

**Resolution Agreement  
Denver Public Schools  
Complaint Number 08-16-1365**

In order to resolve the open allegations in Case Number 08-16-1365, filed against Denver Public Schools (“the District”) and opened for investigation by the U.S. Department of Education (“the Department”), Office for Civil Rights (OCR) pursuant to 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. §§ 12131–65, and its implementing regulation at 28 C.F.R. part 35, the District agrees to implement the following Resolution Agreement.

**I. Policy Revisions**

- A. The District will review and revise, as necessary, its restraint policies and regulations to:
- i. Take into account the Department’s “Restraint and Seclusion: Resource Document” and the Department’s “Restraint and Seclusion of Students with Disabilities Dear Colleague Letter;”
  - ii. Narrowly limit when, how, and by whom prone restraints may be used;
  - iii. Include data collection (see Term V below); and
  - iv. Include a grievance process for students, parents, and guardians to use when they believe the policies and regulations have been violated (see Term VI below).
- B. If, before June 15, 2017, a state law or a state regulation is adopted that affects the terms of the policy, OCR will work with the District to modify, as necessary, the relevant provisions in Part I(A) of this Agreement.
- C. By July 15, 2017, the District will submit to OCR for feedback a draft of its revised policies and regulations.
- D. The District will promptly and fully address feedback from OCR until it receives OCR’s final approval of the revised policies and procedures.
- E. Within sixty (60) calendar days of OCR’s final approval of the revised policies and procedures, the District will adopt, publish, and disseminate the revised policies and procedures.
- i. Publication will include, but will not necessarily be limited to, the District’s “Special Education” website and its “Board of Education Policies and Procedures.”
  - ii. The revised policies and procedures will be disseminated directly to all staff and all parents and guardians of students in all schools and programs specifically designed for students with intensive affective needs (“AN-I schools and programs”).

*REPORTING REQUIREMENTS: Within ninety (90) days of OCR’s final approval of the revised policies and procedures, the District will submit to OCR: (a) the adopted policies*

*and procedures; (b) proof that the revised policies and procedures have been adopted (e.g., school board meeting minutes); (c) proof that the revised policies and procedures were published (e.g., screen shots); and (d) proof that the revised policies and procedures were disseminated as described above (e.g., copies of letters or emails sent).*

## **II. Provider Selection**

- A. In requests for proposals (RFPs) and other solicitations for outside providers of AN schools, programs, and services, the District will inquire about the applicant's policies and practices for the use of prone restraint.
- B. As one factor considered by the District in selecting providers, the District will give preference to applicants that do not use prone restraint.

*REPORTING REQUIREMENTS: Within thirty (30) calendar days of issuing an RFP or other solicitation for a provider of AN schools, programs, or services for the 2017-2018 school year, the District will submit to OCR a copy of the RFP or other solicitation. Within thirty (30) calendar days of the applicant selection, the District will submit to OCR: (a) the name(s) of the selected provider(s); (b) copies of all proposals submitted to the District; and (c) the criteria by which the District selected the provider(s).*

## **III. Prevention**

- A. The District will review all decisions to place students at AN-I schools and programs to ensure that each decision involved consideration of:
  - i. Each student's individualized education program (IEP);
  - ii. Whether the student has or should have a functional behavioral assessment (FBA) and behavioral intervention plan (BIP); and
  - iii. If the student already has an FBA and BIP, whether they are consistent with the District's policies.

*REPORTING REQUIREMENTS: By January 31, 2018, the District will submit to OCR: (a) the names of all students in AN-I schools and programs during fall 2017; (b) the name of each student's school or program; (c) a copy of each named student's IEP or Section 504 plan, and FBA and BIP (if applicable), and minutes or notes from the meeting during which the decision was made to place the student in the AN-I school or program. If prone restraint is included as an intervention in any student's IEP, Section 504 plan, or BIP, the District will provide an explanation for the inclusion.*

## **IV. Staff Training**

- A. Within sixty (60) calendar days of the District adopting the revised policies and procedures described in Term I of this Agreement, the District will submit to OCR for review and approval:

- i. Draft materials to train all staff in Cenpatico-operated schools and programs within DPS about: (a) Positive Behavioral Interventions and Supports (PBIS); (b) social and emotional learning; (c) behavioral and emotional disabilities; (d) non-physical de-escalation techniques; and (e) safe restraint techniques that comply with the revised policies and procedures described in Term I; and
  - ii. The name(s), title(s) or position(s), and qualifications of one or more proposed individuals to provide the training.
- B. The District will promptly and fully address feedback from OCR until it receives OCR's final approval of the revised policies and procedures.
- C. Within sixty (60) calendar days of receiving OCR's final approval of the materials and trainer(s), the District will provide the training to all Cenpatico staff.
- D. No Cenpatico staff member who has not yet participated in restraint training will participate in restraints.

*REPORTING REQUIREMENTS: Within thirty (30) calendar days of the training being provided to Cenpatico staff, the District will submit to OCR: (a) the date, time, and location of the training; (b) confirmation that the approved trainer(s) delivered the training; (c) the agenda and materials from the training; (d) the names and titles of all staff who attended the training; and (e) the name(s) and title(s) of all staff who did not attend the training, and an explanation for each person's absence.*

**V. Data Collection**

- A. The District will ensure collection of data on the use of restraints in all of the District's schools and programs, including all AN-I schools and programs administered by providers through contractual agreements with the District. The data will include the following information for each restraint:
- i. School or program name;
  - ii. Date;
  - iii. Time;
  - iv. Location;
  - v. Student's name;
  - vi. Student's grade;
  - vii. Name(s) of staff involved;
  - viii. De-escalation techniques attempted before resorting to restraint;
  - ix. Length of the restraint;
  - x. Injuries, if any; and
  - xi. Date, time, and method of notice to the student's parent(s) or guardian(s).
- B. The District will ensure the data described in Part A is collected on an annual basis.

*REPORTING REQUIREMENTS: By January 31, 2018, the District will submit to OCR: (a) complete data for the fall 2017 semester; and (b) a statement affirming that the District will continue collecting and analyzing restraint data on an annual basis.*

**VI. Grievance Process**

- A. Within thirty (30) calendar days of the District's adoption of the revised policies and procedures addressed in Term I of this Agreement, the District will designate at least one of its own staff members (*i.e.*, not a staff member of an outside provider) to receive and handle grievances, pursuant to the revised policies and procedures described in Term I above, from students, parents, and guardians regarding the use of restraint in the District's schools and programs, including all AN-I schools and programs administered by providers through contractual agreements with the District. The grievance process will be consistent with 34 C.F.R. § 104.7.
- B. The District will directly notify all parents and guardians of students in AN-I schools and programs of the grievance process. The notification for this Term may be part of the notification for Term I.

*REPORTING REQUIREMENTS: Within thirty (30) calendar days of the District's adoption of the revised policies and procedures addressed in Term I of this Agreement, the District will submit to OCR for review and approval: (a) the name(s), title(s), qualifications, and contact information for the designated staff member(s); and (b) a draft of a notice to be sent to parents and guardians.*

*Within thirty (30) calendar days of OCR's approval of the designated staff member(s) and notice, the District will notify parents and guardians of the designated staff member(s) and grievance process*

*Within thirty (30) calendar days of the notice being disseminated to parents and guardians, the District will provide OCR with a copy of the final notice and documentation showing it was disseminated.*

**VII. Individual Remedies**

- A. For all students with disabilities subjected to prone restraints in Cenpatico schools and programs during the 2015-2016 school year or during the 2016-2017 school year (as of the date of this Agreement), the District will, within ninety (90) calendar days of this Agreement being finalized, convene IEP or Section 504 team meetings to discuss: (a) the effects of the restraints on the student; (b) the need to re-evaluate the student; (c) the need to conduct a new FBA; (d) the need to amend the student's IEP, including the student's BIP; and (e) the need for compensatory education.
  - i. The decisions of the IEP and Section 504 teams will be effectuated.

- B. For all students with disabilities in Cenpatico schools and programs subjected to prone restraints subsequent to this Agreement being finalized, the District will, within ten (10) school days of the use of prone restraint, convene IEP or Section 504 team meetings to discuss: (a) the effects of the restraints on the student; (b) the need to re-evaluate the student; (c) the need to conduct a new FBA; and (d) the need to amend the student's IEP, including the student's BIP.
- i. The decisions of the IEP or Section 504 teams will be effectuated.

*REPORTING REQUIREMENTS: Within thirty (30) calendar days of the end of the 2016-2017 school year, the District will submit to OCR copies of prior written notices (PWNs) from the IEP team meetings required by Parts A and B above. If the PWNs do not reflect the discussion of topics (a)-(e) in Part A above or topics (a)-(d) in Part B above, then the District will submit additional documents reflecting the discussions (e.g., minutes from the meetings).*

*Within thirty (30) calendar days of the end of the 2016-2017 school year, the District will also submit a statement affirming that the District will continue convening IEP or Section 504 team meetings as required by Part B above in subsequent school years.*

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulations implementing Section 504 and Title II, which were at issue in this case.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of the Agreement, if necessary, OCR may visit the District, interview District employees and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504 and Title II, which were at issue in this case.

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.

For Denver Public Schools:

/s/ \_\_\_\_\_  
Josh Drake, Executive Director of Exceptional Students

March 27, 2017 \_\_\_\_\_  
Date