

Davis Joint Unified School District
Resolution Agreement
OCR No. 09-19-5001

The Davis Joint Unified School District (District) agrees to resolve the above-referenced compliance review initiated by the U.S. Department of Education, Office for Civil Rights (OCR), by voluntarily entering into this Resolution Agreement (Agreement) to address the violations and compliance concerns. In this compliance review, OCR investigated whether the District's use of restraint and seclusion denies its students with disabilities a free appropriate public education (FAPE) in violation of the District's obligation to comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, its implementing regulation, 34 C.F.R. Part 104, 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.

As detailed in the accompanying letter, OCR found that the District denied a FAPE to three District students with disabilities (Students A, B, and C) placed in nonpublic school settings, in violation of Section 504 and Title II, because the District: failed to ensure that the District staff members making placement decisions had access to and carefully considered information obtained about the use of physical restraint and/or seclusion rooms with these students; failed to ensure that a group of persons knowledgeable about the child, the meaning of the evaluation data, and the placement options made the placement decisions regarding behavioral interventions for these students; and failed to reevaluate these students to determine whether the repeated use of restraint and seclusion had affected their receipt of a FAPE and whether additional aids and services were necessary to ensure the provision of a FAPE. OCR further found that these procedural failures denied Students A, B, and C a FAPE in violation of Section 504 and Title II. OCR also identified a compliance concern that the District did not document all restraints and seclusions, which may have resulted in its students being denied a FAPE, and may not have consistently provided parents with access to the information needed to participate meaningfully on the Individualized Education Program (IEP) teams for their children. The District denies these violations and concerns but has agreed to resolve them voluntarily through this Agreement.

The District 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. REVISION OF POLICY REGARDING USE OF RESTRAINT AND SECLUSION IN DISTRICT AND OTHER SETTINGS¹

- A. By **January 31, 2023**, the District will revise its existing policy regarding the use of restraint and seclusion (AR 5131.41) and submit a draft of the revised policy to OCR for its review and approval that includes the following provisions:
1. explains that the use of restraint and seclusion of students with disabilities is subject to the provisions of Section 504, Title II, and their implementing regulations;

¹ For purposes of this Agreement, "seclusion" includes any referral or placement of a student alone or with others in a room or area from which the student is physically prevented from leaving, including but not limited to, timeouts and seclusion rooms.

2. prohibits the use of restraint and seclusion on students with disabilities: (a) for behavior(s) that would not result in restraint or seclusion for students without identified disabilities; or (b) based on assumptions or stereotypes about disabilities or students with disabilities generally;
3. requires discontinuing a restraint and seclusion as soon as the imminent risk to the safety of the student or others has dissipated;
4. permits only personnel trained in the safe and effective use of restraint and seclusion to use either technique on students;
5. requires documenting all uses of restraint and seclusion in a manner that is consistent with the documentation required by Section III.A of this Agreement;
6. requires school staff to notify a student's parent² (in a language they understand) on the same day that the restraint or seclusion is used, unless same-day notice is impracticable, in which case notice must be provided by noon on the following day;
7. requires the District 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);
8. identifies the criteria the District will use to determine when, after instances of restraint or seclusion, the District 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, including, for example: (i) the number of restraints and/or seclusions the student was subjected to within a month; (ii) the number of restraints and/or seclusions that took place in a school year and the timeframe within which they occurred; (iii) the nature and length of each restraint and seclusion; (iv) changes in the student's behavior(s) that results in the use or increased use of restraint and seclusion; (v) if applicable, the nature of the student's disability; (vi) whether the student was restrained and/or secluded in violation of District policy (e.g., mechanical restraint); and (vii) any other factor that is relevant to these determination(s);
9. requires the District and its schools to take individualized measures to address any

² 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.

negative effects of restraint or seclusion on a student, including potential compensatory services or other remedial measures, and to document such measures;

10. requires District schools to notify the District'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;
 11. requires the District's Director of Special Education (or a qualified designee) to review every restraint or seclusion of a District student within three days; and
 12. provides the contact information (phone number, office address, and e-mail address) of the District's 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 District's policies or use of restraint or seclusion with District students.
- B. Within 30 calendar days of receiving OCR's written approval of the revised policy developed under Section I.A, the District will: (1) formally adopt the revised policy; (2) update all printed publications and online publications with the revised policy (inserts may be used pending reprinting of these publications); (3) disseminate the revised policy described in Section I.A to its faculty, administrators, staff, and all parents of students enrolled in the District regardless of the location at which the students may be receiving educational instruction. Dissemination may be done by U.S. mail or e-mail (if a parent has previously consented to receipt of such information by e-mail). The District will post the policies and memorandum on its website and at all locations at which other such generally applicable documents are posted in order to be seen by the public, students, parents, or staff.

C. REPORTING REQUIREMENTS

Within 30 calendar days of disseminating the revised policy as required by Section I.B, the District will provide to OCR documentation showing that the policy was disseminated to all its faculty, administrators, staff and parents of students with disabilities, including a web address at which the posting may be found, and the number and locations of the postings.

II. NOTICE TO NONPUBLIC SCHOOLS OF REVISED DISTRICT POLICY

- A. Within 20 calendar days of formal adoption of the revised policy described in Section I.A above, the District will provide a copy of the revised policy to any nonpublic school (NPS) providing special education services to students with disabilities residing within the District who are placed at the NPS, and the District will communicate to the director of the NPS that the NPS must abide by the restraint and seclusion terms of the revised policy with regard to students residing within the District.

- B. The District will ensure that prior to entering into any new contractual relationship with the NPS, the District provides a copy of its revised policy described in Section I.A above and ensures that the Individual Service Agreement requires the NPS to comply with the restraint and seclusion terms of the revised policy with regard to any District students with disabilities placed at the NPS.
- C. The District will ensure that any contract with the NPS requires it to send an emergency report to the District's Director of Special Education, the administrator on the Student's IEP Team or Section 504 Team, and any District student's Education Rights Holder within 24 hours of the NPS's use of a restraint or seclusion on a District student.

D. REPORTING REQUIREMENTS

- 1. Within 30 calendar days of completing Section II.A above, the District will provide to OCR documentary evidence that the District has provided a copy of the revised policy to each NPS contracting with the District to provide services to students with disabilities and communicated to the NPS that it must comply with the restraint and seclusion terms of the revised policy as required by Section II.A.
- 2. At the end of each school year during the course of this Agreement, the District will provide OCR with documentary evidence that the District has provided a copy of the revised policy described in Section I.A above to any new NPS providers with whom the District has an Individual Service Agreement during the course of the school year to provide services to students with disabilities as required by Section II.B above.

III. THE CREATION AND MAINTENANCE OF RECORDS

- A. The District will develop and implement a process and form to create and maintain records about the use of restraint and seclusion of District students, including District students placed at any NPS, as follows:
 - 1. The District will ensure that its records concerning restraint and seclusion are revised as necessary to accurately capture all data that it is required to submit through the Civil Rights Data Collection (CRDC) survey. The District will record as "restraint" or "seclusion" all such interventions for District students, including District students placed at a non-District school, that fall within the definitions of the terms "physical restraint," "mechanical restraint," or "seclusion" in the directions for completing OCR's CRDC survey, regardless of the duration of those interventions or how those terms are defined under California law, in District materials, or through District practices.
 - 2. The District will create a form to document each restraint and seclusion or a compliance form created by the NPS that falls within the definitions of physical restraint, prone restraint, mechanical restraint, and seclusion in the revised policy required by Section I.A. The District will ensure that the form requests all of the

information set forth in Appendix A for each restraint and seclusion. The District will require all District schools and any NPS where the District has placed its students to use the form, or a compliance form, to document each restraint and seclusion.

3. In addition to documenting each restraint and seclusion on the form required by Section III.A.2 and Appendix A, the District will document (a) any evaluations to determine if a restrained or secluded student has a disability, and the outcome of those evaluations; (b) any meetings of the Section 504 team or IEP team following the restraint or seclusion of a student with a disability; (c) any reevaluations of restrained or secluded students with disabilities; (d) any revisions to the student's Section 504 Plan, IEP, and/or BIP; and (e) any compensatory services provided to the student.
4. The District will ensure that all forms and documentation required by Sections III.A.2 and III.A.3 become part of the Student's records so that any member of the IEP team or Section 504 team can access the records.
5. The District will make the records described in Sections III.A.2 and III.A.3 available to parents, upon request, to the extent necessary to allow parental participation consistent with the procedural requirements of Section 504.

B. REPORTING REQUIREMENTS:

1. Within 30 school days of the execution of this Agreement, the District will provide to OCR, for its review and approval, a description of the record-keeping process the District developed, and a copy of the form developed in accordance with Sections III.A.1-3 above.
2. Within 30 school days of the execution of this Agreement, the District will submit to OCR a report of the District's use of restraint and seclusion with District students, including District students placed at any NPS ("the Report"), for the first semester of the 2022-2023 school year. Within 30 calendar days of the end of the second semester of the 2022-2023 school year, the District will submit the Report to OCR. For the 2023-2024 and 2024-2025 school years, including extended school years, by September 1 of each year, the District will submit the Report to OCR. The Report will include:
 - a. a copy of each completed form required by Section III.A.2 and Appendix A for each restraint and seclusion in 2023, 2024, and 2025;
 - b. the manner in which the District 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 District, 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 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, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, consistent with 34 C.F.R. § 104.35(c);
- d. evidence that the District 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;
- e. action steps the District took or will take if its review of a restraint or seclusion of a District student identified a use of restraint or seclusion that did not adhere to District policy; and
- f. a complete copy of the documentation demonstrating its compliance with the regulations cited above and Section III.A.2, Section III.A.3, and Appendix A of this Agreement for any students referenced in the Report, as outlined in Section B.2.a-f above, 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 District and the student's parents about each restraint and seclusion incident, and documentation pertaining to any medical treatment or hospitalization the student received after the restraint or seclusion.

IV. TRAINING FOR DISTRICT AND NPS STAFF SERVING DISTRICT STUDENTS

- A. In accordance with the Reporting Requirements in Section IV.C below, the District will provide interactive training to all District teachers and administrators (i.e., principals, assistant principals, etc.), the Director of Special Education, program specialists within the Department of Special Education, and any other District 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 a minimum:
 - a. the provisions of the District's Behavioral Interventions for Special Education Students policy (AR 6159.4) and the revised policy (the policies) regarding the use of restraint and seclusion approved under Section I.B above, including an

explanation of the limited circumstances when the use of restraint is permissible under these policies;

- b. the record creation and maintenance process approved under Section III.A above;
 - c. the form approved under Section III.A.2 above and described in Appendix A;
 - d. the safe 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 sections 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. when a school's repeated use of restraint or seclusion of a student with an identified disability may suggest that the student's current array of regular or special education and related aids and services is not sufficient to provide a FAPE;
 - i. the District's obligation to remedy any denial of a FAPE that resulted from the prior use of restraint or seclusion, including determining whether to provide compensatory services for services missed during periods of restraint and/or seclusion; and
 - j. how District 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 District will respond.
- B. When a District student's IEP team or Section 504 team determines that an appropriate public education alternative does not exist within the District's schools, and that placement in the NPS is appropriate for that student, the District will ensure that, prior to placing the student at the NPS, the NPS personnel working with the student have received the training required by Section IV.A above. Where that training is not possible, the District will ensure that prior to placing the student at the NPS, the NPS personnel working with the student complete training that addresses the FAPE-related requirements of Section 504, the District's policies on restraint and seclusion, and the need to document and report every restraint and seclusion of District students within 24 hours to the individuals identified in Section II.C above, including documenting each restraint and

seclusion on the form required by this Agreement wherever contractually possible.

C. REPORTING REQUIREMENTS

1. Within 30 calendar days of OCR's approval of the revised policy, record-keeping process, and form developed under Sections I.A and III.A, and annually thereafter until the end of the 2024-2025 school year, the District will submit to OCR for review and final approval the proposed (1) training materials referenced in Section IV.A above; (2) the qualifications of the proposed trainer(s); and (3) the process the District will utilize to ensure NPS personnel receive the District-provided training required by Section IV.A above or, where this is not contractually possible, comparable training that complies with Section IV.B. The District will respond to and address OCR's feedback, if any, until the District receives OCR's final approval of the training materials and trainer(s).
2. Within 30 calendar days of receipt of written approval from OCR of the training materials, the trainers, and the process to ensure NPS personnel receive the District-provided training or comparable training, the District will provide the training for all staff listed in Section IV.A and implement the process to ensure NPS personnel receive the training required in Section IV.A above (or comparable training under Section IV.B above) prior to any placement of a District student at the NPS.
3. Within 30 calendar days of completing the required training(s) of District staff, the District will provide to OCR documentation showing that the training occurred, including sign-in sheets showing the names, job titles, and employment locations (e.g., school name, central office) of all training attendees, the training date, the training materials, the length of the course, the names, job titles, and employment locations of all staff who did not attend the training(s) with proposed dates to provide the training to these staff, and a list of all 2022-2023 faculty, staff, and administrators, the Director of Special Education, program specialists within the Department of Special Education, and any other District staff who are members of IEP and Section 504 teams.
4. Within 30 calendar days of placing a District student at an NPS, the District will provide documentation to OCR confirming that training or comparable training has been provided to NPS personnel as required by Section IV.B above, including sign-in sheets showing the names and job titles of all training attendees, the training date, the length of the course, and a list of all 2022-2023 NPS personnel involved with providing instruction or services to District students with disabilities.
5. Within 45 calendar days of a new employee or newly assigned employees consisting of faculty, staff, administrators, the Director of Special Education, program specialists within the Department of Special Education, any other District staff who are members of IEP and Section 504 teams, the District will provide OCR documentation that the new employee or newly assigned staff person received the training required by Section IV.A prior to providing services to District students.

6. Within 45 calendar days of a new NPS employee or newly assigned NPS employee providing instruction or services to District students with disabilities, the District will provide OCR documentation that the new employee or newly assigned staff person received the training referenced in Section IV.A (or comparable training under Section IV.B) prior to beginning to provide services to any District student with disabilities.

V. INDIVIDUAL STUDENT'S REMEDIAL SERVICES

A. By **January 31, 2023**, the District will provide proper written notice to Student B's former and current Education Rights Holders indicating that they have 45 days to express their interest in convening a meeting to determine what remedial services from the District, including compensatory education services, are appropriate for Student B as a result of past use of restraint or seclusion while Student B was a District student and attended NPS B during the period from 2017 to 2019. If Student B's Education Rights Holder(s) agree to participate, the meeting will include a group of knowledgeable persons, including, but not limited to Student B's Education Rights Holder(s) from 2017 to 2019, to make this determination. The determination of appropriate remedial services will consider, among other factors, the amount of instructional time Student B missed in the period from 2017 to 2019 based on the best documentation available. The group of knowledgeable persons will develop a plan for providing timely remedial services with a completion date not to extend beyond the conclusion of the 2022-2023 school year, and the District will ensure that such plan is implemented for Student B by the end of the 2022-2023 school year.

B. REPORTING REQUIREMENTS:

1. If Student B's Education Rights Holder(s) agree to participate in the meeting described above in Section V.A, the meeting will be convened on an agreed-upon date by **March 31, 2023**. Within 30 calendar days of convening and reaching the decision regarding appropriate remedial services for Student B, as required by Section V.A above, the District will submit to OCR, for review and approval, the rationale and documents supporting this decision. This documentation will include a description of and schedule for providing remedial services to Student B, as well as a detailed analysis as to how the group determined the minutes of remedial services. Prior to approving the District's decision and plan for providing the proposed services, OCR will review the documentation to ensure that the District met the requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35 and 104.36, and, as applicable, Title II, at 28 C.F.R. § 35.160, in making these determinations.
2. Within 30 calendar days of the provision of all of the remedial services for Student B, the District will provide documentation to OCR of the dates, times, and locations that remedial services were provided, a description of what was provided, and the name(s) of the service provider(s).
3. If Student B's former and current Education Rights Holders decline the right to

participate in a meeting to consider whether Student B is entitled to the remedial services described above in Section V.A or do not respond to the District's notice, the District will provide OCR, within 15 days of receiving Student B's Education Rights Holders' decision not to participate, documentation demonstrating that they declined the meeting.

VI. DEVELOPING STUDENT REMEDIES

- A. By **February 1, 2023**, the District will have one or more District-level administrators conduct a review to identify any District students who were restrained or secluded while attending any NPS from the 2019-2020 school year through the date this Agreement is signed (Group 1). The review will include obtaining and analyzing information from restraint and seclusion documentation forms and similar documents such as NPS emergency reports, incident reports, and level sheets; discipline records; law enforcement records; and relevant staff at each school, including but not limited to principals, social workers, psychologists, and teachers.
- B. The District will schedule an IEP team meeting or Section 504 team meeting of each student with a disability in Group 1 by **April 1, 2023**, to determine (1) if the student's current interventions and supports are sufficient or whether any changes are needed and (2) whether the student requires any compensatory services for denial of a FAPE or other instructional services missed as a result of restraint or seclusion. In making these two determinations, the team will apply appropriate criteria, including, for example: (1) the number of restraints and/or seclusions the student was subjected to within a month; (2) the number of restraints and/or seclusions that took place in a school year and the timeframe within which they occurred; (3) the nature and length of each restraint and seclusion; (4) changes in the student's behavior(s) that results in the use or increased use of restraint and seclusion; (5) if applicable, the nature of the student's disability; (6) whether the student was restrained and/or secluded in violation of District policy (e.g., mechanical restraint); and (7) any other factor that is relevant to the determination(s). If the student's Education Rights Holder declines the right to participate in a meeting to consider whether the student is entitled to remedial services, or does not respond to the District's notice, the District will provide OCR, within 15 days of receiving student's Education Rights Holders' decision not to participate, documentation demonstrating that they declined the meeting.
- C. For each team meeting required by Section VI.B, the District will follow the following requirements:
1. The District 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.
 2. The District 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. This written plan will be included with the student's Section 504 plan or IEP and will identify the nature, amount, and provider of the compensatory and/or other remedial services to be delivered at no cost to the student's parent. The District will promptly provide the services at no cost to the student's parent before the end of the 2022-2023 school year, unless the team determines that additional services beyond the 2022-2023 school year are appropriate for the student's individual needs.
3. The District will provide the student's Education Rights Holder(s) with a meaningful opportunity to provide input into these determinations, written notice of the determinations made, 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 District's determinations.

D. REPORTING REQUIREMENTS

1. By **July 1, 2023**, the District will submit to OCR documentation to demonstrate its implementation of Section VI.A above, including a report showing who conducted the review and describing all of the information obtained and analyzed, an Excel spreadsheet or similar document listing all students identified and, for each student: whether the student has a Section 504 plan or IEP.
2. By **September 1, 2023**, the District will submit to OCR documentation showing implementation of Section VI.B, including a copy of any IEPs and/or Section 504 plans revised or developed for the students, any compensatory education services plans, documentation of any input or concerns provided by the student's parent(s) and showing that written notice of the determinations and of their procedural safeguards were provided to the student's parent(s), and any other documentation relevant to the determinations reached. OCR will review the documentation submitted to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.33-104.36, in making these determinations.
3. By **June 1, 2024**, the District will submit to OCR documentation verifying the implementation of all compensatory education services plans developed under Sections VI.B-C above.

VII. RESTRAINT AND SECLUSION MONITORING PROGRAM

- A. By **March 1, 2023**, the District will implement a program to monitor the use of restraint and seclusion for District students to ensure compliance with Section 504 and Title II. For the Spring semester of the 2022-2023 school year, and annually for the 2023-2024 and 2024-2025 school years, the District's Director of Special Education (or a qualified designee) will:

1. review all incidents involving the restraint and seclusion of District students, including at any NPS, to determine if the use of restraint or seclusion reflected an individualized determination based on the student's need and was consistent with District policy and related training;
2. 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 District staff or NPS staff to seek an evaluation or reevaluation of the student;
3. 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;
4. review all restraint and seclusion forms to ensure that District staff and NPS staff properly complete the required forms;
5. identify all concerns related to the District's or NPS's use of restraint and/or seclusion, propose recommendations to address any concerns, and develop timelines for implementation of the recommendations; and
6. conduct an onsite visit of any NPS (a) before placing a District student at the NPS, including asking NPS staff about their use of restraint and seclusion (if any), observing any rooms used for seclusion, and obtaining a copy of all policies, procedures, forms, and training about restraint and seclusion; and (b) whenever an NPS, a parent of a District student placed at an NPS, or other interested stakeholder (e.g., a group home where a District student placed at an NPS resides) reports (a) a restraint or seclusion of a District student that raises Section 504 and/or Title II concerns under the Student's IEP, Section 504 Plan, and/or BIP or the District's or NPS's policies or training; or (b) the repeated use of restraints and/or seclusions of a District student placed at an NPS.

B. REPORTING REQUIREMENTS:

1. By **March 31, 2023**, the District will provide documentation of its proposed monitoring program developed under Section VII.A to OCR.
2. By **July 1 of each year**, beginning with July 1, 2023, and ending with July 1, 2025, the District will provide a report to OCR demonstrating that the District's Director of Special Education (or a qualified designee) completed the semester and annual reviews required by Section VII.A. The District'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 District will provide such records within 30 calendar days of such request.

VIII. OCR MONITORING

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

The District 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 District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

By: _____/s/_____
Superintendent or Designee
Davis Joint Unified School District

Date: December 7, 2022

APPENDIX A

As required by Section III.A.2 of the Agreement, the District will create a form to document each restraint and seclusion that meets the applicable definition in the District's policy and require the collection of the following information for each restraint and seclusion on the form:

- a. the student's name or other identifier;
- b. the student's school;
- c. the student's grade level;
- d. whether the student has an identified disability and/or medical condition (i.e., has an IEP or a Section 504 plan) and if so, identify the specific disability and/or medical condition;
- e. the date of the restraint or seclusion;
- f. the start time, end time, and total time of the restraint or seclusion;
- g. the location of the restraint or seclusion (e.g., cafeteria, auditorium, hallway, specific classroom, playground, sports field, school parking lot, school bus, etc.);
- h. whether the student was secluded, restrained, or both, and a clear identification of the type of restraint, including a description of how the restraint or seclusion was conducted (i.e., for restraints, where staff were positioned and what they did during the restraint; whether the student was sitting, standing, lying down, etc.);
- i. the name(s) and job title(s) of staff who conducted the restraint or seclusion;
- j. the name(s) and job title(s) of any staff who witnessed, but did not conduct, the restraint or seclusion;
- k. whether the student or staff suffered any injury or required medical treatment as a result of the restraint or seclusion;
- l. a description of the student's behavior(s) that precipitated staff's belief that restraint or seclusion was justified and the antecedent factors (i.e., the events or circumstances that triggered the student's behavior(s));
- m. a description of the de-escalation strategy or strategies used prior to the restraint or seclusion, or an explanation as to why de-escalation strategies were not used;
- n. a description of events immediately following the restraint or seclusion (e.g., student remained in classroom or removed to different location, student met with counselor, etc.)

- o. if the student is a student with a disability, whether the student's IEP or Section 504 plan, including any BIP, was followed prior to and/or during the restraint or seclusion (e.g., was the de-escalation strategy prescribed in the BIP followed prior to the use of a physical restraint and did the IEP authorize the use of such restraint);
- p. if the student is a student with a disability, whether the student's IEP team or Section 504 team needs to meet to discuss:
 - i. whether the relevant provisions of the Student's Section 504 plan, IEP, and/or BIP were implemented prior to the use of the restraint or seclusion;
 - ii. whether the student needs a re-evaluation;
 - iii. whether the student's Section 504 plan, IEP, or BIP need to be revised; or
 - iv. whether the student should receive compensatory services;
- q. if the student is not identified as a student with a disability, whether the student is suspected of having a disability, and therefore, should be referred for an evaluation under Section 504, IDEA, or both;
- r. the date, time, and method of parent notification of the restraint or seclusion (and if the notification was made in a language other than English, the language used);
- s. the date, time, and method of notifying the District's director of student support services (or their qualified designee);
- t. the activity or activities that the student missed during the restraint or seclusion (e.g., recess, lunch, a related service, special education, a general education class, a District or District-sponsored after-school program or activity, etc.);
- u. the number of prior restraints and seclusions the student was subjected to during the school year;
- v. the name(s) and job title(s) of the person(s) completing the form; and
- w. the date the form was completed.