

RESOLUTION AGREEMENT
Spectrum Academy
OCR Compliance Review Number 08-19-5001

Spectrum Academy (the Academy) agrees to resolve the above-referenced compliance review initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR) by voluntarily entering into this Resolution Agreement (Agreement) to address the violations and compliance concerns set forth in the accompanying letter of resolution. In this compliance review, OCR investigated whether the Academy's use of restraint and seclusion denied its students with disabilities a free appropriate public education (FAPE), in violation of the Academy's obligation to comply with Section 504 of the Rehabilitation Act of 1973 (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. § 12101 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35.

The Academy agrees to take the actions in this Agreement to ensure compliance with the requirements of Section 504 and its implementing regulation, 34 C.F.R. Part 104, and Title II and its implementing regulation, 28 C.F.R. Part 35, which prohibit discrimination on the basis of disability by recipients of federal financial assistance and public entities, respectively.

I. INDIVIDUAL STUDENT REVIEWS AND REMEDIAL SERVICES

- A. By **December 31, 2023**, for each currently enrolled student who experienced a restraint or seclusion at the Academy during the review period (the 2017-18 and 2018-19 school years), the Academy will convene the Individualized Education Program (IEP) team or Section 504 team of each student to determine (1) if the student's current interventions and supports are sufficient or whether any changes are needed to provide a FAPE and (2) whether the student requires any compensatory services for a denial of a FAPE or other instructional services missed as a result of restraint or seclusion during the review period or any subsequent school year. In making these two determinations, the team will apply appropriate criteria, including, for example: (1) the number of restraints and/or seclusions that took place in a school year and the timeframe within which they occurred; (2) the nature and length of each restraint and seclusion; (3) changes in the student's behavior(s) that result in the use or increased use of restraint and seclusion; (4) if applicable, the nature of the student's disability; (5) whether the student was restrained and/or secluded in violation of Academy policy or the Student's IEP or 504 Plan (e.g., mechanical or prone restraint); and (6) any other factor that is relevant to the determination(s). If the student's annual or triennial IEP meeting is scheduled to occur within 90 days of this agreement, the IEP team may choose to comply with this provision at the regularly scheduled IEP meeting.
- B. For each team meeting required by Section I.A, the Academy will do the following:
1. The Academy will ensure that the team convened is a group of persons knowledgeable about the student, the evaluation data, and the placement options,

including the student's parent(s).¹ The information about the placement options will include whether the placement options use restraint or seclusion and if so, when and how.

2. The Academy will ensure that the team makes an individual assessment of the amount of compensatory services appropriate for the student. If appropriate, the team will revise the student's IEP or Section 504 plan and will develop a written plan for providing the student with the compensatory education or other remedial services deemed necessary. The Academy will include the plan with the student's Section 504 plan or IEP and will identify the nature, amount, and provider of the services to be delivered at no cost to the student's parent. The Academy will promptly provide all of the owed compensatory services at no cost to the student's parent before the end of the 2023-2024 school year, unless the team determines that additional services beyond the 2023-2024 school year are appropriate to meet the student's individual needs.
 3. The Academy will provide the student's parents with a meaningful opportunity to provide input into these determinations, written notice of the Academy's determinations, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree with the Academy's determinations.
- C. By **January 30, 2024**, after completing the meetings required in Sections I.A and I.B, the Academy will evaluate the results of those meetings and propose a plan for OCR's review and approval to determine whether any other student was denied a FAPE due to the Academy's use of restraint or seclusion in the 2019-20, 2020-21, 2021-22, or 2022-23 school years and what, if any, compensatory services are owed to those students and a proposed timeline for providing them. Once that plan is approved by OCR, the Academy will provide all required compensatory services.

D. REPORTING REQUIREMENTS

1. By **January 30, 2024**, the Academy will submit to OCR documentation showing implementation of Sections I.A and I.B above, including a copy of any meeting minutes, any IEPs and/or Section 504 plans revised or developed for the students, and any compensatory education services plans and documentation of any evaluations conducted, any input or concerns provided by the student's parent(s), written notice of the Academy's determinations and the procedural safeguards to the student's parents, and any other information relevant to the Academy's determinations. OCR will review the documentation submitted to ensure that the

¹ For ease of reference, the term "parent" in this document refers to any and all parents, guardians, custodians, Education Rights Holders, or others with legal custody and/or educational decision-making authority.

Academy met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.33-104.36, in making these determinations.

2. By **June 30, 2024**, the Academy will submit to OCR documentation verifying the implementation of all compensatory education services plans developed under Section I.B above.
3. By **January 30, 2024**, the Academy will submit to OCR the plan described in Section I.C for OCR's review and approval.
4. By **June 30, 2024**, the Academy will provide OCR with all documentation (including all relevant documents listed in Section I.D.1) showing that the approved plan described in Section I.C has been implemented and that all compensatory services have been delivered pursuant to the plan.

II. POLICIES AND DOCUMENTATION

- A. The Academy will revise its Behavior Support Policy and Procedure Manual and/or Special Education Manual regarding the use of restraint and seclusion to ensure that students with disabilities are not denied a FAPE in a manner prohibited by Section 504 and Title II. At minimum, the revised policy will:
 1. require documenting all uses of restraint and seclusion in a manner that is consistent with the documentation required by Section IV of this Agreement;
 2. require the Academy and its schools to determine whether additional or different interventions or supports and services may be needed to reduce the use of restraint and seclusion (e.g., positive behavioral interventions and supports (PBIS), de-escalation techniques, functional behavioral assessments (FBAs), behavioral intervention plans (BIPs), a broad continuum of placements);
 3. identify the criteria the Academy will use to determine when, after instances of restraint or seclusion, the Academy will:
 - a. reconvene a student's IEP team or Section 504 team to determine whether the student should be reevaluated and if the student's current interventions and supports are sufficient or whether any changes are needed; or
 - b. evaluate a student without an identified disability to determine if the student qualifies as an individual with a disability;
 4. require the Academy and its schools to take individualized measures to address any negative effects of restraint or seclusion on a student, including potential

compensatory services or other remedial measures, and to document such measures;

5. require the Academy and its schools to notify the Academy's Director of Special Education (or a qualified designee) in writing of each restraint and seclusion within 24 hours where practicable and by no later than the close of the next business day;
 6. require the Director of Special Education (or a qualified designee) to review every restraint or seclusion of an Academy student within a designated timeframe; and
 7. provide the contact information (phone number, office address, and e-mail address) of the Director of Special Education (or a qualified designee) who will serve as a point of contact for individuals who have any questions or desire information about the Academy's policies or use of restraint or seclusion with students.
- B. The Academy will revise its Emergency Safety Incident (ESI) form and Seclusionary Timeout (STO) Log form to ensure the following information is captured and/or included for incidents of both seclusion and restraint (in addition to what the forms currently capture):
1. The total amount of time the student spent away from the classroom, including before an emergency intervention, after an emergency intervention, and during recovery time.
 2. A statement of the criteria described in Section II.A.2 that the Academy will use to determine when, after emergency interventions, the Academy will reconvene a student's IEP or Section 504 team to determine whether the student should be reevaluated and if the student's current interventions and supports are sufficient to provide a FAPE or whether any changes are needed to provide a FAPE, and a space on the ESI form where the Academy must explain why it did not convene an IEP or Section 504 team after emergency interventions, including restraint and seclusion, were used with a student.

C. REPORTING REQUIREMENTS:

1. By **September 30, 2023**, the Academy will provide OCR with the revised documents described in Section II.A-B for OCR's review and approval.
2. Within 30 calendar days of receiving OCR's final approval of each document described in Sections II.A-B, the Academy will provide OCR with documentation reflecting that it has: formally adopted and implemented the documents;

distributed the documents to the relevant Academy staff members; and posted the revised Behavior Support and/or Special Education manual on the Academy's website.

III. STAFF TRAINING

- A. Within 60 calendar days of OCR's written approval of the revised policy and forms developed under Sections II.A-B, and annually thereafter, the Academy will provide interactive training to all Academy teachers and administrators (i.e., principals, assistant principals), the Director of Special Education, behavior specialists, and any other Academy staff who are members of IEP and Section 504 teams. The training will:
1. be provided by one or more trainers with expertise in the use of restraint and seclusion and Section 504 and Title II; and
 2. explain the following topics, at minimum:
 - a. the provisions of the Academy's policy regarding the use of restraint and seclusion approved under Sections II.A above;
 - b. the recordkeeping process approved under Sections IV.A-B below;
 - c. how and when staff are expected to complete an ESI Incident Report and STO Log, how each section is relevant to ensuring that student with disabilities are not denied a FAPE, and instructions for completing the ESI Incident Report and STO Log forms;
 - d. safety protocols related to the use of restraint and seclusion;
 - e. how to reduce reliance on restraint and seclusion and identify alternatives;
 - f. how the restraint or seclusion of a student with a disability can result in a student being denied a FAPE; the FAPE related requirements of the Section 504 regulation at 34 C.F.R. §§ 104.33-104.36, and with particular attention to §§ 104.34, 104.35(b), and 104.35(c);
 - g. when to reconvene an IEP or Section 504 team to determine whether the use of restraint or seclusion has affected the student's receipt of a FAPE, and when to reevaluate a student and/or determine if any additional aids and services are appropriate to provide a FAPE and reduce incidents of restraints and seclusions;

- h. that a school's repeated use of restraint or seclusion of a student with a disability may suggest that the student's current array of regular or special education and related aids and services is not sufficient to provide FAPE;
 - i. how discussion of restraints during IEP or Section 504 meetings should be documented in the IEP or Section 504 meeting notes;
 - j. the Academy's duty to remedy any denial of a FAPE that resulted from the prior use of restraint or seclusion, including the duty to provide compensatory services for instruction or services missed during periods of restraint and/or seclusion; and
 - k. how Academy staff and parents can report concerns about the use of restraint or seclusion, including how and whether it is being recorded; the name(s), title(s), and contact information (phone number, office address, and e-mail address) to whom concerns should be reported; and how the Academy will respond.
- B. The Academy will conduct the training described in Section III.A on an annual basis, between August and November of each year, until OCR has determined that the Academy has fully complied with this Agreement.

C. REPORTING REQUIREMENTS

1. Within 30 calendar days of OCR's written approval of the revised policy and forms developed under Sections II.A-B, the Academy will provide a draft of the training material(s), the title(s) and name(s) of the proposed trainer(s), and proposed date(s) for the training for OCR's review and approval.
2. Within 15 calendar days of conducting the annual training described in Section III.A, the Academy will provide OCR documentation showing that the training occurred, including attendance lists (name, job title, and school name), the training date(s), and the length of the training.
3. No less than 45 calendar days prior to the scheduled trainings described in Section III.A, the Academy will provide OCR a draft of the training material(s), the job title(s), and name(s) of the proposed trainer(s) for the training, and scheduled date(s) for the training, for OCR's review and approval.
4. Within 15 calendar days of conducting the trainings described in Section III.A, the Academy will provide OCR documentation showing that the training occurred, including attendance lists (name, job title, and school name), the training date(s), and the length of the training.

IV. MONITORING THE USE OF RESTRAINT AND SECLUSION

- A. The Academy will implement a program to monitor the use of restraint and seclusion for its students to ensure compliance with Section 504 and Title II in SY 2023-24 and thereafter for the duration of this Agreement. Each semester the Academy's Director of Special Education (or a qualified designee) will:
1. review all ESI forms and STO logs to ensure that they are completed in accordance with this Agreement, promptly submitted to the Academy office, and that any additional information gathered about the behavioral emergency from the school (by phone, email, or in-person) is documented and included in the student's file;
 2. regularly ensure that all staff who must review ESI forms and STO logs receive a copy of the forms and logs and review them;
 3. review all incidents involving the restraint and seclusion of Academy students to determine if the use of restraint or seclusion reflected an individualized determination based on the student's need and was consistent with Academy policy and training;
 4. analyze whether the behavior(s) that led to the restraint and/or seclusion of a student were part of a pattern of behavior(s) that should have led Academy staff to seek an evaluation or reevaluation of the student;
 5. if applicable, assess if the student's IEP or Section 504 team considered whether the student's current regular or special education and disability-related aids and services provided the student with a FAPE; and whether the restraint and/or seclusion caused missed instruction and/or disability-related services resulting in the denial of a FAPE, and, if so, whether compensatory education and/or remedial services are necessary to address the denial of a FAPE; and
 6. identify all concerns related to the Academy's use of restraint and/or seclusion, propose recommendations to address any concerns, and develop timelines for implementation of the recommendations.

B. REPORTING REQUIREMENTS:

1. By **February 15, 2024**, the Academy will provide documentation of its proposed monitoring program developed under Section IV.A to OCR for its review and approval.

2. By February and July of each school year, the Academy will provide a report to OCR demonstrating that the Academy's Director of Special Education (or a qualified designee) completed the semester review required by Section IV.A. The Academy's report will identify all students who were subjected to restraint and/or seclusion during the semester reviewed, and for each such student specify: (a) the student's school; (b) whether the student has an IEP or 504 Plan; (c) the number of restraints and/or seclusions; (d) whether any restraints and/or seclusions resulted in physical injury to the student; (e) the total number of minutes that each student spent in restraint and/or seclusion during the semester; (f) whether the student was evaluated or reevaluated as a result of the use of restraint and/or seclusion; and (g) if applicable, the date of the student's evaluation or reevaluation. If OCR requests any student records for students included in the report, the Academy will provide such records within 15 calendar days of such request.

V. RECORD CREATION AND MAINTENANCE

- A. The Academy will review and revise its process for collecting data on the use of restraint and seclusion to ensure that the Academy is able to accurately capture and report all of the data that it is required to submit through the Civil Rights Data Collection (CRDC) survey.
- B. The Academy will develop a process to maintain records about the use of restraint and seclusion with Academy students to ensure that the Academy has access to the information needed to ensure the provision of a FAPE to eligible students, as follows:
 1. The Academy will ensure that all forms and documentation required by Sections II.A-B become part of the student's records so that any member of the IEP or Section 504 team can access the records.
 2. The Academy will make the records described in Sections II.A-B available to parents upon request to the extent necessary to allow parental participation consistent with the procedural requirements of Section 504.
 3. For the 2023-2024 and 2024-2025 school years, including extended school years, by September 1, 2024 and September 1, 2025, respectively, the Academy will submit to OCR a report of the Academy's use of restraint and seclusion with Academy students, for the preceding school year ("the Report"). The Report will include:
 - a. a copy of each completed ESI Incident Form and STO Log;

- b. the manner in which the Academy provided a FAPE to all students with disabilities who were restrained or secluded in that school year, regardless of the nature or severity of the disability, consistent with 34 C.F.R. § 104.33;
- c. evidence that the Academy, in interpreting evaluation data and in making placement decisions for students who were restrained or secluded in that school year, (i) drew upon information from a variety of sources, including the restraint(s), the seclusion, the student's physical condition and adaptive behavior; (ii) established procedures to ensure that information obtained from all such sources is documented and carefully considered; and (iii) ensured that the placement decision was made by a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, consistent with 34 C.F.R. § 104.35(c); evidence that the Academy ensured that the placement decision was made in conformity with § 104.34, which requires placement in the regular education environment to the maximum extent appropriate;
- d. action steps the Academy took or will take if its review of a restraint or seclusion of an Academy student identified a use of restraint or seclusion that did not adhere to Academy policy; and
- e. a complete copy of the documentation demonstrating its compliance with the regulations cited above for any students referenced in the Report, as outlined in the Reporting Requirements section below, including but not limited to a copy of the student's IEPs, Section 504 Plans, BIPs, and FBAs in effect at the time of each restraint or seclusion, any relevant behavior incident reports (e.g., discipline reports and records related to each incident of restraint and seclusion), written communications between the Academy and the student's parents or guardians about each restraint and seclusion incident, and documentation pertaining to any medical treatment or hospitalization the student received after the restraint or seclusion.

C. REPORTING REQUIREMENTS

1. By **June 30, 2024**, the Academy will provide OCR with a written description of the steps it has taken to ensure accurate reporting to the CRDC, and confirmation that all employees charged with reporting data to the CRDC have reviewed the CRDC's [Restraint & Seclusion Module](#).
2. Within 60 calendar days from the execution of this Agreement, the Academy will provide OCR with a description of the recordkeeping process the Academy developed in accordance with Sections V.A-B above.

3. Within 60 calendar days of the end of each semester of the 2023-2024 and 2024-25 school years, and the 2024 and 2025 extended school years, the Academy will submit a Report to OCR. The Report will include for OCR review and approval the action steps the Academy is proposing to take as described in Section V.B.3.d above. Each Report will include the supporting documentation for each student who was restrained or secluded.

GENERAL REQUIREMENTS

By signing the Agreement, the Academy agrees to provide data and other information in a timely manner in accordance with the reporting requirements of the Agreement. Further, the Academy understands that during the monitoring of the Agreement, if necessary, OCR may visit the Academy, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the Academy has fulfilled the terms and obligations of the Agreement. The Academy understands that OCR will not close the monitoring of the Agreement until such time as OCR determines that the Academy is in compliance with the terms of the Agreement and the statutes and regulations at issue in this compliance review.

The Academy understands and acknowledges that OCR may initiate administrative enforcement proceedings or refer this case to the Department of Justice (DOJ) for judicial proceedings in the event of breach to enforce the specific terms and obligations of the Agreement and/or the applicable statute(s) and regulation(s). Before initiating such proceedings, OCR will give the Academy written notice of the alleged breach and 60 calendar days to cure the alleged breach.

By: /s/
Jaime D. Christensen, Ed.D.
Executive Director
Spectrum Academy

Date: September 7, 2023