

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION VIII

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

September 7, 2023

Dr. Jaime Christensen
Academic Director
Spectrum Academy
665 N. Cutler Drive
North Salt Lake, UT 84054

RE: Spectrum Academy: OCR Compliance Review 08-19-5001

Dear Dr. Christensen:

This letter notifies you of the resolution of the compliance review of Spectrum Academy (the Academy) initiated by the Office for Civil Rights (OCR) of the U.S. Department of Education (the Department) on January 29, 2019. OCR's review examined whether the Academy's use of restraint and seclusion during the 2017-2018 and 2018-2019 school years (the Review Period) denied students with disabilities a free appropriate public education (FAPE) in violation of Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 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, 28 C.F.R. Part 35. Section 504 prohibits discrimination on the basis disability under any program or activity receiving Federal financial assistance, and Title II prohibits discrimination on the basis of disability by public entities. Because the Academy receives Federal financial assistance from the Department and is a public entity, the Academy must comply with Section 504, Title II, and their regulations.

I. Summary of OCR's Compliance Review and Findings

OCR analyzed the Academy's records and data, including, but not limited to: restraint and seclusion records for its students during the Review Period; other education records for its students with disabilities who were reported to have been subjected to restraint and seclusion during the Review Period; Academy policies and procedures; records and materials related to staff training concerning restraint and seclusion; meeting records of the committee that reviews the Academy's use of restraint and seclusion; information regarding the Academy's educational programs; and the Academy's student demographic data. Based on the District's records, OCR identified approximately 376 total incidents of restraint and seclusion involving 69 students in the 2017-18 school year, and 692 total incidents of restraint and seclusion involving 109 students in the 2018-19 school year. OCR conducted a virtual onsite visit in October 2020, using photographs to evaluate areas for seclusion at each school. OCR also interviewed a total of 36 staff across all of the Academy's schools including: the Academy's academic director, behavior coordinator, and special education administrator; the principal, assistant principal(s), behavioral

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specialists, and behavioral assistants at each school; and two special education teachers.

Based on OCR's investigation to date, OCR found that the Academy violated Section 504 and Title II in three ways with regard to two students: Student A who was restrained and/or secluded at least 40 times over a two-year period and Student B who was restrained and/or secluded at least 99 times over a one-year period. First, OCR found that the Academy failed to ensure that a group of knowledgeable persons making placement decisions for these students carefully considered the repeated use of physical restraint and/or seclusion with these students, as required by 34 C.F.R. §104.35(c)(2). Second, OCR found that the Academy failed to reevaluate Student A and may have failed to timely reevaluate Student B to determine if additional aids and services were appropriate to reduce the use of restraint and seclusion and to provide a FAPE, as required by 34 C.F.R. §104.35(b). Third, OCR found that the Academy denied a FAPE to Student A by restraining Student A at least 40 times, resulting in 14 hours of missed instruction, and denied Student B a FAPE by restraining Student B at least 99 times, resulting in at least 13 hours of missed instruction, and failed to consider or offer them any compensatory services.

OCR also identified three FAPE-related compliance concerns, two procedural and one substantive, with respect to an additional 26 students whom OCR identified as being subject to a high number of restraints and seclusion during the Review Period. First, the Academy may have failed to ensure that a group of knowledgeable persons making placement decisions for these 26 students carefully considered the repeated use of physical restraint and/or seclusion with these students, as required by 34 C.F.R. § 104.35(c)(2). Second, the Academy may have failed to reevaluate these 26 students to determine if the Academy's repeated use of restraint and seclusion for these students caused them to miss instruction or services, denied them a FAPE, and indicated a need for additional aids and services to ensure a FAPE under 34 C.F.R. §104.35(b). Third, OCR identified a substantive concern under Section 504 and Title II that the Academy's repeated use of restraint and seclusion with these 26 students may have denied them a FAPE and that the Academy did not offer them any compensatory services for missed services and instruction. Although the Academy took steps to address this compliance issue during OCR's review by automatically providing compensatory services for the time a student spent out of instruction due to seclusion, the Academy does not have a procedure or practice for a group of knowledgeable persons to consider if the repeated use of seclusion denied the student a FAPE and if further compensatory services are needed. The Academy also continues to lack a procedure or practice for such groups to consider if the repeated use of restraint denied a FAPE and requires compensatory services.

Finally, OCR is concerned that the Academy's recordkeeping practices may have prevented teams of knowledgeable persons from being able to carefully consider and meaningfully discuss the incidents of restraint and/or seclusion to determine if the current array of special education and related aids and services was sufficient to provide a FAPE. The Academy's system for maintaining records about restraint and seclusion may also be inadequate to allow the Academy to accurately report restraint and seclusion incidents in the Civil Rights Data Collection (CRDC).

OCR's compliance review of the Academy also made some positive findings. OCR found that the Academy has clear and detailed policies restricting the use of restraint and seclusion to emergency situations only. OCR also found that the Academy provides staff with regular training on the use of restraint and seclusion and limits the use of restraint and seclusion to trained staff. Staff members interviewed by OCR consistently and accurately articulated the Academy's policies, reflecting the training provided.

The legal standards and the facts gathered to date supporting these concerns and violations are summarized below. The Academy agreed to resolve these concerns and violations through the attached Resolution Agreement (the Agreement).

II. Legal Standards

OCR applied the following legal standards to the facts to determine if the Academy complied with its obligations under Section 504 and Title II regarding its use of restraints and seclusion.

A. Definitions

For the purposes of this compliance review, OCR defines "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 the purposes of this compliance review, OCR defines "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.¹

For the purposes of this compliance review, OCR defines "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.

B. Section 504 and Title II

The Section 504 regulation, at 34 C.F.R. § 104.33, requires school districts to provide a FAPE to

¹ 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.

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 individualized education program (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 school 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.²

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 school district shall: (1) draw upon information from a variety of sources, including physical condition and adaptive behavior;³ (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 34 C.F.R. § 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

² 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).

³ 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.

sufficient to provide a FAPE and the school must reevaluate prior to any significant change in placement.

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

III. Facts

OCR found the following facts in its compliance review of the Academy's restraint and seclusion practices. This section provides background about the Academy and summarizes its policies and procedures for restraint and seclusion, its practices and training related to its use of restraint and seclusion with students in Academy schools, its related recordkeeping, the incidents of restraint and seclusion during the Review Period, its monitoring of such incidents across schools, and the absence of guidelines about when to reevaluate students after the repeated use of restraints and/or seclusion.

A. Background Information – Spectrum Academy and its Educational Programs

Spectrum Academy is a Utah charter school for students with high functioning autism and others who would benefit from its learning environment.⁴ During the Review Period, the Academy offered programs to approximately 1,500 students in grades K-12 in two geographic locations, Spectrum Academy-North Salt Lake and Spectrum Academy-Pleasant Grove. North Salt Lake has four separate schools, each with its own principal: North Salt Lake Elementary (grades K-3), North Salt Lake Intermediate (grades 4-8), North Salt Lake High School (grades 9-12+), and North Salt Lake STARS (for students significantly below grade level and developmental level). Pleasant Grove offers programs for students in grades K-12+ in a single school with two principals. For the purposes of this compliance review, OCR considered the Academy to operate five schools, although it reports having only two schools with several campuses.

Because the Academy's mission is to serve students with autism, the Academy has a high percentage of students with disabilities. The Academy's response to the CRDC survey indicates that 86.5% of students were students with disabilities in the 2017-18 school year, all served under the IDEA, and none served under Section 504 only.

The Academy offers three programming tracks based on student needs: the Traditional Track leading to a high school diploma for students performing academically at or near grade level; the Occupational Track for students who have been identified as participating in the Alternative Assessment; and the Functional Skills Track for students who are performing significantly below grade level academically and below developmental level for adaptive skills. Direct instruction using Applied Behavior Analysis is provided in the Functional Skills Track. Although each campus provides functional skills classes, the North Salt Lake STARS campus is specifically designed for K-12 students in the Functional Skills Track. In addition to these tracks, the

⁴ See <https://www.spectrumcharter.org/>. The information in this section reflects the organization of the Academy during the Review Period. The Academy may have changed since that time.

Academy provides students with daily social skills instruction, assistive technology, speech therapy, occupational therapy, and sensory integration interventions.

The Academy's Director explained that a teacher leads each general education classroom at each school and that the teacher may be licensed for regular education or dually licensed for regular and special education. Each classroom also has a paraprofessional to help the teacher with implementing the IEP goals for the students with disabilities. Each special education classroom has multiple paraprofessionals and is led by a teacher who is licensed for special education. Each school also has a special education coach, who can assist the classroom teachers with implementing students' IEP goals, and a team of behavioral staff with one or more behavior specialists and behavior assistants. The behavior staff are expected to hold or be working toward certification in their field.

B. The Academy's Restraint and Seclusion Policies

The Academy has policies and procedures regarding restraint and seclusion that use the state of Utah's definitions for restraint and seclusion and its standards for their use.⁵ The State also provides schools with an extensive technical assistance manual on Least Restrictive Behavioral Interventions (LRBI).⁶ The Academy's primary policy document is the *Behavior Support Policy and Procedure Manual* (the Manual), which states that its policies and procedures for the use of Emergency Safety Interventions (ESI) is in compliance with state rules and the LRBI Manual. OCR reviewed the version revised of the Manual on September 1, 2018, which was in effect during part of the Review Period. The Manual has been revised multiple times since 2018, and the current version was revised on September 9, 2022.

Rule R277-609 of the Utah Administrative Code (the Rule) provides standards for LEA discipline plans and emergency safety interventions. The Rule uses the following terminology and definitions:

- "Emergency safety intervention" means the use of seclusionary timeout or physical restraint when a student presents an immediate danger to self or others.
- "Immediate danger" means the imminent danger of physical violence or aggression toward self or others, which is likely to cause serious physical harm.
- "Physical restraint" means personal restriction that immobilizes or reduces the ability of an individual to move the individual's arms, legs, body, or head freely.
- "Seclusionary timeout" means that a student is: placed in a safe area by school personnel in accordance with the Rule; purposefully isolated from adults and peers; prevented from leaving, or reasonably believes that the student will be prevented from leaving, the enclosed area.

The definition of "physical restraint" above is generally the same as the definition OCR applied in this review, and the definition of "seclusionary timeout" above is generally consistent with the definition of "seclusion" OCR applied in this review. The Academy's Manual uses the same

⁵ See <https://rules.utah.gov/publicat/code/r277/r277-609.htm>.

⁶ See <https://www.schools.utah.gov/safehealthyschools/programs/behaviorsupport>.

terminology above and sets forth the Academy's disciplinary policies, as well as its crisis management policies for restraint and seclusion.

Information on restraint and seclusion appears in the Manual's "Crisis Management" section, which states that:

There may be times when a student's behavior escalated to the degree that they are unsafe to themselves or others. In these cases, the use of Emergency Safety Interventions (ESI) is necessary. ESI are not teaching or disciplinary strategies, they are only used when a student is considered to be at imminent risk to self or others. ESI, such as seclusionary time out and physical restraint are considered highly intrusive interventions and are only used when a student is considered at imminent risk, and are only used by staff trained by Spectrum Academy in Nonviolent Crisis Intervention (NCI). Violations of ESI may result in employee discipline or action.

Manual at 14. The Manual goes on to describe what should happen in a crisis situation. First, employees should make an effort to verbally de-escalate the situation involving the student. Each school campus has a Student Support Team composed of staff trained in nonviolent crisis intervention. When a student poses an imminent danger to self or others, staff are expected to activate ESI by calling the front office and having the Student Support Team paged to come to the area where the student is. The focus of the Student Support Team is de-escalation and safety, while maintaining a therapeutic rapport with the student and preserving their dignity.

The Manual also includes a non-discrimination statement and information about the Academy's Positive Behavior Supports approach, school rules, and level system for behavior management, including consequences and rewards. For example, the Manual includes guidelines for the use of Seclusionary Timeout, which is defined as "any time a student is placed in an enclosed area by staff, purposefully isolated from adults and peers, and the student is prevented from leaving or reasonably believes that they would be prevented from leaving the enclosed area." Per the Manual, Seclusionary Timeout is only used with a student who is at imminent risk of harm to self or others and is only used by staff trained in nonviolent crisis intervention.

Each school campus in the Academy has a specific and designated room for Seclusionary Timeout. These rooms should not be used for anything other than Seclusionary Timeout and are not to be used for any purpose other than safety. Use of such rooms requires: (1) a decision from the Student Support Team to use ESI, (2) documentation that less intensive interventions were tried, (3) use of only trained staff, and (4) maintenance of a log about the Seclusionary Timeout, which must be attached to an Incident Form. Staff must notify parents immediately of the use of Seclusionary Timeout with their children and at intervals throughout the Seclusionary Timeout. Staff trained in nonviolent crisis intervention must maintain constant visual supervision of the student in the Seclusionary Timeout Room to ensure their safety.

The Manual states that the Academy uses a specific method of nonviolent crisis intervention. After attempting to verbally deescalate a student, employees may use “some level of physical containment” pursuant to the nonviolent crisis intervention training. The Manual discusses the use of seclusion in more detail than the use of restraint. For example, the Manual does not include information about the specific types of physical restraints that may be used or how they should be implemented, because that information is included in the nonviolent crisis intervention training materials that members of the Student Support Team receive.

The Utah Rule provides some guidance on how the Academy’s schools and other schools should approach the use of restraint. The Utah Rule requires schools to have plans for ongoing staff training in the use of ESI, and to have policies and procedures for the use of emergency safety interventions that prohibit: physical restraint except as authorized by the Rule; prone physical restraint; supine physical restraint; physical restraint that adversely affects a student’s primary mode of communication; mechanical restraint (with some exceptions); chemical restraint; and seclusionary timeout except as authorized by the Rule. The Rule states that restraint or seclusionary timeout may not be used as a means of discipline or punishment and should be used for the minimum time necessary to ensure safety. The Rule places a 30-minute maximum on the use of restraint or seclusion and requires notifying parents/guardians of each use.

The Manual addresses the majority of these elements of the Utah Rule, including: the requirement for ongoing staff training, the prohibition of physical restraint and seclusionary timeout except in emergency situations involving imminent risk of harm, the need to notify parents during seclusion timeout, the 30-minute maximum on restraint and seclusion, and a prohibition on using ESI, including restraint and seclusionary timeout, as disciplinary techniques. The Manual does not address mechanical restraints, chemical restraints, the use of prone or supine physical restraint, or physical restraint that adversely affects communication. The Academy’s nonviolent crisis intervention training materials include information about the risks of certain restraint positions, but do not prohibit the use of prone or supine restraints. The training materials do not address the use of mechanical or chemical restraints. In OCR’s interviews, several witnesses stated that floor restraints (such as prone or supine) are not practiced at the Academy, and staff are authorized only to use the holds described in the nonviolent crisis intervention training materials, which do not include prone, supine, or mechanical restraints.

OCR notes that in the current version of the Manual, revised in September 2022 (the Revised Manual), the Academy added a section that describes the ways that the use of restraint and seclusion may deny students with disabilities a FAPE. The Revised Manual indicates that:

It is important to note that the restraint or seclusion of any student may signal the need to reevaluate the student and revise his or her IEP or Section 504 plan, including conducting a functional behavioral assessment (FBA) and creating or revising a behavioral intervention plan (BIP). Continuously using restraint and/or seclusion on students will likely result in a determination of a denial of FAPE and have adverse effects on all parties involved.

The Revised Manual also includes a statement that “if students are in time-out or being secluded during instructional time, we provide compensatory services for any IEP special education or related services minutes that were missed during this time.” OCR confirmed that the current incident forms that the Academy uses to track incidents of restraint and seclusion include fields to record the number and type of instructional minutes missed. OCR also viewed sample entries from a spreadsheet that is used to track when and how compensatory services are provided and confirmed that Academy staff record how many minutes of compensatory services are necessary, and when and by whom the compensatory services were provided.

OCR reviewed the Academy’s Special Education Policies and Procedures Manual for the 2018-19 school year (the Special Education Manual) to determine if the Academy had any policies about the use of restraint and seclusion with students with disabilities during the Review Period. The Special Education Manual provides a list of special factors that must be considered when developing an IEP. In the case of a student whose behavior impedes the student’s learning or that of others, the Special Education Manual describes how a team should respond “when an emergency situation occurs that requires the immediate use of moderately or highly intrusive interventions to protect the student or others from harm.” This Manual states that if a behavior requiring emergency procedures occurs more than once per week, two times in a month, or four times in a year, “it is a pattern that must be addressed in the IEP and/or a behavior intervention plan.” When OCR asked Academy witnesses whether and how IEP teams address the use of restraint and seclusion, no witnesses referred to this requirement. OCR’s review of the students with high numbers of restraints also revealed that many who meet the threshold described in the Special Education Manual do not have a BIP and their IEPs do not address the pattern of restraint or seclusion.

The Special Education Manual’s section on reevaluation states that the Academy conducts a reevaluation when “the educational or related services needs, including improved academic achievement and functional performance, of a student warrant a reevaluation; or if the student’s parent or teacher requests a reevaluation.” The Special Education Manual does not address if the repeated use of restraint or seclusion would trigger a reevaluation. With regard to when a Functional Behavioral Assessment (FBA) should be conducted, the Special Education Manual states only that an FBA should be conducted “as appropriate” when a student’s “behavior impedes the student’s learning or that of others,” without explaining when an FBA would be “appropriate” for a student who has experienced multiple instances of restraint or seclusion.

The current Special Education Manual revised by the State in March 2023 no longer includes the requirement about addressing the use of emergency procedures that occur more than once per week, two times in a month, or four times in a year. Instead, this manual requires staff to comply with Utah law governing emergency safety interventions under R2777-609.

C. The Academy’s Restraint and Seclusion Practices

The Academy’s practices and training related to its use of restraint and seclusion were as follows.

1. The Academy's Student Support Teams

Academy witnesses told OCR that only members of each school's Student Support Team may use restraint or seclusion with a student. Each Student Support Team consists of the school's behavior specialists and assistants, and a select group of other teachers and administrators who have received the appropriate nonviolent crisis intervention training. The behavioral staff are the primary individuals who conduct restraint and seclusion, with other trained staff members called in to assist as needed if the behavior staff are unavailable.

Consistent with the instructions in the Manual described above, witnesses told OCR that when a potential emergency situation arises, a teacher or other staff member would call the main office for assistance from the Student Support Team. The office would then call a member of the team to respond, and the team member would attempt to deescalate the situation and use a restraint or Seclusionary Timeout if the Student Support Team determined that either was necessary. Witnesses reported that in rare situations, a teacher who is fully trained in nonviolent crisis intervention may initiate a restraint or seclusion after calling the Student Support Team but before they arrive. Witnesses also indicated that it is not permissible for a staff member who is not fully trained in nonviolent crisis intervention to restrain a student. When OCR asked witnesses if they were aware of any situations where an unauthorized staff member restrained a student, two witnesses described one such incident at Pleasant Grove where a teacher may not have been aware that what he was doing was a restraint. When staff reported this incident to administrators, the principal told OCR that the Academy gave the teacher additional training and instructions and reassigned the teacher to a new position the next school year.

2. Nonviolent Crisis Intervention Training

The Academy reported to OCR that it uses nonviolent crisis intervention training from a private provider and that it had used a different provider in SY 2017-18 than the current provider. During OCR's interviews of Academy staff, the witnesses described the current training as consisting of two parts. Part one is provided to all Academy staff and focuses on de-escalation strategies for students in crisis. Part two is provided to members of the Student Support Teams (behavior staff and select others) who are authorized to conduct restraint and seclusion. Part two of the training teaches how and when to use different types of restraints. Only staff who have had both parts of the training are allowed to conduct restraint and seclusion. For the 2018-19 school year, the Academy reported having five staff members (administrators and behavior specialists) who were certified as nonviolent crisis intervention trainers. The Academy provides nonviolent crisis intervention training at least annually to its staff.

3. The Types of Restraint Used by the Academy

OCR reviewed the nonviolent crisis intervention training materials used by the Academy to train staff on the use of restraints. The materials describe the following types of holds: holding in a seated position, holding in a standing position, "Team Control Position," and "Children's

Control Position.” For each hold, illustrations are provided for lower-, medium-, and higher-level holds, which appear to correlate to how invasive or limiting the hold is. No holds on the ground are illustrated, although the appendix indicates that if an individual is held on the floor in an emergency situation, a supine (face up) position should be used. The Academy’s witnesses confirmed that the holds described in the training materials are the only ones authorized for use at the Academy. The Academy’s forms also record the use of “transports” in addition to holds. As described by witnesses, transports are a type of vertical immobilization (i.e., holding a student in a standing position) that are recognized as a type of restraint and recorded as ESI incidents on the forms. Witnesses explained that a transport would typically be used to move a student from a classroom to a safer location such as a break room or Seclusionary Timeout room.

4. The Rooms the Academy Used for Seclusion

At each campus, the Academy has a designated room or rooms used exclusively for Seclusionary Timeout. The rooms are generally located within a classroom space that is used as a “break room.” As described by witnesses, these break rooms are classroom spaces that may be intermittently used during the school day for small group instruction but are primarily used as a cool down space for students. Interviewed staff explained that when a student’s behavior is “escalated” in the classroom, staff may move the student to the break room to attempt de-escalation prior to putting a student in a Seclusionary Timeout. The Academy’s Behavior Manual does not define “escalated” but states that “there may be times when a student’s behavior escalated to the degree that they are unsafe to themselves or others.” The Seclusionary Timeout rooms are carpeted and have pads secured to the walls. The doors do not lock and have a clear window through which staff can monitor students in the room. In interviews with staff involved in the use of seclusion, the staff explained that they hold doors closed with their bodies because the doors do not lock. Staff also described that the rooms have ceilings of a normal height and are generally large enough that a student could lie down. The Academy provided measurements and photographs of each room to OCR that confirm these descriptions.

D. The Academy’s Recordkeeping

According to Academy witnesses, staff must report each restraint or seclusion in writing using the ESI Incident form developed by the Academy pursuant to its policies and Utah regulations, and staff must complete the Seclusionary Timeout (STO) Log for any Seclusionary Timeout. The staff involved in the incident complete the forms typically on the same day, with the staff involved at the beginning of the incident, such as a teacher, starting the form, and the staff involved in the actual restraint or seclusion, such as a behavior assistant, completing the form. The school’s behavior specialist reviews and signs every form. The ESI Incident Form provides fields for staff to describe the behavior of concern and antecedent behavior, interventions attempted, and the type of ESI intervention that was used. The most recent version of the form also collects data on the total minutes out of instruction. The form must be signed by the staff member completing the form and a behavior specialist or administrator. The STO Log includes fields for additional details such as time in, time out, and total time; and if compensatory services are necessary, the name of the special education case manager responsible.

Based on OCR's review of the ESI Incident forms, OCR found that most Academy staff complete the handwritten forms thoroughly. After reviewing the forms, the behavior specialist inputs the data into a Google spreadsheet that the Academy uses to create reports on the use of ESI at each school for the ESI Committee, which meets quarterly to monitor the use of ESI across the Academy. Behavior specialists can access the data in the spreadsheet to develop BIPs for students. As described by witnesses, the spreadsheets should contain adequate information to allow behavior specialists to count the number of students restrained or secluded at their school, the number of restraints or seclusions a particular student experienced, and the total number of restraints or seclusion at the school, but there is no automated way to generate a report with this useful information. Although OCR asked the Academy to clarify, it remains unclear whether these Google spreadsheets maintained by the behavior specialists are the same as the spreadsheets that the Academy generated and provided to OCR as part of this review.

OCR found that in some cases, incidents that were recorded on ESI Incident Forms and STO logs were not recorded on the spreadsheets provided to OCR, which appear to function as the Academy's official record of its use of restraint and seclusion reported to the ESI Committee and available to IEP teams. For example, for Student B, the ESI Incident Forms record 99 incidents of restraint or seclusion, but the spreadsheets record only 57 incidents. In other cases, incidents of restraint and seclusion were reported on the spreadsheets, but the Academy did not provide OCR with supporting documents for those incidents, including ESI Incident Forms, STO Logs, and IEP documents from one or both years of the Review Period. For example, the spreadsheets provided to OCR record 36 incidents of restraint and/or seclusion for a student (Student C), but the Academy did not provide any ESI Incident Forms or STO logs for those incidents.

Inconsistencies in the Academy's data reported to OCR also indicate that the Academy's system of recordkeeping may not be sufficient to allow accurate responses to the CRDC survey. For example, for the 2017-18 CRDC survey, the Academy reported 50 instances of physical restraint and 33 instances of seclusion. However, based on the information the Academy provided as part of this compliance review, OCR estimates that there were approximately 276 total incidents of restraint and seclusion during the same school year.

E. Incidents of Restraint and Seclusion and "High Incidence Students"

Based on the documents provided by the Academy, OCR determined that there were 69 students who experienced restraint and/or seclusion in the 2017-18 school year and 109 students who experienced restraint and/or seclusion in the 2018-19 school year. Many incidents involved both restraint and seclusion (e.g., a student being restrained for the purpose of transporting them to the Seclusionary Timeout Room, where a seclusion then occurred). These were not always entered as separate occurrences on the spreadsheets given to OCR. As a result, OCR could not separately calculate the number of students who were restrained and the number of students who were secluded; instead, OCR has calculated the number of students who were subject to either restraint and/or seclusion during the Review Period.

OCR estimates that there were approximately 376 total incidents of restraint and seclusion in the

2017-18 school year and approximately 692 total incidents of restraint and seclusion in the 2018-19 school year. These counts are based on the Academy's spreadsheets that include an entry for each incident of restraint and seclusion. But OCR discovered that in some instances, different spreadsheets appeared to provide different information for the same time period, and there were a number of incident reports on file that were not reflected in the spreadsheets. For example, for Student B, the spreadsheets report 57 incidents in the 2018-19 school year, but the ESI incident reports for that year include 99 incidents. Because the forms were created for each incident and the spreadsheets should tally the incidents for each Student, OCR finds that Student B was restrained at least 99 times in the 2018-19 school year. Given these discrepancies between the numbers reported in the spreadsheets and those derived from the underlying forms, the total number of restraint and seclusion incidents is likely higher than OCR's estimates.

The Academy's spreadsheets show that the number of times a student was secluded or restrained in one school year ranged from a single incident to 57 incidents. While some students were restrained or secluded only once during the Review Period, 26 students had at least 15 restraint or seclusion incidents cumulatively across the Review Period. OCR determined that all 26 are students with disabilities with IEPs. OCR closely analyzed the files for these 26 students and this letter refers to them as the "High Incidence Students." To ensure this group included students from all schools, OCR added the two students from [redacted content] School who had the highest number of incidences even though it fell below 15, for a total of 28 High Incidence Students, all of whom are students with disabilities with IEPs.

Based on the Academy's spreadsheets, the total amount of time a student spent in restraint or seclusion in one school year ranged from under one minute to 270 minutes, but the total amount of time out of instruction may exceed the time the student was restrained or secluded. Many incidents of restraint or seclusion lasted under one minute, and the longest incident recorded was a 45-minute seclusion. Incidents exceeding 30 minutes were rare in the reported data, likely because the Academy's policy and Utah law place additional restrictions on seclusions over 30 minutes.

F. ESI Committee's Monitoring of the Academy's Use of Restraint and Seclusion

As required by Utah's regulations and the Academy's policies, the Academy has an ESI Committee to monitor the use of ESI across the Academy. The Committee comprises all Academy behavior staff, classroom teachers, administrators, at least one parent, and the director of academics. Witnesses indicated that all behavior staff attend the meetings, but other members generally attend when they can. Behavior specialists at each school compile monthly reports that are shared with the Committee. The Academy's response indicates that the Committee discusses questions such as: Are the number of ESI incidents going up or down? What grades, teachers, times of day, or settings are seeing the most incidents? Were any Seclusionary Timeouts longer than 30 minutes, and could it have been handled differently? For high frequency students, what is being done to help those students? Based on interviews with Academy staff, these meetings appear to be primarily an opportunity for each campus to report its numbers of ESI incidents. While the discussions may generate ideas for helping an individual student, they are not intended to replace the type of discussions that an IEP team might have about specific interventions or

services to be provided to a student.

G. Re-evaluation

The Academy does not have written guidelines that address whether and when an IEP team must reconvene in response to incidents of restraint or seclusion to discuss if an additional evaluation or changes to the student's IEP or BIP are necessary to ensure the provision of a FAPE.

The Special Education Manual in effect during the Review Period included guidance for when the use of restraint or seclusion would need to be addressed in the student's IEP or in a BIP by specifying that if a behavior requiring emergency procedures occurred more than one time per week, two times in a month, or four times in a year, "it is a pattern that must be addressed in the IEP." However, when OCR asked witnesses how IEP teams address the use of restraint and seclusion, no witnesses referred to this requirement. As noted above, the current Revised Special Education Manual no longer requires an IEP or BIP to address a pattern of restraint or seclusion. Several witnesses told OCR that a student who was repeatedly restrained or secluded could be referred to a Child Study Team, which would consider the need for an additional evaluation or intervention, but no witnesses noted a specific point that would trigger such a referral.

H. FAPE-related Observations

As noted above, OCR focused on the 28 "High Incidence Students" who were restrained or secluded most often at each school to identify any potential FAPE-related compliance concerns. For each of the High Incidence Students, OCR reviewed their special education files and documentation relating to restraint and seclusion, such as ESI Incident Forms and STO Logs. These forms and IEPs were missing for some students, as noted in the discussion of the Academy's recordkeeping above. Based on OCR's review of the available records for the 28 High Incidence Students and interviews of 36 Academy staff, OCR made the following FAPE-related observations about the Academy's use of restraint and seclusion.

1. The High Incidence Students

First, OCR found that all 28 of the High Incidence Students were students with disabilities who had IEPs. In some cases, the Academy's files were missing the IEP documents that would allow OCR to confirm the student's disability, but OCR was able to confirm that these students had IEPs based on the Academy's other submissions to OCR. When OCR asked the witnesses if they were aware of any students who did not have IEPs being restrained or secluded, the witnesses were not aware of any. Several witnesses added that if this situation did occur (e.g., for a kindergarten student or new student who did not yet have an IEP), that student would be referred to a Child Study Team, which could initiate the referral and evaluation processes.

Second, OCR found that the use of restraint and seclusion was almost never mentioned in the IEP documents or BIPs of the High Incidence Students. Several BIPs mentioned that if the student's behavior cannot be safely managed by following the steps of the plan, the student may

be placed in a hold or taken to a seclusion area. However, these statements in the BIPs appeared to be a reiteration of the Academy's general policy on when restraint and seclusion may be used, not individual IEP team determinations of when restraint or seclusion may be used with the student. The BIPs on file for Student D and Student E refer indirectly to seclusion. One of the interventions listed for these students is "Time Out, Exclusionary," defined as "removal of a student from a reinforcing setting into a setting with a lower reinforcing value, but not a time-out room." While it is possible to read this as a statement that the student should not be placed in seclusion in a timeout room, other portions of the BIP suggest that the inclusion of the intervention to remove the student to a different setting might involve seclusion (e.g., statements that the Crisis Intervention Team should be called if the student makes threats of harm to others or leaves the school building). Other than these two indirect references to seclusion and statements of the Academy's general policy, OCR did not find that the IEPs or BIPs for the 28 High Incidence Students addressed the use of restraint and seclusion.

Third, when OCR asked witnesses whether IEP teams discussed the use of restraint or seclusion, some witnesses stated that teams did not discuss this, while the two [redacted content] replied that they may discuss this when a behavior specialist attended the meeting. However, OCR found that the IEP documents rarely contained evidence that the IEP team had discussed the use of restraint and seclusion with the High Incidence Student even when the behavioral specialist was present. In some cases, there was evidence that a behavior specialist attended the meeting and provided data on the student's behavioral incidents, but it is not clear whether the team discussed the number of times the student had been restrained or secluded, the impact of restraint or seclusion on the student, whether the student needed additional services or supports to address the behavior that was leading to restraint or seclusion, or whether the student needed a reevaluation. The IEPs did not contain evidence that the team had specifically addressed situations where emergency interventions were used more than once a week, twice a month, or four times a year, despite the requirement to do so in the Special Education Manual in effect during the Review Period.

Finally, OCR found that the IEP documents for the 28 High Incidence Students did not contain evidence that their IEP teams considered whether the repeated use of restraint or seclusion, exceeding at least 15 times within two years for 26 of these students, had impacted the student's ability to receive a FAPE, and if so, what additional interventions and services were needed to ensure a FAPE and whether any compensatory services should be provided to the student. In OCR's interviews, several staff members indicated that they have started providing compensatory services to students following seclusion. OCR understands that this is a new practice started in the 2020-21 school year, implemented in response to the agreement reached in OCR case 08-20-1328, and that the practice was not in place during the Review Period. As a result, none of the 26 students who were restrained 15 or more times within two years received any compensatory services for the services missed as a result of the restraints.

2. Case Examples

OCR discusses the experiences of Student A and Student B at the Academy during the Review Period as two salient examples of the FAPE-related observations detailed above.

a. Student A

Student A is an example of a High Incidence Student whose IEP documents do not address the use of restraint and seclusion even though the Academy restrained and/or secluded the Student at least 40 times over a two-year period and he missed at least 14 hours of instruction as a result. Student A was a student in [redacted content] grade at the [redacted content] campus during those years. According to the data provided by the Academy, he was subjected to 24 incidents of restraint and/or seclusion during the 2017-18 school year. During the 2018-19 school year, he was subjected to 16 incidents of restraint and/or seclusion.

Student A's area of eligibility was [redacted content]. According to his IEP dated [redacted content], 2017, he was in a [redacted content] placement and received [redacted content]. Additional accommodations included [redacted content]. The IEP meeting record does not indicate the presence of any behavioral staff member. The IEP does not reflect that Student A had or was being considered for an FBA or BIP despite a very high number of restraints and/or seclusion in the 2017-18 school year. The only change the Academy made to Student A's IEP was to change a goal related to his participation in small group instruction in an amendment on [redacted content], 2018.

Shortly before the school year ended on [redacted content], 2018, Student A's IEP team met again to review his IEP for the following school year. His area of eligibility and placement remained the same, although additional accommodations were added (e.g., [redacted content]). The school's behavior specialist attended the meeting and reviewed Student A's present levels of behavior. The behavior specialist did not recommend a formal behavior intervention plan at that time even though the Academy had used restraints and/or seclusion with Student A on 24 occasions that school year and the IEP did not discuss the use of either behavior restriction. Even though the Academy continued to use restraint and seclusion with Student A in the 2018-19 school year, the Academy produced no evidence that it evaluated whether the repeated use of restraint and seclusion denied the Student a FAPE and whether additional supports and services were needed to ensure a FAPE. The only amendment to Student A's IEP in the 2018-19 school year was on [redacted content], 2018, when it reflected Student A's participation in state and district assessments.

As noted above, OCR found that the Academy restrained or secluded Student A at least 40 times, resulting in over 14 hours of missed instruction (with each incident ranging from 10 seconds to 2 minutes for restraint, and 1 minute to 20 minutes for seclusion). Despite these high numbers and even though Student A's IEP team met at least four times during that two-year period (on [redacted content]), the IEP documents, meeting notices, and prior written notices that the Academy produced to OCR do not reflect that Student A's IEP team discussed the use of

restraint or seclusion at all, let alone the effects of these repeated restraints and seclusion on Student A's ability to receive a FAPE and whether compensatory services were needed to address at least 14 hours of missed instruction. The documentation also does not reflect that the team conducted any re-evaluation related to the repeated use of restraint and seclusion with Student A during the Review Period.

OCR looked further at whether the Academy considered its 40 uses of restraint and/or seclusion with Student A when making placement decisions by interviewing IEP meeting participants and did not find any participants who could demonstrate that this information was carefully considered when making student placement decisions. OCR interviewed Student A's [redacted content] to learn whether the IEP team considered the impact of restraint and seclusion on the student or whether Student A should be reevaluated given the repeated use of restraint and seclusion. One [redacted content] indicated that a discussion about restraint and seclusion would be part of the information shared by a behavioral specialist and may be described in the meeting notes in a shorthand manner, such as a statement that the behavior specialist reviewed behavior goals or shared behavior data. OCR confirmed that the notes from Student A's IEP meeting, dated [redacted content], include a statement that the behavior specialist "reviewed [Student A's] present levels of behavior," but this vague reference did not demonstrate that the team carefully considered the repeated and ongoing use of restraint and seclusion with the Student when making placement decisions for him.

OCR also asked Student A's [redacted content] why the team decided not to conduct an FBA when the student had such a large number of restraint and seclusion incidents. The [redacted content] believed that this was because Student A had recently changed classrooms, and it was likely that the behavioral specialist wanted to collect data on the student's behavior in the new classroom before moving forward with an FBA. The [redacted content] confirmed that Student A did have an FBA and BIP the following year, after at least 40 restraints and seclusions over the two-year Review Period. None of the witness or documentary evidence for the 2017-18, 2018-19 or 2019-20 school years demonstrated that the teams considered if Student A had been denied a FAPE and needed compensatory services to make up for at least 14 hours of missed instruction.

b. Student B

Student B is another example of a High Incidence Student whose IEP documents do not address the use of restraint and seclusion even though the Academy restrained and/or secluded him at least 99 times in one school year and he missed at least nearly 13 hours of instruction as a result.⁷

During the 2018-19 school year, Student B was in [redacted content] grade at the [redacted content] campus. Student B's area of eligibility was [redacted content]. According to his IEP dated [redacted content], 2018, he received special education for [redacted content], and the accommodations of [redacted content]. The notes of this IEP indicated that a behavior specialist

⁷ As noted above, OCR found that the Academy restrained Student B at least 99 times in the 2018-19 school year based on the ESI Incident Forms, and that the tally of 57 times in the Academy's spreadsheets was inconsistent.

attended the IEP team meeting, presented on behavior data, and obtained permission to test for behavior. Nothing in the IEP or related documentation indicates that the team carefully considered the five restraints or seclusion of Student B that had already occurred that school year, resulting in 80 minutes out of instruction.

The Academy completed an FBA of Student B on [redacted content], 2018. The assessment indicates a review of the use of “physical redirection” and seclusionary timeout during the observation period. On [redacted content], 2019, the IEP team met to draft a BIP. The team met again on [redacted content], 2019, to “discuss and come up with ideas on how to help [the student] when he is having behaviors at school.”

The first incident of restraint and seclusion was recorded on [redacted content], 2018, and the Academy continued to use restraint and/or seclusion during each remaining month of the 2018-19 school year, for a total of 99 times. Despite this very high use of restraint each month, the IEP documents do not refer to the use of restraint or seclusion, even when the behavior specialist presented behavioral data to the team. Although Student B’s team did conduct additional evaluation to address the Student’s behavior over the course of the school year, including conducting an FBA and developing a BIP, and meeting again to consider additional strategies for behavioral success, the Academy did not produce evidence demonstrating that the Student’s IEP team carefully considered the effect of the repeated use of restraint and seclusion on the Student’s receipt of a FAPE or whether there was a need for compensatory services to account for missed educational opportunities due to at least 99 incidents of restraint and/or seclusion, which resulted in, at a minimum, nearly 13 hours of missed instruction.

IV. Analysis

As discussed below, OCR identified three FAPE-related violations and three compliance concerns related to the Academy’s restraints and seclusion of students with disabilities in the Review Period.

A. FAPE-related Violations

The evidence OCR has reviewed to this point demonstrates the following three FAPE-related violations with respect to Students A and B. First, OCR finds that the Academy failed to ensure that the teams making placement decisions for Students A and B carefully considered the repeated use of physical restraint and/or seclusion with these students, as required by 34 C.F.R. §104.35(c)(2). Second, OCR found that the Academy failed to reevaluate Student A to determine if additional aids and services were appropriate to reduce the high use of restraint and seclusion (at least 40 uses) and to provide a FAPE, as required by 34 C.F.R. §104.35(b). OCR also has a concern that the Academy may not have timely reevaluated Student B in response to the very high number of restraints and seclusion in the 2018-19 school year (99 incidents). Though the Academy started drafting a BIP in [redacted content] 2019, the Academy had restrained or secluded Student B at least 38 times by that point and the evidence did not indicate that the BIP was drafted in response to the repeated use of restraint or seclusion. Third, the evidence indicated that the Academy denied a FAPE to Student A by restraining him at least 40 times,

resulting in at least 14 hours of missed instruction, and denied Student B a FAPE by restraining him at least 99 times, resulting in at least 13 hours of missed instruction, and failed to consider if Student A or B needed compensatory services to make up for these many hours of missed instruction.

The evidence established that the Academy restrained or secluded Student A at least 24 times during the 2017-18 school year, including four times prior to the first IEP team meeting on [redacted content], 2017, and a total of 20 times before the next IEP meeting on [redacted content], 2018. Although records of the second meeting reflect that the behavior specialist did not believe a behavior plan was necessary, the records do not show that the team carefully considered the 20 uses of restraint and/or seclusion or whether it was necessary to reevaluate Student A on the basis of the repeated use of restraint and seclusion. The use of seclusion with Student A continued, with an additional 16 incidents during the 2018-19 school year.

The repeated use of restraint and seclusion should have suggested to the team that Student A's current array of services may not have been sufficient to provide a FAPE, and that a reevaluation was necessary to assess if additional or different services were needed. Indeed, the Academy's Special Education Manual for those two school years required that after a pattern of behavior requiring emergency procedures more than once per week, two times per month, or four times in a year, the pattern "must be addressed in the IEP and/or a behavior intervention plan." Despite this requirement and Student A's pattern of behavior involving 20 uses of restraint and/or seclusion within six months, OCR did not see evidence that the IEP addressed this pattern, and the team specifically declined to do a BIP without documenting why it was not necessary. The available documentation shows that Student A missed at least 14 hours of instruction and services as a result of being restrained and/or secluded at least 40 times, and that the Academy denied a FAPE to Student A without taking any steps to assess or offset this loss with compensatory services.

For Student B, the evidence shows that the Academy restrained and/or secluded him at least 99 times in one school year. Despite this very high use of these emergency interventions, nothing in the IEP or related documentation indicates that the team carefully considered any of these 99 restraints and/or seclusion of Student B when making placement decisions for him. Although the documentation indicates that the Academy completed an FBA by the end of November 2018 and started drafting a BIP in January 2019, OCR has a concern that the Academy may not have timely reevaluated Student B because the evidence did not indicate that the BIP was developed in a timely way in response to the repeated use of restraint or seclusion, which far exceeded the four-times-a-year threshold in the Manual that required addressing the pattern of behavior in the IEP and/or BIP. Even if there is some evidence to support that the Academy conducted a reevaluation of Student B that led to the implementation of a BIP, the Academy was slow to develop and implement the BIP, and the use of restraint and seclusion continued throughout every month of the school year despite the BIP. In addition, OCR finds that the Academy denied the Student a FAPE by restraining him at least 99 times in one school year, resulting in at least 13 hours of missed instruction, and without considering, offering, or providing any compensatory services. OCR found no evidence that the IEP team even considered whether the

Student missed educational instruction or services as a result of the 99 uses of restraint and/or seclusion and may need compensatory services as a result.

B. FAPE-related Concerns

Based on the evidence obtained in this compliance review, OCR identified three FAPE-related concerns with respect to the 26 other High Incidence Students, two procedural and one substantive. The two procedural concerns are based on OCR's review of the IEPs of the other 26 High Incidence Students because the Academy appears to have failed to carefully consider its repeated use of restraint and/or seclusion with these students, as required by 34 C.F.R. §104.35(c)(2), or to reevaluate and revise their IEPs when the repeated use of restraint and/or seclusion with these students indicated a need to reevaluate them under 34 C.F.R. §104.35(b). OCR found that their IEPs were generally silent with regard to restraint and seclusion. They did not include any documentation that showed that IEP teams considered whether the repeated restraint or seclusion of the students impacted their ability to receive a FAPE, or whether the student may need additional aids and services to ensure a FAPE under 34 C.F.R. §104.35(b). While some students received new evaluations or re-evaluations during the Review Period, the Academy failed to document in the IEPs or otherwise if these evaluations were conducted to address the use of restraint and seclusion. Some of the High Incidence Students did not have FBAs or BIPs in their file, and their IEP records did not document whether the teams considered whether some of the High Incidence Students should receive this type of evaluation and intervention.

Relatedly, OCR is concerned that the Academy may be unable to identify FAPE denials because it does not have written guidelines that address whether and when an IEP team must reconvene in response to incidents of restraint or seclusion to discuss if an additional evaluation or changes to the student's IEP or BIP are necessary to ensure the provision of a FAPE. For example, the student's behaviors that lead to restraint and seclusion may be evidence that the student's current array of regular or special education and related aids and services is not addressing the student's needs and not ensuring the provision of a FAPE.

In addition to these procedural concerns about whether the IEP teams for these 26 students failed to reevaluate them or to carefully consider the repeated use of restraint and seclusion when making their placement decisions, OCR also has a concern that the Academy's repeated use of restraint and seclusion with these students denied them a FAPE and the Academy did not provide them compensatory services for missed instruction or services. OCR found no evidence that the Academy offered any of the 26 students compensatory services during the Review Period.

Although there is evidence that the Academy currently has a practice to record and compensate for each minute of instructional time missed due to the use of restraint and seclusion, the evidence does not suggest that IEP teams routinely consider whether students being repeatedly restrained and secluded have been denied a FAPE and how any potential denial can be remedied. Appropriate remedial measures may go beyond the 1:1 compensation of minutes missed and may include additional services such as counseling, a one-on-one aide, or positive behavioral

interventions and supports to address any new education-related needs that may have arisen from the use of restraint or seclusion. For example, the use of restraint and seclusion may impact students in ways that result in trauma and/or new academic or behavioral difficulties and needs (e.g., new types of misbehavior, impaired concentration, increased absences, or social withdrawal) or missed educational instruction or services.

Lastly, OCR's compliance review considered if the Academy may have denied a FAPE to students without identified disabilities because the student's behaviors that led to a restraint or seclusion may be evidence that a student has a disability and needs special education or related services. As noted above, OCR did not find evidence of students without disabilities being repeatedly restrained or secluded by the Academy. OCR asked the witnesses whether they were aware of any incidents of restraint or seclusion involving a student who did not have an IEP indicated that they were not aware of any such incidents. Because of the Academy's unique position as a school for students with autism, at least 80% of the students are already identified with a disability and have an IEP. While there are a few non-disabled students who attend (such as siblings of disabled students), OCR's review to date found that most students who do not already have an IEP are already in the process of undergoing different interventions and evaluations that may ultimately lead to an IEP.

C. Recordkeeping Concern

OCR is also concerned that the Academy's recordkeeping practices may have prevented IEP teams from being able to carefully consider and meaningfully discuss the incidents of restraint and/or seclusions to determine whether the current array of special education and related aids and services was sufficient to provide a FAPE. Although it appears that staff consistently complete the ESI Incident Form and the STO log, and that these forms are then summarized in a Google spreadsheet, OCR concludes that the ESI Incident Form, the STO log entries, or the summative Google spreadsheet were not consistently available to or reviewed by the IEP teams. As discussed above in Section III.D about the Academy's recordkeeping, OCR found that there were ESI Incident Forms and STO Logs for restraint and seclusion incidents that were not recorded on the spreadsheets provided to OCR, as well as incidents recorded on the spreadsheets for which the Academy did not produce ESI Incident Forms, STO logs, or other related records. As a result, OCR has a concern that the Academy's recordkeeping practices may have resulted in a denial of a FAPE to the other 26 High Incidence Students or other students by denying the IEP teams necessary information to determine the appropriate educational program or placement for a student.

OCR's review of the data showed that although staff create contemporaneous records when a restraint or seclusion occurs, the Academy does not consistently collate or maintain those records in a manner such that they are available to IEP teams. Without all the information related to each restraint or seclusion incident, IEP teams would be unable to carefully consider and discuss the antecedent behaviors that resulted in the use of restraint or seclusion, and, in the aggregate, its impact on the student. Further, IEP teams would be unable to determine whether a student's current array of interventions was appropriate, whether a student needed additional and/or

different interventions, whether the student's placement was appropriate, or whether a reevaluation was necessary.

OCR also has concerns that the Academy's system for maintaining records about restraint and seclusion may be inadequate to allow the Academy to accurately report incidents of restraint and seclusion in the CRDC. As noted above in Section III.E, the number of restraints and seclusions reported to OCR in this compliance review (at least 376 combined in the 2017-18 school year) is inconsistent with the data reported in response to the CRDC survey for that school year (50 instances of physical restraint and 33 instances of seclusion). The enclosed Agreement requires the Academy to develop procedures for ensuring that the detailed and thorough raw data it collects about restraint and seclusion can be reported accurately in summary form in the CRDC survey and in the reporting required by the Agreement, and can be used effectively to inform IEP team decisions for students with disabilities in the Academy.

V. Conclusion

In addition to the violations and concerns identified in this letter, OCR notes the following positive features of the Academy's policies, training, and practices regarding restraints and seclusion. OCR found that the Academy has clear and detailed policies restricting the use of restraint and seclusion to emergency situations only. OCR also found that the Academy provides staff with regular training on the use of restraint and seclusion and limits the use of restraint and seclusion to trained staff. Staff members interviewed by OCR consistently and accurately articulated the Academy's policies, reflecting the training provided. The Academy also currently has a practice to ensure that students who miss instructional time as a result of restraint and seclusion will receive compensatory instruction.

Based on the Academy's commitments made in the enclosed Agreement, OCR is closing this compliance review as of the date of this letter. To resolve the violations and concerns identified in this letter, the Agreement requires the Academy to take a number of steps to ensure compliance with Section 504 and Title II. These steps include: providing individual remedies for students who were restrained or secluded during the Review Period and compensatory services for those who were denied a FAPE; preparing and implementing a plan to identify and compensate any other students who were denied a FAPE due to the Academy's use of restraint or seclusion since the Review Period; revising the Academy's policy and manuals regarding restraint and seclusion, providing training to staff, and developing processes to maintain records to allow accurate reporting and to ensure the provision of a FAPE to the Academy's students. When fully implemented, the Agreement is intended to address the identified violations and compliance concerns. OCR will monitor the Academy's implementation of the Agreement until the Academy is in compliance with its terms and the statutes and regulations at issue in this compliance review.

This concludes OCR's compliance review and should not be interpreted to address the Academy's compliance with any other regulatory provision or to address any issues other than

those addressed in this letter. The Complainant may have the right to file a private suit in federal court whether or not OCR finds a violation.

This letter sets forth OCR's determination in an OCR compliance review. This letter is not a formal statement of OCR policy, and it 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 Academy may not harass, coerce, intimidate, discriminate, or otherwise retaliate against any individual because they have participated in a compliance review. If this happens, the individual may file a complaint with OCR alleging retaliation.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If 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.

Thank you for the courtesy and cooperation that you and your staff extended to us during the compliance review. We look forward to working with you and your staff during the monitoring phase. If you have any questions, please contact OCR's primary contact for this compliance review, [redacted content].

Sincerely,

/s/

Sandra J. Roesti
Supervisory Attorney

Enclosure

cc: Dr. Sydnee Dickson, Utah State Superintendent of Public Instruction