



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS, REGION XV

1350 EUCLID AVENUE, SUITE 325  
CLEVELAND, OH 44115

REGION XV  
MICHIGAN  
OHIO

August 31, 2017

Wanda T. Lillis, Esq.  
Associate Legal Counsel  
Columbus City Schools  
270 East State Street  
Columbus, Ohio 43215

Re: Columbus City Schools, OCR Docket #15-13-5001

Dear Ms. Lillis:

On July 1, 2013, the U.S. Department of Education's Office for Civil Rights (OCR) notified the Columbus City Schools (the District) that it had been selected for a compliance review to examine whether the District discriminates against students on the basis of disability through its use of restraint and seclusion.

OCR is responsible for enforcing Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (Section 504), and its implementing regulation at 34 C.F.R. Part 104, and Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131 *et seq.*, (Title II), and its implementing regulation at 28 C.F.R. Part 35. These laws prohibit discrimination on the basis of disability by recipients of Federal financial assistance from the U.S. Department of Education (the Department) and by certain public entities, respectively. The District is a recipient of Federal financial assistance from the Department and a public entity. Therefore, OCR has jurisdictional authority to investigate this matter under Section 504 and Title II.

OCR initiated an investigation into the following legal issues:

- Whether the District discriminates against students on the basis of disability by using restraint or seclusion more frequently and excessively for students with disabilities than students without disabilities and, if so, whether the District has a legitimate, nondiscriminatory reason for the difference in treatment that is not a pretext for disability discrimination. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130.
- Whether the District's use of restraint or seclusion has denied qualified students with disabilities an opportunity to receive a free appropriate public education (FAPE). 34 C.F.R. § 104.33.
- Whether any inappropriate physical restraint of students with disabilities by District staff for conduct related to the students' disabilities constitutes disability harassment that has

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interfered with or denied such students the ability to participate in or receive benefits, services, or opportunities in the District's program, resulting in a hostile environment. 34 C.F.R. § 104.4 and 28 C.F.R. § 35.130.

### **Applicable Legal Standards**

The Section 504 regulation prohibits a recipient from, on the basis of disability, excluding qualified individuals with a disability from participation in, denying them the benefits of, or otherwise subjecting them to discrimination under any of its programs or activities. Prohibited discrimination includes, in providing any aid, benefit or service, affording a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or services that is not equal to that afforded others, or providing different or separate services to persons with disabilities or to any class of persons with disabilities unless such action is necessary to provide qualified persons with disabilities with aid, benefits, or services that are as effective as those provided to others. The regulation further provides that a recipient may not otherwise limit an individual in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service. The regulation implementing Title II at 28 C.F.R. § 35.130 contains similar provisions. *See* 34 C.F.R. § 104.4(a), (b)(1)(ii), (b)(1)(iv), and (b)(1)(vii); 28 C.F.R. § 35.130(a), (b)(1)(ii), (b)(1)(iv), and (b)(1)(vii).

In investigating potential disability discrimination under a different treatment theory, OCR first will determine whether the recipient treated the individual with a disability differently from similarly situated individuals without disabilities. If so, OCR will determine whether the recipient had a legitimate, nondiscriminatory reason for the difference in treatment and whether that reason was a pretext for discrimination.

The Section 504 regulation, at 34 C.F.R. § 104.33, also requires recipient school districts to provide a free appropriate public education (FAPE) to each qualified individual with a disability who is in the recipient's jurisdiction, regardless of the nature or the severity of the person's disability. An appropriate education for purposes of FAPE is defined as the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of nondisabled students are met, and that are developed in accordance with the procedural requirements of 34 C.F.R. §§ 104.34-104.36 pertaining to educational setting, evaluation and placement, and procedural safeguards. 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.

Disability harassment may deny a student an equal opportunity to education under Section 504 or Title II. Disability harassment under Section 504 and Title II is intimidation or abusive behavior toward a student based on disability that is sufficiently severe, persistent, or pervasive that it creates a hostile environment by interfering with or denying a student's participation in or receipt of benefits, services, or opportunities in the institution's program. Appropriate classroom discipline is permissible, generally, if it is of a type that is applied to all students or is consistent with IDEA and Section 504, including the student's IEP or Section 504 plan. However, inappropriate physical restraint of a student by a teacher for conduct related to the student's

disability that interferes with or denies the student's participation in or receipt of benefits, services, or opportunities in the institution's program can constitute disability harassment that creates a hostile environment in violation of Section 504 and Title II.

The Section 504 regulation, at 34 C.F.R. § 104.34, requires a recipient school district to educate, or provide for the education of, each qualified person with a disability in its jurisdiction with persons without disabilities to the maximum extent appropriate to the needs of the person with a disability. If a recipient operates a facility that is identifiable as being for persons with disabilities, the recipient must ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

### **Summary of OCR's Investigation to Date**

- **Background**

The District is the largest public school district in Ohio. The District reports on its website that it operates 109 schools. During the 2016-2017 school year, the District reported to the Ohio Department of Education (ODE) a fall headcount of 50,405 total students, of which 7,056 were identified as students with disabilities (15.8%).

OCR initiated this compliance review on July 1, 2013. OCR's investigation to date has examined the District's use of restraint and seclusion during the 2011-2012 and 2012-2013 school years. OCR has reviewed behavior incident forms provided by the District that purported to document the District's use of restraint and seclusion for the 2011-2012 and 2012-2013 school years. OCR's investigation primarily focused on incidents of restraint and seclusion occurring during the 2012-2013 school year, as the District was also investigated by ODE with respect to its use of restraint and seclusion in November 2012. The ODE investigation was initiated in response to an individual student complaint and included a review of incidents of restraint and seclusion occurring during the 2011-2012 school year.<sup>1</sup>

In addition to its document review, OCR also conducted onsite visits to 23 District schools in January 2014, April 2014, and May 2014. OCR visited all 13 of the District's schools identified by the District to OCR as having had seclusion rooms during the relevant time periods: Arts IMPACT Middle School<sup>2</sup>, Beatty Park Elementary School, Beechcroft High School, Buckeye Middle School, Columbus Alternative High School, Columbus Scioto (serves students in grades 6-12), Duxberry Park Elementary School, Eastmoor Academy Elementary School, Indian Springs Elementary School, Ridgeview Middle School, Sherwood Middle School, Whetstone High School, and Winterset Elementary School. OCR also visited 10 other schools where students were described on the behavior incident forms reviewed as having been placed in time-out areas/rooms or other similarly described areas or there was an indication that a student had

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<sup>1</sup> On January 11, 2013, ODE issued a findings letter concluding that the District was not in violation of IDEA with respect to its use of restraint and seclusion for students with disabilities. OCR notes that the ODE findings letter, a copy of which was provided to OCR by the District, is informative, but not dispositive on these matters under OCR's Section 504 and Title II jurisdiction.

<sup>2</sup> Unless otherwise noted, the District's elementary schools generally serve students in grades K-5, the middle schools serve students in grades 6-8, and the high schools serve students in grades 9-12.

been subjected to restraint: Binns Elementary School, Buckeye Elementary School, Burroughs Elementary School, Clinton Elementary School, Como Elementary School, Easthaven Elementary School, Hilltonia Middle School, Livingston Elementary School, Northtowne Elementary School, and Westmoor Middle School.

Additionally, OCR interviewed the District's then-director of exceptional student services, and approximately 42 other District employees from 15 schools, including 5 principals, 15 teachers, 1 guidance counselor, 12 classroom instructional assistants, 1 instructional aide, 6 intervention aides, 1 behavior intervention specialist, and 1 social worker, who were authorized and/or permitted to restrain, seclude, and/or monitor such incidents during the 2011-2012 and 2012-2013 school years.

On July 5, 2017, the District provided updated information to OCR regarding its use of restraint and seclusion for the 2014-2015 and 2015-2016 school years. For the 2014-2015 school year, the District reported to OCR, via its ODE reporting form, that there were a total of 476 students (381 identified as students with disabilities) restrained in 2,046 total incidents of restraint use. During the same school year, the District reported that there were a total of 305 individual students (244 identified as students with disabilities) secluded in 865 total incidents of seclusion use. With respect to the 2015-2016 school year, the District provided OCR with a copy of its raw data which showed that there were 3,085 total incidents of restraint involving 556 individual students (431 students identified as special education students) and 1,052 total incidents of seclusion involving 275 students (237 identified as special education students) during that school year.

Based on the information obtained to date, OCR has identified compliance concerns with respect to the District's use of restraint and seclusion for students with disabilities. Specifically, the information obtained to date indicates that the District may be using restraint or seclusion more frequently and excessively for students with disabilities than students without disabilities, without legitimate nondiscriminatory reason, in violation of the Section 504 implementing regulation at 34 C.F.R. § 104.4 and the Title II implementing regulation at 28 C.F.R. § 35.130. In addition, the information obtained to date indicates that the District may not be providing those students with disabilities who are subjected to restraint and seclusion with FAPE in accordance with 34 C.F.R. § 104.33 and the procedural requirements of 34 C.F.R. §§ 104.34-104.36. Accordingly, OCR determined that it is appropriate to resolve this compliance review pursuant to Section 302 of the *Case Processing Manual*. The basis for entering into a resolution agreement is set forth below.

- **The District's Special Education Program for Students with Behavior-Related Disabilities**

In the District's September 4, 2013, correspondence to OCR, it explained to OCR that students who are identified as having an emotional disturbance (ED), cognitive disability, other health impairment (OHI), autism, and traumatic brain injury may be served in any and all school buildings in the District. The District reported that every school building had at least one special education classroom (or unit) and many have between two and seven special education classrooms. The District also has special education classrooms for students with multiple

disabilities (MD). Those classrooms could serve students with a cognitive disability, other health impairment, autism, or traumatic brain injury if the student has more than one disability. During the 2011-2012 and 2012-2013 school years, the District operated three schools that served only students identified as ED: Beatty Park Elementary School (K-5); Clearbrook Middle School (6-8); and Alum Crest High School (9-12). In addition to the three separate facilities, there are also ED classrooms (units) in numerous other buildings throughout the District. At the time of OCR's onsite visit, Clearbrook Middle School and Alum Crest had ceased to operate, as the District had built a new school, Columbus Scioto, which began serving students identified as having ED in grades 6-12, effective the 2013-2014 school year.

Based on the structure of the District's special education programs, the District advised that restraint and seclusion incidents could be reported by any building in the District that serves special education students. For the 2011-2012 school year, the District provided documentation of restraint and seclusion incidents (behavior incident reports) that occurred at the three separate ED facilities and 39 additional District schools. For the 2012-2013 school year, the District provided documentation regarding restraint and seclusion behavior incident reports that occurred at the three separate ED facilities and 27 other District schools.

- **The District's Restraint and Seclusion Policies and Procedures<sup>3</sup>**

The District explained to OCR by letter dated September 4, 2013, that, at the time, it **did not** have a District policy regarding the use of restraint or seclusion, which was subsequently confirmed by the District's director of exceptional student services (the student services director). In addition to the District's lack of a written policy, as explained in more detail below, the evidence obtained by OCR during its witness interviews revealed that, during this same time period, the District's practice was to implement the use of restraint and/or seclusion only with students with disabilities. This information was corroborated by the District's training materials and other District documentation.

In response to OCR's request for specific policies and procedures governing its use of restraint and seclusion related to this investigation, the District provided documentation indicating that its staff had been trained in utilizing the Crisis Prevention Institute (CPI) program of Nonviolent Crisis Intervention in dealing with the behavior management of students, including physically aggressive students. According to the information provided, CPI is an international organization that provides training on the use of physical restraints and the de-escalation of disruptive and assaultive behavior. Specifically, the District provided OCR with a CPI Refresher Workbook and the District's training documents regarding nonviolent crisis intervention and student behavior management.

- **Student Behavior Management**

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<sup>3</sup> OCR notes that in April 2014 OCR approved the District's Section 504 policies and procedures for the identification, evaluation, and placement of students with disabilities and Section 504 grievance procedures through monitoring of a resolution agreement in OCR Docket #15-12-1163. These policies and procedures did not contain specific provisions concerning restraint and/or seclusion.

The District provided its “training documents regarding student behavior management”, consisting of approximately 66 pages, which addressed several topics, including the use of restraint and seclusion of students. The behavior management procedures and safeguards included in the training documents generally required that: positive behavior interventions and reinforcement should always be attempted first with students before resorting to more restrictive and intrusive forms of intervention; behavior management procedures should never be used for staff convenience or as a substitute for active programming; and restrictive and intrusive behavior management techniques, such as restraint and use of seclusion rooms, should only be used in situations where documentation exists demonstrating that the student has failed to respond to positive reinforcement.

Additionally, the behavior management procedures required that physical restraint and seclusion only be used if provided for in a student’s IEP or behavior management plan. The procedures allowed an exception to that rule in “crisis situations,” in which a student’s behaviors are “dangerous to self, others, and/or objects.” Specifically, the procedures define “danger to others” as aggression to others with sufficient force to cause bodily harm, “danger to self” as aggression to self with sufficient force to cause bodily harm, and “danger to property” as aggression to objects with sufficient force to cause damage to property. Additionally, the procedures stated that such behavior should no longer be considered a crisis, and that a behavior management plan must be developed, if it occurred more than once a week, three times a month, or six times in a year.

The training documents regarding student behavior management also included procedures and safeguards for the use of “seclusionary time-out rooms.” These procedures provided that a student may only be placed in a seclusion room if (1) staff can provide direct, constant, visual supervision of the student; (2) the door to the room is held shut by staff or by a mechanism requiring constant physical pressure from a staff member to keep the mechanism engaged; (3) the room is free from hazardous conditions; (4) the room is adequately lighted and ventilated; and (5) the student’s placement in the room does not exceed 60 consecutive minutes. OCR notes that another document in the student behavior management materials, “Hierarchy of Behavioral Interventions,” states that research indicates that the amount of time that a student is placed in seclusionary time out should equal the students’ chronological age (in minutes). According to the seclusionary room procedures, staff were required to log a student’s placement in the seclusion room, including the following information: date; time in; time out; activity prior to incident; behavior; type of physical escort needed, if any; behaviors occurring in the seclusion room; and behavior after intervention. The student behavior management materials included copies of logs to document the use of the seclusion room.

One of the documents included with the training documents regarding student behavior management, entitled “Behavior Management Program,” appeared to be a sample for developing a behavior program for students. In the section of the document regarding the progression of interventions to be used with a student who becomes aggressive to others during interventions, the procedures indicated that staff should implement a student basket hold intervention, preferably seated. District witnesses, however, told OCR that the basket hold is a prohibited method of restraint in its schools<sup>4</sup>; although not all District witnesses were familiar with this

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<sup>4</sup> The District also provided a copy of Ohio Executive Order 2009-13S, which prohibits the use of prone restraint in Ohio.

term and at least one District staff member told OCR that she had used such a restraint during the 2012-2013 school year.

With respect to the student behavior management training documents provided, the District stated in its September 4, 2013, letter to OCR that not all items in the student behavior management packet were currently used, although they had been used within the past five years. OCR noted that the dates these documents were created were unclear. OCR noted that the District did not identify which items were not currently used or should not have been used. Additionally, information obtained during interviews with staff revealed that some of the information contained in the documents was still in circulation with staff and some staff continued to use some of the practices outlined in these materials. The student services director told OCR that she was not familiar with the student behavior management materials and recognized the need for ensuring that the outdated material was removed from circulation.

o **Nonviolent Crisis Intervention**

The student services director told OCR that, in lieu of a board policy regarding restraint and seclusion, the District had, at the time, adopted the CPI program for intervening with students with disabilities who showed inappropriate and extreme behaviors in the school environment. According to the student services director, the CPI program sets forth the procedures which govern staff's use of restraint. Almost all staff interviewed referred to the CPI program as the District's policy and procedure regarding restraint and, in some instances, seclusion.

The District's behavior intervention specialist, who also served as the District's lead CPI trainer (lead trainer), said that the District has used the CPI program since 1997. The student services director and the lead trainer stated that the CPI training and procedures primarily focused on restraint, such as verbal de-escalation and physical controls techniques, but also included some discussion on the use of seclusion.

The District did not provide a copy of the specific CPI program procedures governing the District's use of restraint; rather, it provided only its 2005 CPI Refresher Workbook and the accompanying "Nonviolent Crisis Intervention" training materials. OCR's review of the CPI materials found that they identified potential student behavior categories and appropriate staff approaches to the various behaviors. The CPI materials repeatedly state that nonviolent physical crisis intervention (i.e., restraint) should only be used as a last resort. Notably, the CPI materials specifically state that restraint should only be used when all other options have been exhausted and when an individual is a danger to self or others. OCR noted that, unlike the information contained in the student behavior management materials discussed above, the CPI program does not authorize the use of restraint when a student's behavior is a danger to property.

The CPI materials also provide information and illustrations regarding the permissible and impermissible types of restraints recognized and permitted under the CPI program, as

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Prone restraint is defined in the Executive Order as "all items or measures used to limit or control the movement or normal functions of any portion, or all, of an individual's body, while the individual is in a face down position for an extended period of time."

well as permissible safety techniques for staff. Under CPI, restraints are referred to as “holds.”<sup>5</sup> Permissible CPI holds include single child controls, team controls, and transport position. Impermissible CPI holds include prone restraint, any type of floor or wall control, or any type of control done while the student is not standing. The student services director told OCR that the District’s policy is that if a student falls down to the floor while being restrained the staff member is to let go of the student. Most District staff interviewed confirmed that their understanding is that, if a student falls to the floor while in restraint, the student is to be released from the restraint because of the harm that could befall the student if he or she was restrained while on the floor. One staff member, however, told OCR that if a student fell to the floor she “might let go” depending upon the situation. Another District staff member told OCR that, if a student falls to the ground while in restraint, staff can continue to restrain the student as long as both of the student’s arms are either up in the air or down at the side. District staff also universally reported that carrying students was not permissible.

OCR noted that the CPI materials provided did not appear to address the District’s use of seclusion rooms. District witnesses told OCR that the CPI training did not address the use of seclusion rooms and, instead, focused on the use of restraint. The student services director told OCR that, at the time of OCR’s investigation, the District did not have any specific criteria covering how seclusion rooms were to be designed or how they were to be used. Two District administrators, who led District schools with seclusion rooms, told OCR that they had asked for a policy regarding the use (i.e., when and how they should be used) of seclusion rooms, which are also referred to by the District as “processing rooms” or “respite rooms,” and were both told that the policy was “out there,” but, at the time of OCR’s investigation, the District had not yet provided a copy to the District administrators or OCR.

OCR also noted that the CPI materials provided did not set forth procedures governing the District’s documentation of its use of CPI holds and positions or the use of seclusion rooms.

In the District’s September 4, 2013, letter to OCR, the District explained that, under the CPI program, staff are required to undergo an initial eight hours of training to demonstrate mastery of the child control positions and to pass a written test. According to the District, staff are also required to annually complete a three-hour refresher training course. District witnesses explained to OCR that the District required all special education staff working with students with autism, ED, MD, and preschool disabilities to participate in CPI training and to implement those techniques and procedures when using physical restraint on a student. The District’s CPI training logs for the 2007-2010 and 2012-2013<sup>6</sup> school years confirmed that CPI training was provided, primarily to special education staff and a limited number of building administrators in buildings that serve students with disabilities. All District teachers, intervention aides,

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<sup>5</sup> OCR’s review of the physical controls or holds used in CPI and by District staff show that they were consistent with the terms used to define restraint in the Civil Rights Data Collection (CRDC) in that the holds immobilize or reduce the ability of a student to move his or her torso, arms, or legs freely. Accordingly, the terms “hold” and “restraint” will be used interchangeably in this document.

<sup>6</sup> The District explained in its September 4, 2013, letter to OCR, that training data for the 2011-2012 school year was not available due to changes in the District’s administrative staff.

intervention assistants, and social workers interviewed who were identified as having used restraint on students or placed them in seclusion reported to OCR that they had taken the initial training course and had annually participated in the CPI refresher course.

The student services director told OCR that all building administrators should be trained in CPI and the use of restraint and seclusion, and that the District was working to identify those individuals who still needed such training. OCR's investigation identified District administrators who had not been trained in the use of CPI in accordance with the District's training program. For example, during OCR's onsite visits, three District administrators, who had MD units in their schools and employees using both restraint and seclusion in these schools, told OCR that they had not been CPI trained in the previous few years, with some reporting that it had been as many as five years since their last CPI training. Only two of the five administrators interviewed told OCR that they had completed the CPI refresher course within the previous year.

- **The District's April 2014 and May 2015 Policies on Restraint and Seclusion**

On April 9, 2013, the Ohio State Board of Education approved an administrative code provision, OAC 3301-35-15, which set forth, among other things, the state's standards for the implementation of the use of restraint and seclusion, and required all school districts to adopt a policy concerning the use of restraint and seclusion.

On April 22, 2014, during the course of OCR's investigation, the District adopted Board Policy 5141.1 to address its use of restraint and seclusion in conformity with OAC 3301-35-15. On July 5, 2017, the District provided OCR with a copy of an updated version of its policy applicable to restraint and seclusion, now designated as Board Policy 5630.01, entitled Positive Behavior Intervention Supports (PBIS) Limited Use of Restraint and Seclusion. This policy was nearly identical to the April 22, 2014, policy, was adopted on May 19, 2015, and became effective July 1, 2015. The new policy encourages the use of PBIS on a district-wide basis. According to the new policy, PBIS is a school-wide systematic approach to embed evidence-based practices and data-driven decision-making to improve school climate and culture in order to achieve improved academic and social outcomes, and increase learning for all students; it encompasses a wide range of systemic and individualized positive strategies and intervention to reinforce desired behaviors, diminish reoccurrences of challenging behaviors and teach appropriate behavior to students. These behavior interventions are used with both regular and special education students and are integrated at the individual classroom level and at the building level. The District states in its policy rationale and philosophy that the PBIS model will be used as a non-aversive effective behavioral system to prevent the need for the use of restraint and seclusion in District schools.

The District's new policy specifically emphasizes that restraint and seclusion strategies should be used only when the student poses a danger to self or others and should be used only as a last resort when no other safe and effective interventions are possible. Notably, the new policy includes definitions of terms such as physical restraint, and differentiates between the use of "seclusion" and "time out." Specifically, the policy provides the following definitions:

- Physical Restraint is defined as the use of physical contact that immobilizes or reduces the ability of a student to move their arms, legs, body, or head freely.
- Seclusion is defined as the involuntary isolation of a student in a room, enclosure or space from which the student is prevented from leaving by physical restraint or by closed door or other physical barrier.
- Time out is defined as a behavioral intervention in which a student, for a limited and specified time, is separated from the class within the classroom or in a non-locked setting for the purpose of self-regulating and controlling his or her own behavior. In a time out, the student is not physically restrained or prevented from leaving the area by physical barrier.

With respect to restraint, the new policy sets forth specific requirements for its use. Under the new policy, restraint may only be used if: (1) it is implemented in a manner that is age and developmentally appropriate; (2) the safety of other students is ensured and the dignity of the student involved is protected; (3) the least amount of force necessary is used for the least amount of time necessary; (4) staff are appropriately trained; (5) staff continually observe the student in restraint for signs of physical or mental distress; and (6) the student is removed from physical restraint when the immediate risk of harm to self or others has dissipated. The new policy includes similar requirements for the use of seclusion, and specifically requires that the room or area used for seclusion provide for “adequate space, lighting, ventilation, clear visibility and the safety of the student; and not be locked.” Notably, however, the policy does not provide any explanation as to when a student should be secluded versus restrained or vice versa.

The new policy requires District staff to complete an incident report for each occurrence of physical restraint and/or seclusion. The incident report is to be provided to the student’s parent/guardian within 24 hours of the incident and to the school building administration. According to the policy, the incident report will be maintained in the student’s file. OCR notes that the policy indicates that the District must complete the incident report within 24 hours. The policy also requires the District to debrief following incidents of physical restraint and/or seclusion with all involved staff, student, and parents to evaluate the trigger for the incident, staff response, and methods to address the student’s behavior needs. According to the policy, if the behavior is noted as a pattern of dangerous behavior that leads to the use of restraint and/or seclusion, a functional behavior assessment and/or behavior intervention plan must be completed.

The new policy also includes a training and professional development plan to train all staff on the new policy on an annual basis. The lead trainer for the District told OCR that he was on the District team charged with developing procedures for the implementation of the District’s policy on restraint and seclusion. To date, OCR has not obtained information regarding the procedures developed for implementation of the District’s policy or any other information with respect to the District’s training on the new policy.

The new policy also includes a monitoring plan that states that the District shall “monitor the implementation of this policy and the [D]istrict procedures.” OCR notes that the District’s new

policy does not indicate how it plans to monitor the implementation of this policy; notably, there are no provisions for the District's central administration staff, such as the District's Section 504 Coordinator or student services director, to review the incidents of restraint and seclusion happening in the District's various school buildings.

The new policy also includes a complaint procedure with respect to matters concerning restraint and seclusion. OCR notes, however, that such complaints are to be filed with the superintendent's designee, but the policy fails to identify that individual or provide his or her contact information. The complaint procedure provides that the District will respond to the complaint in writing within 30 days of the filing of a complaint regarding an incident of restraint and seclusion. To date, OCR has not obtained information from the District regarding complaints that have been filed under the new policy.

- **The District's Restraint and Seclusion Practices**
  - **The District's Use of Restraint and Seclusion Appeared to Be Limited to Students with Disabilities at the Time of OCR's Investigation**

The information OCR obtained during its investigation indicated that the District's use of restraint and seclusion was primarily limited to use with students with disabilities. As noted above, the District's student behavior management manual specifically stated that restraint and seclusion was only to be used for students with IEPs, who have been identified by the District as students with disabilities. During the course OCR's investigation in another matter, the District provided OCR with a copy of an August 15, 2011, memo from the District's then-Chief Officer of Student Support Services to all special education staff that notified them that the use of CPI was applicable only to students with disabilities (emphasis added). The District stated in its September 4, 2013, correspondence to OCR that the District only placed a student in seclusion if the student has an IEP signed by the parent authorizing such use.

Interviews with District witnesses confirmed that the District's practice of using restraint and seclusion had been primarily limited to students with disabilities. At the time of OCR's initial onsite in January 2014, staff almost universally reported to OCR that a student needed to have an IEP and, in some instances, a behavior plan in order to be subjected to the use of restraint or seclusion. Some staff stated that only students who are classified as having specific disabilities could be subjected to the use of restraint or seclusion. These witnesses identified students classified as ED or MD or those students in the District's special needs preschool program as the only students who could be subjected to the use of restraint and/or seclusion.

The District provided several thousand behavior incident reports for the 2011-2012 and 2012-2013 school years. The District told OCR that it uses these forms to document each use of restraint and seclusion in the District. With the exception of the three separate ED facilities, all other schools that provided behavior incident reports were schools which enrolled mostly general education students, but also had special education units such as MD or ED classrooms. In almost all instances, the schools that were primarily general education facilities provided incident reports showing that the use of restraint or seclusion was occurring almost exclusively in the schools' ED, MD, or preschool disabilities classes. OCR's review, to date, found no behavior

incident reports involving general education students who were not already identified as special education students or otherwise being evaluated for other or additional special education services. OCR's investigation to date also found no documentation of restraint or seclusion incidents involving students with Section 504 plans. OCR also did not identify any behavior incident reports for general education students involved in fights or assaults that may have also resulted in some type of CPI control or hold in the documentation provided. Some District staff, including one District administrator, told OCR that general education students who, for example, were in a physical altercation or fight would not be restrained using the District's CPI methods; rather, these students would be physically separated and prevented from fighting one another.

OCR notes that, of the District staff interviewed, five reported to OCR that general education students could be subjected to restraint or seclusion in the same manner as students with disabilities. For example, District staff members at a middle school informed OCR that students without disabilities could also be restrained using the same CPI holds and following the same procedures as students with disabilities. These staff members explained that, if a student who is not on an IEP is restrained on multiple occasions, the District would evaluate that student for special education services. The staff member did not identify to OCR how many times a student would need to be restrained before the District initiated the disability evaluation process. District staff members at this school reported that they had used restraint on both special education students as well as general education students during the 2013-2014 school year. OCR's review of the information provided by the District at the time of OCR's investigation, however, did not support that, if such CPI holds of general education students were occurring, the District had documented or maintained that information in the same manner as it did for CPI holds or restraints involving special education students.

Another District staff member at an elementary school provided conflicting information about the applicability of restraint to students with and without disabilities. This staff person told OCR that District policy limited the use of restraint to students with IEPs; however, this same staff member reported instances of using restraint on two different students who did not have IEPs: one student who was undergoing the District's evaluation process but had not yet been placed on an IEP, and another student who had a safety plan because he was known to be "volatile" but did not have a behavior plan or IEP. Other District staff members, including a teacher at an elementary school, told OCR that staff can use three emergency control holds on a particular student who does not have an IEP or behavior plan, but, after the third time a restraint is used on a student, staff must conduct a functional behavior assessment and develop an IEP or behavior plan for that student. Several other District witnesses across the District consistently reported that, if a student is subjected to restraint on three occasions, a behavior plan must be developed for the student.

The principal at one of the District's ED facilities stated that, technically, a student does not have to be on an IEP or a behavior plan to be put into a processing (seclusion) room if it is a crisis situation; however, with respect to the use of seclusion rooms for students without a disability or a behavior plan, those students are not put into a seclusion room, but rather are taken to the office or somewhere else to get them under control. None of the witnesses interviewed could recall a general education student who had been placed in any of the processing or seclusion rooms or sent to the time out rooms.

Based on the information obtained during the course of OCR’s investigation through May 2014, including the interviews of District’s witnesses and OCR’s review of behavior incident forms, OCR did not find information that general education students had been subjected to the District’s restraint and seclusion practices.

The District’s new restraint and seclusion policy, as written, is not limited in its application to students with disabilities; however, District witnesses continued to report to OCR during interviews in April and May 2014, after the new April 2014 restraint and seclusion policy was adopted, that the use of restraint (and seclusion) was limited to students with disabilities. OCR notes that only a few witnesses who were interviewed after the District’s adoption of the new policy reported to OCR that they were even aware of the District’s new policy.

o **Use of Restraint and/or Seclusion To Be Documented in IEPs and Behavior Plans**

In the District’s August 2011 memo to special education staff, the District’s then-chief officer of student support services instructed all special education staff that the use of physical control techniques (i.e., CPI) must be addressed in the students’ IEPs and documented on the students’ behavior plans, when “appropriate and necessary.” District witnesses consistently told OCR that students could not be restrained or secluded unless the use of such interventions was listed in their IEPs and/or behavior plans, to which the students’ parents and/or guardians had to agree. At one District middle school, however, District staff reported that such provisions were not required to be listed in the IEP or behavior plan, but usually were included for ED students. OCR notes that staff at this school also commented that there were students at the school who had behavior plans, but did not have IEPs or Section 504 plans. Some District witnesses told OCR that they simply did not know whether there was a requirement for the use of restraint or seclusion to be captured in the IEP or behavior plan.

OCR’s review of the information obtained raised the compliance concern that the District has utilized restraint and/or seclusion for students with disabilities without including such use in students’ IEPs and behavior plans and therefore whether such use was determined to be appropriate by the students’ IEP teams. A summary of a few examples found during OCR’s review of the 2012-2013 incident forms and IEPs provided to OCR illustrating this concern follows below:

- At one District middle school, at least xxxxxxx students were subjected to restraint (CPI), including xxxxxx students who were subjected to restraint for 20 minutes or more. xxxxx of the xxxxxxx students were also restrained four and five times, respectively. None of these xxxxxxx students had behavior plans that were produced to OCR and their IEPs did not reflect specific behavior interventions, such as the use of restraint, to be used with the students.
- At one District elementary school, at least xxxx students were subjected to restraint, including xxxxxx of the xxxxx students being restrained on multiple occasions and xxxxx of the xxxxx students subjected to restraint for 25 minutes or more. Of the data provided,

OCR only identified an IEP or behavior plan for one of the four students, which did reference use of CPI.

- [xxx--- paragraph redacted---xxx]
- [xxx--- paragraph redacted ---xxx]
- [xxx--- paragraph redacted ---xxx]
- At one District middle school, xxxxxxxxxxxx students were subject to seclusion for more than 20 minutes on multiple occasions. Behavior plans were not provided for these students, and thus it was unclear whether they had them. The students' IEPs did not identify the use of restraint and/or seclusion as specific behavior interventions to be used with the students.
- At one District high school, the IEPs for xxxxxxxx students who were subjected to restraint or seclusion did not identify the use of such methods and it was unclear as to whether the students had behavior plans as they were not provided to OCR.
- [xxx--- paragraph redacted--- xxx]
- At two District middle schools, xxxxxxxxxxxx students were subjected to restraint and/or seclusion for which use such interventions was not recorded in the IEPs and/or behavior plans provided to OCR.

○ **Restraint and/or Seclusion To Be Used as Last Resort**

The District's student services director emphasized to OCR that restraint and/or seclusion of a student is to be used as a last resort, and only if a student poses a risk of danger to himself or herself or others. The student services director also explained that the destruction of property is only factored in as a basis for restraint if the student is using that property to harm himself or herself or others, and that the best method in avoiding the use of restraint in such situations is to remove the other students from harm's way versus restraining the offending student.

Almost all District staff interviewed consistently reported to OCR that restraint was used as a last resort for students, and only to be used when the student was a danger to himself or others. OCR noted that the District's lead trainer articulated three specific criteria that had to be met before a student was restrained: (1) the student is a danger to self or others; (2) all verbal intervention has ceased to work; and (3) the danger of the control is less than the danger of the behavior the student is exhibiting. Out of all of the District witnesses interviewed, only District staff at Beatty Park, one of the District's ED facilities, articulated all three criteria as the standards that must be met when using restraint.

District staff explained that the CPI training required them to use a variety of other skills before resorting to the use of restraint to calm a student. Specifically, staff stated that they were to use verbal de-escalation, redirection, calming conversations, and changes in body language before

using restraint. Some staff told OCR that a student’s IEP or behavior plan might specify what methods should be used to calm a student down before resorting to restraint, and others explained that over the course of the school year they learned what methods worked best for each student so that the use of restraint could be minimized. District staff similarly reported that prior to placing a student in a seclusion room staff are required to attempt to de-escalate the situation with the student using the same methods. Few District staff members, however, mentioned to OCR the need to remove other students from the classroom when a student is being restrained.

District staff provided several examples of occasions when restraint was necessary that generally involved a student hitting, kicking, or threatening others. District staff also provided examples of when restraint was necessary for a student that did not involve touching, hitting, or kicking others, such as students attempting to climb out of windows, running with scissors, attempting to leave the school building, climbing on tables or jumping from heights, and banging or bashing their heads against the wall. Generally, District staff members explained to OCR that destruction of property alone was not a sufficient reason for placing a student in restraint, but would be appropriate when such destruction was going to cause harm to the student or others. District staff offered examples of property damage that could also present a danger to individuals, such as students attempting to climb bookcases or pull bookcases down on themselves, and students throwing objects (computers, chairs and desks) at other individuals.

Notably, District witnesses who were familiar with the use of both restraint and seclusion articulated various reasons to OCR for when it would be more appropriate to use one method of intervention over the other, i.e., the use of restraint versus the use of a seclusion room. One District witness told OCR that the decision to use a seclusion room versus restraining a student “depend[s] on the student’s behavior and whether it was aggressive or dangerous to students and staff.” Two District witnesses told OCR that a student is moved to a seclusion or processing room if, after using a restraint, the control is not working to subdue the student and he or she is still able to hurt himself or herself or others. District witnesses at a middle school told OCR that students are placed in the processing rooms as an alternative to the use of restraint when a student is a danger to himself, herself, or others and the student is physically “too big” to restrain. A District staff member at an elementary school told OCR that the room is used when it is clear that staff will be hurt by placing the student in a restraint.

Furthermore, some District witnesses provided statements regarding their use of seclusion rooms that were inconsistent with the District’s stated practice that a student should only be placed in a seclusion room when the student poses a danger to himself or others. For example, one District witness said that a student could be placed in a seclusion room, rather than being restrained, if a staff member believed it was necessary to take the student away from the rest of the class or if they tried to work with the student individually to calm the student down. One told OCR that students could be placed in a seclusion room when the students are a “high distraction.” This staff member explained that the students could be taken to the processing room to calm down. Another staff member told OCR that a student could go to the processing room if the student was having “trouble sitting down” and containing himself or herself in the classroom.

- **The District Does Not Limit the Duration or Frequency of the Use of Restraint and/or Seclusion**

OCR's review of the behavior incident forms for the 2011-2012 and 2012-2013 school years found that there were schools with a high number of incidents of restraint and seclusion. As discussed above, during the 2011-2012 and 2012-2013 school years, the District had three separate ED facilities which accounted for a large number of the incident forms. However, there were other schools that were not separate ED facilities that had high numbers of incident reports. For instance, during the 2011-2012- school year, Watkins Elementary School had 119 incident reports; approximately 92 of the incidents involved the xxxxxxxxxx xxxxxxx and xxxxxxxxxx students. During the same school year, Binns Elementary School reported 119 incidents involving xxxxxxxxstudents; however, 75% of the incidents concerned only xxxxxx of the xxxxxx students.

During the 2012-2013 school year, Arlington Elementary School reported 137 incidents involving the xxxxxxxxxx xxxxxxx and xxxxxxx students; however, xxxxxxxxxx accounted for xxxxxxxxxx incidents alone. Moler Elementary School reported 172 incidents; xxxxxxxxxx xxxxxxx and xxxxxxx xxxxxxx were the primary persons involved in almost 150 incidents of restraint that primarily involved the same xxxxxxxxxx students. OCR notes that for the 2012-2013 school year the separate ED middle school and high school reported fewer incidents than some of the above-mentioned classes within general education school buildings. Alumcrest High School provided approximately 151 behavior incident reports involving xxxxxxx students. Clearbrook Middle School provided approximately 130 behavior/incident reports involving xxxxxxxxxx students. The District's documentation reviewed to date reflected a high use of controls by certain staff in some of the schools, which raises a potential compliance concern regarding excessive use. This is especially true when these schools were compared to the separate ED facilities.

District staff made reference to the fact that, if a student is repeatedly restrained, the student's IEP team is reconvened. At Beatty Park, staff explained to OCR that they discuss students' behaviors at weekly team meetings and the students' attendant behavior plans, and review and revise these plans as necessary when repeated behaviors are observed.

- **Restraint**

District staff interviewed at the time of OCR's onsite visits were not aware of any limits with respect to how long a student could be placed in restraint or any limits to the frequency with which a student could be placed in restraint. District witnesses consistently reported to OCR that a student is restrained for as long as it takes for the student to gain control of himself or herself. Staff generally reported that restraints lasted, on average, from two to seven minutes. OCR's review of the behavior incident forms found several instances of restraint that took place in the two-to-seven-minute timeframe reported by District witnesses. However, witnesses also reported restraints lasting for significantly longer periods of time. For example, one District witness reported that she witnessed a situation in which xxxxxxxxxxxx restrained for approximately 30-40 minutes at one District middle school, and another District witness reported that he witnessed a situation in which xxxxxxxxxxxx restrained for approximately 35 minutes at another middle school. OCR's review of the behavior incident forms for the 2012-2013 school year found multiple instances of restraint lasting longer than two to seven minutes, including instances of restraint lasting: 20 minutes or longer at Buckeye Middle School, East Linden

Elementary School, and Livingston Elementary School; 30 minutes at Clinton Elementary School and Devonshire Elementary School; 35 minutes at Indian Springs Elementary School; 40 minutes at Burroughs Elementary School and Starling Middle School; and an hour at Whetstone High School.

District witnesses reported that the CPI program requires that staff check on a student in restraint at regular intervals based on their age (e.g., every 8 minutes for an 8-year-old student). However, staff consistently told OCR that they check students who are in a restraint for the entire time they are in the restraint position. Staff reported that generally there are at least two staff members present when a student is restrained, and one staff member is checking on the student's well-being while the student is being restrained.

OCR notes that the District provided information on July 5, 2017, showing that the District recorded that there were 236 restraint incidents during the 2014-2015 school year that each exceeded 15 minutes.

- **Seclusion**<sup>7</sup>

As with restraint, the student services director and District witnesses at the time of OCR's onsite visits consistently told OCR that they were not aware of any District policy that provides guidelines for or otherwise limits the amount of time a student may be kept in a seclusion room. District witnesses at Beatty Park, one of the ED facilities, told OCR that the unwritten "rule of thumb" used to be that a student could stay in the room one minute for every year of his age; so if a student is seven years old, he would stay in the room for seven minutes or less. According to the student services director, as soon as the student's behavior de-escalates, the student should be removed from the room. Additionally, as described below, the information gathered by OCR to date raises potential compliance concerns that the District's lack of a policy has resulted in excessive use of seclusion by the District.

One District witness told OCR that, generally, students' behavior plans dictate how long a student would be placed in a seclusion room. According to this District witness, a student generally would be placed in the seclusion room for 10 minutes with the door shut, and if the student regained control of themselves the door was opened. The students would then be required to sit in the room with the door open for another 10 minutes, and then, if the student maintained control of themselves, they would be permitted to leave the room. Other staff stated students were left in the seclusion room for as long as it took for the students to calm down. If

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<sup>7</sup> As noted earlier, the District referred to areas used for seclusion by various names including processing rooms and respite rooms. The student services director told OCR that these terms describe the same rooms and are used interchangeably in the District. As discussed in more detail below, although most of the processing/respite rooms no longer have door or foot locks, there were numerous incidents reported during both the 2011-2012 and 2012-2013 school years that showed that: students were involuntarily confined by means of a physical control and/or transport; doors were shut for safety or other reasons; and at least one staff member was present to ensure, among other things, that students remained in the room until they were no longer a danger to themselves or other or had de-escalated. This information is consistent with the CRDC definition of seclusion.

students demonstrated that they had calmed down before 10 minutes had elapsed, staff would start the process of having the students exit the room.

District witnesses described a similar process for a student to exit the seclusion rooms at another District middle school. According to District witnesses, a student must show that he or she is no longer a danger to self or others in order to exit the room. District witnesses explained that students show that they are not a danger to self or others by sitting down in the processing room and showing that they are in the ready position. The “ready position” is when a student folds his or her hands in his or her lap. District witnesses explained that a timer is generally set for three to five minutes to check to see if the student can leave the room. District witnesses also described a similar process at a high school, in which a student who has entered the processing room is required to sit in the room with the door shut and a timer is set for five minutes. If the student is calm, then the door is opened for five minutes. If the student remains calm after sitting for five minutes with the door opened, then the student can exit the processing room. OCR’s review of behavior incident reports at this high school found instances of students remaining in the seclusion rooms during the 2012-2013 school year from 10 to 50 minutes.

District witnesses at Beatty Park Elementary School explained that a student is ready to leave the room when he or she can demonstrate that they are physically in control. Staff explained that, in order to determine that a student has regained physical control, they will examine a student’s body language as well their ability to articulate whether they are ready to rejoin the class. The student must also be able to articulate to staff what happened that resulted in their placement in the room. After the student does this to the staff’s satisfaction, the decision is made to allow the student to return to class. District staff at Beatty Park reported students remaining in the processing rooms for durations longer than 30 minutes, including up to two to three hours at a time. OCR’s review of the behavior incident forms at Beatty Park found multiple instances of students spending one hour or more in the school’s seclusion rooms. Another District staff member reported that there was xxxxxxxx xxxxxxxx at the school that, at times, spent the entire school day in the seclusion room.

The student services director told OCR that, while students are in the seclusion rooms, they are to be regularly checked for dehydration and toileting needs, and to ensure that they are not harming themselves. Once students are removed from the seclusion rooms, they are to be checked for injuries. The student services director explained that, historically, the District had foot latches on the seclusion room doors and that one of the purposes for the foot latches was to ensure that staff maintained constant supervision of the student, as the way the latch operated was that a foot had to be on the latch at all times in order for the door to the room to remain shut and “locked.” The student services director asserted to OCR that none of the District’s remaining seclusion rooms have locks of any type remaining on the doors, as the District was required to remove such locks in past years.

District witnesses familiar with the use of seclusion rooms confirmed that staff consistently checked on the welfare of students while they were in the seclusion rooms and upon their exit from the room. One staff member told OCR that they were required to check on students in seclusion every five minutes per District policy. Several other District staff told OCR that the rule is that a staff member must check on a student after one minute for every year of the child’s

age. Thus, if a student is 10 years old, staff must check in on the student every 10 minutes. No one, however, could recall where the rule they were referring to came from or where it is located.

District witnesses interviewed denied knowing of any circumstances in which a student was in a processing room for so long that he or she missed lunch or was unable to attend to personal hygiene needs such as using the restroom. District staff did report that students urinated in the processing rooms and on occasion threw their feces over the top of the seclusion room into the main classroom. One District staff member asserted that the students were not doing this because they needed to go to the restroom; rather, they were doing so as a result of their behaviors and because they were acting out. The lead trainer told OCR, however, that whether a student is offered a restroom break does depend on whether the student has calmed down and that some students cannot be allowed to leave the room until they are settled down. One District staff member told OCR that he does not offer students restroom breaks and water while they are in the room, but does not deny them either if they ask for it. The principal at Beatty Park told OCR that students are always supposed to be asked if they need water or a restroom break.

District staff, including the lead trainer, frequently commented to OCR that, if a student does not calm down within about 30 minutes of being placed in the seclusion, staff take additional measures, such as contacting the principal, contacting security or the police, or calling the student's parents.

OCR notes that the District provided information on July 5, 2017, showing that the District recorded that there were 407 seclusion incidents during the 2014-2015 school year that each exceeded 15 minutes.

- **Lost Instructional Time**

District witnesses generally acknowledged to OCR during interviews that once a student has been restrained, and particularly when a student has been placed in a seclusion room, addressing lost instructional time is not a priority. Some District witnesses reported that the ability and the need for making up instructional time varies by student and depends on the students' needs. One teacher told OCR with respect to lost instructional time as a result of the use of restraint and/or seclusion that "the goal is to have these students act appropriately in society, which may mean that reviewing the student's behavior and coming up with other coping strategies is more important than math." Few staff indicated to OCR that they routinely provided make-up work to the students for the time they spent in restraint or in seclusion.

OCR's investigation to date found examples of students who had been subjected to restraint and seclusion for as little as five to ten seconds to as much as an entire school day. OCR's investigation to date has not identified any information demonstrating that the District has a practice of addressing the lost instructional time that results from the use of these interventions.

Some incident forms OCR reviewed indicated that, after students were restrained and/or secluded, they left school for the day. In these cases, District staff told OCR that they generally would provide make-up work for students who left school early. [xxx--- paragraph redacted--- xxx]. At another elementary school, District witnesses told OCR that students who lost

instructional time while in the processing room were given make-up work during the classroom day to review what they missed. However, a staff member at a middle school told OCR that when students were sent to a sensory room or left school early because they would not calm down the lost instructional time was not accounted for or otherwise made up.

- **The District’s Seclusion Rooms**

As noted above, OCR conducted an onsite review of the 13 schools that the District reported had seclusion rooms during the 2011-2012 and 2012-2013 school years. OCR’s onsite visit found that, in general, the seclusion rooms housed in the general education facilities generally had the same features, including a steel door, padded walls, vinyl tile floors, and peepholes that allowed District staff to see the students. Notably, however, OCR found that there was no uniformity as to the size of the seclusion rooms. Some of the seclusion rooms measured less than 4 feet in width, while others measured more than 11 feet in width. OCR also noted that by January 2014, when OCR conducted its onsite review of the facilities, most of the processing/respice rooms no longer had door locks or foot latches. However, District witnesses could not tell OCR which locks, at which schools, were removed and when.

On July 5, 2017, the District notified OCR via e-mail that in approximately December 2014, at the direction of the District’s new superintendent, the District closed and dismantled the processing (seclusion) rooms in all of its buildings except Beatty Park Elementary and Columbus Scioto 6-12, which serve students with emotional disabilities. According to the District’s July 5, 2017, correspondence, in June 2015, administrators were assigned to walk through every room in every building with the principal to ensure that there were no more processing rooms in the District or rooms that could be used as seclusion rooms.

- **The District’s Documentation and Monitoring of the Use of Restraint and Seclusion**

- **Behavior Incident/Intervention Form**

District witnesses consistently reported to OCR that they were required to document each instance restraint and seclusion was used for a student. During the course of OCR’s investigation, OCR identified four different types of forms used by District staff during the 2012-2013 school year that documented staff’s use of restraint and seclusion: the “behavior incident/intervention form,” the “behavior incident/observation form,” the “discipline log,” and the “processing room” log. The student services director told OCR that only one type of form, the behavior incident/intervention form (the behavior incident form), should be used to document use of restraint and seclusion, as that form is consistent with the District’s CPI training materials. The lead trainer told OCR that he created this form, and, effective the beginning of the 2012-2013 school year, the District started using the form.

The form from the 2012-2013 school year required staff to document: the name, age, and school of the student; start and end times for the incident and the start and end times for intervention; location of the incident and the location of the intervention; antecedents for the behavior (i.e., directive/request, difficult task, peer provocation, etc.); categories and function (purpose) of the behavior (for example, assault, AWOL, non-compliance, property destruction, inappropriate

language, psychotic symptoms, etc.); specific start and stop times for use of the processing room and/or a physical control; the times when a student in the processing room or a physical control was checked; information about parental contact and nurse contact; details of any control used with names of staff members; the names and positions of staff involved; and any plan for the future.

OCR found during its review that an older version of this form, the behavior incident/observation form, did not require staff to document start and end times for the incident or the intervention. OCR found that the outdated behavior incident/observation form was still in use during the 2012-2013 school year at Como Elementary School, where the form was used by two different teachers to document (1) use of a restraint on xxxxxxxx, 2012, (2) use of restraint and the “time out” area on xxxxxxxx, 2012, (3) use of restraint on xxxxxxxx, 2012, and (4) use of restraint on xxxxxxxx, 2013. The outdated behavior incident/observation form was also still in use at Starling Middle School (now Westmoor), where the form was used to document an incident of restraint on xxxxxxxx, 2013.

District witnesses told OCR that it is a team decision as to who completes the form following the use of restraint and/or seclusion. The lead trainer stated that he prefers that the person who started the intervention complete the form and that this is the most common practice in the District, although in some rooms the teacher takes on that responsibility rather than the aide. Most staff reported to OCR that the behavior incident forms are completed on the same day of any incident. District witnesses generally told OCR that the form is supposed to be reviewed and signed by all of the District staff members who were involved in the incident and intervention. OCR notes that its review found examples of forms at almost all of the District schools reviewed that indicated that multiple individuals were involved in an incident and/or intervention with a student, but the forms were only signed by one staff member. District witnesses could not explain to OCR why all staff members involved did not sign the forms.

The lead trainer explained to OCR that one of the staff members involved in the intervention is expected to call the parent to report what happened as soon as possible after the incident. This person can be the staff member who initiated the control, the one with the most knowledge, or the one with the best rapport with the parent. District staff almost universally reported to OCR that parents are notified immediately, and at a minimum by the end of a school day, if their student is restrained or subjected to seclusion. OCR notes that one staff member told OCR it was “a good practice” to contact a student’s parent, but that it was not required. Another staff member told OCR that she never sends the behavior incident forms home because they “are legal documents,” and thus the parent would not receive them.

Although most District witnesses including the student services director and the lead trainer told OCR that the behavior incident forms are to be used to document restraint and/or seclusion use, OCR found several examples of completed incident forms that did not indicate that restraint or seclusion had been used. Some District staff confirmed to OCR that their use of the behavior incident forms was not limited to restraint and/or seclusion use. For example, one teacher at an elementary school told OCR that she uses the form to document student incidents in the Intervention Assistance Team (IAT) process, which was described as the evaluation process for determining whether a student is a student with a disability, and that the form can be used for



Based on OCR's review of the behavior incident forms for the 2012-2013 school year, to date, as well as the information provided by District witnesses during OCR's interviews regarding completion of the form, OCR has determined that the behavior incident forms produced by the District to OCR do not appear to accurately reflect the following:

- The actual number of students subjected to restraint and/or seclusion, as well as the actual number of instances a student is subjected to restraint and/or seclusion.
- The actual staff, including numbers of staff, involved in restraining and/or secluding students.
- The amounts of time students spend in restraint and/or seclusion rooms.
- The steps District staff undertake before a student is subjected to restraint and/or seclusion, if any.
- Whether students are engaged in self-injurious behavior or otherwise pose a danger to themselves or others before they are subjected to restraint and/or seclusion.
- Whether District staff are timely and consistently contacting students' parents.

The District's apparent failure to accurately and completely maintain meaningful information about restraint and seclusion prevents the District from monitoring these practices, including monitoring, at a minimum: whether District staff are using the correct forms; the frequency and duration with which staff are using these interventions; which staff are using restraint and seclusion and under what circumstances to ensure that its use is appropriate; which students are being subjected to restraint and seclusion (i.e., general education students or special education students); whether the placement of students repeatedly subjected to restraint and/or seclusion is appropriate or whether a student needs to be reevaluated; and whether parents are kept abreast of the nature of the interventions being used on their students.

The District has acknowledged to OCR that it does not monitor the use of restraint and seclusion on a district-wide basis. The student services director specifically told OCR that the incident forms are not monitored for follow-up by the District's central administrators and are not otherwise used for compliance determinations. The student services director acknowledged to OCR that the incident forms are not centrally maintained by the District in any way that would allow it to monitor its use of restraint and seclusion or the District staff who are using restraint and seclusion. One District administrator interviewed told OCR that she reviews the behavior incident forms that she receives, but could not tell OCR with what frequency she undertook this review. She also did not provide any information to OCR indicating that she took any measures to follow up with staff regarding her review of the behavior incident forms. Another District witness reported that the special needs preschool program director also receives a copy of the behavior incident forms. This is the only information OCR obtained from District witnesses, to date, indicating that central District administrators outside of a school received information about the use of restraint or seclusion from students. This witness, however, was not aware of how the District utilized the information at the special needs preschool level.

○ **Other Forms of Documentation**

In addition to the behavior incident forms, OCR's review of the information provided by the District also found that District staff were recording the use of restraint and seclusion on

“discipline logs” and “processing room logs.” For example, District staff at one middle school maintained discipline logs. OCR’s review of the discipline logs found that the staff noted, in multiple instances, when restraint was used on various students. OCR’s review also found that the logs were not used in place of the behavior incident forms; rather, they were used in addition to the behavior incident forms and mirrored the information captured in those forms.

District staff at a high school referred to using a processing room log as well as a behavior incident form. According to a high school staff member at this school, the processing room log was used to record the times the students enter and exit the rooms, the antecedent to their behavior, why the student was taken into the room, and what behavior the students exhibited while they were in the room. Staff indicated that this same information was also recorded on the behavior incident forms. OCR found similar processing log forms in its review of incident forms at an elementary school. OCR noted that the student services director told OCR that the processing room log was an old form that should not be in use.

- **The District’s Other Rooms**

- **Sensory Rooms**

During the course of OCR’s investigation, it learned that, in addition to seclusion/processing/respite rooms, some of the District schools also had sensory rooms or sensory areas. Like the processing or seclusion rooms, sensory rooms are also generally used for students with disabilities, but District staff were unaware of any policies that prohibited the use of the sensory rooms by general education students. The District’s student services director explained to OCR that sensory rooms are generally created for students at the building level, and that each school in the District may use sensory rooms in a different manner. The student services director told OCR that sensory rooms serve a different purpose than the processing rooms, and that they should not have doors or locks. OCR noted that contrary to the information provided by the student services director, the sensory room at Ridgeview Middle School had, at the time of OCR’s visit, both a door and a lock.

At the time of OCR’s onsite visits, the District did not maintain a list of which District schools had or were using sensory rooms, thus OCR was not able to proactively identify and visit the District schools using such rooms or areas.<sup>8</sup>

Although OCR did not visit the District’s East Linden Elementary School, it learned during the course of its investigation that this school also has a sensory room. According to a District witness familiar with the school, the sensory room at East Linden was, at least during the 2012-2013 school year, used for students who were exhibiting aggressive behaviors and was available for students with and without disabilities. The District staff member did not describe the sensory room as having specific sensory objects; rather, she explained that the sensory room was a room where students were taken in order to calm down and to talk out issues with a staff member.

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<sup>8</sup> OCR learned upon arrival at Duxberry Park Elementary School that it had converted one of its processing rooms to a “sensory room.” This room, contrary to the information provided by the student services director, had a door.

- **Positive Efforts for Adjustment and Knowledge (PEAK) Rooms**

OCR also learned during the course of its investigation that the District has “PEAK” rooms. The student services director told OCR that PEAK rooms are designed for general education students and are “somewhat like” an in-school suspension room for behaviors that could result in some type of disciplinary action. PEAK rooms are limited to the District’s elementary schools. The student services director explained that PEAK rooms are not at all like processing rooms, in that students take work to the PEAK classroom, which is monitored by the District staff person and that other students are generally in the PEAK room.

The student services director also told OCR that special education students could be sent to PEAK rooms for a class period for “acting out.” She explained that use of the PEAK room is monitored to make sure that it is not being used in lieu of discipline that would lead to the need for a manifestation determination meeting. However, one District staff member at a middle school told OCR that PEAK was used for special education students to avoid the ten-day exclusion limit that would necessitate a manifestation determination meeting for the students. OCR has not obtained any information, to date, showing that the District monitors the use of PEAK rooms or receive any information explaining the criteria being used to send students to PEAK rooms. District witnesses told OCR that the District’s middle schools and high schools have rooms similar to the PEAK rooms, which are also used by all students, general education and special education students, for in-school suspension purposes.

### **Compliance Concerns Identified to Date**

The information obtained to date indicates that the District treated students with disabilities differently than students without disabilities with respect to its use of restraint as seclusion. The evidence obtained shows that from at least August 2011 until approximately April 22, 2014, the District maintained a practice of almost exclusively using restraint and seclusion for students with disabilities. Such practices are documented in the District’s August 2011 memo to the District’s special education staff as well as the student behavior management manual, which the District reported to OCR had been in use within the last five years.

Further, the evidence shows that, during the relevant time period, the District limited its training on these topics to its staff responsible for students with disabilities. To date, OCR has found no information in the documentation or through witness testimony that supported that the CPI program as used by the District was ever intended to apply to general education students. Additionally, District witnesses consistently told OCR that the use of restraint and seclusion was limited to students with disabilities at the time of OCR’s investigation.

The evidence also shows that even after the District adopted a restraint and seclusion policy in April 2014 that applied to all students, including students without disabilities, District staff continued to report to OCR that the use of restraint and seclusion was limited to students with disabilities. The District offered no justification or explanation for limiting the use of these behavioral intervention methods to students with disabilities other than that restraint and seclusion was, at times, necessary when students were a danger to themselves or others, which would not explain why these techniques would only be used with students with disabilities. The

District provided OCR with no information to support that only students with disabilities engaged in behaviors that may pose a danger to themselves or others. Indeed, staff at at least one District school reported the need to use restraint on students without disabilities, although their use was inconsistent with the District's policies and practices at the time. OCR notes, however, that the District's most recent data appears to show that, during at least the 2014-2015 and 2015-2016 school years, students who were not identified as students with disabilities (or as special education students during 2015-2016) were subjected to restraint and seclusion. To date, however, OCR has not obtained information regarding the circumstances leading to these students' restraint and/or seclusion. Furthermore, the District's documentation showed that its use of restraint and/or seclusion at the time of OCR's investigation was not consistently supported by the documentation of the students' behaviors and that the decisions about when and how to release students from these interventions varied.

In addition, the information obtained to date appeared to indicate that the District may have been utilizing restraint and seclusion as intervention methods that may not have been identified by the students' IEP teams through appropriate evaluation and placement procedures as required by the Section 504 implementing regulation at 34 C.F.R. § 104.35. OCR found multiple examples for which restraint and/or seclusion was used for students for whom such intervention methods were not prescribed by the students' IEPs or behavior plans provided to OCR. In addition, OCR noted a District witness reported that students had been placed on safety plans because of their "volatile" behavior, but such students were not on IEPs or Section 504 plans, which raises similar compliance concerns about the District's practices in following its OCR-approved evaluation and placement procedures for students with disabilities.

OCR notes that, should students' IEPs and/or behavior plans include the use of restraint and seclusion interventions, the District's stated practice to OCR is that such intervention methods are only to be used as a last resort and when there is a danger of harm to self and others. The determination that imminent harm to self or others will occur due to a student's behavior is not apparent from OCR's review of the behavior incident forms or sufficient to support use of restraint and/or seclusion. The District's student behavior management manual, which remains in circulation in the District, and which was produced to OCR during this investigation, permits the use of restraint and seclusion for property damage that does not place a student or other persons in danger. The use of physical restraint or seclusion for behaviors that are a danger to objects or aggression to objects with sufficient force to cause damage to property is not consistent with information provided by the District. In addition, the evidence obtained to date shows that District staff do not generally record the de-escalation measures they employ before restraining or secluding a student; thus, the District's recordkeeping makes it difficult to ascertain whether restraint or seclusion is employed as a last resort and employed consistently with the requirements of students' IEPs to ensure students are receiving FAPE as required by the Section 504 implementing regulation at 34 C.F.R. § 104.33(b).

Further, the evidence obtained to date shows that the District does not have a practice that provides for students subjected to restrain and seclusion to recoup lost instructional time, which may range from a little as a few seconds to 30-40 minutes to up to an entire school day. The District's apparent failure to address lost instructional time raises a compliance concern under

the Section 504 implementing regulation at 34 C.F.R. § 104.33, as to whether the students, as a result of being restrained and secluded, are also being denied a FAPE.

### **Resolution and Conclusion**

On **August 30, 2017**, the District signed the enclosed voluntary resolution agreement that is intended to, when fully implemented, resolve the issues raised in this complaint.

Through the Agreement, the District commits to take specific actions to ensure that all students have an equal opportunity to learn in school. Provisions in the Agreement are intended to ensure that the District implements fair and equitable restraint and seclusion policies and practices and creates an environment where all students feel safe and welcome. The Agreement requires the District to take specific steps including, but not limited to, review and revision of the District's restraint and seclusion policies, practices and procedures, along with improvements to its data collection and review, and training of its administrators and staff in order to ensure compliance with Section 504 and Title II. The District has agreed to provide data and other information, demonstrating implementation of the Agreement, in a timely manner in accordance with the reporting requirements of the Agreement.

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

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

We appreciate the courtesy and cooperation shown by the District during the course of this investigation. If you have any questions, please contact xxxxxxxxxxxxxx, who will be monitoring the District's compliance with the Agreement, by telephone at (216) xxx-xxxx or by e-mail at [xxxxxxxxxx.xxxxxxxxxxx@ed.gov](mailto:xxxxxxxxxx.xxxxxxxxxxx@ed.gov).

Sincerely,

/s/

Meena Morey Chandra  
Regional Director

Enclosure