

RESOLUTION AGREEMENT
Southeastern Cooperative Educational Programs
OCR Docket No. 11-17-5001

Southeastern Cooperative Educational Programs (SECEP) agrees to resolve the compliance review initiated by the U.S. Department of Education, Office for Civil Rights (OCR), Compliance Review No. 11-17-5001, by voluntarily entering into this Resolution Agreement (Agreement) to address the concerns that OCR identified in the accompanying letter of resolution. In this compliance review, OCR investigated whether SECEP's use of restraint and seclusion denies students with disabilities who participate in SECEP's programs a free appropriate public education (FAPE), 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. This Agreement does not constitute an admission by the SECEP of a violation of Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans with Disabilities Act of 1990 (Title II), or any other law enforced by OCR.

SECEP assures OCR that it will take the following actions to ensure compliance with the requirements of Section 504 and its implementing regulation, and Title II and its implementing regulation, which prohibit discrimination on the basis of disability by recipients of federal financial assistance and public entities, respectively.

Action Item I: Policy and Procedures

1. SECEP will revise and formalize the excerpt from its employee handbook entitled Student Safety and Crisis Intervention (the Excerpt), its current policy, and develop corresponding procedures regarding the use of restraint and seclusion, to ensure that the use of restraint and seclusion will not interfere with a student's ability to receive a FAPE. The policy and procedures will, at a minimum:
 - a. maintain defined terms such as restraint, seclusion, exclusion, and school quiet area as well as physical escort and timeout;
 - b. explain how restraint and seclusion are distinct from physical escorts, exclusion, and timeouts;
 - c. clearly indicate the circumstances under which students may be restrained, secluded, or excluded; the steps staff must follow to use restraint, seclusion, or exclusion, safely; and the non-physical alternative intervention approaches available to staff;
 - d. explain how students will receive missed instructional services when a student returns to class following an incident of restraint, seclusion, or exclusion;
 - e. clarify the circumstances under which staff will isolate a student in a space (other than the SQA) with moveable objects while staff remains present in the space to support the student, based on the student's individual needs, and explain how staff will document and record information about such incidents;

- f. establish criteria SECEP will use to determine when, after instances of restraint and seclusion, SECEP will convene a student’s Individualized Education Program (IEP) or Section 504 team to assess a student’s current interventions and supports, whether any changes are needed to those interventions and supports, whether the student was denied a FAPE, and whether the student needs compensatory services;
 - g. explain that when a student’s IEP or Section 504 team, including parents¹ and representatives from the student’s placing school division, meets to conduct a review and, if appropriate, make revisions to the student’s interventions or services to ensure the student receives a FAPE, the team also should consider the relative effectiveness of supports or interventions used prior to the restraint and seclusion, if any, and any adverse effects resulting from or related to the repeated use of restraint or seclusion;
 - h. describe SECEP’s process for documenting and monitoring its use of restraint and seclusion as described in Action Item V below;
2. SECEP will disseminate the published policy and procedures to staff, parents, and each of its participating school divisions.

Reporting Requirements:

1. Within 60 calendar days of signing this Agreement, SECEP will provide a draft of its policy and procedures developed in accordance with Action Item I above for OCR’s review and approval.
2. Within 60 calendar days of OCR’s approval of the revised policy and procedures, and after incorporating any feedback from OCR, SECEP will formally adopt and implement the policy and procedures described in Action Item I. SECEP will provide documentation to OCR that the revised policy and procedures were adopted, implemented, published in relevant printed and online publications (inserts may be used pending reprinting of these publications), and disseminated to staff, participating school divisions, and parents.

Action Item II: Recordkeeping and Notification

1. SECEP will record as “restraint” or “seclusion” all interventions that fall within the definitions of the terms “physical restraint” or “seclusion” in the directions for completing OCR’s Civil Rights Data Collection (CRDC), regardless of how those terms are defined in the revised policy. SECEP will ensure that its records concerning restraint and seclusion are revised as necessary to accurately capture all data that it is required to submit through the CRDC survey.

¹ 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.

2. SECEP will modify its restraint and seclusion recordkeeping system (e.g., incident reports and SQA logs). The modified recordkeeping system will include, at a minimum, the following:
 - a. accurate identification of the time each instance of restraint and seclusion begins and ends;
 - b. accurate identification as seclusion each instance in which a student is placed alone in a room and not permitted to leave;
 - c. information about the behaviors that prompted the use of restraint and seclusion and the interventions used by staff prior to restraining and secluding the student; and
 - d. notation of total missed educational and related services, including services missed due to exclusion.
3. SECEP will develop written instructions to staff explaining how to document individual restraint and seclusion incidents and the total missed instructional time and missed educational services.
4. SECEP will notify a parent of an incident of restraint and seclusion on the same day as each restraint and seclusion incident occurred, consistent with the state regulation, 8VAC20-750-60.
5. SECEP will provide a written incident report to a parent following an incident of restraint and seclusion. SECEP may provide a written incident report consistent with state regulation to satisfy this requirement. At a minimum, the written incident report will identify the date of the incident, the individuals involved, the duration of the incident, the total amount of missed instructional time and educational services, the behaviors that prompted the use of restraint and seclusion, the interventions used by staff prior to restraining and secluding the student, and the date and method of parental notification under Provision (4) above. If the student is a student with a disability, the written incident report will indicate whether staff is recommending the student's IEP or Section 504 team meet to discuss: the incident and whether additional or different services are necessary; whether reevaluation is needed; or whether compensatory services are required due to missed educational and related services.
6. SECEP will develop a process by which a parent may request expedited receipt of the written incident report, in the event that an IEP meeting has been scheduled prior to the state regulation's timeframe for providing a parent a copy of the written incident report.

Reporting Requirements:

By January 31, 2023, SECEP will provide to OCR, for OCR's review and approval, a template of each element in the modified recordkeeping system, a copy of the written instructions, a copy of the written incident report, and the draft process, in accordance with Action Item II, Provisions (2), (3), (5), and (6), respectively. Within 30 school days of receiving OCR's approval, SECEP will implement the modified recordkeeping system, written incident report, and process to request expedited receipt of the report, and will circulate to staff the written instructions; and within 45 school days of receiving OCR's approval, SECEP will provide evidence to OCR that it has taken these steps.

By December 22, 2023, SECEP will provide to OCR a chart that indicates, for each incident of restraint and seclusion through December 1, 2023 of the 2023-2024 school year, the name or anonymous identifier for each student, the name or anonymous identifier of the parent contacted in Provision (4); the date, time, and method of the contact for the notification in Provision (4); the date the written incident report was provided to a parent, as described in Provision (5); and whether a parent requested expedited receipt of the written incident report allowed by Provision (6).

Action Item III: Training

1. SECEP will augment its existing annual training for all relevant staff who are involved in providing instruction or services to students with disabilities (i.e., principals, assistant principals, education specialists, counselors, behavioral interventionists, special education teachers, paraprofessionals, related service providers, etc.) on the appropriate use of restraint and seclusion with information about the revised policy and procedures developed in accordance with Action Item I. SECEP will ensure that training is consistent across all schools, Centers, and SECEP programs.
2. SECEP will ensure that the training described in Action Item III is provided by one or more individuals with expertise in the use of restraint and seclusion and Section 504 and Title II, incorporates the procedural requirements of Section 504, and explains SECEP's obligations to provide FAPE, as described in 34 C.F.R. §§ 104.33-104.35, as they relate to the use of restraint and seclusion. SECEP will ensure that, at a minimum, the training will discuss the following topics:
 - a. SECEP's revised policy and procedures, recordkeeping, and monitoring requirements;
 - b. circumstances in which restraint and seclusion is permitted, emphasizing that restraint and seclusion is to be used as a last resort when necessary to protect a student or other person from imminent, serious physical harm;
 - c. accurate calculation and documentation of missed instructional time and educational services when a student has been restrained and secluded;

- d. how to minimize the use of restraint and seclusion, including alternative intervention approaches;
- e. the safe use of restraint and seclusion;
- f. the necessity of making individualized determinations for all aspects of students' IEPs or Section 504 plans, as well as the necessity of fully implementing students' Section 504 plans and IEPs and providing procedural safeguards to parents, including notice of their right to challenge such determinations through an impartial due process hearing should they disagree with the team's determinations;
- g. when a student without an identified disability who experiences restraints and seclusions must be evaluated to determine if the student qualifies as an individual with a disability;
- h. when a student's IEP team or Section 504 team must convene to address the repeated use of restraint and seclusion of the student, e.g., to reevaluate the student, identify any additional necessary supports and services for the student, or determine appropriate compensatory services for a student denied a FAPE;
- i. how restraint and seclusion may deny a student FAPE and SECEP's obligation to:
 - i. determine whether current interventions and supports are being implemented properly;
 - ii. determine the extent to which additional or different interventions or supports and services, including positive behavioral interventions and supports and other behavioral strategies may be needed, and, if necessary, reevaluate the student;
 - iii. ensure that any needed changes are made promptly; and
 - iv. remedy the denial of FAPE.

Reporting Requirement:

Within 30 calendar days of OCR's approval of OCR's approval of the policy described in Action Item I, SECEP will provide to OCR, for OCR's review and approval, a copy of the training materials it will use, the proposed date for completing training, and the names, titles and professional qualifications of the trainers.

Within 30 calendar days of the completion of the required training, SECEP will submit to OCR documentation of the following: (a) the name of the individual(s) who conducted the training and their qualifications; (b) the date(s) of the training session(s); (c) all training materials; and (d) a sign-in sheet including a list of the names, signatures, and position titles of the personnel who participated in each training session.

Action Item IV: Individual Student Reviews and Compensatory Education and Remedial Services

1. By January 31, 2023, SECEP staff will identify all currently enrolled SECEP students who were restrained or secluded while attending a SECEP program from the 2016-2017 school year through the date this agreement is signed. For each identified student, SECEP will list:
 - a. the student's date of enrollment;
 - b. the number of restraints and seclusions the student experienced in each school year; and
 - c. whether SECEP has convened a meeting for the student under Virginia regulation 8VAC20-750-80 and the date(s) of the meeting(s).
2. For students identified as outlined in Provision (1), SECEP will submit to OCR a proposed schedule to complete reviews for each student as outlined below in Provisions (3) through (5).
 - a. For each review, SECEP will convene a group of persons knowledgeable about each student, the meaning of the evaluation data, and the education placement options. The group will review the student's educational records, including records related to restraint and seclusion.
 - b. SECEP will provide appropriate written notice to each student's parent and placing school division that it is convening such a meeting, providing parents with a meaningful opportunity to provide input into these determinations, written notice of the determinations made (including a copy of any written plan for providing the student with compensatory education), and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree with the team's determinations.
 - c. SECEP will determine whether a student was denied FAPE and requires any compensatory services as a result of restraint or seclusion or other instructional services missed, applying appropriate criteria to determine the impact of restraint and seclusion, including, for example:
 - i. the number of restraints and seclusions the student experienced within a month;
 - ii. the number of restraints and seclusions that took place in a school year and the timeframe within which they occurred;
 - iii. the nature and length of each restraint and seclusion;

- iv. changes in the student’s behavior(s) that resulted in the use or increased use of restraint and seclusion;
 - v. if applicable, the nature of the student’s disability; and
 - vi. any other factor that is relevant to the determination(s).
 - d. If SECEP determines compensatory services are necessary for any student, SECEP will create a written plan for compensatory services as part of the student’s IEP or Section 504 plan. SECEP will identify the type, frequency, and duration of the services to be provided at no cost to the student’s parents, the title and qualifications of the provider, and when the services will be provided. SECEP will offer such services and provide the parent(s) no less than 10 days to respond to SECEP’s offer. If the parent(s) accept the offer, SECEP will provide the compensatory services consistent with the plan.
3. If SECEP has held one or more meetings consistent with Virginia regulation 8VAC20-750-80 for a student, SECEP will determine whether any compensatory services are due the student.
4. If SECEP has not held a meeting consistent with Virginia regulation 8VAC20-750-80 for a student, SECEP will determine:
 - a. whether the student’s current interventions and supports are sufficient or whether any changes are necessary;
 - b. whether the student’s placement remains appropriate;
 - c. whether the student requires reevaluation, following the procedural requirements of 34 CFR 104.33-35;
 - d. whether any compensatory services are due the student; and
 - e. for any student not previously identified as a student with a disability, whether SECEP has reason to believe the student may require special education or related services because of a disability, in which case SECEP will refer the student for evaluation.
5. SECEP will begin reviews within 10 school days of OCR approving SECEP’s proposed schedule pursuant to Provision (2) and will complete all reviews by December 31, 2023. SECEP will begin providing compensatory services within 20 school days of receiving a parent’s written consent to the provision of services unless the IEP or Section 504 team determines that the services will be delivered at a later time, such as during school breaks (i.e. spring break, summer break, and/or winter break) and will complete delivery of compensatory services, if any, by December 20, 2024.

Reporting Requirement:

By January 31, 2023, SECEP will provide OCR with an EXCEL spreadsheet that lists all students identified through SECEP’s review in Provision (1) (a) and (c), including a notation of the date the student became enrolled in SECEP; the number of restraint or seclusion incidents for each school year that the student was enrolled SECEP; and whether the student has had a meeting under Virginia regulation 8VAC20-750-80 and the dates of such meetings.

By February 14, 2023, SECEP will submit for OCR’s review and approval the proposed schedule required by Provision (2) above. If OCR requires any changes and re-submission, SECEP will make those changes and re-submit within ten (10) business days of receiving OCR’s determination.

By June 30, 2023, October 16, 2023, January 5, 2024, and March 15, 2024, for all students identified for review, SECEP will submit to OCR the results of the reviews that occurred in the preceding quarter, according to the proposed schedule. SECEP will submit to OCR a list of student files reviewed, including documentation (i.e., an Excel spreadsheet) of the review as described in Action Item IV above. OCR will review the documentation to ensure SECEP’s compliance with Action Item IV and the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.34, 104.35, and 104.36. The documentation submitted shall identify:

- a. the name of the student or anonymous identifier;
- b. the SECEP program and Center or school the student attends;
- c. whether the student has a disability, and if so, what disability;
- d. the date the IEP or Section 504 team convened;
- e. the participants in the student file review, including whether the parent and a representative from the placing school division attended the meeting;
- f. whether the team determined that the student was denied FAPE and that compensatory education and related services were deemed necessary;
- g. if SECEP completed a review in accordance with Provision (4),
 - i. whether the team determined the current interventions and supports are sufficient or whether any changes are needed;
 - ii. whether the student’s placement remains appropriate;
 - iii. whether the student requires evaluation or reevaluation;

- iv. whether the team made revisions to the student’s IEP/Section 504 plan;
- v. whether the team determined to conduct a Functional Behavioral Assessment and develop a Behavior Intervention Plan;
- h. a written explanation of the data reviewed and the basis for the decisions made in (f) and (g) of this reporting requirement; and
- i. whether procedural safeguards were provided to the parent.

Additionally, in accordance with the preceding reporting requirement, for any student that SECEP determined requires compensatory services, SECEP also will provide documentation of the decision to provide services, a copy of the proposed plan to provide compensatory services, and a description of and schedule for providing any compensatory services.

By November 17, 2023, March 1, 2024, June 1, 2024, and October 18, 2024, if SECEP determined compensatory services were necessary for a student, SECEP will provide to OCR documentation for each student whose services were completed in the preceding quarter, indicating that it provided all services deemed necessary. If the student’s parent declines services or SECEP cannot deliver services as required, SECEP will provide evidence to OCR of the parent’s decision to decline services or of its reasonable efforts to provide these services to the student.

OCR may request additional documentation concerning specific students as necessary, in which case SECEP will provide the requested information within 14 calendar days of OCR’s request.

Action Item V: Restraint and Seclusion Monitoring Program

- 1. On a quarterly basis, until December 22, 2023, SECEP will monitor and assess the use of restraint and seclusion in its programs to determine whether the use is appropriate in accordance with its policy and procedures and with Section 504 and Title II. The assessment will review and analyze:
 - a. restraint and seclusion data collected from each Center and school having a SECEP program, including disaggregation by action taken (i.e. physical restraint, seclusion, or exclusion) and by student;
 - b. all restraint and seclusion documentation forms (i.e., incident reports and SQA logs) to ensure that SECEP staff properly complete the required forms;
 - c. whether the use of restraint and seclusion reflected an individualized determination based on the student’s need and was consistent with SECEP policy and procedures and related training;

- d. whether the behavior(s) that led to the restraint and seclusion of a student were part of a pattern of behavior(s) that should have led SECEP staff to seek an evaluation or reevaluation of the student;
 - e. whether SECEP staff considered the impact of the restraint and seclusion on the student, and if this impact necessitated an evaluation or reevaluation of the student;
 - f. whether students' regular or special education and disability-related aids and services allowed them to receive FAPE, students' IEPs and behavior interventions were implemented, students' behavior interventions were effective, and students were appropriately and timely re-evaluated;
 - g. whether the restraint and seclusion caused missed instruction and disability-related services resulting in the denial of a FAPE, and, if so, whether students' IEP or 504 teams met to consider the need for compensatory services to address any denial of a FAPE;
 - h. whether students not previously identified as students with disabilities who experienced restraints and seclusions were evaluated for a disability, if appropriate;
 - i. whether further training is necessary;
 - j. whether incidents of restraint and seclusion were appropriately documented;
 - k. whether SECEP is communicating appropriately with participating school divisions and parents; and
 - l. data collected (i.e., incidents of restraint and seclusion broken down by Center or school, staff, grade level, program, etc.) to assess whether incidents of restraint and seclusion have increased or decreased in number and duration and whether there are any particular location(s) or program(s) where numerous incidents of restraint and seclusion occurred.
2. As a result of the assessment, SECEP will identify concerns related to the use of restraint and seclusion, propose recommendations to address any concerns, and develop timelines for implementation of the recommendations.

Reporting Requirement:

Within 45 calendar days of the end of the 2022-2023 school year, SECEP will submit to OCR a copy of the assessment completed pursuant to Action Item V, Provisions 8(a) – (l) and relevant supporting materials. SECEP will identify the individuals who conducted the monitoring and assessment. Thereafter, SECEP will submit a quarterly assessment until December 22, 2023.

