



## U.S. Department of Justice

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### Civil Rights Division Educational Opportunities Section

*U.S. Mail:* 4 Constitution Square  
150 M St. NE, Rm. 10.1112  
Washington, DC 20530  
*Overnight:* 4 Constitution Square  
150 M St. NE, Rm. 10.1112  
Washington, DC 20002  
*Phone:* (202) 305-5791  
*Fax:* (202) 514-8337  
*Email:* James.Eichner@usdoj.gov  
Amelia.Huckins2@usdoj.gov

February 16, 2023

### *Via Electronic Mail Only*

Matthew Singer, Esq.  
Schwabe, Williamson, & Wyatt  
420 L Street, Suite 400  
Anchorage, AK 99501

### **Re: Anchorage School District Investigation**

Dear Mr. Singer:

We write regarding the results of U.S. Department of Justice's (the "Department") investigation into the Anchorage School District's (the "District" or "ASD") seclusion and restraint practices with respect to students with disabilities. The Civil Rights Division's Educational Opportunities Section conducted the investigation on behalf of the Department under Title II of the Americans with Disabilities Act ("Title II") as amended, 42 U.S.C. § 12132, and the Department's implementing regulations, 28 C.F.R. pt. 35, which prohibit disability discrimination by public entities. The Department appreciates the District's cooperation throughout our investigation. Specifically, we recognize the time that the District's staff dedicated to responding to our information requests and participating in meetings and interviews so that we could learn about the District's seclusion and restraint practices.

We appreciate that, before our investigation had concluded, the District expressed a desire to improve its practices and make positive changes for its students with disabilities, including by starting a process to end the use of seclusion in its schools. Since that time, the parties have worked together in a cooperative fashion to reach a resolution of the Department's investigation that would serve these goals and ensure the District's compliance with Title II. Those efforts culminated in the District and the Department entering into the attached settlement agreement on February 16, 2023.

The Department’s investigation concluded that the District engaged in disability discrimination through its seclusion and restraint practices during the 2018-19, 2019-20 and 2020-21 schools years (“the Relevant Period”)<sup>1</sup> by: (1) denying students with disabilities equal opportunity to participate in or benefit from the District’s education program, *see* 28 C.F.R. § 35.130(b)(1)(i); (2) using eligibility criteria that effectively subjected students with disabilities to discrimination, *see* 28 C.F.R. § 35.130(b)(8); and (3) failing to make reasonable modifications to avoid disability discrimination in the District’s program, *see* 28 C.F.R. § 35.130(b)(7).

The investigation primarily focused on five schools within ASD: the Whaley School, ASD’s special education school that exclusively serves students with disabilities who have “challenging behavior,”<sup>2</sup> and Baxter Elementary School, Kasuun Elementary School, Lake Hood Elementary School, and Tyson Elementary School. Baxter, Kasuun, Lake Hood, and Tyson were the four schools during the Relevant Period that housed the District’s School Based Behavior Support Program, which is designed to serve students with “challenging behaviors.”<sup>3</sup> The Department reviewed the following documents and data: District- and school-level policies and procedures on restraint and seclusion; Alaska state statutes, regulations, and guidance on restraint and seclusion; spreadsheets containing student and school-level restraint and seclusion data; voluminous incident reports describing seclusions and restraints; employee training materials related to restraint and seclusion and managing the behavior of students with disabilities; reports provided by the District to the State of Alaska regarding restraint and seclusion incidents; complaints filed on or behalf of students; documents related to student behavior and classroom behavior management; information about placement and programming at the five schools that were the focus of the investigation; and Individualized Education Programs (“IEPs”), Functional Behavioral Assessments (“FBAs”), and Behavior Intervention Plans (“BIPs”) for students who had been secluded and/or restrained during the relevant period. We also interviewed District and school administrators, advocates; and the parents/guardians of District students who were secluded and restrained.

Over the Relevant Period, the District reported secluding and/or restraining 227 students in nearly 4,000 individual incidents. Eighty-two percent of the students restrained and secluded by the District during that time were students with disabilities even though only 15% of ASD’s total student population had disabilities. The District’s use of restraint and seclusion resulted in students missing large amounts of instructional time. Additionally, some students subjected to prolonged and repeated seclusion engaged in self-harm and expressed suicidal ideation while secluded.

The investigation identified various practices during the Relevant Period that contributed to the District’s noncompliance with Title II. Despite state law and the District’s own policy, and contrary to generally accepted practice, the District did not limit its use of restraint and seclusion to “emergency” situations in which “the student’s behavior poses an imminent danger of injury to the student or others and less restrictive interventions would be ineffective at stopping the

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<sup>1</sup> Our conclusions pertain only to the years covered by our investigation.

<sup>2</sup> *About Whaley*, ANCHORAGE SCH. DIST., <https://www.asdk12.org/domain/3598>

<sup>3</sup> *The School Based Behavior Supports (SBBS) Program*, ANCHORAGE SCH. DIST., <https://www.asdk12.org/Page/6676> (last visited February 2, 2023).

imminent danger.”<sup>4</sup> Rather, the District used restraint and seclusion to address noncompliant student behavior (including to enforce school rules or prevent students from leaving a room or area) in the absence of any safety threat. Instead of implementing students’ BIPs and revising those as necessary, the District regularly and repeatedly secluded and restrained students in response to misbehavior that it should have anticipated and managed as part of educating students with emotional and behavioral needs. The District continued to use seclusion and restraint even when it appeared to escalate noncompliant behavior. ASD also often imposed vague and arbitrary criteria to determine when students could be released from seclusion that did not consider individual students’ disabilities.

We appreciate the District and its counsel’s assistance throughout our investigation and look forward to working with the District to implement the settlement agreement. If you have any questions about this letter, please do not hesitate to contact James Eichner ([james.eichner@usdoj.gov](mailto:james.eichner@usdoj.gov)) or Amelia Huckins ([amelia.huckins2@usdoj.gov](mailto:amelia.huckins2@usdoj.gov)).

Sincerely,

Shaheena A. Simons  
Chief  
Franz R. Marshall  
Deputy Chief



James A. Eichner  
Amelia K. Huckins  
Trial Attorneys  
Educational Opportunities Section

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<sup>4</sup> ANCHORAGE SCH. DIST., Board Policy (“BP”) 5142.3, Restraint and Seclusion, <https://www.boardpolicyonline.com/?b=anchorage> (last visited February 2, 2023); *see also* Alaska Stat. § 14.33.125(b).