, the parties negotiated an agreement and OCR did not make a compliance determination under Section 504 or Title II as to whether PISD discriminated against students on the basis of disability. On December 15, 2016, PISD voluntarily submitted the enclosed resolution agreement (Agreement).

As part of the Agreement, PISD has committed to ensuring that it takes effective measures to promote and ensure equal opportunities for all students, including students with disabilities, to participate in its schools and programs. The Agreement requires PISD to take specific steps and actions to:

- Revise its policies regarding the use of restraint to ensure that the policies are consistent with the regulations, reflect best practices, and are equitable to students with disabilities, including revising its restraint policy to prohibit use of mechanical restraints and remove "serious property damage" as an appropriate basis for restraining a student.
- Develop a system for accurately recording the number of restraint incidents that occur to allow for accurate reporting to the CRDC, ensuring that restraint incidents involving both students with and without disabilities are recorded, incidents recorded as restraint meet the definitions used for CRDC reporting, documentation of restraint incidents are maintained

with sufficient detail to determine if the incident meets the definition of restraint, and restraint data can be disaggregated.

- Develop a system for tracking and monitoring the amount of time that students utilize cool-down rooms, ensuring that data about the utilization of the rooms can be disaggregated.
- Analyze data related to the use of physical restraint in its schools and programs in order to determine whether restraint is utilized for students with disabilities at statistically significant higher rates than other students and, if so, the reasons for the disproportionality.
- Conduct an administrative review of the educational records for any student enrolled in PISD as of the date of Agreement who was placed in restraint more than three times (or restrained on any occasion for more than 30 minutes) and/or utilized a time out room on three or more occasions within a one week period (or for an hour or more in a one week period) in either the 2014-15 or 2015-16 school years to determine if there is a need to re-evaluate the above-referenced student(s) and/or provide compensatory educational services.
- Develop a plan to increase opportunities for meaningful educational instruction and access to the curriculum for students who may, at times, need to be removed from the classroom instructional setting for behavioral reasons (including removals for restraint and/or for use of time out rooms).
- Provide training to administrators and relevant staff at all PISD schools regarding revisions to its policies and procedures with respect to the use of physical restraint and time out rooms, the District's legal obligation to evaluate students consistent with Section 504 regulations, and PISD's process for identifying whether a student needs to be re-evaluated and the process for re-evaluating students, particularly if that student is repeatedly subject to restraint or is utilizing a time out room on a frequent, unscheduled basis for behavioral problems.

Conclusion

OCR will monitor implementation of the Agreement. If the District fails to implement the Agreement, OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of the Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10), or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

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

Please be advised that PISD may not harass, coerce, intimidate, or discriminate against any individual because he or she participated in this compliance review. If this should occur, an individual may file a complaint alleging such harassment or intimidation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it 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.

OCR appreciates the cooperation and assistance of PISD in coordinating the compliance review activities. If you have any questions or concerns, please contact Cristina Doss, General Attorney, at (214) 661-9684, or Lori Bringas, Team Leader, at (214) 661-9638.

Sincerely,

Taylor D. August
Director
Dallas Office

Enclosure

cc: XXXXXXXX
XXXXXXX