



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

1244 SPEER BLVD, SUITE 310  
DENVER, CO 80204-3582

REGION VIII  
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WYOMING

July 19, 2017

Superintendent Jeff Stephens  
Weber School District  
5320 Adams Ave. Pkwy.  
Ogden, UT 84405

Re: Weber School District  
Case Number: 08-14-5002

Dear Dr. Stephens:

This is to advise you of the resolution of the above-referenced compliance review of Weber School District (District) that was initiated by the Office for Civil Rights (OCR), U.S. Department of Education (Department). The compliance review was initiated to examine whether the District discriminates against students with disabilities by subjecting them to restraint or seclusion more frequently and excessively than students without disabilities. The compliance review also assessed whether the District's use of restraint or seclusion has denied students with disabilities an opportunity to receive a free appropriate public education.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 and its implementing regulation at 34 Code of Federal Regulations Part 104, which prohibit discrimination on the basis of disability in programs and activities that receive Federal financial assistance from the Department; and Title II of the Americans with Disabilities Act of 1990 and its implementing regulation at 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department, the District is subject to these laws and regulations.

During the course of the investigation, before OCR had obtained sufficient evidence to make a finding, the District indicated its desire to voluntarily enter into an agreement to resolve this concern pursuant to Section 302 of OCR's *Case Processing Manual*. OCR reviewed this request and determined that it justified entering into an agreement without completing a full investigation. On July 17, 2017, OCR received the District's signed Resolution Agreement (enclosed). When the Agreement is fully implemented, the issues of this compliance review will have been resolved consistent with the requirements of Section 504, Title II, and their implementing regulations. This letter describes the results of our investigation to date.

**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).

In this review, OCR considered whether the District discriminates against students on the basis of disability in its use of restraint or seclusion by (a) unnecessarily treating students with disabilities differently from students without disabilities; or (b) denying them the right to a free appropriate public education (FAPE).

### **A. Different Treatment**

Under a different treatment 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 so as to limit or deny the ability of the student to participate in or benefit from the education program or activity.

To determine whether an individual has been discriminated against on the basis of disability under Section 504 and Title II, OCR looks at whether there is evidence that the individual was treated differently than non-disabled individuals under similar circumstances, and whether the treatment has resulted in the denial or limitation of services, benefits, or opportunities. If there is such evidence, OCR examines whether the school district provided a nondiscriminatory reason for its actions and whether there is evidence that the stated reason is a pretext for discrimination.

### **B. 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**

Weber School District is located in Ogden, Utah, and comprises seven high schools, ten junior high schools, and 29 elementary schools. During the 2013-14 school year, when this compliance review was initiated, the District enrolled 30,870 students. Of those students, 3,849 were identified as receiving special education (9.8 percent).<sup>1</sup>

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<sup>1</sup> <http://www.schools.utah.gov/data/Reports/Enrollment-Demographics.aspx>

According to the 2009 Civil Rights Data Collection (CRDC) data, among all the school districts in Region VIII of the Department's Office for Civil Rights, the District had reported the second highest number of restraint or seclusion incidents. The District reported the largest number of restraint and seclusion incidents in the state of Utah. From the 2009 CRDC data, Weber reported a total of 829 incidents of restraint and seclusion. In contrast to the 2009 CRDC data, the 2011-12 CRDC data shows that the District reported only 99 total incidents of restraint and seclusion, which amounts to an almost 90% drop in the number of restraint or seclusion incidents reported in the previous CRDC.

### **DATA SUBMITTED BY THE DISTRICT**

The District provided OCR with the following data:

- The name and contact information for the District's Section 504 coordinator and a screenshot of this information from the District's website.
- The District's Section 504 policy and a description of where it can be found.
- The District's policies regarding restraint and seclusion. These include the Utah State Office of Education's Least Restrictive Behavioral Interventions Guidelines (LRBI), The Mandt System (described further in this section), the District's Special Education Procedures.
- Copies of restraint and seclusion logs for the 2012-13 and 2013-14 school years. The logs included information such as dates, antecedents that led to the problem behavior, brief descriptions of the student's behavior and the type of physical contact. However, there is inadequate room under each category for substantial information to be written. The information was not always filled out or was described only vaguely. For instance, the logs often did not always include the names of all of the individuals involved, precise records of the length of a seclusion incident, or enough detail about the physical contact or time out for OCR to determine whether the incidents could be characterized as restraint or seclusion.
- A list of staff authorized to use restraint during the 2012-13 and 2013-14 school years.
- An Internet link to The Mandt System, a behavioral management system of de-escalation and intervention techniques, including restraint.
- Sign-in sheets for Mandt System trainings held during the 2012-13 and 2013-14 school years, including names of staff members who took the training.
- LRBI written training materials and sign-out sheets for the LRBI training video.
- Bus discipline training sessions for paraprofessionals and a list of paraprofessionals who attended the training in 2014.
- A spreadsheet summarizing restraint and seclusion incidents that occurred during the 2012-13 and 2013-14 school years which were a summary of the restraint and seclusion logs. The spreadsheet included information on 53 students who experienced restraint and seclusion. When the information was available from the logs, the spreadsheet included the names of the students involved, the school at which the incident occurred, disability status of the student, a brief description of restraint and/or seclusion used, the date of incidents, and the name(s) of staff involved in the incidents
- IEPs for the students listed on the spreadsheet.

- A list of schools housing special education programs, including descriptions of the types of programs at each school.
- Standard forms used by the Human Rights Committee (HRC) and HRC student records for the 2012-13 and 2013-14 school years. The HRC is a committee that reviews the handling of interventions considered intrusive under LRBI standards, such as restraint and seclusion. It consists of two parents of students with disabilities, a representative from the Division of Child and Family Services, a representative from Weber Human Services, an administrator, three teachers of students with significant disabilities with extensive behavioral knowledge, a school social worker with extensive behavioral knowledge, at least one special education coordinator with extensive behavioral knowledge and the special education director as committee chair. Review by the HRC is triggered when a student's behavior requires intrusive interventions more than once a week, two times a month, or four times a year. The purpose of the HRC is to review cases in which intrusive interventions such as restraint and seclusion have been needed frequently, identify causes of problem behaviors leading to the need for restraint and seclusion, review the behavior plans of the students involved, and make recommendations to IEP teams for behavioral interventions that may reduce the need for intrusive interventions. Utah's Least Restrictive Behavioral Interventions Guidelines recommends the creation of an HRC for each school district. In 2012-2013, the District's HRC reviewed 21 student cases and in 2013-2014, HRC reviewed 20 cases.

### **OVERVIEW OF THE USE OF RESTRAINT AND SECLUSION IN THE DISTRICT**

The District has Special Education Procedures that describe the District's system for dealing with restraint and seclusion. The District requires staff to apply the LRBI Guidelines in emergency situations in which restraint and seclusion may be necessary. The Utah State Office of Education created the LRBI Guidelines, and the Guidelines emphasize the use of prevention and de-escalation techniques to avoid the need for restraint and seclusion. The LRBI manual is available on the internet at <http://www.schools.utah.gov/sars/Behavior/ManualPrint.aspx>.

The LRBI Guidelines for crisis management prohibit both chemical and mechanical restraint. Restraints that obstruct the airway or impede a student's primary means of communication are prohibited. Prone restraint is specifically prohibited. The LRBI Guidelines use the term "seclusionary time out". Both physical restraint and seclusionary time outs are referred to as "emergency safety interventions" that may be used when a student presents an immediate danger to himself or others, not for disciplinary purposes.

According to the District's policies, the District only uses restraint and seclusion when a student is an imminent danger to self or others. Staff members who implement restraint and seclusion techniques are trained in the Mandt system, which is a series of behavior management techniques that are designed to de-escalate behavior situations prior to the implementation of restraint or seclusion practices. When an emergency situation occurs that does require the use of restraint or seclusion, the trained staff utilize the restraint and seclusion techniques that are part of the Mandt system. Staff members authorized to perform restraint and seclusion receive annual training in the Mandt system. For example, the Principal at Valley View Elementary told OCR that staff members clear the room when a student's behavior is escalating and give the student space and

time to think about what is upsetting him or her. Mandt prohibits the use of dangerous techniques such as prone restraint. In the 2012-13 and 2013-14 school years, 225 District staff members received Mandt training, and most of these staff members were teachers and paraprofessionals. The District provided Mandt training sign-in sheets demonstrating that these individuals received the training. Witnesses OCR interviewed who had performed restraint and seclusion confirmed that they had received Mandt training and that staff must be Mandt-trained in order to perform intrusive interventions.

OCR learned that the staff then completes and submits an emergency contact form to the Special Education Director and notifies the student's parents within 24 hours, as required by the LRBI guidelines. The emergency contact forms contain brief descriptions of antecedents, the problem behavior, and the intervention used. Staff members also fill out restraint and seclusion logs to record the incident. The District provided OCR with copies of these forms.

If a behavior requiring restraint and seclusion happens more than once per week, two times in a month, or four times in a year, the HRC reviews these cases and refers cases to the IEP/Section 504/Behavior team to determine if such behavior should be addressed in an IEP, Section 504 plan, or a Behavior Intervention Plan (BIP). Additionally, all plans that include restraint and seclusion will be reviewed by the HRC. The Special Education Director reviews all emergency contact forms to verify that procedures were followed. If procedures were not followed, training will be provided to the responsible staff.

### **SUMMARY OF ONSITE**

OCR conducted an on-site investigation of the District in May 2015. OCR visited six campuses<sup>2</sup>, where OCR interviewed witnesses and conducted visual inspection of rooms used for seclusion. OCR staff interviewed 31 witnesses (including teachers, teaching assistants, and administrators) on the six campuses. The interviews addressed District and campus policies and practices for restraint and seclusion of students with and without disabilities, and also covered employee experiences and observations of occurrences of restraint and seclusion. OCR staff also viewed and photographed the seclusion rooms at five of the six campuses (the sixth campus reportedly did not have a seclusion room). In advance of the onsite, OCR utilized a survey sent to school administrators and school staff authorized to use restraint and seclusion in order to identify campuses that may have higher incidents of restraint or seclusion. OCR used this information to determine which campuses to visit for the onsite.

#### **A. Restraint**

The interviewed witnesses indicated that restraint was being used only when students were an imminent physical danger to themselves or others. Staff were regularly trained and certified in the use of restraint as well as de-escalation techniques, and only trained staff used restraint. In practice, prone restraint is never used. The information that OCR gained through the interviews

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<sup>2</sup> OCR visited Bonneville High School (a comprehensive high school serving grades 10-12); Orion Junior High (a junior high school serving grades 7-9); Green Acres Elementary (a K-6 school); Valley View Elementary (a K-6 School); Washington Terrace Elementary (a K-6 school); and Canyon View School (a campus serving exclusively special education students, including programs for elementary, junior high, and high school students).

indicates that restraint practices are being used only to prevent physical harm to self or others. However, OCR had some concerns with the District's reporting and recordkeeping of restraint incidents, which were inconsistent and sometimes incomplete. More accurate record keeping practices would enable the District to better monitor and more accurately report on their use of restraint.

## **B. Seclusion**

While onsite, OCR viewed and photographed any designated seclusion rooms on each campus OCR visited. OCR did not include areas identified as "time out" areas – areas where students would not be confined or prevented from leaving, such as a corner of a classroom or a cubicle within a classroom.

In general, the seclusion rooms were large enough to allow for the free movement of a student; a student had sufficient room to sit, lie down, pace, or stretch. All the rooms OCR visited were clean and in good repair and had working lights. All had windows in the door to allow for observation of a student inside. The doors all had operational handles on the inside and outside. Some handles had locks, but the door could only be locked as long as someone was pressing the lock button. As soon as the button is released, the door unlocks, so students could not be locked inside without an adult standing immediately outside the door. One room (Bonneville) had a security camera inside and a mirror outside to allow for constant visual monitoring. One room (Washington Terrace) had construction paper covering the window in the door, but it could be easily lifted to look inside. Staff explained that the paper prevents the student from becoming distracted by what was happening in the classroom.

## **ANALYSIS**

The District supplied data that summarized each documented incident of restraint or seclusion. The data was provided by the Special Education Department and included only students with IEPs. According to the District, no data is maintained about the use of restraint or seclusion with general education students or with Section 504-only students. However, as noted previously, the District reported multiple instances of restraint and seclusion involving non-disabled students in both the 2009 and the 2011-12 CRDC data.

While some of the data discrepancies between the 2009 and the 2011-2012 CRDC may be attributed to District personnel who are no longer employed in the District, our analysis of the present data showed that there continue to be data errors that the District could not adequately explain.

As noted above, the District provided a spreadsheet summarizing restraint and seclusion incidents that occurred during the 2012-13 and 2013-14 school years. The spreadsheet included information on 53 students who were subjected to restraint or seclusion – the data fields on the spreadsheet included the name of the student, the school where the incident occurred at, the disability status of the student, a brief description of restraint and seclusion used, the date(s) of incidents, and the names of staff involved in the incidents, but these fields were not always completed. The District also provided "restraint" logs and "time out" logs. Neither the logs nor

the spreadsheet provide in-depth descriptions of student behaviors, of the physical location(s) that the students were placed in for seclusion or time outs, or of the physical contact that may or may not constitute restraint.

OCR realized after reviewing the data that many of the instances the District was reporting as instances of restraint may not actually constitute restraint. However, the information provided by the District was often not sufficiently detailed to allow OCR to make this determination. As a result, OCR was hesitant to rely on the District's data as an accurate count of what OCR would consider actual restraint and seclusion incidents. For example, the records for some students indicated they had experienced "forced physical guidance", but there is not enough detail in these records to indicate whether these incidents constitute restraint.

Additionally, the "time out" logs do not indicate whether the students were physically prevented from leaving an area or room or were in less restrictive time outs. The logs used at Washington Terrace Elementary School, for instance, are simply titled "logs" and include instances of time outs in which the door to the seclusion room is left open. The spreadsheet and the logs for some students were incomplete and did not indicate the staff involved or whether the door was open or closed during time outs. One student at Canyon View Elementary School closed the door to the seclusion room on his own, and the door was not held shut by staff. While the District does not dispute that there are instances of restraint and seclusion, the data that OCR obtained was sufficiently unclear to determine the actual prevalence of these practices.

OCR is concerned that as a result of the District's inadequate recordkeeping, the District is unable to ensure it is meeting its FAPE obligation to students. 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 adequately 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. Inadequate recordkeeping makes it difficult for the District to satisfy its ongoing obligation to determine whether a student's IEP or Section 504 Plan is effective with respect to the use of restraint and seclusion.

## **CONCLUSION**

Before OCR completed its investigation and made a compliance determination, the District requested to enter into the enclosed Agreement to resolve the issues raised by this compliance review. The Agreement is constructed with the benefit of OCR's understanding of the District's programs and services, and when fully implemented will ensure the District meets all compliance and regulatory standards. The terms in the attached Agreement are aligned with the specific areas

analyzed in this compliance review and are consistent with the regulatory requirements of Section 504 and Title II. In summary the Agreement requires that the District:

- Draft policies for the use of restraint and seclusion;
- Develop and implement a system for data collection that allows for accurate reporting of restraint and seclusion incidents for all District students;
- Review incidents of restraint and seclusion that occurred during the 2015-16 and 2016-17 school years to ensure that all FAPE requirements are being met, and provide appropriate remedies if not; and
- Provide training to necessary District personnel regarding the District's updated policies for the use of restraint and seclusion.
- Conduct an ongoing and periodic Districtwide review of restraint and seclusion incidents involving students with disabilities to ensure that all FAPE requirements are being met, and provide appropriate remedies for students, in those instances where FAPE is denied.

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 or judicial proceedings to enforce the Agreement, OCR shall give the District written notice of the alleged breach.

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.

The District may not harass, coerce, intimidate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. Also, under the Freedom of Information Act, it may be necessary to release this letter 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.

Thank you for your and your District staff members' cooperation in resolving this compliance review. If you have any questions regarding this matter, please contact XXXX, Equal Opportunity Specialist, at 303-844-XXXX.

Sincerely,

/s/

J. Aaron Romine  
Regional Director

Enclosure