

**Huron Valley Schools  
Resolution Agreement  
OCR Docket No. 15-19-5002**

Huron Valley Schools (District) agrees to resolve the above-referenced compliance review initiated by the U.S. Department of Education (Department), Office for Civil Rights (OCR) 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 the District's use of restraint and seclusion denied students with disabilities who participate in the District's programs a free appropriate public education (FAPE) in violation of Section 504 of the Rehabilitation Act of 1973 (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 *et seq.*, and its implementing regulation, 28 C.F.R. Part 35. Nothing in this Agreement constitutes an admission by the District that it failed to comply with any relevant law.

The District 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. The District will ensure that all communications required in the Agreement are accessible to parents with disabilities and/or limited English proficiency.

**I. Developing Student Remedies**

- A. By **March 15, 2022**, the District will convene the Individualized Education Program (IEP) or Section 504 team of each of the 38 students who were subjected to restraint or seclusion between September 7, 2017, through January 17, 2019, and on February 28, 2019, according to the documentation the District provided to OCR during this investigation (Group A). OCR will provide the District a list of the 38 students who comprise Group A upon the execution of this Agreement. The team for each student will have before it a record of all restraints and seclusions the student was subjected to from September 7, 2017, through the date this Agreement is signed and will determine: (1) if the student's current interventions and supports are sufficient or whether any changes are needed and (2) whether the student requires any compensatory services for denial of a free appropriate public education (FAPE) or other instructional services missed as a result of restraint or seclusion. To make these two determinations, the team will apply appropriate criteria, including, for example: (1) the number of restraints and/or seclusions the student was subjected to within a month; (2) the number of restraints and/or seclusions that took place in a school year and the timeframe within which they occurred; (3) the nature and length of each restraint and seclusion; (4) changes in the student's behavior(s) that results in the use or increased use of restraint and seclusion; (5) if applicable, the nature of the student's disability; (6) whether the student was restrained and/or secluded in violation of District policy (e.g., mechanical restraint); and (7) any other factor that is relevant to the determination(s).

B. For each student:

1. The District will ensure that the team convened is a group of persons knowledgeable about the student, the evaluation data, and the placement options, including the student's parent or guardian.<sup>1</sup>
2. The District will ensure that the team makes an individual assessment of the amount of compensatory services appropriate for the student. If appropriate, the team will revise the student's IEP or Section 504 plan and will develop a written plan for providing the student with the compensatory education or other remedial services deemed necessary. The plan will be included with the student's Section 504 plan or IEP and will identify the nature, amount, and provider of the services to be delivered at no cost to the student's parent. The District will promptly provide the services at no cost to the student's parent in the 2021-2022 school year, unless the team determines that additional services beyond the 2021-2022 school year are appropriate for the student's individual needs.
3. The District will provide the Student's parents with a meaningful opportunity to provide input into these determinations, written notice of the determinations made, and notice of the procedural safeguards available to them under 34 C.F.R. § 104.36, including their right to challenge such determinations through an impartial due process hearing should they disagree with the District's determinations.

C. By **March 15, 2022**, the District will have one or more District-level administrators conduct a review to identify any students outside of Group A, with and without identified disabilities, who were restrained or secluded by the District from the 2017-2018 school year through the date this Agreement is signed (Group B). The review will include obtaining and analyzing information from restraint and seclusion documentation forms and similar documents; the District's online restraint and seclusion portal; and relevant staff at each school, including but not limited to principals, social workers, psychologists, and teachers.

D. By **May 2, 2022**, the District will convene the IEP team or Section 504 team of each student with a disability in Group B to determine (1) if the student's current interventions and supports are sufficient or whether any changes are needed and (2) whether the student requires any compensatory services for denial of a FAPE or other instructional services missed as a result of restraint or seclusion. In making these two determinations, the team will apply appropriate criteria, including those listed in Item I.A above. For each team meeting, the District will follow the same requirements stated above in Items I.B.1 through I.B.3 above.; and

E. By **May 2, 2022**, the District will promptly refer for evaluation any students in Group B who the District has reason to believe need special education or related services because of a disability. In making these two determinations, the team will apply appropriate

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<sup>1</sup> Throughout the rest of the Agreement, "parent" will refer to a student's parents and or guardians.

criteria, including those listed in Item I.A above. For each team meeting, the District will follow the same requirements in Items I.B.1 and I.B.3 above.

**Reporting Requirements:**

1. By **March 15, 2022**, the District will submit to OCR:
  - a. Documentation showing implementation of Item I.A and I.B, including for each student: a copy of any meeting minutes, a copy of any revised IEPs and/or Section 504 plans developed for the students, any compensatory education services plans, documentation of any input provided by the student's parent(s) and showing that written notice of the determinations and procedural safeguards were provided to the student's parent(s), and any other documentation relevant to the determinations reached. OCR will review the documentation submitted to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.33-104.36, in making these determinations.
  - b. Documentation to demonstrate its implementation of Item I.C, including a report showing who conducted the review and describing all of the information obtained and analyzed, and an Excel spreadsheet or similar document listing all students identified and, for each student, whether the student has a Section 504 plan or IEP, whether the student will be referred for disability evaluation based on the review, or whether the student is not a student with a disability or suspected of having a disability.
2. By **May 2, 2022**, the District will submit to OCR documentation showing implementation of Item I.D, including documentation of any evaluations conducted and a copy of any meeting minutes, a copy of any IEPs and/or Section 504 plans revised or developed for the students, any compensatory education services plans, documentation of any input or concerns provided by the student's parent(s) and showing that written notice of the determinations and of their procedural safeguards were provided to the student's parent(s), and any other documentation relevant to the determinations reached. OCR will review the documentation submitted to ensure that the District met the procedural requirements of the regulation implementing Section 504, at 34 C.F.R. §§ 104.33-104.36, in making these determinations.
3. By **July 5, 2022 and October 28, 2022**, the District will submit to OCR documentation verifying the implementation of all compensatory education services plans developed under Items I.B.2 and I.D.

**II. Restraint and Seclusion Documentation and Policy**

- A. By **March 15, 2022**, the District will submit to OCR for its review and approval:
  1. Revised restraint and seclusion documentation forms. The District will revise the restraint and seclusion documentation forms as necessary to ensure that they include applicable definitions of physical restraint, mechanical restraint, and seclusion,

and require the collection of the information set forth in Appendix A regarding each restraint and seclusion.

2. Draft written instructions for completing the restraint and seclusion documentation form and the debriefing form.
3. A draft policy regarding how to use and document the use of restraint and seclusion of District students. The policy will include, at a minimum:
  - a. definitions of key terms, including but not limited to seclusion, timeout, physical restraint, prone restraint, physical escort, mechanical restraint, and safety devices, including in the definitions clear statements where any of the defined practices are prohibited;
  - b. an explanation about how seclusion, mechanical restraint, physical restraint, and prone restraint are distinct from safety devices, physical escorts, and timeouts;
  - c. a statement that restraint and seclusion will not be used on students with disabilities: (1) for behavior(s) that would not result in restraint or seclusion for students without identified disabilities; or (2) based on assumptions or stereotypes about disabilities or students with disabilities generally;
  - d. a prohibition on the use of restraint and seclusion except in situations where a student's behavior(s) poses an imminent risk to the safety of the student or others;
  - e. a statement that restraint and seclusion shall be discontinued as soon as the imminent risk to the safety of the student or others has dissipated;
  - f. a statement that only personnel trained in the safe and effective use of restraint and seclusion may use either technique on students;
  - g. the title, and contact information (phone number, office address, and e-mail address) of the District's director of student support services and notice regarding the role and duties of the director of student support services in reviewing incidents of restraint and seclusion;
  - h. a statement that the District's director of student support services or a qualified designee will review every incident involving the restraint and/or seclusion of a District student within a designated timeframe;
  - i. a statement requiring that District staff document all uses of restraint and seclusion in a manner that is consistent with Item II.A;
  - j. instructions making clear that when multiple restraints and/or seclusions involving the same student occur on the same date, then any documentation forms

- and debriefing forms for those incidents must identify all prior incidents of restraint and seclusion of that student that occurred on the same date;
- k. instructions regarding whether separate documentation forms and debriefing forms must be completed when a single incident involves a restraint and a seclusion of the same student;
  - l. how forms will be disseminated and available to staff;
  - m. who is primarily responsible for completing the documentation forms and debriefing forms;
  - n. a statement regarding how completed documentation forms and debriefing forms will be collected and maintained;
  - o. a statement requiring parent notification on the same day that the restraint and/or seclusion occurred, unless same-day notice is impracticable, in which case notice must be given by the end of the following school day;
  - p. a statement requiring that notification of each restraint and seclusion be given to the District's director of student support services (and any other administrator required) and a provision regarding how and when notification must be given; and
  - q. the criteria the District will use to determine when, after instances of restraint or seclusion, the District will: (1) reconvene a student's IEP team or Section 504 team to determine whether the student should be reevaluated and if the student's current interventions and supports are sufficient or whether any changes are needed; or (2) evaluate a student without an identified disability to determine if the student qualifies as an individual with a disability, including, for example: (a) the number of restraints and/or seclusions the student was subjected to within a month; (b) the number of restraints and/or seclusions that took place in a school year and the timeframe within which they occurred; (c) the nature and length of each restraint and seclusion; (d) changes in the student's behavior(s) that results in the use or increased use of restraint and seclusion; (e) if applicable, the nature of the student's disability; (f) whether the student was restrained and/or secluded in violation of District policy (e.g., mechanical restraint); and (g) any other factor that is relevant to these determination(s).

**Reporting Requirement:** By **March 15, 2022**, the District will provide to OCR for its review and approval the revised restraint and seclusion documentation forms, the draft written instructions for completing the restraint and seclusion documentation form and the debriefing form, and the draft policy developed or revised under Item II.A. The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the forms, instructions, and policy.

- B. Within **90 calendar days** of receiving OCR's written approval of the forms, instructions, and policy developed or revised pursuant to Item II.A, the District will: (1) formally adopt the developed and/or revised documents; (2) update all printed publications and online publications with the developed and/or revised documents (inserts may be used pending reprinting of these publications); (3) electronically or otherwise disseminate the revised forms and the instructions to District administrators, District staff, and non-District personnel contracted by the District to provide educational services to District students; and (4) electronically or otherwise disseminate the policy to District administrators, District staff, District parents, and non-District personnel contracted by the District to provide educational services to District students.

**Reporting Requirement:** Within **90 calendar days** of receiving OCR's written approval of the forms, instructions, and policy developed and/or revised pursuant to Item II.A, the District will provide OCR with documentation showing implementation of Item II.B, including: its director of student support services' certification that the District has formally adopted the developed and/or revised documents; updated copies of all printed publications (if not yet finalized, copies of inserts for printed publications may be submitted) and links to online publications with the developed and/or revised documents; a list of the publications in which the information appears (e.g., website, student handbook, manual); and evidence of the electronic or other dissemination of the developed and/or revised documents to District administrators, District staff, District parents, and non-District personnel contracted by the District to provide educational services to District students.

### **III. Restraint and Seclusion Monitoring Program**

- A. By **May 15, 2022**, the District's director of student support services, or a qualified designee, will implement a monitoring program to assess the District's use of restraint and seclusion on a monthly basis. Each month, the District's director of student support services or a qualified designee will, at a minimum:
1. review all incidents involving the restraint and seclusion of District students to determine if the use of restraint and/or seclusion reflected an individualized determination based on the student's need and was consistent with District policy, written instructions, and related training;
  2. analyze whether the behavior(s) that led to the restraint and/or seclusion of a student were part of a pattern of behavior(s) that should have led District staff to seek an evaluation or reevaluation of the student;
  3. determine if District staff considered the impact of the restraint and/or seclusion on the student, and if this impact necessitated an evaluation or reevaluation of the student;
  4. if applicable, assess if the student's IEP or Section 504 team considered whether the student's current regular or special education and disability-related aids and services provided the student with a FAPE; and whether the restraint and/or seclusion caused

missed instruction and/or disability-related services resulting in the denial of a FAPE, and, if so, whether compensatory education and/or remedial services are necessary to address the denial of a FAPE;

5. ensure students without identified disabilities subjected to multiple and/or prolonged restraints and/or seclusions are evaluated for disability if appropriate;
6. review all restraint and seclusion documentation forms and debriefing forms to ensure that District staff properly complete the required forms;
7. compile, evaluate, and analyze data collected (i.e., incidents of restraint and seclusion broken down by school, staff, grade level, program, etc.) to assess whether incidents of restraint and/or seclusion have increased or decreased in number and duration and whether there are any particular location(s) or program(s) at the District where numerous incidents of restraint and/or seclusion occurred; and
8. identify concerns related to the District's use of restraint and/or seclusion, propose recommendations to address any concerns, and develop timelines for implementation of the recommendations.

#### **Reporting Requirements:**

1. By **May 15, 2022**, the District will provide documentation of its monitoring program developed under Item III.A to OCR.
2. By **October 28, 2022**, the District will provide documentation to OCR demonstrating that the District's director of student support services, or a qualified designee, completed the monthly reviews to date referenced in Item III.A. The District's report will identify all students who were subjected to restraint and/or seclusion during the time period reviewed, and for each such student specify: (a) the student's school, (b) whether the student is identified as having a disability; (c) the number of instances of restraint and/or seclusion, (d) whether any of those instances of restraint and/or seclusion resulted in physical injury to the student; (e) the total number of minutes that each student spent in restraint and/or seclusion during the 2021-2022 school year; (f) whether the student was evaluated or reevaluated as a result of the use of restraint and/or seclusion; and (g) if applicable, the date of the student's evaluation or reevaluation. If OCR requests any student records for students on the list, the District will provide such records within 30 calendar days of such request (e.g., documentation forms; debriefing forms; IEPs; Section 504 plans; BIPs; records of whether the incident(s) of restraint and/or seclusion of students without identified disabilities caused an evaluation to determine if the students qualified as individuals with a disability; and records of whether the incident(s) of restraint and/or seclusion of students with disabilities caused the students' IEP teams or Section 504 teams to reconvene, and reevaluate the students, and determine

whether the students required compensatory education and/or remedial services to address the denial of a FAPE).

#### **IV. Restraint and Seclusion Training**

A. Within 90 calendar days of OCR's written approval of the forms, instructions, and policy developed and/or revised pursuant to Item II.A and OCR's written approval of the training materials the District intends to use to comply with Item IV.A, and periodically as may be required by the policy adopted by the District pursuant to Item II. A.3 and annually thereafter, the District will provide required training on these documents, and the requirements of Section 504 and Title II, to all District teachers and administrators (i.e., principals, assistant principals, etc.), the student support services director and administrative assistant, and all District staff who work with students who are subject to restraint and/or seclusion, including all members of the IEP teams or Section 504 plan teams of students who have been restrained or secluded. The training will:

1. be provided by one or more trainers with expertise in the use of restraint and seclusion and Section 504 and Title II; and
2. cover the following topics, at a minimum:
  - a. the requirements of Section 504's implementing regulation at 34 C.F.R. §§ 104.33-104.36 regarding the District's obligation to provide a FAPE to students with disabilities;
  - b. 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;
  - c. the definitions of restraint, seclusion, timeout, physical restraint, prone restraint, physical escort, mechanical restraint, and safety devices, identifying which practices are prohibited;
  - d. how to minimize the use of restraint and seclusion;
  - e. alternatives to restraint and seclusion;
  - f. the safe use of restraint and seclusion;
  - g. when a student without an identified disability, where the student was subjected to repeated and/or prolonged restraints and/or seclusions, must be evaluated to determine if the student qualifies as an individual with a disability;

- h. how the restraint and seclusion of a student with a disability can result in the denial of a FAPE;
- i. when a student's IEP team or Section 504 team must convene to address the repeated use of restraint and/or 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;
- j. the District's restraint and seclusion policy, documentation form, debriefing form, and written instructions approved by OCR pursuant to Item II.A; and
- k. how District staff and parents can report concerns about the use of restraint and/or seclusion, including how and whether this use is being documented; the name(s), title(s), and contact information (phone number, office address, and e-mail address) to whom concerns should be reported; and how the District will respond.

### **Reporting Requirements:**

1. Within **60 calendar days** of OCR's written approval of the forms, instructions, and policy developed and/or revised pursuant to Item II.A, the District will provide to OCR for its review and approval the training materials the District intends to use to comply with Item IV.A and the qualifications of the proposed trainer(s). The District will promptly and fully address OCR's feedback, if any, until the District receives OCR's final approval of the training materials and trainer(s).
2. Within **90 calendar days** of OCR's written approval of the forms, instructions, and policy developed and/or revised pursuant to Item II.A and OCR's written approval of the training materials the District intends to use to comply with Item IV.A, the District will submit to OCR documentation to demonstrate its implementation of Item IV.A, including: the date(s) of the training(s); a copy of the training agenda; copies of training materials used; the name(s), title(s), and qualifications of the person(s) who provided the training(s); sign-in sheets showing the names, job titles, and employment locations (i.e., central office, school name) of all training attendees; and the names, job titles, and employment locations (i.e., central office, school name) of staff who did not attend the training(s) with a proposed date(s) to provide training to these individuals.

### **GENERAL REQUIREMENTS**

By signing this Agreement, the District understands that it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms and obligations



## APPENDIX A

As required by Paragraph II.A.1 of the Resolution Agreement, the District will revise the restraint and seclusion documentation forms as necessary to ensure that they include applicable definitions of physical restraint, mechanical restraint, and seclusion, and require the collection of the following information regarding each restraint and seclusion:

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

- n. if the student is a student with a disability, whether the student's IEP or Section 504 plan, including any Behavior Intervention Plan (BIP), was followed;
- o. the number of prior restraints and seclusions the student was subjected to during the school year;
- p. the activity or activities that the student missed during the restraint or seclusion (e.g., recess, lunch, a related service, special education, a specific general education class, a District or District-sponsored after-school program or activity, etc.);
- q. if the student is not identified as a student with a disability, whether the student is suspected of having a disability, and therefore, should be referred for an evaluation;
- r. if the student is a student with a disability, whether the student's IEP team or Section 504 team needs to discuss follow-up actions (e.g., reevaluating the student, discussing compensatory education and/or other remedial services for the student, etc.);
- s. the date, time, and method of parent notification;
- t. the date, time, and method of administrator notification;
- u. the name(s) and title(s) of the person(s) completing the form; and
- v. the date the form was completed.