

Resolution Agreement
Durham Public Schools
OCR Complaint Nos. 11-13-1153 and 11-13-1273

Durham Public Schools (the “District”) voluntarily enters into this resolution agreement (the “Agreement”) with the U.S. Department of Education’s Office for Civil Rights (“OCR”) to resolve the above-referenced complaints. Implementation of the following commitments will resolve all issues in the complaint.

TRAINING

1. By August 25, 2014, the District will provide training to relevant COPE Program personnel, which will include all personnel responsible for developing students’ Section 504 plans, individualized education programs (IEPs), or other individualized plans (“individual plans”), and personnel who could be responsible for placing students in a physical restraint (COPE Personnel). The training will be based on the Nonviolent Crisis Intervention model. “Physical restraint” means the use of physical force to restrict the free movement of all or a portion of a student’s body. At a minimum, the training will instruct personnel that:
 - a. Restraint is an emergency intervention that should only be used as a last resort to protect safety, and should be avoided to the greatest extent possible without endangering students and staff.
 - b. Any actual use of physical restraint must be documented in compliance with federal and state law. The use of physical restraint should be reviewed periodically by students’ IEP or 504 teams and considered when determining appropriate evaluations, placements, and interventions.
 - c. If a student for whom restraint is not listed in an IEP/BIP is being subjected to restraint repeatedly, or, if a student for whom restraint is listed in an IEP/BIP is being subjected to restraint in a manner that does not comply with the IEP/BIP, a school must convene a group of people knowledgeable about the student and his or her disability, as defined in 34 C.F.R. § 104.35(c) (a properly constituted IEP or 504 team will satisfy this requirement), to assess whether it is necessary to re-evaluate the student to determine whether the student’s current placement or services, including behavioral interventions, are meeting the student’s individual educational needs and whether the student is being served in the least restrictive environment; that group should also determine if restraint is an appropriate emergency intervention for the student and, if so, the circumstances and manner in which it should be implemented. This group should include the student’s parent(s), if the parent chooses to participate, and invite the student’s medical provider(s), if applicable.

2. By August 25, 2014, the District will provide training to all COPE program staff involved in student discipline on disciplinary procedures pertaining to students with disabilities. The training will provide information on the appropriate manner to address inappropriate behavior and make clear that sending students home early is not an appropriate way to address disciplinary issues. The training will also emphasize that sending a student home

to address disciplinary issues is equivalent to suspending him and triggers the same protections applicable to suspensions of students with disabilities. The training will also address the District's responsibility to and its process for identifying whether a student needs to be re-evaluated and the process for re-evaluating students, particularly when a student is repeatedly placed in restraint to address the student's disability-related behavior. The training will also review the District's process for placing students in restraint, including, where restraint is used to prevent harm, or as otherwise required by DPS policy and state and federal law, the obligation to document such use and inform parents/guardians. The training will also instruct personnel in the safe, appropriate and approved methods and techniques for using physical restraint.

3. By June 13, 2014, the District will issue a document to all District staff involved in student discipline clarifying certain elements of the District's policy on restraint and seclusion as follows:
 - a. Physical restraint should only be used to promote safety and prevent harm to students and staff, should be used as a last resort, and should be limited to the minimum intervention necessary to prevent the harm.
 - b. The use of physical restraint "to teach a skill [or] to calm or comfort a student" is only permissible for educational or developmental support purposes, and not for disciplinary purposes.
 - c. The authorization to use physical restraint "to escort a student safely from one area to another" only refers to a temporary touching or holding for the purpose of inducing a student who is acting out to walk to a safe location.
 - d. The use of physical restraint or seclusion "as provided for in a student's IEP or Section 504 plan or behavior intervention plan" must also be consistent with other uses of physical restraint and seclusion permitted by the policy.
4. By August 25, 2014, the District will train COPE Personnel and an administrator or special education facilitator from any school or program that is authorized by the Division to use physical restraint or seclusion to ensure that the policy clarifications described in provision 3 above are understood and implemented.

Reporting Requirements

- a. By June 1, 2014, the District will provide for OCR's review and approval a copy of the training materials prepared for Provisions 1 and 2, including the name(s) and title(s) of the trainer(s) and any handouts or presentations developed for this training.
- b. Within 30 days of the completion of the approved trainings, the District will submit to OCR the name(s) and title(s) of the trainer(s), the date of the training,

any materials used, and the sign-in sheet indicating the names, titles, and assigned District school (if applicable) of participants.

- c. By June 1, 2014, the District will provide for OCR's review and approval a copy of the clarification document prepared for Provision 3.
- d. Within 30 days of OCR's approval of the clarification document prepared for Provision 3, the District will provide documentation to OCR that it was distributed to all District staff involved in student discipline.
- e. By June 1, 2014, the District will provide for OCR's review and approval a copy of the training materials prepared for Provisions 4, including the name(s) and title(s) of the trainer(s) and any handouts or presentations developed for this training.
- f. Within 30 days of the completion of the approved trainings, the District will submit to OCR the name(s) and title(s) of the trainer(s), the date of the training, any materials used, and the sign-in sheet indicating the names, titles, and assigned District school (if applicable) of participants.

STUDENT-SPECIFIC PROVISIONS

RESTRAINT

5. By August 25, 2014, for each of the three identified students in COPE classrooms who were placed in physical restraints during the 2012-2013 school year and who remain enrolled in the District, the District will conduct an administrative review of their records to determine if there is a need to re-evaluate the student; that is, whether there is reason to believe the current placement or services, including behavioral interventions, are not meeting the student's individual educational needs or whether the student is not being served in the least restrictive environment. To the extent that re-evaluation is warranted, it will be conducted consistent with the evaluation, placement, and procedural safeguard requirements of 34 C.F.R. §§ 104.35 and 104.36.
6. If the re-evaluation leads to a finding that a student is in need of a change in placement, including a change in services or behavioral interventions, in accordance with 34 C.F.R. §§ 104.35 and 104.36, the District will determine whether the provision of compensatory educational services or other appropriate relief is warranted. If compensatory services are warranted, the District will offer and provide compensatory educational services to affected students, as appropriate, along with a timetable for delivery of those services.

Reporting Requirements:

- a. By June 30, 2014, the District will provide OCR with its screening criteria for how it plans to review students to determine whether the students should be re-evaluated based on their placement in restraint for OCR's review and approval.

At a minimum, the screening criteria will include the number of times each student was placed in restraint each year, the type of behavior that warranted the use of this intervention, the date of each student's most recent evaluation/re-evaluation, and any other information necessary to determine whether the student requires a re-evaluation.

- b. By August 25, the District will provide OCR with verification of its review of the circumstances involving each of the three identified students (by name or unique identifier) who was restrained during the 2012-2013 school year. At a minimum, the review will include the screening criteria considered, the District's determination of whether the student should be re-evaluated, and its rationale for the determination, for OCR's review and approval.
- c. By October 3, 2014, the District will provide documentation to OCR that the re-evaluation was conducted (*e.g.*, copies of forms, meeting notes, re-evaluation decisions, revised plans), including any changes in placement and/or changes to a student's related aids or services and behavior interventions. For any students who the District determined required a change to his or her related aids or services, including behavior interventions, or any other placement decision, the District will document its findings as to whether the provision of compensatory education or other appropriate relief is warranted, for OCR's review and approval.
- d. Within 30 days of OCR's approval of any compensatory educational services, the District will provide OCR with documentation it offered the approved services to the student's parent/guardian; the parents/guardians' response(s); and a list of students to whom compensatory services will be provided.
- e. By June 1, 2015, the District will provide documentation to OCR of the dates, times, and locations that any compensatory and/or remedial services were provided, and the name(s) of the service provider(s).

SECTION 504/Title II

7. By July 1, 2014, the District will convene a properly constituted IEP team (consistent with 34 CFR 104.35) to review Student A's records and information gained during this investigation to determine whether the Student was subjected to a disciplinary change of placement, when including non-suspension removals, and if so whether it was for conduct that was a manifestation of his disability. If the District finds that Student A was subject to a disciplinary change of placement for conduct that was a manifestation of his disability, it will:
 - a. Remove any discipline records related to this conduct from the Student's disciplinary file;
 - b. Consider whether to develop or revise his Behavior Intervention Plan to address his disability-related conduct;

- c. Provide training for COPE program staff involved in disciplining students on the legal requirements regarding the circumstances in which a manifestation meeting must be held; and
 - d. Determine, , whether the Student should be offered compensatory educational services due to the disciplinary change in placement and, if so, identify the nature and amount of the services to be provided at no cost to the Student's parents; this determination will draw upon information from a variety of sources, including the Student's parent, and be made by persons knowledgeable about the Student.
8. By August 25, 2014, the District will also review and revise Student A's Behavior Intervention Plan (BIP) and specifically consider the behaviors that have led staff to send the Student home early and agree upon appropriate interventions to address those behaviors.

Reporting Requirements

- a. By July 14, 2014, the District will submit for OCR's review and approval documentation of its determination of whether Student A was subjected to a disciplinary change of placement due to behavior that was a manifestation of his disability during the 2012-2013 school year. The documentation will include an explanation of the basis for the decision and the names and titles of all meeting participants. If applicable, the District will provide to OCR a copy of Student A's revised disciplinary file, and a copy of any individualized plan to address Student A's disability-related conduct.
- b. Within 30 days of OCR's approval of the District's determination, if there is a finding that Student A was subjected to a disciplinary change of placement due to behavior that was a manifestation of his disability, the District will provide OCR with an explanation of whether Student A will be provided compensatory educational services for the times when the Student was sent home early, including the factors considered in making this determination, and the names and titles of the decision-makers. This information should include a copy of the meeting minutes or similar documentation from all relevant meetings; an explanation for decisions made; the names and titles of all meeting participants, and, if applicable; and, if applicable, a description of and schedule for providing any compensatory and/or remedial services to Student A. 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. §§ 104.34, 104.35 and 104.36, in making these determinations.
- c. Within fifteen (15) days after OCR's review and approval of the information submitted as a part of the reporting requirement above, the District will provide the parent(s) or legal guardian(s) with written notice, a copy also to be sent to OCR, of the outcome of the meeting(s), including, as necessary, a written offer regarding the District's provision of the compensatory educational services, and a proposed timetable.

- d. If Student A and his parent accept the District's offer, the District will begin providing the services to Student A within fifteen (15) calendar days from the date of its receipt of Student A's acceptance of the District's offer, or at a later date, if agreed upon by Student A's parent. The compensatory education program shall be delivered in a manner so as not to hinder the delivery of any services that are required by Student A's current educational program and have a completion date not to extend beyond June 1, 2015.
- e. By June 1, 2015, the District will provide documentation to OCR of the dates, times, and locations that any compensatory and/or remedial services were provided, and the name(s) of the service provider(s).

The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. Part 104 and Title II, at 28 C.F.R. Part 35, which were at issue in this case. The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this 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 of this Agreement and is in compliance with the regulation implementing Section 504, at 34 C.F.R. Part 104, and Title II, at 28 C.F.R. Part 35, which were at issue in this case.

The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9 and 100.10), or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and a minimum of sixty (60) calendar days to cure the alleged breach.

Full implementation of this Agreement by the District resolves this case.

_____/s/_____
 Deputy Superintendent for Academic Services
 Durham Public Schools

_____/5/16/2014_____
 Date