



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE FOR CIVIL RIGHTS

REGION IX
CALIFORNIA

50 UNITED NATIONS PLAZA
MAIL BOX 1200; ROOM 1545
SAN FRANCISCO, CA 94102

March 29, 2017

Lori Rhodes
Superintendent
Redlands Unified School District
20 W. Lugonia Avenue
Redlands, California 92374

(In reply, please refer to OCR Docket Number 09-13-1352.)

Dear Superintendent Rhodes:

The U.S. Department of Education, Office for Civil Rights (OCR), has completed its investigation of the above-referenced complaint against Redlands Unified School District (District). The Complainant alleged that the District discriminated against the Student¹ on the basis of disability. Specifically, OCR investigated the following allegations:

- 1) Whether the District failed to provide the Student with a free, appropriate public education (FAPE) by:
 - a. Failing to implement the Student's Individualized Education Program (IEP); and
 - b. Failing to evaluate/re-evaluate the Student's individual educational needs with regard to the Student's behavior.

- 2) Whether the District allowed the Student to be subjected to a hostile environment on the basis of the Student's disability by subjecting him to physical and mechanical restraints.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104. Section 504 prohibits discrimination on the basis of disability by recipients of Federal financial assistance. OCR is also responsible for enforcing Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35. Title II prohibits discrimination on the basis of disability by public entities. As a recipient of Federal financial assistance from the Department and as a public education system, the District is subject to Section 504, Title II, and their implementing regulations.

¹ OCR previously provided the District with the identity of the Complainant and the Student. We are withholding their names from this letter to protect their privacy.

To investigate this complaint, OCR interviewed 13 District staff members and the Complainant and reviewed documents and other information provided by the Complainant and the District. After careful review of the information gathered in the investigation, OCR concluded that the District violated Section 504 and Title II with respect to allegations (1)(a) and (2). Prior to OCR completing its investigation to reach a compliance determination regarding issue (1)(b), the District expressed an interest in voluntarily resolving this allegation through a Resolution Agreement (Agreement) pursuant to section 302 of OCR's Case Processing Manual (CPM).

The applicable legal standard, the facts gathered by OCR, and the reasons for OCR's conclusions are summarized below.

Legal Standards

FAPE

The regulations implementing Section 504, at 34 C.F.R. § 104.33, require public school districts to provide a FAPE to all students with disabilities in their jurisdictions. An appropriate education is defined as regular or special education and related aids and services that are designed to meet the individual needs of students with disabilities as adequately as the needs of non-disabled students are met, and that are developed in accordance with the procedural requirements of §§104.34-104.36 pertaining to educational setting, evaluation and placement, and due process protections. 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. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to provide a FAPE at least to the same extent required under the Section 504 regulations.

Section 104.35(a) of the Section 504 regulations requires school districts to conduct an evaluation of any student who needs or is believed to need special education or related aids and services because of disability before taking any action with respect to the student's initial placement and before any subsequent significant change in placement. Under §104.35(b), tests and other evaluation materials must be administered by trained personnel, must be reliable, and must be valid for the purpose for which they are being used. Under subsection (c), placement decisions (i.e., decisions about whether any special services will be provided to the student and, if so, what those services are) must be made by a group of persons knowledgeable about the student, the evaluation data, and the placement options. Placement decisions must be based on information from a variety of sources, with information from all sources being carefully considered and documented. School districts must also establish procedures for the periodic re-evaluation of students who have been provided special education and/or related services. A procedure consistent with the IDEA is one means of meeting this requirement.

In addition to the Section 504 regulations at 34 C.F.R. §104.35, Section 104.36 requires school districts to provide procedural safeguards for parents and guardians of disabled students with respect to any action regarding the identification, evaluation or placement of the student. Taken together, the regulations prohibit a district from taking disciplinary action that results in a significant change in the placement of a disabled student without re-evaluating the student and affording due process procedures. OCR interprets the Title II regulations, at 28 C.F.R. §§35.103(a) and 35.130(b)(1)(ii) and (iii), to require districts to act consistent with the Section 504 regulations in disciplining disabled students.

The exclusion of a disabled student from his or her program for more than 10 consecutive days, or for a total of more than 10 cumulative days in a school year under circumstances that show a pattern of exclusion, constitutes a significant change in placement. Where such a change is occurring through the disciplinary process, districts must evaluate whether the misconduct was caused by, or was a manifestation of the student's disability. If so, the district may not take the disciplinary action and should determine whether the student's current placement is appropriate. If the misconduct is not found to be a manifestation of the student's disability, the disciplinary action may be administered in the same manner as for non-disabled students.

Hostile Environment

The regulations implementing Section 504, at 34 C.F.R. §104.4(a) and (b), prohibit discrimination based on disability by recipients of Federal financial assistance. The Title II regulations, at 28 C.F.R. §35.130(a) and (b), create the same prohibition against disability-based discrimination by public entities. School districts are responsible under Section 504 and Title II for providing students with a nondiscriminatory educational environment. Harassment of the student based on disability can result in the denial or limitation of the student's ability to participate in or receive education benefits, services, or opportunities.

School districts provide program benefits, services, and opportunities to students through the responsibilities given to employees. If an employee who is acting, or reasonably appears to be acting, in the context of carrying out these responsibilities engages in disability-based harassment that is sufficiently serious – severe, pervasive, or persistent – to deny or limit a student's ability to participate in or benefit from the program, the school district is responsible for the discriminatory conduct whether or not it has notice.

Intimidating or abusive behavior toward a student based on disability can create a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the district's program. When a student is subjected to unjustified or inappropriate physical or mechanical restraint because of conduct related to his disability, such restraints can create a hostile environment for a student with a disability. In determining whether a hostile environment based on disability has been created, OCR looks at the totality of the circumstances, including:

the type of harassment (e.g., whether it was verbal or physical); the frequency and severity of the conduct; the nature of the student's disability; the age and relationship of the parties; the setting and context in which the harassment occurred; whether other incidents have occurred at the district; and other relevant factors.

Under Section 504, Title II, and the regulations, if a student is harassed based on disability by an employee, the district is responsible for determining what occurred and responding appropriately. What constitutes a reasonable response to harassment will differ depending upon the circumstances. However, in all cases the district must conduct a prompt, adequate and impartial inquiry designed to reliably determine what occurred. If harassment is found, it should take reasonable, timely, age-appropriate, and effective corrective action, including steps tailored to the specific situation. The response must be designed to stop the harassment, eliminate the hostile environment if one has been created, and remedy the effects of the harassment on the student who was harassed. The district must also take steps to prevent the harassment from recurring. Other actions may be necessary to repair the educational environment. The district should take steps to prevent any retaliation against the student who made the complaint or those who provided information.

Findings of Fact

Student Background

The Student has medical diagnoses of XXXXXXXX XXXXXXXX, XXXXXXXX XXXXXXXX XXXXXXXX, Asperger's Syndrome, and Autism. The District found the Student eligible for special education services under the IDEA category of "other health impairment" (OHI) when the Student was in XXXXX grade (XXXX-XXXX). From the beginning of his eligibility for services under the IDEA, the Student's IEP recognized that the Student had serious behavior problems resulting from his disability and incorporated a Behavior Support Plan (BSP). During the 2012-2013 school year, the year in which the incidents giving rise to this complaint took place, the Student was enrolled in the XXX grade at a District middle school (the School).

Applicable District Policies and Procedures

The East Valley SELPA Special Education Handbook (SELPA Special Education Handbook) in effect at the time of the incidents that gave rise to this complaint stated that students who have behavior problems related to their disability must have an IEP that includes a BSP. The BSP must describe the behavior problem, how it is to be handled or responded to, "including situations which would call for disciplinary action, and the special education and related services, such as counseling, which are being provided to address the problem."

In addition to the SELPA Special Education Handbook, the District adopted its own special education policies and procedures, a special education handbook, and a Section 504 handbook. In relevant part, District policies in effect during the 2012-2013 school year included:

- Board Policy 6159.4, which stated that a Functional Analysis Assessment (FAA) must be conducted, with parent consent, when a special education student's serious behavioral problems significantly interfere with implementing the goals and objectives of the student's IEP.
- Administrative Regulation 6159.4, which defined "serious behavioral problems" as including self-injurious, assaultive, or pervasive and maladaptive behaviors that require frequent and systematic use of behavioral interventions; "behavioral intervention" as a "systematic use of procedures that result in lasting positive changes in the individual's behavior"; and a "behavioral emergency" as the "demonstration of a serious behavior problem which has not been previously observed and for which a behavioral intervention plan has not been developed or for which a previously designed behavioral intervention is not effective."
- Emergency Behavior Intervention Procedures which, among other things, identified Professional Assault Crisis Training (Pro-ACT) as an approved emergency behavior intervention. These procedures prohibited District staff from using approved interventions without prior training. Following a behavioral emergency where Pro-ACT was used, staff members were required to immediately complete a Behavior Emergency Report. When a behavioral emergency concerned a student with an existing BSP or Behavior Intervention Plan (BIP)² who exhibited a previously unseen serious behavior problem, the District was required to contact the student's parent within 24 hours, schedule an IEP meeting within two days to review the emergency report, and determine the need for any changes to the BSP/BIP based on a Functional Analysis Assessment.

IEP in Effect During the 2012-2013 School Year

On September XX, 2012, the Student's IEP team found that the Student continued to be eligible for special education and related services for Autism based on his triennial evaluation. The District's offer of FAPE for the 2012-2013 school year included specialized academic instruction in the behavioral intervention (BI) classroom for 250 minutes a day, five times a week. The Student's IEP goals focused on (1) reducing incidents of physical aggression and property destruction to no more than once per quarter, (2) reducing incidents of physical agitation (pacing, ranting, etc.) to no more than once per month, and (3) mainstreaming to one general education academic class with paraprofessional support.

The September XX, 2012, IEP included a BSP to address the Student's physical aggression (threatening others and destruction of property) and physical agitation (ranting, cursing, and pacing). The BSP stated that these behaviors were impeding the Student's learning due to related loss of instructional time, disruption of the learning environment, and impairment of the Student's social relationships. The BSP stated, among other things, that the following environmental changes and supports were required to remove the Student's need to use problem behaviors:

² OCR notes that, while California law differentiated between BSPs and BIPs during the time in which the events described in this complaint took place, the District Special Education Director stated that District staff and District policies used these terms interchangeably.

- Structuring the Student's time and activities;
- Providing time for processing, and a time-frame for transition;
- Monitoring and guiding the Student's proximity to peers, identifying cues prior to aggression, and continuing to monitor the Student during lunch, recess, and unstructured time;
- Prompting the Student to engage in calming activities when signs of escalation appear;
- Frequent and specific praise for successes;
- Use of structured choices, when appropriate;
- Use of a calm, but direct voice to assist in de-escalation; and
- Use of clear expectations, breaking down tasks into multiple steps, and limiting the number of tasks to prevent the Student from becoming overwhelmed.

The BSP stated that the following teaching strategies and curriculum were to be implemented to foster replacement behaviors:

- Instruction on self-regulation strategies, relaxation, and conflict resolution strategies through modeling and role-play so that the Student can use them at the onset of physiological signs of frustration or anger (clenched fists, grasping at hair, tightened body, furrowed brow, growling noises, and staring "through" you);
- Role-play and practice of appropriate protest language in counseling and with supervision of school community;
- Instruction in appropriate ways to request "time away" or for a system oriented activity;
- Immediate positive reinforcement when the Student exhibited desired behaviors; and
- Bi-monthly meetings with the counselor to reinforce and practice learned coping strategies.

The BSP stated that if a problem behavior recurred, then the following strategies "will be employed":

- Prompting the Student to calm down, self-advocate appropriately, respect personal space, and self-monitor;
- Redirecting the Student and prompting him to de-escalate or changing topic from one that might develop into perseveration or negative self-spin;
- Using direct verbal reminders to use appropriate behaviors;
- Removing the Student to an alternative environment and discussing appropriate behavior/coping strategies; and
- When the Student's behavior escalates, using behavior-crisis communication, evasion principles, and restraint principles employed by Pro-ACT³-trained staff.

³ As stated in the Pro-ACT Participant Training Manual produced by the District, Pro-ACT focuses on crisis communication and evasion methods in response to behavioral emergencies. Pro-ACT principals permit multiple types of restraints as a last resort when less aversive de-escalation/evasion techniques have been implemented and are not effective.

The BSP also stated that, once the problem behavior ended, staff members were required to discuss and counsel the Student regarding positive alternatives. The BSP stated that if the Student's problem behavior continued, then school or District disciplinary procedures may apply.

The BSP stated that it was to be implemented by the School staff on a daily basis. In interviews with OCR, the Student's behavior intervention/special education teacher (BI teacher) corroborated the IEP and BSP's descriptions of the Student's escalation of behavioral problems when agitated. Likewise, the BI teacher, Paraprofessional, and physical education (PE) teacher stated that the implementation of specific BSP strategies were generally effective in de-escalating the Student.

With the exception of the BI teacher, no School staff members were trained in Pro-ACT restraint principles prior to the restraint incidents described below. Although the Student's BI teacher, PE teacher, and the Assistant Principal reported that they were aware of the Student's BSP and responsible for its implementation, five staff members who regularly interacted with the Student reported to OCR that they were unaware of the Student's BSP and its requirements:

- The Security Officer, a staff member who physically escorted the Student to the office 15 to 20 times during the 2012-2013 school year and subjected the Student to physical and mechanical restraints on two occasions stated that he did not know that the Student had a BSP.
- A staff member who was in charge of scheduling IEP meetings and frequently observed the Student when he was sent to the office in an agitated state, stated that she knew that the Student had an IEP but was not aware of the Student's BSP.
- Two counselors, who were identified in the BSP as responsible for establishing and monitoring the use of strategies related to self-regulation, conflict resolution, and relaxation to reduce incidents of physical and verbal aggression, were not familiar with the Student's BSP and their responsibilities under the BSP.

In addition, the Paraprofessional, who frequently accompanied the Student outside of his primary behavioral intervention class, stated that he knew about the Student's BSP but did not receive training on how to implement the BSP.

Escalating Behavior During the 2012-2013 School Year

Between October 2012 and May XX, 2013, the Student was disciplined on 12 separate occasions for defiance of authority and disruption of school activities. District records show that the District utilized a number of disciplinary actions and interventions, including nine warnings, ten office referrals, two separate one-day suspensions and restraints. During the spring of 2013, the Student's behaviors escalated in intensity and

frequency from yelling and use of profanity to physical aggression/agitation and self-injurious behavior.

During interviews with School staff responsible for implementing the Student's BSP, the Paraprofessional did not identify that he utilized any specific strategies required by the BSP other than providing the Student with space to calm down. On September XX, 2012 and February XX, February XX, March XX, and April X, 2013, the records showed that the Paraprofessional either was the initial person to engage with the Student when his behavior began to escalate and/or was the person who escorted the Student to the office. The Principal and Assistant Principal, who interacted with the Student after he had been escorted to the office by the Paraprofessional and/or Security Officer, could not identify that they utilized the specific strategies required in the BSP other than providing the Student space to calm down. School staff further stated that there were many other occasions where the Student was removed from class due to physical aggression and agitation without a formal referral: the Security Officer reported escorting the Student to the office between 15-20 times during the 2012-2013 school year, and the Paraprofessional reported he would frequently escort the Student to the office and "leave him there" after he became agitated in PE class.

Use of Restraints

In addition to the incidents described above, two behavioral incidents resulted in the District's use of restraints against the Student. On April X, 2013, the Student ran off campus after he had been referred to the office from PE class for not following instructions. The Paraprofessional and the Security Officer escorted the Student back to the office where the Student began yelling profanity, hitting himself against walls and doors, threatening to kill himself, and attempting to choke himself. The Security Officer mechanically restrained the Student by handcuffing him, and the Assistant Principal called the District Behavior Intervention Program (BIP) Coordinator and the Complainant. While the Assistant Principal discussed de-escalation strategies with the Complainant, there is no record indicating that a similar conversation occurred with the Student as required by his BSP. Contrary to the District's Emergency Behavior Intervention Procedures, interviews with School staff showed that the District did not immediately document the incident in a Behavior Emergency Report. Likewise, an IEP meeting was not scheduled within two days, or at all, to determine the need for any changes to the student's IEP or BSP based on an FAA. Instead, the Student received a defiance warning and a one-day suspension for disruption/willful defiance. Prior to April X, 2013, there were no documented incidents where the Student expressed suicidal ideation.

On May XX, 2013, the Student again began to exhibit escalated behaviors. The Student's BI teacher took the Student to the office because a substitute teacher would be supervising students while the BI teacher attended a meeting. In the office, the Student became disruptive and more agitated. The Principal told the Student to sit down and stop shouting profanities, and the Security Officer was called. At least four

School staff members and one student were present in the office and witnessed some or all of the events that followed.

The Security Officer arrived and warned the Student that he needed to calm down or he would be handcuffed. After the Security Officer's warning, the Student made the shape of a gun with his hand, pointed it at his head, and simulated shooting first himself and then School staff. The Student calmed down, and the Security Officer left the office. After the Security Officer left, the Student knocked over a chair. The Security Officer heard the sound, returned to the office and proceeded to handcuff the Student. According to the Secretary, the Student was very upset and struggled against being handcuffed. The Security Officer held the Student against the wall and in a face-down prone restraint on the floor to handcuff the Student's hands behind his back. The Student banged his head against the floor and wall, kned himself in the face, tightened the handcuffs, yelled with pain, and stated that he was going to kill himself. Once the Security Officer readjusted and double-locked the handcuffs, the Security Officer sat the Student in a chair and placed his hands on the Student's knee and chest to prevent the Student from moving. During the course of the restraint, the Student incurred physical injuries in the form of scratches to his face and a bloody nose.

After a counselor and the Assistant Principal spoke to the Student, the Security Officer removed the handcuffs, and the Student went into the Assistant Principal's office. Following the incident, the Student's parents took him to the hospital XXX---paragraph redacted---XXX.

After May XX, 2013 incident, the Student did not return to School for the remaining XX days of the 2012-2013 school year.

Post-Restraint IEP Meeting and Functional Analysis Assessment

As with the April XXX restraint incident, the District did not follow its own procedures and schedule an IEP meeting within two days to determine whether the BSP needed to be revised or amended based on an FAA. Likewise, the Complainant stated that she did not receive a Behavior Emergency Report or an incident report documenting this incident.

On May XX, 2013, the Complainant requested an IEP meeting to discuss the May XX restraint incident. On June X, 2013, the District held an IEP meeting to review the May XX restraint incident, the Student's behavior, and the September 2012 BSP. The IEP team agreed that an FAA would be completed by the District's behavior analyst at the beginning of the 2013-2014 school year to identify strategies that will allow the Student to "to calm down when he knows he is agitated." The IEP team also agreed that School staff would receive Pro-ACT and verbal de-escalation training during the 2013-2014 school year. The District also stated that the BIP Coordinator would provide the parents with a report regarding both incidents in which the Student was handcuffed.

The District completed the FAA on September XX, 2013, and convened an IEP meeting to review the FAA on September XX, 2013. School Staff received Pro-ACT training during the 2013-2014 school year.

Impact of the 2013 Restraint Incidents

In an interview with OCR, the Complainant stated that the Student exhibited anxious and regressive behaviors for approximately six months after the May 2013 restraint incident. He used coping strategies less frequently, experienced greater difficulty regulating his behavior, and was frequently unable to perform basic self-care tasks, such as brushing his teeth or getting dressed without repeated prompting. From late May until September or October 2013, the Student experienced nightmares approximately three times a week, repeatedly verbalized extreme anger toward the Security Officer, and expressed fear and anxiety regarding future interactions with school security staff and the Security Officer whenever the School was discussed.

XXX---paragraph redacted---XXX.

Analysis

Issue 1: Whether the District failed to provide the Student with a FAPE by (a) failing to implement the Student's IEP and (b) failing to evaluate/re-evaluate the Student's individual educational needs with regard to the Student's behavior.

(a) Failure to implement the Student's IEP

OCR determined that the District failed to implement the Student's IEP because District staff failed to implement the Student's BSP during the 2012-2013 school year. The District does not dispute that the Student's September 2012 IEP contained a BSP to address physical agitation and aggression caused by the Student's disability or that the BSP was part of the District's offer of FAPE for the 2012-2013 school year. Although the BSP stated that it was to be implemented by School staff on a daily basis, at least five School staff members who regularly interacted with the Student, including the Security Officer who subjected the Student to physical and mechanical restraints, reported to OCR that they were unaware of the Student's BSP and/or were never trained regarding its implementation.

Records reviewed by OCR and interviews with School staff indicated that required BSP strategies were not implemented between October 2012 and May 21, 2013, particularly with regard to interventions designed to de-escalate the Student. While the Paraprofessional and School administrators stated that they gave the Student space to calm down, these staff members and others who interacted with the Student when escalated reported that they were unaware of the Student's BSP and/or untrained in how to implement required BSP strategies to de-escalate the Student. As such, District records and interviews with School staff did not indicate that specific BSP strategies were utilized when the Student demonstrated escalated, disability-related behaviors described in his BSP and IEP.

When the Student's behavior escalated in intensity and frequency, School staff members responded by removing the Student from class and requesting intervention from the Security Officer. The Security Officer was not aware of the BSP de-escalation strategies and had not been trained on the Pro-Act protocol that was required by the Student's BSP and District policy. The Security Officer, without following the de-escalation strategies in the Student's BSP or the Pro-Act protocol, handcuffed the Student on two separate occasions and in the second incident also subjected the student to a prone restraint and a physical restraint in a chair.

For all of these reasons, OCR found by a preponderance of the evidence that the District failed to implement the Student's BSP when the Student exhibited escalated behaviors involving physical agitation and aggression during the 2012-2013 school year. Therefore, OCR concluded that the District denied the Student a FAPE in violation of Section 504 and Title II and its implementing regulations with respect to this allegation.

(b) Failure to evaluate/re-evaluate the Student's individual educational needs with regard to the Student's behavior

With respect to the allegation that the District failed to evaluate/re-evaluate the Student, OCR identified two deficiencies. First, the Student was suspended for two days and removed from his instructional setting at least 25 times during the 2012-2013 school year. However, the District did not keep accurate records that would allow for a reliable calculation of the number of minutes of lost instruction. Accordingly, the District may have subjected the Student to a significant change in placement without conducting an evaluation in violation of 34 C.F.R. § 104.35(a) when it removed the Student from his instructional setting for a total of more than 10 cumulative days for disability-related behaviors during the 2012-2013 school year.

Second, during spring 2013, the Student exhibited an escalating pattern of behavior, which included increasingly frequent incidents of physical aggression, self-harm, expressions of suicidal thoughts and agitation. OCR's investigation raised a concern because the District did not schedule an IEP meeting to consider whether the Student's educational needs should be re-evaluated to ensure FAPE until June X, 2013, after the subsequent May XX restraint. Further, the re-evaluation of the Student was not completed until September XX, 2013. The District also did not follow its own policies and procedures for emergency behavior interventions. These policies and procedures required the District to schedule an IEP meeting within two days of a behavioral emergency to determine the need for any changes to a student's BSP/BIP based on an evaluation where, as here, the Student threatened suicide, a serious behavior problem that was first observed and documented during the April X restraint.

Prior to OCR completing its investigation and reaching a compliance finding with respect to allegation 1(b), the District expressed an interest in voluntarily resolving this allegation through an Agreement pursuant to section 302 of OCR's CPM. OCR agreed it was appropriate to do so.

Issue 2: *Whether the District allowed the Student to be subjected to a hostile environment on the basis of the Student's disability by subjecting him to physical and mechanical restraints.*

OCR determined that, based upon the facts specific to this case and the totality of the circumstances, the mechanical restraint of the Student on April X, 2013, combined with the prone restraint, physical, and mechanical restraint of the Student on May XX, 2013, constituted physical harassment on the basis of disability. The Student's IEP and BSP provided for the use of discipline and restraint as a last measure only after other specific less restrictive and aversive strategies had been used even when, as was the case with respect to the May XX incident, the Student's behaviors were severe and staff expressed a reasonable concern for the Student's and their own well-being.

OCR found that the School staff involved in both the April X and May XX restraints failed to utilize other less restrictive and aversive alternatives that were required by the BSP before applying the restraints. In addition, the District did not take the minimum step of providing the BSP and IEP to the Security Officer and training him on its contents, and the Security Officer, as well as other School staff present during the incidents, were not provided with Pro-ACT training that the Student's IEP and District policy required for anyone utilizing a restraint in order to limit harm to the Student. Furthermore, the mechanical restraint used to restrain the Student is not a restraint permitted by the Student's BSP or specifically authorized under District's emergency behavior intervention policies.

The Security Officer was an employee of the District and acting within the scope of his duties when he administered the restraints. The precipitating behavioral issues exhibited by the Student on both occasions were consistent with (1) the September 2012 IEP and BSP's descriptions of the Student's disability-related behavior and (2) the BI Teacher's descriptions of the Student's escalation of behavioral problems when he became agitated. Thus, the Student's behavior on April X and May XX, 2013 were predictable and familiar to the District and recognized by the District as related to the Student's disability. As such, OCR found that the Student was handcuffed and prone-restrained by District staff because of his recognized disability-related behavior.

Considering the totality of the circumstances, OCR determined that the combination of restraints used against the Student was unjustified and severe. In this case, the Student was subjected to two instances of restraint within seven weeks of each other, with the second instance involving more aversive physical intervention than the first. On April X, 2013, the Security Officer used a mechanical restraint against the Student when he handcuffed the Student in the School office. On May XX, 2013, the Security Officer used a prone and a mechanical restraint against the Student when he physically forced the Student face down onto the floor and handcuffed the Student's hands behind his back. Next, the Security Officer used an additional physical restraint against the Student when he placed his hands on the Student's knee and chest after readjusting the Student's handcuffs. The prone and mechanical restraints had the effect of causing the Student to become more agitated, yell with physical pain, suffer physical injury in the

form of scratches to his face and a bloody nose, engage in self-harming behavior, and vocalize repeated suicidal ideation.

The May XX, 2013 restraint incident also subjected the Student to humiliation, as the application of restraints and the Student's reaction to the restraints was witnessed by at least four School staff members and one student. Moreover, the Student was hospitalized immediately afterwards for XXX---paragraph redacted---XXX. The Student did not return to school until the following school year. For approximately six months after the May restraint incident, the Student suffered nightmares approximately three times a week and regressed substantially in his ability to engage in independent activities and self-care. In addition, the Complainant reported that, for months after the May XX incident, the Student expressed anxiety and fear about encountering the Security Officer. As such, OCR determined that the use of restraints against the Student was sufficiently severe to deny or limit the Student's ability to participate in or benefit from the educational program and created a hostile environment on the basis of the Student's disability.

While the District took some responsive steps following the May XX, 2013, restraint incident to provide Pro-ACT and verbal de-escalation training to School staff, these trainings took place the following school year, months after the Student had first been restrained. The District did not offer any academic or behavioral counseling, or other services for the Student to remedy the effects of the restraint incidents which included depression, nightmares, and suicidal ideation. Instead, the Complainant paid for the Student to receive XXXXXX XXXXXXXXXXXX XXXXXXXX XXX XXXXXXX XXXXXXXX for approximately six months after the Student was XXXXXXXXXXXX XXXX XXX XXXXXXXX. According to the Complainant, these therapies facilitated the Student's ability to return to and remain in school.

Therefore, OCR determined that the preponderance of the evidence was sufficient to conclude that the District, in violation of Section 504 and Title II and their implementing regulations, allowed the Student to be subjected to a hostile environment on the basis of the Student's disability and failed to provide an appropriate response.

Conclusion

The District entered into the enclosed Agreement, which is aligned with the complaint allegations, deficiencies identified, and findings made by OCR during its investigation.

The enclosed Agreement requires the District to determine whether the Student needs compensatory and/or remedial services related to any adverse effects due to the use of physical and mechanical restraints in 2013 and to reimburse the Complainant for out of pocket medical expenses incurred as a result of the restraint incidents. The Agreement also contains provisions to ensure that students with disabilities at the School are provided with FAPE through the revision of School policies and procedures concerning the implementation of appropriate IEP and Section 504 plans; the re-evaluation of students with disabilities who demonstrate escalating behavioral, social and/or

emotional needs which are negatively impacting their ability to access their educational program; the use of alternatives to restraint; and training for School staff regarding IEP implementation for students with BSPs consistent with Section 504, Title II and their implementing regulations.

Based on the commitments made in the enclosed Agreement, OCR is closing the investigation of this complaint as of the date of this letter, and notifying the Complainant concurrently. When fully implemented, the Agreement is intended to address all of the allegations in this investigation. OCR will monitor the implementation of agreement until the District is in compliance with Section 504, Title II and their implementing regulations at 34 C.F.R. §§104.33, 104.34-104.36, 104.4(a) and (b) and 28 C.F.R. §§35.103(a), 35.130(a), and 35.130(b)(1)(ii) and (iii).

OCR's determination in this matter should not be interpreted to address the District'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 individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

Please be advised that the District may not harass, coerce, intimidate, retaliate, or discriminate against any individual because he or she has filed a complaint or participated in the complaint resolution process. If this happens, the Complainant may file another complaint alleging such treatment.

Under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. In the event that OCR receives such a request, it will seek to protect, to the extent provided by the law, personal information that, if released, could reasonably be expected to constitute an unwarranted invasion of privacy.

Thank you for your cooperation in resolving this case. If you have any questions regarding this letter, please contact Alexis Turzan at (415) 486-5572.

Sincerely,

/s/

Zachary Pelchat
Team Leader