

RESOLUTION AGREEMENT
Aberdeen School District
Complaint Number 07-16-1912

The U.S. Department of Education, Office for Civil Rights (OCR) and the Aberdeen School District (District), Aberdeen, South Dakota, enter into this Resolution Agreement (Agreement) to resolve the allegations in the above-referenced complaint. The Agreement does not constitute an admission of liability, non-compliance, or wrong-doing by the District. The District assures OCR that it will take the following actions to comply with the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 United States Code (U.S.C.) § 794, and its implementing regulation at 34 Code of Federal Regulations (C.F.R) Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of Federal financial assistance and public entities.

Restraint and Seclusion Determination

1. By _____, and periodically thereafter, the District shall conduct an individualized review to determine the appropriate use of restraint or seclusion for the following students:
 - a. all students with a disability who are identified as exhibiting behaviors which impede his or her learning or that of others, notwithstanding whether the student has been subjected to restraint or seclusion; and
 - b. any student with a disability upon whom restraint or seclusion was used during the 2017-18 and/or 2018-19 school year.
2. The individualized review of the students identified above shall be conducted by the respective individualized education program (IEP) team or Section 504 team. The individualized review shall address the following:
 - a. if and when restraint or seclusion may be used;
 - b. who is authorized to administer restraint or seclusion;
 - c. the type of restraint or seclusion which may be used;
 - d. where the student may be restrained or secluded;
 - e. how long the student may be restrained or secluded;
 - f. whether there is a pattern in the use of restraint or seclusion indicating a need to review the student's current placement, including assessing the function of the student's behaviors, the development of an individualized behavior management plan and/or positive behavioral interventions or supports which reduces the need for restraint or seclusion;

- g. the method by which parents or guardians will be notified if restraint or seclusion is used;
- h. alternative methods of preventing imminent danger to self or others, if any;
- i. whether other placement options would reduce the need for or frequency of restraint or seclusion; and
- j. whether the student needs counseling or other services to remedy missed academic or related service or any other negative effects of the use of restraint or seclusion.

REPORTING REQUIREMENT A: By June 1, 2018, the District will provide OCR with a list of the students for whom it will be conducting the review required by item 1(a) and their 2017-2018 IEPs or Section 504 plans. The District will further provide OCR with a list of students for whom it will be conducting the review required by item 1(b), and, including the following:

- a. whether the student was subjected to restraint or seclusion or both;
- b. the date of the restraint or seclusion;
- c. whether the student is currently identified as a student with a disability; and
- d. a copy of the Restraint and Seclusion form for each incident.

REPORTING REQUIREMENT B: By _____, the District will provide OCR with the written outcome of the individualized review of the students identified in item 1 (a) and (b). The written outcome will specifically document the District’s determination of item 2 (a) through (j) for each student. The individualized review shall be incorporated into the student’s IEP or Section 504 plan, which will be provided to OCR pursuant to this reporting requirement. For any student identified as exhibiting a pattern of restraint or seclusion pursuant to item 2 (f), the District shall provide OCR with the data collected to identify the cause of the behavior and the District’s analysis of the data, including the development of an appropriate behavior management plan.

REPORTING REQUIREMENT C: Concurrent with the satisfaction of reporting requirement B, the District shall provide OCR with documentation demonstrating the parents or guardians of the students identified in item 1 received the written outcome of the individualized review of the use of restraint or seclusion required by item 2, including notice of procedural safeguards for those parents of students with a disability.

REPORTING REQUIREMENT D: By September 30, 2019, the District will provide OCR with copies of all IEPs and Section 504 Plans for all students who have been the subject of restraint or seclusion one or more times during the 2018-19 school year which document (a) – (j) above.

Restraint and Seclusion Form

3. By _____, the District will ensure that its restraint and seclusion reporting form (Form) is used to document all instances of restraint and seclusion. The District will ensure that within one day of the administration of restraint or seclusion, the parent or guardian is notified of the information contained in the Form either orally or in writing. The District will further ensure that the Form is provided to the student’s IEP team or Section 504 team prior to their next meeting, or, for students not identified as eligible for special education or related services, to the appropriate child-find team.

REPORTING REQUIREMENT: By _____, the District will provide OCR a draft of its restraint and seclusion reporting form for review and approval.

REPORTING REQUIREMENT: By January 30, 2019, the District will provide OCR copies of its restraint and seclusion reporting forms which document the use of restraint or seclusion for the first semester of the 2018-19 school year. By June 1, 2019, the District will provide OCR with copies of its restraint and seclusion reporting forms which document the use of restraint or seclusion for the second semester of the 2018-19 school year.

The District understands that by signing this Agreement, it agrees to provide the foregoing information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with Section 504 at 34 C.F.R. § 104.4(a), § 104.33, § 104.34, and § 104.35, which were at issue in this case. Upon completion of the obligations under the Agreement, OCR shall close this complaint.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10) or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

The Agreement will become effective immediately upon the signature of the District’s representative below.

Dr. Becky Guffin, Superintendent

Date