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OFFICE FOR CIVIL RIGHTS

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By email only to armstrong.laura@secep.net

Ms. Laura Armstrong, Executive Director
Southeastern Cooperative Educational Programs
6160 Kempsville Circle
Suite 300B
Norfolk, VA 23502

Re: OCR Case No. 11-17-5001
Southeastern Cooperative Educational Programs

Dear Ms. Armstrong:

This letter notifies you of the resolution of the U.S. Department of Education, Office for Civil Rights (OCR) compliance review of restraint and seclusion in the Southeastern Cooperative Educational Programs (SECEP). The compliance review, opened on August 29, 2017, examined whether SECEP's use of restraint and seclusion denies a free appropriate public education (FAPE) to students with disabilities who participate in SECEP's programs, in violation of SECEP's obligation to comply with Section 504 of the Rehabilitation Act (Section 504), 29 U.S.C. § 794, and its implementing regulation, 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131, and its implementing regulation, 28 C.F.R. Part 35.

Eight school divisions that receive Federal financial assistance from the Department jointly participate in and oversee the management of SECEP. As part of the programs and activities of those school divisions, SECEP is subject to OCR's jurisdiction and the requirements of Section 504 and its implementing regulation. OCR also has jurisdiction over SECEP and the eight participating school divisions under Title II because they are public educational institutions.¹

To date, OCR has reviewed SECEP records and documentation, including SECEP policies and procedures and materials related to staff training on restraint and seclusion.² OCR also has reviewed statistical information from SECEP about the number of restraint and seclusion incidents during the 2016-2017 and 2017-2018 school years, disaggregated by student, school division, program, school, and disability. Further, OCR reviewed educational records of selected students with disabilities who had incidents of restraint and seclusion during the 2016-2017 and 2017-2018

¹ The eight school divisions that jointly oversee the management of and participate in SECEP are: Virginia Beach City Public Schools, Norfolk Public Schools, Chesapeake Public Schools, Portsmouth Public Schools, Franklin City Public Schools, Suffolk Public Schools, Southampton County Public Schools, and Isle of Wight County Schools.

² Throughout the remainder of this letter, the phrase "restraint and seclusion," refers to situations in which there was a restraint, a seclusion, or both a restraint and seclusion.

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school years, including restraint and seclusion logs, incident reports, educational records, and meeting notes. OCR conducted site visits to five SECEP centers and interviewed three center principals, three assistant directors, and the former Executive Director, whom we will refer to as the Executive Director.

Before OCR completed its investigation, SECEP expressed an interest in proceeding under Section 302 of OCR's *Case Processing Manual*, which permits the resolution of an investigation prior to OCR making a determination if a recipient expresses an interest in resolving the investigation and OCR has identified compliance concerns that can be addressed through a resolution agreement. OCR determined that proceeding under Section 302 was appropriate because OCR had identified concerns regarding SECEP's compliance with Section 504 and Title II. The following is a summary of the evidence OCR obtained and the concerns OCR identified during the investigation to date, as well as of the resolution agreement that addresses those concerns.

LEGAL STANDARDS

A. Definitions

OCR defines "mechanical restraint" as the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel or used by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed.³

OCR defines "physical restraint" as a personal restriction that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term physical restraint does not include a physical escort. Physical escort means a temporary touching, or holding of the hand, wrist, arm, shoulder, or back for the purpose of inducing a student who is acting out to walk to a safe location.

OCR defines "seclusion" as the involuntary confinement of a student alone in a room or area from which the student is physically prevented from leaving. The term does not include a timeout, which is a behavior management technique that is part of an approved program involving monitored separation of the student in a non-locked setting and is implemented for the purpose of calming.

B. Section 504 and Title II

The Section 504 regulation at 34 C.F.R. § 104.33 requires school districts to provide a FAPE to all students with disabilities in their jurisdictions, regardless of the nature or severity of the disability. An appropriate education is defined as regular or special education and related aids and

³ Examples of specific and approved purposes include: adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

services that are designed to meet the individual needs of students with disabilities as adequately as the needs of students without disabilities are met and are based on adherence to procedures that satisfy the requirements of 34 C.F.R. §§ 104.34-36. Implementation of an individualized education program (IEP) developed in accordance with the Individuals with Disabilities Education Act (IDEA) is one means of meeting these requirements.

The Section 504 regulation at 34 C.F.R. § 104.35(a) provides that a district shall conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. The regulation at 34 C.F.R. § 104.35(b) provides that a district shall establish standards and procedures for the evaluation and placement of persons who, because of disability, need or are believed to need special education or related services.⁴

Moreover, the Section 504 regulation at 34 C.F.R. § 104.35(c) provides that in interpreting evaluation data and in making placement decisions, a district shall (1) draw upon information from a variety of sources, including physical condition and adaptive behavior;⁵ (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered; (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) ensure that the placement decision is made in conformity with § 104.34, which requires placement in the regular educational environment to the maximum extent appropriate.

When a student exhibits behavior that interferes with the student's education or the education of other students in a manner that would reasonably cause teachers or other school personnel to suspect that the student has a disability, as defined under Section 504, the school district must evaluate the student to determine if the student has a disability and needs special education or related services because of that disability. For a student who has already been identified as a student with a disability, a school's repeated use of restraint or seclusion may suggest that the student's current array of regular or special education and related aids and services is not sufficient to provide FAPE.

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

⁴ The procedures must ensure that: (1) tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer; (2) tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and (3) tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure). 34 C.F.R. § 104.35(b)(1)-(3).

⁵ The regulation at 34 C.F.R. § 104.35(c)(1) also lists the following possible sources: aptitude and achievement tests, teacher recommendations and social or cultural background.

BACKGROUND

SECEP is a regional special and alternative education program established during the 1978-1979 school year by eight school divisions in the Tidewater region of Virginia (the participating school divisions). During the 2016-2017 and 2017-2018 school years, SECEP enrolled approximately 1,200 students. Overall, SECEP is led by an Executive Director, who is assisted by four Assistant Directors, three of whom supervise educational programming and one who is responsible for human resources, and by two coordinators for instruction and professional development.

SECEP primarily serves students with disabilities (approximately 85% of enrollment), as well as a small number of students without disabilities who require an alternative placement due to behavioral and disciplinary issues. SECEP specializes in working with students identified under the IDEA disability categories of autism, emotional disability, and multiple disabilities (typically, autism and intellectual disabilities) who exhibit significant behavioral needs. Each of the participating school divisions refers students with disabilities to SECEP's special education programs through a placement decision made by the student's IEP team. SECEP's goal is to reintegrate students in the school divisions that placed them (referred to below as a "Placing Division"); however, reintegration depends on the nature and severity of a student's disabilities, as well as a student's educational and behavioral progress.

EVIDENCE OBTAINED

Approximately 70 SECEP special education classes operate within about 50 comprehensive schools serving general and special education students in the participating school divisions. SECEP also has five regional centers (the Centers), which serve students who cannot be placed appropriately in a comprehensive school within their school division. These are the SECEP Chesapeake Center, the SECEP Norfolk Center, the SECEP Suffolk Center, the SECEP Virginia Beach Elementary Center, and the SECEP Virginia Beach Renaissance Academy. Each Center is led by a principal, who is assisted by "educational specialists" who support teachers and educational programming. Finally, SECEP also provides services to students in two residential, medical facilities.

SECEP offers five programs: the Autism Spectrum Program (ASP), Educational and Behavioral Interventions for Challenging Students (EBICS), Re-Education of Children (Re-ED), Tidewater Regional Alternative Education Program (TRAEP), and Raising Expectations and Abilities for Children with Complex Health Needs (REACH). The ASP serves students identified as having autism and uses Applied Behavior Analysis (ABA) principles and other methodologies to structure the educational setting while Board Certified Behavior Analysts (BCBAs) design, implement, and monitor behavior programs. The EBICS program serves students with intellectual disabilities who exhibit severe and disruptive behaviors in the comprehensive school setting. EBICS classroom staff also have ABA training, use ABA principles and methodologies, and have the support of BCBAs for behavior interventions. Both ASP and EBICS are offered in comprehensive schools and the Centers.

The Re-ED program, which primarily serves students identified as having an emotional disability, provides instruction in core academic areas and offers support for literacy remediation

and social skills. TRAEP provides an alternative setting for students with and without disabilities who may have been removed from the comprehensive school setting for violations of the code of student conduct. Re-ED and TRAEP are offered at the Centers only, and TRAEP is located at only four of the five Centers.

Finally, REACH supports students with intellectual disabilities and complex health needs who are placed in a residential, medical facility. SECEP did not report any incidents of restraint and seclusion in this fifth program, nor does SECEP operate the residential, medical facilities, so OCR did not review the REACH program as part of this compliance review.⁶

A. State Regulation

After OCR began its review, Virginia proposed a regulation governing the use of restraint and seclusion in schools. The draft regulations, *Regulations Governing the Use of Seclusion and Restraint in Public Elementary and Secondary Schools in Virginia*, went into effect on January 1, 2021. See 8VAC20-750. The regulation sets out definitions and requirements for the use of restraint and seclusion, notification to parents, and also describes steps for addressing the needs of students who have multiple incidents of restraint and seclusion.

The Virginia regulation requires schools to notify parents of incidents of restraint and seclusion, and any first aid it administered on the day the incident occurred. See 8VAC20-750-60. Further, it subsequently requires schools to provide a written incident report to a parent. The written incident report must contain 15 points of information about the incident, including, for instance, the duration of the incident, a description of what occurred before and during the restraint and seclusion, the behavior that led to the use of restraint and seclusion, less restrictive interventions attempted, and whether the student or other individuals sustained injury. The regulation also requires a school principal to review the school's use of restraint and seclusion regularly to ensure compliance with school division policies and procedures.

Additionally, the Virginia regulation requires school divisions to take steps to prevent restraint and seclusion and to address the needs of students who have multiple incidents of restraint and seclusion. See 8VAC20-750-80. In developing and reviewing IEPs or Section 504 plans for students, teams must consider whether a student's behaviors are likely to result in the use of restraint and seclusion, and whether a student requires a functional behavior assessment (FBA), a behavior intervention plan (BIP) that addresses the causes of behaviors and de-escalation strategies, behavioral goals, reevaluation, or evaluation. The regulation also requires that school divisions hold a meeting for students following the second school day in a school year on which an incident of restraint and seclusion occurred to consider the need for an FBA, revised BIP, revised behavioral goals, or whether a student requires additional evaluation or reevaluation. The Virginia regulation requires that a school division hold a similar meeting to determine whether a student without a disability needs a referral for evaluation.

⁶ REACH operates at Lake Taylor Transitional Care Hospital and St. Mary's Home, both of which are located in Norfolk, Virginia. During the 2016-2017 school year, REACH served 76 students; during the 2021-2022 school year, REACH served 61 students.

B. Procedure

Prior to the above regulation becoming effective, SECEP provided a 1.5-page excerpt from its employee handbook, entitled Student Safety and Crisis Intervention (the Excerpt), in response to OCR's request for SECEP's policies and procedures regarding the use of restraint and seclusion. The Excerpt provides a high-level introduction to SECEP's approach to managing behavior and provides definitions of physical interventions SECEP may use.

The Excerpt states that, in addition to the positive behavior strategies SECEP uses to maintain a safe learning environment:

- physical interventions are available if non-physical interventions have been unsuccessful in returning a student to safety,
- seclusion or physical restraint is never to be used as a consequence for inappropriate behavior, and
- staff should follow individual student behavior plans.

Although not stated in the Excerpt, SECEP informed OCR that it does not use mechanical restraint.⁷

The Excerpt defines restraint, seclusion, and an additional term, exclusion, as follows:⁸

- physical restraint is “personal restriction that immobilizes or reduces ability of student to move freely.” During restraint, staff is to monitor a student for signs of physical distress or trauma and adjust the restraint as needed to maintain safety for the student. Upon being released from restraint, the nurse must examine the student prior to the student re-joining class.
- seclusion is “involuntary confinement of student [sic] alone in room or area from which student is physically prevented from leaving” until student no longer poses a threat to self or others.
- exclusion is “a behavioral control technique when a student is separated from others and prevented from leaving a designated area.”

The Excerpt also defines the terms “break area” and “physical prompting.” Break area is a space to which a student can go for a break and leave at any time. Physical prompting involves light or occasional touch to redirect a student, or it can involve walking with a reluctant person.

The Excerpt states that students must see the nurse after a restraint has ended, and the contact must be recorded in the student electronic database discussed below. The Excerpt is silent as to whether students who have been secluded must see the nurse.

The Executive Director identified a practice that is not reflected in the Excerpt but nonetheless is used for students in the ASP and EBICS programs; as noted above, ASP and EBICS are offered

⁷ Given this representation, references in this letter to “restraint” refer only to physical restraint unless specified otherwise.

⁸ The definitions set forth in the Crisis Intervention Excerpt draw upon Virginia regulations that were pending during OCR's gathering of information and that ultimately took effect on January 1, 2021.

both in Centers and comprehensive schools.⁹ Beginning in the 2016–2017 school year, the ASP and EBICS programs used a screen or piece of furniture to separate a student from others in their classroom when a student was acting in an aggressive manner towards other students or staff. This practice was used in comprehensive schools, which do not have seclusion rooms. For students enrolled in ASP or EBICS at a Center, which had a seclusion room, this practice nonetheless was used instead of the seclusion room, in most cases. The Executive Director stated that in such a situation, several staff remain with the student to prompt or help the student to regulate his or her behavior.

The Executive Director told OCR that, although the practice of using a screen or piece of furniture does not conform with SECEP’s definition of seclusion, incidents involving this practice were included among the seclusion incidents SECEP reported to OCR for the purpose of this compliance review. Similarly, the [redacted content] at the [redacted content] told OCR that the Center regarded incidents in which staff escorted a student as incidents of restraint, although such escorts are not part of the definition of restraint.

SECEP indicated that it has revised its procedure since 2021 to comply with the state’s finalized regulation. Consequently, SECEP adopted “Core Foundations of Behaviors,” which is the procedure used to respond to imminent dangers posed by students that could result in physical injury to the student or others. The discussion below addresses SECEP’s use of restraint and seclusion prior to making these revisions.

C. Training

SECEP’s restraint and seclusion training materials consist of two documents, one document focused on restraint and the other document focused on seclusion and exclusion.

The restraint training document is a manual developed by a third-party vendor that SECEP uses to train staff annually on using physical restraint techniques such as holds, releases, and positioning, as well as team intervention strategies, de-escalation techniques, strategies for incident prevention, and physical safety, among other topics. SECEP explained that instructional staff receive a two-day training from the third-party provider when the staff are hired; and, subsequent to the initial training, staff receive one-day recertification training annually. The Executive Director told OCR that SECEP transitioned to a different program for physical management as of the 2018-2019 school year, one designed to train staff to use verbal and physical interventions for behavior management.

The second training document, “School Quiet Area Training,” reviews definitions of seclusion and exclusion, how staff are to use School Quiet Areas (SQAs),¹⁰ staff expectations and responsibilities, and completion of SQA forms. The training is conducted by Center principals and reinforces that seclusion is a last resort when a student presents an imminent safety hazard and that a student is only secluded until he or she no longer presents an immediate threat of danger to property. It directs staff to maintain the student placed in seclusion within their visual field at all times. It further informs staff of expected behavior while monitoring a student using the SQA,

⁹ Comprehensive schools do not have seclusion rooms.

¹⁰ As discussed below, SQAs are the locations in the Centers that SECEP uses for seclusion and exclusion.

including that the room is to be quiet, staff is to maintain flat affect, and staff is to refrain from counseling or mediation, which is to occur at another time or location. The training directs staff to have students assessed by the nurse after leaving seclusion and to document the findings in an incident report.

The SQA training materials state that a student who is in exclusion is not receiving instruction, including special education, related services, or support. The training clarifies that student-requested breaks in a different room or removal for a short period so a student can regain self-control does not constitute seclusion. The training materials further distinguish seclusion from exclusion by the presence of staff in the room and by whether the door is closed; during an exclusion, a student is not alone in a closed room.¹¹

SECEP represented to OCR that it assigns a staff person to each Center to coordinate additional professional development and training throughout the school year. The training provided varies by Center and by need. SECEP did not provide to OCR documents associated with this type of Center-specific training, nor did it provide training materials for staff at the comprehensive schools.

D. Recordkeeping

According to SECEP’s “School Quiet Area Training,” SECEP staff must manually record information about incidents of seclusion and exclusion on hard copies of logs kept in real-time during an incident, including recording behaviors and duration of seclusion and exclusion at 15-minute intervals. These hard copy logs are called SQA logs and are kept in each SQA. No such handwritten logs are used for restraint incidents.

SECEP also has an electronic database to maintain student records, including information about restraint and seclusion incidents. The electronic database has multiple sections, which capture information about disciplinary incidents, restraint and seclusion incidents, visits to the school nurse, and parent contacts.¹²

A document labeled “job aide” describes how staff are to enter information about student disciplinary, restraint, and seclusion incidents in the database. Within 24 hours after a seclusion incident, the lead staff member at a Center must enter in the database the information about seclusions found in the hard copy logs mentioned above. For restraints, within 24 hours of an incident, staff are to directly input information into the database about behaviors, interventions used, and staff who were present, as well as information regarding the student’s condition. SECEP staff do not enter information about exclusions in the database; those records are maintained only in the hard copy SQA logs.

In a Student Contact Log section of the database, staff are to note when a student’s parents have been called. The incident report generated in the database may also reference whether a student’s

¹¹ According to staff OCR interviewed, exclusions may occur when a student is in one of the SQAs. Staff also report that students may ask to voluntarily take a break in the SQA or may be asked to go to the SQA by staff.

¹² SECEP may use the electronic database to record additional student records; however, OCR did not request information about other categories.

parents were contacted. Finally, another section of the database is used to record when a student has received health treatment, including the findings of the school nurse's examination following an incident of restraint and seclusion.

Entering an incident into the database generates an incident report and corresponding incident number. According to the "School Quiet Area Training," after completing an incident report in the database, staff are to email the generated incident number to the educational specialist, assistant principal, and principal.

Finally, the Executive Director stated that SECEP holds meetings after a student has accumulated incidents of restraint and seclusion, and these meetings may be tracked by team notes, possibly from a safety meeting at the end of the school day (discussed further below). These records typically are stored in a binder documenting all safety meetings and not in an individual student's file.

E. Notification

The Excerpt states that SECEP annually sends a letter to students' parents notifying them that physical management may be part of SECEP's program. The notification letter states that SECEP uses restraint and seclusion only when other less intrusive alternatives have failed to maintain a safe environment. The letter does not request permission from parents but rather informs them that SECEP may use restraint and seclusion.

Although the Excerpt and training materials indicate that SECEP will notify parents the same day as restraint and seclusion occurs, neither the Excerpt nor the training materials explain what information should be provided. Incident reports, interviews, and SECEP's narrative response indicate that the primary mode of notification is a phone call to parents. The Executive Director informed OCR that for students enrolled in one of the Centers, on some occasions, restraint and seclusion may be a topic discussed at students' IEP meetings, where such data would be shared with any parents and/or representatives from the Placing Division in attendance.

F. Internal Monitoring

The Excerpt states staff should hold a safety or intervention meeting to discuss student behavior following three incidents of restraint and seclusion. SECEP staff expressed lack of clarity regarding whether safety meetings are required after three incidents or three days. Staff indicated that these meetings are not considered IEP team meetings. The Executive Director stated that staff at these meetings will review antecedent behaviors and discuss strategies to alleviate the need for restraint and seclusion. According to the Executive Director, the decision regarding when to refer a student to the IEP team, including for the development of a behavior intervention plan (BIP), is an individualized decision based on the needs of the child and the success of interventions in preventing or reducing the frequencies of behaviors. The Executive Director discussed the process for collecting data, building timelines for implementation of behavioral strategies, and ensuring implementation of a formal BIP. He stated that if SECEP saw a pattern for a student with behavioral needs, they would meet with the Placing Division and the parent to discuss what was happening.

The Executive Director stated that while SECEP has no written procedure for reviewing restraint and seclusion data, he meets with a leadership team every two weeks, looks “in depth” quarterly, and looks “globally” several times each month. He stated that one of the assistant directors, who is responsible for quality assurance and compliance, has greater oversight of SECEP’s use of restraint and seclusion. He has frequent dialog with this administrator. He stated that they are also looking frequently at the data because of the state’s regulations. As a result of one review, the leadership team pushed for staff training in the classrooms at comprehensive schools.

SECEP’s written documents do not provide information regarding how students are to make up any instructional time missed due to restraint and seclusion or how to track whether they have done so. Although SECEP staff stated that students who miss instruction due to restraint and seclusion incidents, or exclusions, have opportunities to make up missed work on an individual basis, including staying after school or completing assignments during other class time, the Executive Director stated that SECEP has no procedural guide regarding making up missed instruction. As discussed further below, OCR did not find in its file review any evidence of students having made up instruction.

G. SECEP Seclusion Rooms

OCR observed the SQAs at each of the regional SECEP Centers. Essentially, there are three configurations that vary among the Centers. One model of SQA is a small seclusion room accessed directly from a main hallway by a door. A second model is a cluster of multiple seclusion rooms centered around a common area that connects to a main hallway by an open entryway. The third and most common model is multiple seclusion rooms built within an unused classroom (i.e., small rooms within a larger room). The term SQA can refer to any of the three configurations. OCR observed paper copies of logs available in each SQA.

The small rooms used for seclusion, each approximately six feet by eight feet, have their own light and ventilation systems that engage automatically when the doors to the rooms are closed. The doors each have a 12-inch square window for staff to observe students. Seclusion rooms also have convex mirrors mounted to the upper corner of the rear wall and ceiling so that monitoring staff can see students in all parts of each seclusion room through the window in the door. SECEP’s seclusion rooms have electro-magnetic locks on the doors, and “the locking switch must be held to maintain the locked position.” The door remains locked only as long as the staff member depresses the button on the exterior of the door. When staff releases pressure on the button, the door to the seclusion room unlatches.

To deescalate, students may use the open classroom area of a SQA or a seclusion room with the door open, voluntarily or at the direction of SECEP staff. If a student’s behavior remains escalated, the student may then move, or be moved at the direction of staff, to a seclusion room, or if the student already was attempting to deescalate in a seclusion room, the door may be closed to initiate seclusion. When a student is in exclusion, either in the SQA’s open space or seclusion room with the door open, a staff member is present in the SQA with the student; when a student is in seclusion, an adult is always present outside the seclusion room door monitoring the student visually through the small window.

H. SECEP's Use of Restraint and Seclusion at the Centers

During the 2016-2017 school year, 500 SECEP students had 4,190 restraints and 4,413 seclusions. Among those, 441 students identified as having a disability, and 59 students not identified as having a disability, experienced restraint and seclusion. Of the 441 students with a disability who experienced a restraint and seclusion incident, 331 attended a Center, and the remaining 110 attended school in one of SECEP's 70 classrooms within a comprehensive school.

During the 2017-2018 school year, SECEP reported 3,765 incidents of restraint and 3,345 incidents of seclusion involving 459 SECEP students. Among those, 418 were identified as having a disability and 43 not identified as having a disability. Of the 418 students with a disability who experienced a restraint or seclusion incident, 301 attended a Center, and the remaining 115 attended one of the classrooms located in a comprehensive school.

A number of students with disabilities experienced multiple incidents of restraint and seclusion. At the Centers, during 2016-2017 and 2017-2018, approximately 125 and 145 students with disabilities experienced double-digit and triple-digit numbers of incidents in each year, respectively. At the comprehensive schools, some students with disabilities also had high numbers of restraint and seclusion incidents. During the 2016-2017 school year, approximately 30 students with disabilities attending a comprehensive school that SECEP served experienced ten or more incidents of restraint and seclusion, and approximately 32 students with disabilities experienced three to nine incidents of restraint and seclusion. During the 2017-2018 school year, only 35 students with disabilities in a comprehensive school experienced 10 or more incidents of restraint and seclusion, and 39 had three to nine incidents.

With respect to students without identified disabilities at three of the Centers that offer the TRAEP program, during the 2016-2017 school year, 28 students had incidents of restraint and seclusion. Most of these students had one or two incidents; only four students had three incidents, and none had more than three. At the fourth Center that offers TRAEP, 31 students without identified disabilities had incidents of restraint and seclusion during 2016-2017. Seven students had four to six incidents of restraint and seclusion; the remaining 24 students had three or fewer incidents. SECEP provided information to show that one of the 31 students who had multiple incidents of restraint and seclusion was evaluated and determined to have a disability. Similarly, during 2017-2018, at the first three Centers mentioned above, 10 students without identified disabilities had incidents of restraint/seclusion, with each experiencing fewer than three incidents in total. At the fourth Center, 28 students without identified disabilities had incidents of restraint and seclusion; of these, five had more than ten incidents, eight had between three and nine incidents, and 15 had three or fewer incidents.

Given these numbers, OCR initially focused its file review on students who attended a Center and who already were identified as having a disability. OCR reviewed the files of 77 students with disabilities (representing 15%) who had incidents of restraint and seclusion while attending the Centers. OCR selected the files of those who had the most incidents of restraint and seclusion as well as a random sampling of students who had one to three incidents of restraint and seclusion,

adjusting as necessary to ensure the files included a cross-section of grade levels, disability categories, and SECEP programs at each Center.

In the files, OCR reviewed special education records, including students' IEPs, Prior Written Notices (PWN) from IEP meetings, evaluation materials, Functional Behavioral Assessments (FBA), BIPs, and IEP Progress Reports. OCR also reviewed students' report cards. The files generally contained information documenting restraint and seclusion incidents, including incident reports, SQA logs, and parent contact logs, as well as safety or intervention meeting notes that discuss students' behaviors. As discussed below, some files did not include complete records, such as SQA logs.

Below, organized by each Center, OCR describes its site visit and file review.

[redacted content]

[redacted sentence]. Approximately 151 students with disabilities attended the [redacted content] during the 2016-2017 school year, and 138 attended during the 2017-2018 school year.

During the 2016-2017 school year, 115 students with disabilities accumulated 711 incidents of restraint and 1,538 incidents of seclusion. For the 2017-2018 school year, 86 students with disabilities had 411 restraints and 802 seclusions. During both school years, the Re-ED program had the largest number of restraint and seclusion incidents with 103 students having incidents in 2016-2017, and 78 having incidents in 2017-2018.

OCR observed four rooms designated as SQAs. OCR also interviewed the [redacted content], who indicated that the [redacted content] does not use restraint and seclusion as a consequence or behavior modification; rather, he said that the [redacted content] strictly reserves the use of restraint and seclusion for incidents where students pose a severe threat of imminent danger for themselves or others. Written records reflect that, after each incident, a nurse or administrator assessed the student for injuries, and a teacher or administrator contacted the student's parent, typically by telephone. The duration of restraints varied among students since students were only restrained until they were safe and then promptly returned to class after seeing the nurse. Similar to restraints, the duration of seclusions varied depending on the student's ability to deescalate. According to the [redacted content], students are released from seclusion once deemed safe by a staff member.

OCR reviewed the files of 12 students with disabilities. 11 of the students had incidents of restraint and seclusion ranging from three to 213 incidents. OCR notes that SECEP addressed restraint and seclusion directly in the IEP or BIP of two students, acknowledging that restraint and seclusion may be necessary for those students. Seven out of the 12 students did not have BIPs in place or anything in the IEP that addressed behaviors that led to restraint and seclusion.

The records show that SECEP initiated reevaluations for three of the 12 students; two of the students were due for a triennial evaluation under the IDEA, while the other appears to have been reevaluated as a result of behavioral concerns. Additionally, SECEP held informal, internal staff meetings to discuss the behavioral incidents leading to restraint and seclusion for seven students

but did not make changes to the IEP, BIP, or placement of these students or otherwise involve the students' parents or Placing Division representatives. The records indicate that SECEP held the informal meetings two weeks to seven months after three incidents of restraint and seclusion occurred. For one student, who had 91 restraints and 122 seclusions, SECEP began to hold informal "safety" meetings with staff approximately two weeks after the student accumulated three incidents of restraint and seclusion and continued to discuss the student's behaviors at "safety" meetings periodically thereafter; however, SECEP did not reevaluate the student during the 2016-2017 school year. Another student, who had 36 restraints and 64 seclusions, reached three incidents of restraint and seclusion early in the school year; however, staff did not hold a meeting to discuss the behavior until several months later.

The 12 files indicate that several students experienced incidents of restraint and seclusion following non-aggressive behaviors. Files also indicate that staff did not consistently record incident data. Records of the 12 students show that students were absent from the classroom setting for periods ranging from five to 335 minutes for a single incident of seclusion. Seven of the 12 students missed between 1,200 and 6,000 minutes of instructional time in total while an additional student missed a total of 10,000 minutes of instruction due to seclusion during the 2016-2017 school year.

Information OCR gathered from file reviews includes, for example:

- Student A experienced 71 restraints and 121 seclusions during the 2016-2017 school year. The same student had four restraints and seven seclusions during the 2017-2018 school year. In total, Student A spent 10,715 minutes in seclusion during the 2016-2017 school year. OCR noted instances in which Student A was restrained and secluded for physically aggressive behavior (e.g., kicking staff, climbing over or jumping off furniture) that could be classified as "threat to self or others," and OCR also found instances in which SECEP described the precipitating behavior as "classroom disruption, obscene language and gestures," where the behavior did not pose a threat to self or others. The incident reports for Student A show that staff did not consistently denote either the start or end times or the duration of restraint and seclusion incidents. Although there was inconsistency in recording times on incident reports, Student A's SQA logs show many instances in which Student A was secluded for extended periods of time, including one incident in which Student A remained in seclusion for 335 minutes. Student A's SQA logs indicate that 107 of the seclusion events lasted for 30 minutes or longer, the majority lasting an hour or more. Student A also had multiple incidents of exclusion throughout the 2016-2017 school year, totaling 568 minutes of exclusion. There is no information to reflect that Student A's IEP team convened to discuss the incidents or revise the student's IEP or BIP until the annual review during the 2017-2018 school year.
- Student B, during the 2016-2017 school year, experienced 91 restraints and 122 seclusions. During the 2017-2018 school year, Student B had 46 restraints and 46 seclusions. In total, Student B spent 5,294 minutes in seclusion during the 2016-2017 school year. OCR found the incident reports for Student B did not consistently denote either the start or end time or the duration of restraint and seclusion incidents. Although most of the entries on the incident reports indicate Student B was engaging in behaviors that would injure himself or

others, there were also incidents that involved less severe offenses, such as insubordination and non-physical offenses. For example, Student B was secluded for 180 minutes after refusing to follow staff direction and attempting to play on a computer. OCR noted at least two instances in which Student B was restrained and secluded for incidents described as running around and not remaining in his area. Student B's SQA logs indicate that 81 of the seclusion events for Student B lasted for 30 minutes or longer, the majority lasting an hour or more. There were occasions in which the logs indicate that Student B eventually fell asleep while in seclusion. The files do not indicate that SECEP reevaluated Student B during the 2016-2017 school year, and the student did not have a BIP in place.

[redacted content]

[redacted sentence]. Approximately 117 students with disabilities attended the [redacted content] during the 2016-2017 school year; 121 students with disabilities attended during 2017-2018. The [redacted content] has two SQAs.

During the 2016-2017 school year, 72 students with disabilities had 606 incidents of restraint and 928 incidents of seclusion. During the 2017-2018 school year, 72 students with disabilities had 510 incidents of restraint and 849 incidents of seclusion. The largest number of restraints and seclusion in both years involved students in the Re-ED program.

When OCR spoke with the [redacted content], she explained that staff frequently discussed students and their behaviors at safety and instructional team meetings. These meetings were documented by [redacted content] staff in a binder, the contents of which OCR reviewed. The meeting notes detailed students' daily behaviors and strategies used to address those behaviors, noted incidents of restraint and seclusion, and identified concerns for follow-up.

OCR reviewed the files of 21 students with disabilities at the [redacted content]. Nine of the 21 students missed significant amounts of instructional time (i.e., greater than 700 minutes) due to seclusion. The [redacted content] did not reevaluate 14 of the 21 students (six of whom had seclusions greater than 700 minutes) to determine whether the students were receiving appropriate services. Additionally, students experienced restraint and seclusion for behavior that was not threatening to self or others, such as spitting and using profanity. In addition to time spent in seclusion, students at the [redacted content] often spent time in exclusion, generally preceding or subsequent to a seclusion, or both. Ten of 21 students spent more than 700 minutes (and up to 7,500 minutes) in exclusion. Some students who were having behavioral difficulties left the instructional setting to deescalate in the SQA (i.e., exclusion) for periods ranging from five to 60 minutes before moving to seclusion. Thirteen of 21 students transitioned between exclusion and seclusion several times before finally returning to the classroom. Nine of the 21 students had a BIP, and five students had an IEP that reflected consideration of the use of restraint and seclusion. Recordkeeping was inconsistent as some documents appeared to be missing from some files. For example, the files of five students lacked SQA logs, although the Center reported seclusions for those students. OCR could not determine from the records whether those students also had exclusion incidents.

Information OCR gathered from file reviews includes, for example:

- Student C experienced eight restraints during the 2016-2017 school year. He had 17 seclusions, all of which occurred in the spring 2017 semester, and was excluded on multiple occasions. During the 2016-2017 school year, Student C missed 1,511 minutes of instructional time due to seclusion or exclusion. On one occasion, he was secluded for 35 and then 25 minutes, in addition to being excluded for a total of 71 minutes, all noted as one incident of seclusion. Notes indicate that he was spitting, using profanity, and [redacted content] before seclusion. A month later, Student C was secluded for 30 minutes following an exclusion of 105 minutes. In reviewing Student C's file, OCR did not find any documentation that either the safety team or Student C's IEP team met to consider whether the repeated use of restraint, seclusion, or exclusion was preventing Student C from receiving a FAPE. There also is no documentation of whether Student C's behaviors required a revision to the IEP or implementation of a BIP. During the 2017-2018 school year, Student C experienced 23 restraints and 55 seclusions during the year.
- Student D had 21 restraints and 66 seclusions during the 2016-2017 school year. During the following school year, Student D accumulated 25 restraints and 41 seclusions. OCR reviewed IEPs for Student D dated 2015 and winter 2018, which discussed the student's behaviors; however, there was no documentation suggesting Student D had been reevaluated, that his IEP team assessed whether his behaviors were preventing him from receiving a FAPE, or whether he needed a BIP. Student D's file showed multiple lengthy incidents, including seclusions lasting 110, 115, 140, and 345 minutes. Seclusions totaled 3,312 minutes during the 2016-2017 school year. In addition, Student D had multiple exclusions for various behaviors, including making threats to teachers and staff, totaling 7,500 minutes during the 2016-2017 school year. Notes from the intervention meeting log indicate that staff discussed Student D's behaviors and incidents of restraint and seclusion at daily meetings; however, there is no evidence that the staff proposed reevaluating Student D or convening an IEP meeting to further discuss his behaviors. OCR's review of PWNs in Student D's file does not indicate the IEP team discussed the incidents of restraint and seclusion during Student D's IEP meetings.
- Student E had 11 incidents of restraint and 26 seclusions during the 2016-2017 school year, primarily over four months mid-year, totaling 742 minutes of seclusion for the year. During the 2017-2018 school year, Student E had 28 restraints and 30 seclusions. Student E had a BIP developed during the 2014-2015 school year. While [redacted content] staff discussed Student E during safety meetings and documented the discussion in the binder entries, Student E's 2017 IEP contains no information related to restraint and seclusion, and there is no evidence in Student E's records that the IEP team discussed the incidents of restraint and seclusion. There are no SQA logs included in Student E's file, and the incident reports for seclusion incidents did not contain a record of Student E's behavior at fifteen-minute intervals; incident reports also do not indicate whether Student E had exclusions. Student E received "attendance notices" for poor attendance at school during 2016 and received grades of unsatisfactory or "not progressing" on report cards and IEP progress reports. SECEP proposed reevaluating Student E in the 2017-2018 school year.

[redacted content]

[redacted sentence] During the 2016-2017 school year, 91 students were enrolled in the [redacted content]. Of this number, 74 students were identified as students with disabilities. During the 2017-2018 school year, 81 students were enrolled at the [redacted content]. Of this number, 67 students were identified as students with disabilities. OCR observed one SQA space.

During the 2016-2017 school year, 36 students with disabilities experienced 92 incidents of restraint and 221 incidents of seclusion. During 2017-2018, 65 students with disabilities experienced 127 incidents of restraint and 34 incidents of seclusion. In both years, the largest number of incidents occurred with students in the Re-ED program.

The [redacted content] explained that Center staff use restraint and seclusion as a last resort and staff try to minimize behavioral incidents so that there would be less need for restraint and seclusion. She further explained that if one student has incidents on three days, then a group, including the principal, an educational specialist, teachers, and a teaching assistant, if appropriate, meets to determine what interventions to put in place. These meetings are documented through a “running record.”

With respect to student use of the SQA, the [redacted content] stated that when in this area, students are deescalating, thus instruction is not provided. When asked about missed instructional time due to restraint and seclusion, the [redacted content] did not explain how students recovered any missed instructional minutes, but she did state that students were expected to complete any missed assignments when they returned to class.

Regarding notice, the [redacted content] stated that [redacted content] staff would notify both the Placing Division and the students’ parents about incidents of restraint and seclusion. Specifically, she indicated that parents are often notified by telephone and that staff talk to parents when they begin to see patterns. Further, the [redacted content] told OCR that the [redacted content] is beginning to conduct more FBAs and develop more BIPs for students.

OCR reviewed the files of six students at the [redacted content]. OCR had difficulty finding all relevant information because files did not include some referenced records. Among the representative files, although staff conducted annual reviews of students’ IEPs, there was no indication that IEP teams convened outside of the annual review schedule to reevaluate the students who either had multiple incidents of restraint and seclusion or who may have missed significant amounts of instructional time due to restraint and seclusion. Several students also did not have BIPs in their files. Four of the six students missed between 900 and 3,400 minutes of instruction due to seclusion, and some students remained in seclusion for longer than 30 minutes on a single occasion.

Information OCR gathered from file reviews includes, for example:

- Student F was subjected to eight physical restraints and 27 seclusions during the 2016-2017 school year. According to the data, the seclusions occurred between the middle and the end of the 2016-2017 school year. In total, Student F missed 3,430 minutes of instruction due to seclusion during the year. OCR did not find evidence of a reevaluation

by Student F's IEP team to address either Student F's behaviors, the number of seclusions, or the amount of missed instruction due to the seclusions. Student F's IEP team did propose reevaluating the student the following school year; however, there is no documentation of the meeting in the student's file.

- Student G experienced eight restraints and 11 seclusions during the 2016-2017 school year. According to SECEP records, Student G was evaluated in 2014 and was not evaluated again until 2017. Student G missed 1,456 minutes of instruction due to seclusion, including one occasion in which Student G spent 360 minutes in seclusion after threatening staff. OCR could not find a BIP among the educational records, nor was there documentation of any IEP team meeting, whether formal or informal, to determine whether the student needed additional services.

[redacted sentence]. This Center offers the ASP, EBICS, and Re-ED programs; therefore, the [redacted content] serves only students with disabilities. OCR observed two SQA rooms used for seclusion, which were approximately eight feet by nine feet, and which were located along a hallway.

During the 2016-2017 school year, 60 students were enrolled in the [redacted content]. During the [redacted content] 2016-2017 school year, 50 students experienced a total of 1,241 incidents of restraint and 1,037 incidents of seclusion. During the 2017-2018 school year, 44 students were enrolled in the [redacted content]. During that same school year, 43 students had 1,106 incidents of restraint and 801 of seclusion. Like other Centers, in both years, the largest number of restraints and seclusions occurred in the Re-ED program.

According to the [redacted content], staff train annually on the use of restraint and seclusion. In addition to SECEP's training, [redacted content] conducts weekly informal trainings with its safety management trainer, and more formal trainings eight to nine times a year. The [redacted content] indicated that restraint and seclusion are only used when students are presenting a danger to themselves or others and end when such danger is no longer present. With respect to restraint, the [redacted content] stated that, because of the age of the students in her center, staff use modified physical restraints and only use supine restraints if either standing or seated restraints cannot be safely maintained.

According to the [redacted content], when necessary, seclusion is used for all students at the Center and occurs in seclusion rooms. The only exception is given to students in the ASP program (those identified with Autism), who, unlike their peers, are isolated in the classroom. Staff use bodily proximity to the student or moveable furniture such as a bookcase to prevent ASP students from leaving the space. According to the [redacted content], any time a student experiences an incident of restraint and seclusion, the incident must be documented and must include the antecedent event, the beginning time of the restraint and seclusion, and the end time. For seclusion incidents, the student's behavior is documented every fifteen minutes. The [redacted content] also stated that the student must be seen by the nurse at the conclusion of the restraint and seclusion and that the parent is to be notified.

The [redacted content] explained to OCR that she reviews restraint and seclusion data daily. Additionally, she stated that whenever a student accumulates three days with restraint and seclusion, the Center routinely conducts “intervention meetings,” which she attends, to discuss student behavior. At these meetings, Center staff discuss the interventions used to address the behaviors. The [redacted content] explained that the intervention meetings are not considered IEP team meetings and do not include parents or the Placing Division.¹³ If staff at the intervention meeting determines that current interventions are not successful and that an IEP meeting is necessary, [redacted content] then notifies parents and the Placing Division.

OCR reviewed the files of 10 students at the [redacted content]. Out of the 10 files reviewed, one student had a single mention of restraint in an FBA and IEP, indicating that the student’s aggressive behaviors had been severe enough to necessitate the use of restraint to ensure the student’s safety. One other student had restraint mentioned in an FBA as a behavioral consequence, but there was no further mention of restraint in the subsequent BIP developed. For the remaining eight files, incidents of restraint and seclusion were not directly addressed in either the students’ IEPs or BIPs. Even though the IEPs developed as a part of the annual review process would often state that the team reviewed existing data, including behavior data, OCR could find no specific reference in the meeting minutes to the number or frequency of restraint and seclusion incidents a student may have experienced prior to the IEP team meeting. Furthermore, although all 10 students experienced restraint and seclusion incidents, only five students had a BIP to address the behaviors leading to restraint and seclusion.

Among the files OCR reviewed, OCR found instances of long seclusions and significant amounts of missed instruction. Recordkeeping of some incidents was inconsistent, and some documentation appeared to be missing in the files, including SQA logs. Several students were not reevaluated, including those students described below.

Information OCR gathered from file reviews includes, for example:

- Student H was restrained 157 times and was secluded 155 times during the 2016-2017 school year, for a total of over 4,500 minutes. Forty-nine of those restraints and 40 seclusions occurred in a one-month period early in the 2016-2017 school year. During the 2017-2018 school year, Student H had 92 restraints and 46 seclusions. According to the data OCR reviewed, Student H was not reevaluated during the 2016-2017 or 2017-2018 school years. SECEP provided a June 2016 IEP and a May 2018 IEP; however, there are no additional files suggesting reevaluation in the intervening period. None of the incident reports indicates whether staff used the reinforcement strategies outlined in the student’s BIP prior to the use of restraint and seclusion, and many of the reports did not document the total time Student H was restrained.
- Student I was restrained 71 times and was secluded 21 times during the 2016-2017 school year, for a total of over 760 minutes. Twenty of those restraints occurred in a one-month period early in the 2016-2017 school year. Seclusions lasted between five minutes and 240

¹³ For ease of reference, the term “parent” in this document refers to any and all parents, guardians, custodians, or others with legal custody and/or educational decision-making authority.

minutes, and seven of the seclusions occurred in the first month of the 2016-2017 school year. There is no documentation of Student I's IEP team convening to consider the student's behaviors until four months later. A triennial reevaluation of Student I occurred mid-way through the 2017-2018 school year. The start times, end times, and duration of all seclusion incidents were not recorded consistently in Student I's incident reports. There were no SQA logs included in Student I's file, and the incident reports for seclusion incidents did not contain a record of Student I's behavior at fifteen-minute intervals.

[redacted content]

[redacted sentence]. [redacted content] offers the Re-ED, TRAEP, EBICS, and ASP programs. [redacted content] has SQAs on each of the two levels of the Center with a total of six seclusion rooms.

Approximately 137 students with disabilities were enrolled during the 2016-2017 school year. Fifty-seven students with disabilities had 319 incidents of restraint and 40 had 280 incidents of seclusion. For the 2017-2018 school year, 140 students with disabilities were enrolled, and 55 students with disabilities had 362 incidents of restraint and 57 had 469 incidents of seclusion. During both school years, the largest number of restraints and seclusions occurred in the Re-ED program, particularly in the middle school grades. The ASP and EBICS programs had very few incidents of restraint and seclusion during the investigated school years.

OCR did not interview the [redacted content].

OCR reviewed the files of 28 students with disabilities at the [redacted content]. Six students accumulated between 200 and 600 minutes of seclusion while four more students accumulated more than 700 minutes of missed instructional time due to seclusion. 19 students spent time in exclusion, in addition to missing class time due to restraint or seclusion. For example, one student experienced eight incidents of restraint and seclusion as well as numerous exclusions; the total time for all these incidents was approximately 1,380 minutes. And several students missed significant amounts of instructional time while in exclusion. Five students were excluded for between 1,000 and 2,200 minutes during the 2016-2017 school year while eight students were excluded between 250 and 450 minutes.

OCR found that SECEP addressed restraint and seclusion directly in the IEP or BIP of only five of the 28 students. OCR's review indicated that four students who experienced restraint and seclusion had BIPs in place; for one student, the BIP had been developed three years earlier, and, for another student, the BIP was developed in August 2017, after the 2016-2017 school year ended. For five students who experienced multiple incidents of restraint and seclusion, OCR reviewed documentation illustrating that the student's IEP team reevaluated the student or discussed the incidents of restraint and seclusion. For another student, the reevaluation occurred just before his school division placed him at SECEP in 2016, and the student then incurred multiple incidents of seclusion during the spring 2017 semester, during which time [redacted content]. In addition, the records of two students reflect that SECEP held an IEP meeting to discuss issues of restraint and seclusion. For one of the two students, SECEP held the meeting four months after the student accumulated three incidents of restraint and seclusion.

Information OCR gathered from file reviews includes, for example:

- Student J experienced 22 restraints and 43 seclusions throughout the 2016-2017 school year. Student J's seclusions totaled 1,475 minutes. Student J did not have a BIP. By mid-fall 2016, Student J had already experienced numerous incidents of restraint and seclusion resulting from incidents of aggression toward peers and staff and, [redacted content] yet there is no record of an IEP meeting in fall 2016 to reevaluate Student J or discuss these incidents. Incidents of restraint and seclusion continued to accumulate steadily through the end of the school year, again with no record of reevaluating Student J during that time. Student J had eight incidents of restraint and eight incidents of seclusion during the following school year, totaling 16 incidents. Ultimately, Student J moved [redacted content]. This student's file did not include SQA logs that record detailed information about the incidents.
- Student K experienced 54 incidents of restraint and 38 incidents of seclusion during the 2016-2017 school year. This student's seclusions totaled 1,794 minutes and exclusions totaled 129 minutes. In the first two months of the 2016-2017 school year, Student K accrued multiple incidents of restraint and seclusion for physical aggression toward staff, peers, and school property. There is no record of an IEP meeting to reevaluate Student K or discuss these incidents in fall 2016. The [redacted content] conducted manifestation determination meetings later in the school year; however, Student K continued to accumulate incidents of restraint and seclusion, [redacted content/sentence].

ANALYSIS

OCR is concerned that SECEP's limited written procedure regarding restraint and seclusion, which was effective at the time OCR initiated this review, may have resulted in a denial of FAPE. Specifically, the 1.5-page Excerpt provided by SECEP in response to OCR's request for policies and procedures on restraint and seclusion only briefly outlines SECEP's intended use of restraint and seclusion. The document provides minimal guidance on recordkeeping, does not address how students are to make up missed instruction or services, and is silent on when the use of restraint and seclusion may trigger the need to reevaluate a student to determine if changes in placement or services may be necessary.

OCR also is concerned that the training materials SECEP provided lack sufficient detail to ensure that SECEP's restraint and seclusion practices do not result in a denial of FAPE. The training materials SECEP provided to OCR do not provide staff with a consistent and accurate explanation of restraint and seclusion, the intended scope of these extreme interventions, and how to monitor their use to ensure no denial of FAPE. Although SECEP informed OCR that, in addition to the training provided by a third-party trainer and annual seclusion training at the Centers, it provided periodic training to staff, SECEP did not provide OCR with documentation of this training.

Relatedly, the evidence gathered to date reflects inconsistent and differing views among staff regarding what to count as incidents of restraint and seclusion and about whether to assess students after three incidents of restraint or seclusion or instead after three days of using restraint or

seclusion. These inconsistencies may result in a denial of FAPE if staff fail to ensure students are fully served.

OCR also noted instances in student files where SECEP used restraint and seclusion as a behavior intervention to address non-compliant behavior, even though SECEP procedure specifically prohibits that practice. For example, the records of Student A indicate that on some occasions he was secluded for using obscene language and gestures; Student B had incidents of seclusion for insubordination; and Student C was secluded for using profanity and [redacted content]. The information in the student files does not indicate whether other factors were at play or whether SECEP employed less restrictive methods to address the less severe behaviors. This file review information suggests that SECEP may be relying on restraint and seclusion as a behavior management tool rather than an intervention reserved for the most severe and dangerous behavior.

OCR's review of files also raises concerns that record keeping is not consistent or sufficiently thorough throughout SECEP to ensure FAPE. Based on OCR's record review, some data collection was detailed and thorough, while there were some instances when staff did not record needed information about student incidents. Documentation of incidents of seclusion for most students typically was detailed (every 15 minutes) in hard copy and then entered in the electronic database; however, recordkeeping for restraint was less thorough, resulting in no documentation of the duration of restraints. For both restraint and seclusion, records did not consistently document the precipitating behaviors or interventions attempted prior to the use of restraint or seclusion.

OCR also is concerned that for many students whose files OCR reviewed, the repeated use of restraint and seclusion resulted in the loss of a significant amount of instructional time and, possibly, related services required by an IEP. For example, Student A spent 10,715 minutes in seclusion during the 2016-2017 school year, while Student K spent 1,794 minutes in seclusion during the 2016-2017 school year and spent 129 minutes in exclusion. Students who experienced frequent restraints, such as Student B who had 91 restraints and Student H who had 157 restraints, likely had significant disruptions to instructional services. Although SECEP staff stated that students could make up missed instruction, OCR could find no information in the student records that indicate SECEP provided compensatory instruction or services to address instructional time missed as a result of incidents of restraint and seclusion. OCR is concerned that the loss of instruction and services required by IEPs resulted in a denial of FAPE.

By extension, OCR also is concerned that time spent in exclusion, which resulted in missed instructional services, may deny FAPE. Exclusions often occurred along with seclusions, and records showed that some students transitioned from exclusion to seclusion and back repeatedly during a day. Although exclusion time is distinguishable from seclusion, SECEP did not provide information to show that students received educational or instructional services during periods of exclusion; therefore, students who had multiple or lengthy exclusions may not have received FAPE. OCR did not find any information in the records to show how SECEP provided students with makeup assignments or otherwise compensated them for instruction and services missed as a result of time spent in exclusion.

Additionally, OCR noted that some SECEP locations reported as seclusion incidents where students isolated in their classroom rather than in a seclusion room (that is, students in the ASP and EBICS programs at Centers and in comprehensive schools), and staff at one Center counted as restraint incidents involving students who were escorted out of the classroom. While these interventions do not meet the definitions of restraint and seclusion, they may have resulted in students missing instruction and services that impacted FAPE. OCR is concerned that SECEP does not have a process in place that ensures that staff is considering the impact on students of these interventions.

In addition to the loss of instructional time, OCR's review of files raises a concern that SECEP may have failed to reevaluate students who had multiple incidents of restraint, seclusion, or exclusion, possibly resulting in a failure to adequately meet the students' disability-related behavioral needs, as is required to provide FAPE. IEP teams did not meet routinely to address the repeated instances of restraint and seclusion. Across the Centers, the student files show that SECEP convened meetings to review students' IEPs as part of its IDEA obligation to annually review the IEP or triennially reevaluate; however, the evidence reviewed does not show that as behaviors increased, intensified, or otherwise changed, students' IEP teams consistently reviewed whether the services in the students' IEPs were sufficient to provide FAPE, or whether and to what extent additional or different interventions or supports and services might be needed. Additionally, in the few instances where teams did meet to address behaviors, there is no documentation that IEP teams used the available restraint and seclusion records to determine any impact the use of restraint and seclusion were having on students. For many students, SECEP does not appear to have addressed behavioral concerns through a methodical or structured reevaluation, for example by conducting an FBA or other behavioral assessments, to better understand the behavior and develop a plan to address behavioral needs. PWNs from annual IEP meetings also indicate that, even when IEP teams did meet, most teams did not discuss the behaviors leading to restraint and seclusion, the amount of services or instructional time that students missed due to restraint and seclusion incidents, the effectiveness of restraint and seclusion, or the impact of incidents on students' receipt of FAPE.

Relatedly, OCR is concerned that SECEP relies too heavily on informal "safety" meetings as the primary mechanism for reviewing and revising interventions, which do not satisfy the requirements under Section 504 to re-evaluate a student with a disability when there is reason to believe the student's current placement and services are not adequately meeting the student's individual needs. Although SECEP told OCR that staff monitor and review a student's interventions for effectiveness at informal staff meetings called "safety" meetings or "intervention" meetings, such meetings were loosely documented in binders containing brief notes discussing multiple students and, in most cases, did not result in an IEP team meeting to consider whether there was a need to change a student's IEP or BIP (if one existed) or any other form of course correction with how staff addressed students' behaviors. Moreover, OCR's review of the records indicates that SECEP convened the informal safety or intervention meetings at inconsistent intervals, sometimes months after a student accumulated multiple restraints or seclusions, and the meetings notes vary in terms of the degree to which the group discussed the behaviors of the student that led to restraint or seclusion. During interviews, SECEP administrators confirmed that these meetings are not considered IEP meetings and do not include parents or a Placing Division representative.

Although OCR did not review the individual files of SECEP students with disabilities who attended comprehensive schools, data indicates a small number of these students had significant numbers of restraints and seclusions and, therefore, may have required re-evaluation. Likewise, the data reflects a small number of students without identified disabilities enrolled in the TRAEP program who experienced repeated restraint and seclusion and may have required evaluation to determine whether they had a disability entitling them to services under Section 504.

Finally, OCR is concerned that SECEP does not provide parents meaningful notification of incidents of restraint and seclusion that includes information relevant to assessing whether students are receiving FAPE. Although SECEP generally notified parents when restraint and seclusion occurred via a telephone call within a day of the event and documented that contact in its database, OCR was unable to determine how detailed these conversations were and what information was provided. For example, it is unclear whether parents were informed about how long restraint and seclusion lasted, the preceding behaviors and interventions attempted, or whether the student was subjected to multiple, successive incidents of restraint and seclusion in a compressed time period. The documentation also does not indicate whether SECEP staff informed parents of time that students spent in exclusion. As a result, OCR is concerned that parents may not have an opportunity to meaningfully participate in IEP team meetings or have enough information to know when to assert their right to request a team meeting to consider whether changes to the plan are appropriate to ensure a student's receipt of FAPE.

RESOLUTION

In light of the above concerns, OCR determined that resolving this compliance review pursuant to Section 302 of the *Case Processing Manual* was appropriate. SECEP signed a resolution agreement (Agreement), which requires SECEP to: 1) revise the Excerpt related to restraint and seclusion and develop corresponding procedures to provide a clear process for addressing behavior that results in restraint or seclusion and, thereby, assure students receive FAPE and to address its obligations to reevaluate students with disabilities subjected to the use of restraint or seclusion; 2) develop or revise its recordkeeping and notification procedures; 3) train staff regarding the revised policies and procedures; 4) review files of students who are still attending SECEP who were restrained and secluded from the 2016-2017 school year until the present, to determine whether any student requires evaluation, reevaluation, and/or compensatory education for educational services missed due to incident(s) of restraint and seclusion; and 5) review and assess SECEP's use of restraint and seclusion data to determine whether further training is necessary to ensure restraint and seclusion are used appropriately, ensure students received FAPE, and ensure SECEP is communicating appropriately with participating school divisions and parents to promote access to FAPE. Please review the enclosed Agreement for further details. OCR will monitor SECEP's implementation of the Agreement until SECEP has fulfilled the terms of the Agreement.

CONCLUSION

This concludes OCR's investigation of the compliance review. This letter should not be interpreted to address SECEP's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. 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.

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

We appreciate the SECEP’s cooperation throughout the compliance review. If you have any questions, please contact Amy Williams at Amy.Williams2@ed.gov and Kendra Riley at Kendra.Riley@ed.gov.

Sincerely,

/s/

Emily Frangos
Regional Director
Office for Civil Rights
District of Columbia Office

Enclosure

cc: LaRana Owens, counsel for SECEP via email

Dr. Jared Cotton, Superintendent
Chesapeake Public Schools via email

Dr. Carlton Carter, Interim Superintendent
Franklin Public Schools via email

Dr. Theo Cramer, Superintendent
Isle of Wight Public Schools via email

Dr. Sharon I. Byrdson, Superintendent
Norfolk Public Schools via email

Dr. Elie Bracy, III, Superintendent
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