



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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TEXAS

April 11, 2024

Jamie Wilson, Superintendent  
Denton Independent School District  
**Sent via email only to:** [redacted content]

Re: OCR Compliance Review Ref. No. 06-19-5002  
Denton Independent School District

Dear Dr. Wilson:

This letter is to notify you of the disposition of the above-referenced compliance review initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR), against the Denton Independent School District (DISD or District) on January 19, 2019. OCR's review focused on whether the District's use of restraint and seclusion denied 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 and Title II.

OCR conducted this compliance review pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. Section 794 et seq. (Section 504), and its implementing regulation at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs or activities receiving financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. Section 12101 et seq. (Title II), and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. The District receives federal financial assistance from the Department of Education and is a public entity. Accordingly, OCR had jurisdiction to investigate and resolve this compliance review under Section 504 and Title II.

The evidence obtained through the District's documents and data, as well as interviews of its staff, raised concerns about the District's compliance with Section 504 and Title II. Prior to OCR's completion of its investigation, the District expressed an interest in resolving this compliance review under Section 302 of OCR's Case Processing Manual (CPM), and OCR determined that such resolution is appropriate. The District signed the enclosed Voluntary Resolution Agreement (Agreement) to address OCR's compliance concerns. When fully implemented, the Agreement will resolve this compliance review.

### Summary of Findings

OCR identified four categories of concerns that the District's restraint practices may have resulted in denial of FAPE to students with disabilities participating in the District's programs.

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

OCR's first concern relates to school resource officers (SROs). SROs were at times involved in restraint incidents without having been properly trained regarding the restraint of students in an educational setting or the District's nondiscrimination obligations with respect to students with disabilities. Further, because District staff demonstrated confusion regarding what might constitute a "restraint," particularly when an SRO is involved, and that, consistent with the District's stated position, SROs were only to be involved in a restraint of a student when there was probable cause that a crime was being committed, OCR has concerns that the District may have restrained students with disabilities without documenting them, or considering whether to convene an Admission, Review, and Dismissal (ARD) or 504 committee meeting to reevaluate the restrained student's possible need for a different educational placement or services in order for the District to provide the student with a FAPE.

OCR's second concern is regarding the District's use of restraint in the context of students with disabilities. Specifically, OCR is concerned that the District, at times, restrained students who were not yet classified as students with disabilities multiple times before evaluating their eligibility for special education and related aids and services. Because ultimately most of these students were classified as special education students, and poor recordkeeping (as discussed below) prevents analysis of whether more or all of these students should have been so identified, OCR is concerned that the District may not have met its obligations to evaluate students as required under Section 504. The frequency and duration of the District's restraints are also of concern, as the District sometimes failed to reevaluate students' need for regular or special education and related aids and services, even after lengthy and/or numerous restraints. Also, students in programs for students with emotional and behavioral disabilities were restrained much more often than other students with disabilities in the District. Moreover, the District's lack of consistency in ensuring parents or guardians were notified of student restraints could have deprived the parents/guardians of students with disabilities with information that may have prompted them to seek a reevaluation of the child themselves.

OCR's third concern is with respect to recordkeeping, as documentation of restraints contained significant gaps. First, OCR's review revealed that District staff are unsure of whether and/or when a restraint by an SRO should be documented in the same manner as restraints conducted by District staff, thereby enabling the District to consider the information as part of a student's ARD or 504 committee meeting. Additionally, during the Review Period, District policy only required that restraints of special education students be recorded. This weakness in the District's recordkeeping could lead to the problems identified above regarding the repeated restraint of students not yet identified as students with disabilities. Further, OCR reviewed restraint records that were often missing critical information, such as start and end times for a given restraint, or even the behavior necessitating the restraint. Some forms also lacked clear identification of the staff members involved, which could hinder the District's ability to consider this information in re-evaluating the students' individual educational and behavioral needs by a group of persons knowledgeable about the students and their behavior. In the absence of knowledge of the staff who were involved in a restraint, the District could not ensure those individuals properly participated in a student's reevaluation(s). Additionally, it is unclear whether the District properly documented its restraints of students receiving services pursuant to Section 504 only. Finally, OCR also has concerns with the District's submissions to OCR's Civil Rights Data Collection (CRDC). OCR's review of CRDC data revealed discrepancies between the internal data the District provided to OCR for purposes of this review and the data reported to the CRDC.

Despite the obligation to report such data to the CRDC, the District was not accurately or completely collecting and reporting this data for the 2017-18 school year.

OCR's fourth concern is that the District did not provide clear notice to parents/guardians of the individual(s) designated by the District to coordinate its efforts to comply with Section 504 and Title II (Section 504/Title II Coordinator). This lack of proper notice could also compromise parents'/guardians' ability to request re-evaluations as necessary to ensure their children received a FAPE.

The District reported to OCR that District policy prohibits the seclusion of students, and the District did not report, nor did OCR identify, any seclusion incidents. Accordingly, OCR's review did not identify any concerns regarding seclusion of Students in the District, and OCR focused its investigation on the District's use of restraint.

### **Methodology**

As part of this investigation, OCR reviewed information gathered from a variety of sources, including information submitted by the District, information gathered from witness interviews, as well as publicly available information.

OCR reviewed District policies and procedures related to restraint and seclusion of students. OCR also requested and reviewed District records from the 2017-18 and 2018-19 school years (the "Review Period"). These records related to the District's evaluation and provision of related aids and services to students with disabilities; education records, evaluation records, and documentation relating to any student reported by the District to have been restrained or secluded during the Review Period (regardless of whether the District had yet identified the restrained or secluded student as a student with a disability); Individual Education Plans (IEPs), Behavior Intervention Plans (BIPs), and/or 504 accommodation plans for students the District identified as needing regular or special education and related aids and services because of the student's disability who were restrained or secluded during the Review Period; and District documentation related to every incident of restraint or seclusion of a student which occurred during the Review Period. Finally, OCR also requested and reviewed staff training materials related to restraint and seclusion of students, and descriptions of any rooms or spaces at each District campus where students may have been secluded during the Review Period.

OCR conducted an initial site visit to the District on June 25, 2019, during which it interviewed the DISD's Director of Special Education and Executive Director of Special Education. Over the next year, OCR interviewed over 50 District personnel, including the following: the District's Section 504 Coordinator, District-wide administrators and special education supervisors, selected campus administrators and 504 coordinators, Licensed Specialists in School Psychology (LSSPs), guidance counselors, special education teachers, and special education and general education paraprofessionals.

Based on District records of student restraints during the Review Period, OCR identified more than 150 different District students who had been restrained. OCR therefore requested supplemental data from the District regarding these students, including documentation of any re-evaluations the District conducted to assess student needs based on the frequency and/or duration of restraints for any student. In its initial data response to OCR, the District reported that there were no incidents of seclusion during the Review Period at any of the District's campuses.

## **Legal Standards**

### **Definitions**

For purposes of this review, OCR defined “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. 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.

For purposes of this review, OCR defined “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.

For purposes of this review, OCR defined “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 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 evaluation and placement of persons who, because of disability, need or are believed to need special education or related services. 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).

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 (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); (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.

In the context of restraint and seclusion, a recipient school district is responsible under Section 504 for discrimination that school police, e.g., SROs, may engage in, either where the school police are employed by the district or where they are employed by another entity (e.g., local police department) and provide services to the district pursuant to a memorandum of understanding (MOU) or other contractual arrangement. Under the regulations implementing Section 504, at 34 CFR § 104.4(b)(1) and (4), a recipient may not, directly or through contractual, licensing, or other arrangements discriminate on the basis of disability, and may not, directly or through contractual or other arrangements, utilize criteria or methods of administration that have the effect of subjecting individuals to discrimination on the basis of disability or have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program or activity with respect to individuals with disabilities.

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

## **Facts**

### **Overview**

The District has its central offices in Denton, Texas, the county seat of Denton County, Texas. The city of Denton is located approximately 25 miles north of the Dallas-Fort Worth metroplex. The District's 42 campuses include four comprehensive high schools, eight middle schools, 24 elementary schools, two early childhood centers, an alternative high school, and other specialized campuses (e.g., the District's K-8 Virtual Academy).

The first year of OCR's review period was 2017-18, and according to the data the District reported for OCR's 2017-18 CRDC data, the District enrolled 29,343 students. Of those students, the District reported that 10.8% received special education services pursuant to IDEA, while 12.4% of students were identified as eligible to receive related aids and services because of disabilities pursuant to Section 504 (but not under IDEA). In total, the District had identified 23.2% of District students as students with disabilities eligible for services under IDEA or Section 504. OCR's most recently-published CRDC data – representing data reported by the District for the 2020-21 school year – reflects that the District's enrollment had increased to 30,237 students. Of this population, the District reported that 7,020 of its enrolled students were students with disabilities receiving services under either IDEA or Section 504, or 23.2% of its student population, the same percentage the District reported for the 2017-18 school year.

The District offers a number of different special education programs for students with disabilities based on their individual educational needs. The availability of these special education programs varies by campus. These programs include Academic and Functional Skills (AFS, for elementary students), Academic and Vocational Life Skills (AVLS, for secondary students), Functional Life Skills (FLS, for both elementary and secondary students), and Positive Academic Behavioral Support (PABS, for both elementary and secondary students). During the Review Period, the District housed PABS classrooms at the following eight elementary schools: Alexander; Blanton; Borman; Evers; Hodge; Houston; Pecan Creek; and Savannah. Notably, Alexander Elementary was known as Robert E. Lee Elementary during the Review Period. Further, seven middle school campuses had PABs programs, namely: Myers; Calhoun; Crownover; Harpool; Navo; Rodriguez; and Strickland. Finally, all four of the District's comprehensive high schools – Braswell, Denton, Guyer, and Ryan – contain a PABS program. According to the District's website, the PABS program is "designed to meet the diverse needs of students with significant behavioral and emotional disabilities." Examples of disabilities that may result in placement in the PABS program include Autism and Emotional Disturbance.

For the 2017-18 and 2020-21 school years, the District reported zero mechanical restraints and zero incidents of seclusion of students to the CRDC. The District also reported zero restraints of students with disabilities receiving Section 504 services only to the CRDC for these years. For the 2017-18 school year, the District reported 97 incidents of physical restraint of nondisabled students, and 731 total restraints of students with disabilities receiving special education services pursuant to IDEA. For the 2020-21 school year, the District reported zero restraints of nondisabled students and zero restraints of students with disabilities receiving services pursuant to Section 504 only. The District's CRDC data further reflects that the District restrained a total of 57 students with disabilities receiving services under IDEA during this school year.

### **Section 504/Title II Coordinator**

The regulations implementing Section 504 and Title II require that recipients and public entities provide a written notice of the employee designated by the recipient to coordinate its efforts to comply with Section 504 and Title II (Section 504/Title II Coordinator). The District provided OCR with copies of its 2017-18 and 2018-19 Student/Parent Handbooks. OCR's review of this information revealed that the District published a "Nondiscrimination Notice" identifying its designated Section 504/Title II Coordinator in the 2017-18 Student/Parent Handbook; however, this notification was not included in the 2018-19 Student/Parent Handbook. OCR also reviewed the District's Student/Parent Handbook and Board Policies for the 2023-24 school year to determine whether the District has made any changes to its notices. OCR's review revealed that the District's Student/Parent Handbook directs parents/guardians to a specific individual for the purpose of initiating a referral of a student to be evaluated for Section 504 services. However, the District designated a different individual to coordinate its efforts to comply with Section 504/Title II in its Notice of Nondiscrimination published in the District's Board policies.

### **Restraint/Seclusion Policies and Procedures**

The District maintains policies and procedures that govern the restraint and seclusion of students, including policies specific to those students who, because of disability, have been identified as in need of special education services. The policies, where applicable, cite to Texas state law governing student seclusion and restraint, including actions by SROs. Unless otherwise specifically stated, references to District policy throughout this letter are to the policies that were in effect during the Review Period.

During the Review Period, District policy expressly prohibited the "seclusion" of students, defined as the following: "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." OCR notes that District policy separately prohibited "confining" students with disabilities receiving special education services "in a locked box, locked closet, or other specially designed locked space." Notably, District policy provided that the prohibition on seclusion extends to peace officers only if:

1. The peace officer 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.

While seclusion and confinement were prohibited by District policy, the District's policies permitted the use of "time-out" as a behavior management technique. "Time-out" was defined in District policy as a "behavior management technique in which, to provide a student with the 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."

The District reported zero seclusion incidents in response to OCR's data request. OCR also questioned staff regarding students' removal from the classroom and placed in isolation or "time

out” for the purpose of cooling down. Staff members consistently reported that students removed from the classroom for the purpose of cooling down were always accompanied by a staff member (and therefore never left isolated) and students would never be locked or barricaded in a room for any reason.

OCR also requested and received written descriptions from the District of any “transition rooms, thinking rooms, sensory rooms, or rooms used for similar purposes.” While some District campuses reported that they did not have any rooms designated for these purposes, most reported a variety of rooms used at the campus for these purposes. Most District campuses further reported that if any student began to engage in behavior that could become a threat to the safety of other students and/or staff, the general procedure was to clear other students from the classroom and have the student cool down in the classroom. District campuses also reported that students would never be left alone in a classroom while cooling down. In addition to this customary procedure, District campuses reported a variety of other rooms at their respective campuses where students may be taken to “cool down.” Many campuses reported having “cubbies” with no walls or doors where students would sit and work. District campuses also reported using empty classrooms or administrative/counseling offices for “cool down” areas, and that, when offices or classrooms were used for cool down purposes, students were not left alone. Based upon OCR’s review of documentation and interviews with District witnesses, OCR did not identify any uses of seclusion by the District during the Review Period. Moreover, OCR notes that the District did not report any instances of seclusion to the CRDC for either the 2017-18 or 2020-21 school years.

District policy defined “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. Pursuant to District policy, a District employee may physically restrain a student if the employee believed the restraint was necessary 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. Remove a student refusing a lawful command of a school employee from a specific location, including a classroom or other school property, to restore order or to impose disciplinary measures.
4. Control an irrational student.
5. Protect property from serious damage.

Restraint may only be used in an “emergency,” 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.

“Emergency” was defined as “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.”

District staff, including campus administrators, special education teachers, and special educational paraprofessionals, reported an understanding that staff should not resort to physical restraint of a student unless there is an “emergency,” for example, when a student presents a threat of immediate physical danger to themselves or others. Staff did not report that they had received any guidance regarding a maximum amount of time that a physical restraint should last. Rather, the majority of staff OCR interviewed reported that a restraint should last as long as the “emergency” lasts, or until the student has calmed down, regardless of how long that may take. Students’ IEPs, BIPs, and 504 accommodation plans did not generally indicate that the District evaluated and determined based on students’ individual needs the circumstances under which a student may be restrained, nor did the evaluation documents designate restraint methods for individual students based on staff’s experience with the student(s), or a recommended maximum duration for a single restraint, even after a student had been subjected to multiple restraints during the school year in which the committee convened to re-evaluate the student’s individual educational needs. Rather, even when restraint was mentioned in a student’s IEP/BIP, the committee did not document any additional details, for example, previous behaviors of the student that had necessitated a restraint.

### **Restraint Training**

The District also maintains policies prescribing that “training for school employees, volunteers or independent contractors regarding the use of restraint shall be provided according to the requirements set forth” in the Texas Administrative Code, which during the Review Period required the following:

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.

The District reported to OCR that it trains its staff on the Crisis Prevention Institute (CPI) method of student physical restraint. District-employed behavior specialists provided the CPI training at the District level. According to the District, as of August 2019, the District employed seven active CPI trainers. The District provided OCR with a copy of its CPI training materials, which provided trainees with an overview of different restraint methods and included photographs depicting different restraint holds. District staff also informed OCR that staff working directly with students regularly received training from District behavior specialists regarding positive behavior techniques and de-escalation strategies.

The District further reported to OCR that each campus has a “crisis” team, and each member of this team receives restraint training. The District provided OCR with a spreadsheet evidencing the training history of staff at each of its campuses during the Review Period, which revealed that the District employed approximately 6 to 8 restraint-trained individuals at each campus, who

typically comprised the crisis team. Restraint-trained individuals varied by title at campuses, but generally included at least one administrator, as well as teachers and paraprofessionals. According to the District, some campuses also had an SRO and a Licensed Specialist in School Psychology (LSSP) who received restraint training, but this was not the case at every District campus. The District reported to OCR that campus SROs have not been involved in the District's restraint training since the commencement of the 2018-19 school year.

One District-level Special Education Supervisor reported that, in addition to members of the campus's crisis team receiving restraint training, it was the policy of the District's Special Education Department that any staff member assigned to one of the District's "self-contained classrooms," which included Life Skills and PABS classrooms, received restraint training. District staff with experience working in the District's Life Skills and PABS classrooms reported that CPI training was the only restraint training the District provided them. Staff members confirmed that they received restraint training through the District-level CPI trainers and reported that training "certificates" for restraint training were "good" for two years. Some staff members reported that they received restraint training every two years but took a "refresher" course annually.

Administrators and staff reported differences in the number and titles of staff who received restraint training by campus. For example, [redacted content] reported that every teacher and aide at the campus had received restraint training due to the nature of the campus. A [redacted content] reported to OCR that, in addition to training the campus's special education staff, the campus tried to ensure that there was at least one general education teacher "per hallway" who was trained regarding the use of restraint. [Redacted content] further reported that the campus made the training available to any individual who wishes to receive it. By contrast, as of the 2020-21 school year, [redacted content] reported that restraint-trained individuals included the campus's administrators, the campus guidance counselor, and those staff members who worked with students identified as special education students. At the middle school level, District staff reported that one administrator and special education/PABS staff were trained in restraint, but it did not appear to OCR that middle school counselors received restraint training.

### **Recordkeeping Procedures**

District policy also provided requirements for the documentation and reporting of student restraints to the Texas Education Agency (TEA). In accordance with the Texas Administrative Code provisions with which the District policy is aligned, these requirements are only applicable to incidents of restraint involving students with disabilities receiving special education services pursuant to IDEA. District policy set forth the following requirements:

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 ARD committee when it considers the impact of the student’s behavior on the student’s learning and/or creation or revision of a BIP.

5. Written notification to the parent(s) and documentation must be included in the student’s special education eligibility folder.

District policy required that the student’s special education folder include the following records:

- a. The name of the student;
- b. The name of the staff member(s) administering the restraint;
- c. The date of the restraint and the time the restraint began and ended;
- d. The location of the restraint;
- e. The duration 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.

District policy also incorporated the Texas Administrative Code’s requirement that documentation and reporting of restraints of special education students to the TEA electronically include “the use of restraint by a peace officer performing law enforcement duties on school property or during a school-sponsored or school-related activity.”

At the commencement of OCR’s review, the District provided a narrative statement regarding its system for documenting and reviewing the use of restraint in the District. The District indicated to OCR that “many” of its practices and procedures regarding restraint documentation were created or modified at the beginning of the 2018-19 school year, the second full school year of the Review Period.

The District reported that, when a restraint occurred, the staff members involved in the restraint immediately documented the restraint, providing details such as the time, location, nature of the restraint, the behavior that prompted the restraint, and the staff members involved in the restraint. The practices included the expectation that a staff member involved in the restraint provided a “restraint documentation form” to a campus administrator, who was responsible for entering the restraint information into the Public Education Information Management System (PEIMS), the system used for reporting restraint data to TEA. Under District procedures, the administrator reported the restraint verbally to the parent that same day and in writing within 24 hours of the restraint. OCR’s file review revealed that District campuses included copies of parental notification forms in some student files, but the District’s recordkeeping was not consistent in this regard.

The District further reported that, no later than 48 hours after the incident of restraint, all individuals involved in the restraint gathered for a “Physical Restraint Debriefing Meeting.” The District reported that it utilized a software platform for organizing all documentation related to its special education students, and that restraint information for special education students was uploaded onto this platform and included in the special education student’s file. Thus, the

District reported, the restraint documents were included in the information available for review when an ARD committee convened for any reason.

During the Review Period, there was not a Districtwide process for ensuring that restraints of students with disabilities receiving services in a general education setting pursuant to Section 504 were being documented at each District campus. Additionally, the District's special education administrators reported to OCR that they did not know whether these restraints were documented. The District reported that it asked all campuses to provide documentation reflecting restraints of Section 504-only students, and that if a specific campus did not document restraints of Section 504-only students, the campus did not provide any documentation. Markedly, OCR received few documents related to Section 504-only students, and OCR notes that, for the 2017-18 school year, the District did not report any restraints of Section 504-only students in its CRDC data. The District's 2020-21 CRDC data also does not reflect any restraints of Section 504-only students. The District reported that, at the commencement of the 2019-20 school year, the District's Section 504 administration worked closely with the Special Education Department to ensure that campus staff were informed that all restraints should be recorded using the same process throughout the District.

OCR also noted that some documentation reflecting restraints of students appears not to have been maintained by some District campuses. OCR reviewed ARD committee minutes that referenced student restraints for which no restraint forms were produced to OCR. Further, District staff conceded to OCR that documentation was not consistently maintained by the campus or entered into the District-wide recordkeeping system.

### **School Resource Officers**

The District does not have its own police department. District staff reported to OCR that, therefore, the District contracts with local police departments to provide police officer presence on "most" District campuses. Because the District spans seven different municipalities, the District had memoranda of understanding with seven different police departments during the Review Period. The District reported to OCR that SROs from the following municipal police departments participated in the restraint training offered by the District (CPI) at the commencement of the 2018-19 school year: Denton, Corinth, Denton County Sheriff's Department, Aubrey, Little Elm, and Providence Village. Since that time, however, the District has not included SROs in its restraint training.

The District's stated position is that an SRO should never be involved in a restraint of a student unless there is probable cause that a crime is being committed and, further, that SROs receive legally required School-Based Law Enforcement training from the Texas Commission on Law Enforcement. However, District staff reported inconsistencies with respect to SROs' involvement in incidents of restraint and, further, lacked understanding of when an SROs' handcuffing of a student not incident to an arrest amounted to a "restraint" which would require documentation and reporting. Some staff members reported that they may call an SRO for assistance, just as they may call an administrator, in situations where they may need "back-up." But [redacted content] reported to OCR that she tells the campuses [redacted content] – all of which are elementary school campuses that contain PABS classrooms – that SROs should not be involved in student restraints. Nevertheless, the District provided documentation to OCR which revealed that SROs were involved in restraint incidents during the Review Period.

When SROs were involved in restraint incidents, documentation procedures varied at the campus level. Some District staff reported that if an SRO was involved in a restraint, they would identify the SRO as one of the staff members involved when completing the restraint form. However, other staff members reported that, in situations where an SRO handcuffed a student, they were unsure whether District staff should document the incident as a restraint. By way of example, OCR reviewed restraint documentation which identified staff's physical restraint of a student as one restraint incident and an SRO's action of handcuffing and escorting the student after the initial restraint as an additional restraint incident. In contrast, OCR also reviewed restraint forms which did not record an SRO's handcuffing of a student after termination of a physical restraint as an additional restraint incident. Further, OCR reviewed ARD committee documentation that referenced SRO involvement with students not incident to an arrest, but for which no restraint forms were produced to OCR. Thus, it appears that District campuses are not consistently assessing whether SRO interaction with students necessitates restraint documentation.

The District's 2017-18 and 2020-21 CRDC data reflect that the District reported zero instances of mechanical restraint. However, the restraint information the District provided to OCR, as well as a publicized [media report](#), indicate that SROs were involved in student restraints, to include handcuffing of students not incident to an arrest, during the Review Period.

### **Overview of District's Use of Restraint During the Review Period**

OCR's investigation revealed that the District restrained a total of 159 different students during the Review Period. The following five campuses reported the highest numbers of restraint incidents for the 2018-19 school year, the most recent school year for which OCR reviewed complete restraint data:

1. Alexander Elementary School (39 restraints)
2. Myers Middle School (29 restraints)
3. Hodge Elementary School (27 restraints)
4. Blanton Elementary School (23 restraints)
5. Paloma Creek Elementary School (22 restraints)

Each of these campuses except Paloma Creek Elementary School operated a PABS classroom during the Review Period. While Paloma Creek did not house a PABS classroom, the campus operated one of the District's Preschool Programs for Children with Disabilities (PPCD) during the Review Period. OCR's finding that these campuses had the most restraints is consistent with information provided by District administrators, who indicated that "most" restraints occur in the District's PABS classrooms.

District staff subjected many students to multiple incidents of restraint during the Review Period, including at least 12 students the District restrained 10 or more times, and one student the District restrained a total of 43 different times. Further, some campuses recorded restraints occurring on a single school day on one form, making it unclear whether the District considered the restraint(s) a single restraint or multiple restraints, despite the use of a single form. OCR could not confirm through staff interviews whether restraints recorded on a single form were considered one restraint incident (with breaks to relieve staff participating in the restraint), or separate restraint incidents. By way of example, OCR reviewed restraint forms that included

multiple start/stop times – close in temporal proximity – on a single written summary of a restraint. When OCR inquired of District staff in interviews whether multiple start and stop times reflected on a single restraint form were considered one restraint incident or separate restraint incidents, staff were unsure.

Further, District staff subjected multiple students to restraints that lasted longer than 10 minutes and restrained some students for more than 30 minutes. The District reported to OCR that, at the commencement of the 2019-20 school year, the DISD adopted a policy that a student who had been restrained for 10 minutes or longer must be assessed by the campus's nurse. The District also revised its restraint documentation to include a form that must be completed by a school nurse (when applicable) and reported to OCR that this information is included with the restraint documentation that is maintained and reviewed when ARD/Section 504 committees convene to evaluate students' needs.

## **FAPE-Related Observations**

### **General Observations**

The District restrained some students who were not yet classified as students with disabilities multiple times before it took steps to evaluate whether the student may need special education or related aids and services as a result of a disability. However, once evaluated, of those students restrained by District staff during the Review Period, the District found most of the students were eligible for special education and related aids and services and provided them with services pursuant to an IEP. For the 2017-18 school year, the District reported it restrained only two students receiving solely Section 504 services. For the 2018-19 school year, the District provided data reflecting that it restrained four students receiving only Section 504 services.

For those students the District identified to receive special education services, the District had a practice of convening ARD committees on an annual basis to conduct a review of the student's individual needs. However, OCR's review of ARD committee minutes revealed that students' IEPs and BIPs rarely addressed the use of restraint on the student(s). By way of example, one student's BIP noted that the student would be advised that restraint could occur if the undesired behavior continued but did not provide any guidance to staff as to when to consider restraint, how to restrain the student, or provide any guidance with respect to the duration of the restraint. ARD documentation reviewed by OCR often did not discuss student restraints, even when the District's data revealed that a student had been subjected to multiple restraints prior to the convening of the ARD committee. Moreover, the District's documentation did not indicate that ARD committees considered whether a student subjected to multiple and/or lengthy restraints may need compensatory educational services because of lost instructional time when the student was restrained or calming down outside of the classroom after the restraint.

At times, the District's re-evaluation of a student's needs after multiple incidents of restraint resulted in a change of placement for the student to one of the District's specialized behavior classrooms (i.e., PABS). For those students already placed in PABS who continued to be subjected to multiple restraints, OCR did not identify documentation from the District to show that ARD committees were consistently reviewing the restraint incidents to consider whether the student may need different accommodations.

OCR noted that often restraint forms did not provide a clear explanation of the behavior prompting the need for the restraint or clearly document the “cool down” techniques that were attempted prior to resorting to restraint. Rather, many forms appeared to have every behavior intervention technique “checked off” as a matter of course. Further, some forms lacked clear documentation of the start and end time for the restraint or identification of the individuals who participated in the restraint. Finally, as noted above, some forms included documentation of what appears to be multiple restraints recorded on a single form.

### **Individual Student Observations**

OCR considered how the District’s use of restraint and seclusion affected individual students who were subjected to frequent and/or lengthy restraints. OCR noted the following based on a review of restraint forms, IEPs, BIPs, and ARD committee minutes:

- For one student, the District did not provide any restraint forms, even though ARD committee documentation reflects that the student was restrained by staff multiple times. In addition, the [media report](#) referenced above indicated that, in [redacted content], this student – who was [redacted content] from the District – suffered physical injuries after being handcuffed by an SRO. While this student’s records reflected that the District [redacted content], the documentation did not clearly reflect that the District considered the impact of the student’s restraints, including the SRO restraint, on the student’s ability to receive a FAPE from the District. The [redacted content].
- Another student was restrained a total of 43 times during the Review Period, with minimal information documented on restraint forms. Further, the District’s ARD documentation for this student does not indicate that the committees assessed the impact of these restraints on the District’s ability to provide the Student with a FAPE.
- District staff restrained a student on two separate occasions for over an hour each time. The District’s documentation reflects that, while the District reconvened an ARD committee to make modifications to the Student’s IEP and behavior plan, the committee failed to consider the impact of the restraints on the student’s receipt of FAPE from the District.
- The District restrained an individual student 21 different times during the Review Period, with 8 restraints lasting longer than 20 minutes, and one restraint lasting 45 minutes. The District’s ARD documentation does not indicate that the ARD committee considered the impact of these restraints on the Student’s ability to receive a FAPE from the District.
- A [redacted content] student was restrained by District staff 21 times during the [redacted content]. The District’s first documented incident of restraint involving this student occurred in [redacted content]. The District initiated an evaluation of the Student to determine whether the Student needed special education or related aids and services, and the Student’s IEP and BIP became effective on [redacted content], only after the Student had been restrained at least 18 times.

Many restraint forms for specific students the District subjected to multiple or lengthy restraints were missing or lacking in detail, and OCR did not receive evidence that the students’ restraints were considered by Section 504 or ARD committees in evaluating or re-evaluating the students’ need for special education or related aids and services, including whether a change in a student’s placement may be warranted as a result of restraints.

## Analysis

OCR has concerns that campus SROs are, at times, participating in restraints of students, and at least some of these SROs have not received the restraint training offered by the District. Moreover, OCR found that, in a significant deviation from the District's stated position, SROs were often involved in restraints even in absence of probable cause that a crime was being committed. Because OCR's interviews with District staff indicated confusion regarding what might constitute a "restraint," particularly when an SRO is involved, OCR also has concerns that students may be restrained without an ARD or 504 committee convening to reevaluate whether a student may need a different educational placement or services to ensure the District continues to provide the student with a FAPE.

OCR also has concerns that the District is restraining students not yet identified as having a disability a number of times prior to initiating an evaluation of the student to determine whether the student may have a disability and need regular or special education or related aids and services. Further, OCR has concerns that, because the District's restraint policies and procedures only explicitly require recordkeeping of restraints involving special education students, the District's ability to assess whether a student may have a disability and needs services is impacted.

The District's possible denial of a FAPE to students with disabilities is also of serious concern. Even when the District restrained students repeatedly and for increasing durations, it often took the District some time to reevaluate students with disabilities. Moreover, the District's records reflect that students with emotional and behavioral impairments who have been placed in the District's programs serving students with these needs are being subjected to restraint at rates significantly higher than other students in the District, potentially impeding these students' ability to receive a FAPE. Moreover, OCR found instances when the District failed to provide the requisite notice to parents when the District restrained their children, depriving them of information necessary to know when to seek a reevaluation of their child themselves.

OCR also identified several significant recordkeeping issues. District staff exhibited confusion about when restraints involving SROs should be documented. Many of the District-provided restraint summaries lacked a clear explanation of the behaviors prompting the need for restraint and the de-escalation strategies used. Some forms had missing information, such as a clear start and end time for the restraint and clear identification of the staff members involved, such that the District could not identify these individuals and seek their participation in ARD committee meetings. Further, at times, multiple restraints of varying lengths and involving different staff members were recorded on a single form. This lack of consistent recordkeeping hampers the District's ability to consider this information in reevaluating the students' individual educational and behavioral needs. Additionally, OCR has concerns that the District did not consistently document restraints of students receiving services under Section 504 only.

These recordkeeping issues also led to concerns with the District's required reports to the CRDC. OCR found likely underreporting of restraint data for students receiving services under Section 504 only and/or students not identified as students with disabilities. OCR also found apparent discrepancies between the District's reports to the CRDC and the data it submitted to OCR in conjunction with this Review regarding SRO involvement in student restraints, including, but not limited to, mechanical restraints.

The evidence the District submitted to OCR also revealed concerns that restraint incidents were not consistently and sufficiently being considered during ARD committee meetings for students receiving special education and related services. In fact, most of the ARD committee documentation lacked any evidence that ARD committees considered students' restraint history when determining whether the District should adjust students' related aids and services and, in particular, the tools and resources identified in students' BIPs. The lack of documentation leads OCR to question whether ARD committees made individualized determinations with respect to how District staff may utilize restraint on students, and whether the ARD committees considered the effect of repeated restraints on specific students' abilities to fully participate in the District's educational programs.

Further, the data OCR reviewed raises doubts about whether ARD committees reviewing restraints included individuals knowledgeable about the student and the meaning of data, including restraint data. For example, OCR's review of restraint data indicated that special education paraprofessionals were frequently the District staff performing restraints on special education students, but paraprofessionals were rarely – if ever – included in ARD committees considering student placement options.

OCR also has concerns regarding the duration and frequency of restraints for a select number of identified students. Moreover, OCR has concerns that the District did not re-evaluate whether the duration and frequency of restraints of these specific students may have resulted in a denial of FAPE to the students, as there is little evidence to indicate that the restraints were considered by the ARD committees evaluating these students' individual educational needs, and whether students may have needed compensatory services for lost instructional time.

Lastly, OCR notes that the District did not appear to provide adequate notice to parents/guardians of the individual designated by the District to coordinate its efforts to comply with Section 504 and Title II (Section 504/Title II Coordinator). While this information was included in the 2017-18 Student/Parent Handbook, the notice was removed in the 2018-19 Student/Parent Handbook. During the 2023-2024 school year, the Student/Parent Handbook directs parents/guardians to contact a specified individual to initiate a referral for evaluation of a student for Section 504 services, but the contact person is different from the Section 504/Title II coordinator designated by the District in its Board policies.

## **Conclusion and Resolution**

Under Section 302 of OCR's CPM, allegations under investigation may be resolved at any time when, prior to the conclusion of the investigation, the recipient expresses an interest in resolving the issue under investigation and OCR determines that it is appropriate to resolve the issue because OCR's investigation has identified concerns that can be addressed through a resolution agreement. As noted above, the District expressed an interest in resolving this review prior to the conclusion of OCR's investigation and OCR determined resolution was appropriate. The District signed the enclosed Agreement, which, when fully implemented, will address the evidence obtained, the issue investigated, and the compliance concerns OCR identified. OCR will monitor the District's implementation of the Agreement until the District is in compliance with the terms of the Agreement and the statutes and regulations at issue in the case.

The steps the District committed to take in the Agreement include:

- Convening Section 504 and/or Admission Review and Dismissal (ARD) committees to re-evaluate the needs of students identified during the review who may have been denied a FAPE as a result of the district's use of restraint and timely providing any compensatory services identified as necessary for identified students.
- Reviewing and revising as necessary the district's policies and procedures governing restraint, including the involvement of SROs in restraint incidents.
- Developing a process for the creation, maintenance, and review of records documenting each incident of student restraint.
- Developing a process to ensure accurate reporting of all restraint incidents to the Department's Civil Rights Data Collection.
- Reviewing each incident of restraint in which an SRO was involved between 2022-23 and 2023-24 years to assess the impact on individual students restrained and to inform the district's policies and practices regarding SRO involvement in restraint incidents.
- Reviewing the district's policies regarding the involvement of SROs in restraint incidents, including revising Memoranda of Understanding and district policy as necessary to ensure all policies and agreements include clearly defined roles and areas of responsibility for SROs, including when staff may involve SROs in restraints and how such incidents should be documented.
- Establishing an annual review process for SRO involvement in student restraints.
- Establishing a monitoring program to monitor the use of restraint in students in all district schools to safeguard student rights under Section 504 and Title II.
- Ensuring that all staff who may be involved in student restraints receive training regarding the use of restraint on students, including the district's policies and procedures relating to the recording of all incidents of restraint.
- Ensuring that all staff receive training regarding the District's obligation to provide a FAPE to students with disabilities pursuant to Section 504 and Title II.
- Offering training to all SROs contracted by the District to serve on District campuses regarding the District's policies and procedures regarding restraint, including recordkeeping procedures, as well as the District's nondiscrimination obligations pursuant to Section 504 and Title II.

This concludes OCR's compliance review of whether the District's use of restraint and seclusion denies students with disabilities FAPE in violation of Section 504 and Title II. This letter should not be interpreted to address the District's compliance with any other regulatory provision or to address any issues other than those addressed in this letter.

This letter 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 the District may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because that individual asserts a right or privilege under a law enforced by OCR or has filed a complaint, testifies, assists, or participates in a proceeding under

a law enforced by OCR. If this happens, the individual may file a retaliation complaint with OCR.

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

OCR looks forward to receiving the District's first monitoring report. For questions about implementation of the Agreement, please contact OCR attorney Rachel E. Caum, at (202) 987-1389, or at [rachel.caum@ed.gov](mailto:rachel.caum@ed.gov), who will be overseeing the monitoring of this Agreement.

Sincerely,

Angela Hights  
Regional Director  
Office for Civil Rights  
Dallas Office

cc: **Via email only to:** Deron Robinson, General Counsel [redacted content]

Enclosures: Voluntary Resolution Agreement  
Appendix to Voluntary Resolution Agreement