



U.S. Department of Justice

Civil Rights Division



Spokane Public Schools

Settlement Agreement
between
The United States of America
and
Spokane Public Schools

BACKGROUND

The parties to this Settlement Agreement (“Agreement”) are the United States and Spokane Public Schools (“SPS” or the “District”) (collectively, the “Parties”).

On November 10, 2020, the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section, notified SPS that it was initiating an investigation to determine whether the District engages in improper isolation¹ and restraint practices that deny students with disabilities access to the District’s programs and services in violation of Title II of the Americans with Disabilities Act (“Title II”), 42 U.S.C. § 12132. Title II provides that no “individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. During its investigation, the United States requested, obtained, and reviewed policies and procedures, incident reports, and other relevant documents related to the District’s use of isolation and restraint. The United States also conducted virtual interviews of District- and school-level employees. Throughout the investigation, the District fully cooperated and worked in good faith to respond to the United States’ requests for information.

The United States’ investigation determined that the District discriminated against students on the basis of disability by denying them equal opportunity to participate in or benefit from the District’s education program, *see* 28 C.F.R. § 35.130(b)(1)(i); using eligibility criteria that effectively subject students with disabilities to discrimination, *see* 28 C.F.R. § 35.130(b)(8); and failing to make reasonable modifications to avoid disability discrimination in the District’s program, *see* 28 C.F.R. § 35.130(b)(7). Specifically, the United States concluded that the District improperly isolated and restrained students with disabilities and failed to use appropriate behavior interventions.

¹ Washington state law and Spokane Public Schools use the term “isolation” to refer to seclusion practices. For the purposes of this Agreement, “isolation” is used interchangeably with “seclusion.”

DEFINITIONS

- A. “**Administrators**” refers to all principals and assistant principals at any District school and District-level supervisors who oversee or evaluate their performance.
- B. “**Autism Behavior Learning Environment Program**” or “**ABLE Program**” is a District program that serves special education students with autism diagnoses who have particular emotional and behavioral needs.
- C. “**Behavior Intervention Program**” or “**BI Program**” is a program that serves District students who have severe emotional and behavioral difficulties. The BI Program provides intensive interventions related to social and emotional behaviors in addition to academic support.
- D. “**Behavior Intervention Plan**” or “**BIP**” refers to a plan created by appropriately trained professionals for an individual student, composed of positive behavioral interventions, strategies, and supports, which may include reasonable modifications to the nature of instruction, curriculum, or school routine. Such plans are typically developed based on the outcome of a Functional Behavioral Assessment and reflect feedback from parents or guardians regarding the emotional, mental, and physical health of the student, as well as other relevant data.
- E. “**Board Certified Behavior Analyst**” or “**BCBA**” refers to an individual who has been certified by an accredited organization, like the Behavior Analyst Certification Board.
- F. “**CPI**” refers to the Crisis Prevention Institute, Inc. CPI techniques are designed to permit the District to prevent and de-escalate behavior crises and to respond safely and effectively to incidents of acute behavior crisis that place the student or others at imminent and substantial risk of serious physical injury.
- G. “**Days**” means calendar days. If a deadline falls on a weekend; a District, state, or federal holiday; or a date when the District is otherwise closed, that deadline will be extended to the first regular business day following.
- H. “**De-escalation Techniques**” refers to a progression of non-verbal (e.g., body language, physical cues, and allowing personal space), verbal, and environmental (e.g., clearing a room of all other students to reduce risk to the individual or to others) interventions used to reduce student behavior that may pose a danger to the student or others.
- I. “**Designed Instruction Program**” or “**DI Program**” is a District program that provides a small classroom setting for students who have moderate to severe intellectual disabilities and delays in adaptive behavior. Curriculum in the DI Program focuses on functional skills in: communication, daily living, and social and functional academics, among other things.
- J. “**Emergency Response Protocols**” or “**ERPs**” are plans included as part of a student’s special education documents if the parent and the District decide that a student requires

advanced educational planning. ERPs may be used in the case of emergencies that pose an imminent likelihood of serious harm but may not be used as a substitute for a student's BIP.

- K. **“Functional Behavioral Assessment”** or **“FBA”** refers to a systematic process that is used to operationally define a behavior, identify factors that support the behavior, and determine the underlying function or purpose of a behavior, so that an effective BIP can be developed. An FBA describes the problem behavior, identifies preceding and subsequent events that control the behavior, and develops and tests a theory of the behavior.
- L. **“Incident Report”** refers to the District document(s) titled “Restraint/Isolation Report,” or “RAIR form,” including attachments, and all its subsequent iterations, and which the District uses to record what happened during a Restraint or Isolation.
- M. **“Instructional Staff”** refers to certified staff (e.g., teachers and counselors) and non-certified staff (e.g., teacher aides or paraprofessionals) who work directly with students.
- N. **“Isolation”** refers to the involuntary confinement of a student alone in any room or area, from which the student may not leave (or believes they are not free to leave) regardless of its name (including “safety room,” “chill area,” “chill zone,” “calming room,” “break area,” “quiet room,” or “regulation room”). It does not include a student’s voluntary use of a quiet space for self-calming or temporary removal of a student from his or her regular instructional area to an unlocked area with a staff member for purposes of carrying out an appropriate positive behavior intervention plan.
- O. **“Multi-Tiered Systems and Supports Specialists”** or **“MTSS Specialists”** are District employees responsible for overseeing the District’s implementation of MTSS interventions. MTSS Specialists assist and support building staff and administration in improving student performance in academic, behavior, and social skills for all students who are in need of accommodations or struggling in the school setting. MTSS refers to a three-tiered framework, such as Positive Behavior Interventions and Supports (“PBIS”), to enhance the use of a continuum of evidence-based practices to achieve important outcomes for every student.
- P. **“Restraint”** refers to any physical intervention or force used by any District employee or contractor to control a student in which the student involuntarily participates and that immobilizes a student or reduces the ability of that student to move the student’s torso, arms, legs, or head freely. The term includes physical contact with a student, such as by holding or grabbing a student to escort, compel, or coerce the student to move to another location within the school, and use of devices—such as handcuffs or ties—to immobilize the student. Restraint does not include a temporary touching of the hand, wrist, arm, shoulder, or back without applying pressure or force for the purpose of guiding or directing a student. It does not include appropriate use of a prescribed medical, orthopedic, or therapeutic device when used as intended, such as to achieve proper body position, balance, or alignment, or to permit a student to safely participate in activities.

An action need not be a trained technique to meet the definition of “Restraint” for purposes of this Agreement.

- Q. **“Student with a Disability”** or **“Students with Disabilities”** refers to a student(s) who has or would qualify to receive accommodations, reasonable modifications of policy, and/or disability-related services or supports under the Individuals with Disabilities Education Act (“IDEA”), the Americans with Disabilities Act (“ADA”), and/or Section 504 of the Rehabilitation Act of 1975 (“Section 504”).

TERMS OF AGREEMENT

I. GENERAL TERMS

- A. The District agrees that it will administer its education program, services, and activities in a manner that does not discriminate on the basis of disability and comply with Title II, 42 U.S.C. §§ 12132-1234, and its implementing regulation, 28 C.F.R. Pt. 35.
- B. The District agrees that it is in its best interest, and the United States believes that it is in the public interest, to resolve this dispute without engaging in litigation. The purpose of this Agreement is to address discrimination on the basis of disability in the use of Isolation or Restraints, and to improve educational opportunities for students with disabilities in the District.

II. INTERVENTION COORDINATOR

- A. Within 90 days of the effective date of this Agreement, the District will appoint an Intervention Coordinator (“Coordinator”) who is qualified to carry out all the responsibilities of that position.
- B. The Coordinator will carry out the responsibilities described below, including reviewing incidents, ensuring required follow-up occurs after each incident, evaluating and improving the District’s Restraint practices, overseeing training, and submitting status reports to the United States.
- C. In order to assure compliance with the terms of the Agreement, the Coordinator will oversee and assign compliance responsibilities to other employees as needed (e.g., to the BCBAs) and work closely with the Director of Special Education; MTSS Specialists; and the BI, DI, and ABLE Program Coordinators and Instructional Staff to implement FBAs and BIPs, proactive behavioral interventions, and responsive behavioral supports. The Coordinator will ensure that all staff, including BCBAs and MTSS Specialists, understand their job responsibilities as they relate to Restraints, as well as their additional responsibilities under this Agreement.

III. CLASSROOM-WIDE BEHAVIOR MANAGEMENT PLANS

- A. The District will create program-wide Classroom-Wide Behavior Management Plans (“Classroom Plans”) for classrooms in the BI Program, the DI Program, and the ABLE Program, with one Classroom Plan for each program at each level (i.e., elementary, middle, and high school). The Classroom Plans will document consistent and developmentally appropriate systems, rules, routines, and techniques used by Instructional Staff in classrooms in these programs and will govern both activities in the classroom and the integration of the students in these classrooms into the programming of the schools. The Classroom Plans will be based on data analysis and high-leverage practices. The District will ensure that the Classroom Plans do not discriminate against Students with Disabilities; will ensure equal opportunities to all

students to participate in and benefit from programs, services, or activities; and will discourage the use of Restraint. A Classroom Plan is distinguishable from a student's individualized plan.

- B. The Classroom Plans will be based on data analysis of the factors that influence student and staff behavior including time, location, academic activity (including the subject and its difficulty) and identify behavior problems using analysis of context and an antecedent behavior consequence ("ABC") model.
- C. The Classroom Plans will focus on proactive strategies, promote and reinforce positive behaviors, and ensure that Instructional Staff employ appropriate De-escalation Techniques designed to address student misbehavior without escalating more extreme behavior. To the extent the Classroom Plans use an incentive system involving points, points will be awarded, but never subtracted based on behavior.
- D. To the extent the Classroom Plans set generally applicable behavior goals for students in the class, those goals must be reasonable in light of the abilities of the students in the class.
- E. By July 1, 2023, the District will submit the Classroom Plans to the United States for review and approval. If the United States does not approve the Classroom Plans, it will provide comments and edits to guide the District's revisions.
- F. The District will explain to parents/guardians the Classroom Plans, and all subsequent updates, for each classroom to which their child is assigned, and provide them with a copy of all such Classroom Plans. Parents/guardians will have an opportunity to ask questions and to request reasonable modifications that allow individual students to deviate from the Classroom Plan. The District will provide reasonable modifications to its Classroom Plans for individual students when necessary to accommodate their disabilities and integrate them into the classroom population. The District may approve or deny requested modifications, as appropriate, in accordance with individual student needs.

IV. ISOLATION PRACTICES

- A. The District will prohibit the use of Isolation. This includes any practice that would constitute isolation under Washington law, Wash. Rev. Code § 28A.600.485(1)(a), and Isolation through use of mats, behind a door, and in a former Isolation room or a room designated by another name (e.g., "regulation room" or "calming room").
- B. The District will prohibit the use of any rooms or areas in any school buildings for the Isolation of students and will not place students in the former Isolation rooms, including for any student behavioral or disciplinary purpose.
- C. Within 10 days of the effective date of this Agreement, the District will notify all employees regarding the prohibition on Isolating students.

- D. Within 60 days of the effective date of this Agreement, the District will revise its Isolation policies to reflect the terms of this Agreement and will submit all policies revised under this Section to the United States for review and approval. If the United States does not approve any such policies, it will provide comments and edits to guide the District's revisions.

V. RESTRAINT PRACTICES

- A. Restraint is prohibited unless the student's behavior poses an imminent likelihood of serious harm to the student or others. Restraint may not be used as a form of discipline or punishment, to prevent property destruction where there is no imminent likelihood of serious harm to the student or others, to force compliance with staff directions to a student, as a convenience to staff, or as a substitute for appropriate educational support.
- B. Restraint may not be used to move a student from one location to another or prevent a student from leaving a classroom or any other physical space, unless the staff person reasonably believes the failure to move that student or to prevent that student from leaving the classroom or other physical space will create an imminent likelihood of serious harm to that student or others.
- C. Restraint may be used to protect staff and students only as a last resort after all appropriate De-escalation Techniques have been implemented without success in addressing the immediate behavior crisis and District staff reasonably believes that less restrictive interventions would be ineffective at stopping the imminent likelihood of serious harm.
- D. Only a staff member who is trained in CPI and who is using a CPI-approved technique may conduct a Restraint of a student. In the event there is an imminent likelihood of serious harm and no CPI-trained staff members are available, then a staff member who is not trained in CPI may conduct a Restraint. Following such Restraint, the District will take all reasonable steps to ensure that staff members trained in CPI are available. Staff may use protective equipment in accordance with approved crisis prevention methods but not to Restrain or Isolate a student.
- E. Restraint of a student must end when the student's behavior no longer poses an imminent likelihood of serious harm to the student or others or when a less restrictive intervention would be effective at stopping the imminent likelihood of serious harm. A predetermined length of time or a timer may not be used to determine the end of a Restraint.
- F. The District will revise its Restraint policies to reflect the terms of this Agreement and develop a guidance document summarizing the Restraint policy, including definitions of key terms and examples and non-examples of Restraint and Isolation. Within 60 days of the effective date of this Agreement, the District will submit its guidance and all policies revised under this Section to the United States for review

and approval. If the United States does not approve any such policies or guidance, it will provide comments and edits to guide the District's revisions.

VI. DOCUMENTATION AND MONITORING

- A. For any instance of Isolation or Restraint, the District must complete an Incident Report.
- B. The District will revise its Incident Report form to ensure spaces to also record the following information:
 - i. Location of the behavioral incident from beginning to end, including location of the Isolation or Restraint;
 - ii. The precipitating events to the behavior that led to the Isolation or Restraint, including antecedents, contextual variables, and staff and student behaviors leading up to the incident;
 - iii. All De-escalation Techniques used or other actions taken prior to the use of Isolation or Restraint that demonstrate that less restrictive interventions would have been ineffective, which staff member attempted the technique, the student's response to each technique, and, if the student has a BIP, whether those techniques and interventions are aligned with the student's current BIP;
 - iv. Separately list each instance of Isolation or Restraint during an incident, and for each, the action by the student that prompted each use of Isolation or Restraint, the start and stop time of the Isolation or Restraint, the technique used, and the student and staff behavior during the Isolation or Restraint, including the student's physical condition during the Isolation or Restraint. All Isolations or Restraints that occur during one instance may be recorded on one form as long as each instance contains the above information;
 - v. All staff involved in the incident, including, but not limited to, staff involved in administering the Restraint or any De-escalation Techniques, and the role each staff person played in the incident. For each incident, the District will make every reasonable effort to ensure at least one staff member serves as the designated notetaker. The notetaker(s) will be identified as such on the form;
 - vi. Wellness check of a student for physical and mental health following the incident and the outcome of the wellness check;
 - vii. How the Isolation or Restraint resolved (i.e., whether the student returned to class and if so, what time, or whether the student was suspended, expelled, or picked up by a parent/guardian);
 - viii. Narrative notes from staff, student, and parent/guardian debriefs, and the results of each debrief;

- ix. Multiple options for follow-up after an incident, including, in addition to the prompts currently offered, an open response option and options for consultation with an MTSS Specialist, a BCBA, or the Director of Special Education, such that the MTSS Specialists, BCBA's, or Director of Special Education will be alerted by the option being selected;
 - x. Whether a related disciplinary form has also been completed for the same incident (and on the disciplinary form, whether an Incident Report has also been completed); and
 - xi. Timeline for reviewing the student's FBA and BIP (in accordance with Paragraph VI(H)) and who is responsible for reviewing it.
- C. Within 90 days of the effective date of this Agreement, the District will submit the revised Incident Report form to the United States for review and approval. If the United States does not approve the revised Incident Report form, it will provide comments and edits to guide the District's revisions.
- D. The Incident Report will be completed by a staff member who was involved in the incident. When staff complete the Incident Report, they will:
- i. Include complete information for each field on the form, including all of the information described in Paragraph VI(B);
 - ii. Include all required information on the form itself, rather than referring to other documents. Where it is necessary to refer to another document on the form, other than a document maintained in a central database such as a student's BIP or other individualized plan, that document will be attached to the Incident Report and uploaded to the District's database as part of the Incident Report;
 - iii. Provide objective descriptions of the student's behavior and use action words instead of characterizing the behavior (e.g., "student was yelling" rather than "student was angry");
 - iv. Make all reasonable attempts to ensure that all staff members involved in administering the Isolation or Restraint review and sign the Incident Report; and
 - v. Provide notes of what was discussed during the staff, student, and parent/guardian debriefs, and the results of each debrief, including any decisions made, any action plan for follow-up and the timeline for implementation, and who is responsible for the follow-up. All staff debriefs must include discussion of whether CPI-aligned practices were followed and effective, alternative options rather than using a Restraint or Isolation, and opportunities for defusing or redirection that were missed.

- E. The District will maintain a central database that captures all relevant information on Restraints and Isolations, including from the Incident Reports, disciplinary forms, and staff-made forms and notes on student behavior, and supports the review and analysis provided for below. This database will allow the District to sort the data by all of the relevant variables (e.g., school, program, date, student name, grade level, gender, race/ethnicity, type of disability, Restraint technique used, length of Isolation or Restraint, and staff member(s) involved) and run reports that show the frequency of Restraints or Isolations meeting those criteria, accurately capturing multiple Restraints or Isolations recorded in a single Incident Report. The Coordinator, BCBA, and MTSS Specialists will have access to the information and forms stored in this database; all school Administrators will have access to the information and forms stored in this database related to their schools; and certified Instructional Staff will have access to the information and forms stored in this database related to their students. This database will be a standard source of data used in developing FBAs and BIPs.
- F. If consultation with an MTSS Specialist, BCBA, the Director of Special Education, or any other staff member is requested on the Incident Report, the meeting will take place within 5 school days, and notes and outcomes from the meeting will be recorded within 10 school days and stored in the student's files and in the central database described in Paragraph VI(E).
- G. All Incident Reports will be submitted to the school principal for review and approval. The principal (or, if the principal is involved in the incident, another Administrator or the Coordinator who was not involved in the incident) will review the Incident Report with the relevant staff within 2 school days² to identify:
- i. Any failure to properly complete the Incident Report (including failing to provide all required information on the form). The principal will immediately work with staff to correct failures to properly complete the Incident Report; and
 - ii. Any instance where the use of Restraint did not comply with District policy (as modified by this Agreement). If the principal identifies any such issue, the principal will immediately notify the Coordinator in writing and work with the Coordinator or their designee (e.g., a BCBA) to take appropriate corrective action (e.g., additional guidance or training to the involved staff or putting in place additional monitoring). The principal will submit the form to the Coordinator with a description of suggested follow-up steps.
- H. All Incident Reports will be reviewed by the Coordinator or their designee within 3 school days to:
- i. Ensure that all Restraints met the requirements of Section V of this Agreement. The Coordinator or designee will evaluate and note in writing

² If, due to extenuating circumstances, the District is unable to meet the 2 school days deadline in this Paragraph or the 3 school days deadline in Paragraph VI(H), the District will ensure the task is completed within 5 school days.

whether the use of Isolation or Restraint met each requirement of this Agreement, including whether staff completed the forms properly, conducted required debriefs, and determined appropriate follow-up. Should the Coordinator or designee determine that a use of Isolation or Restraint did not comply with this Agreement or the report was not properly completed, the District will take immediate appropriate remedial action, and the Coordinator or designee will meet with the principal, assistant principal, and relevant staff to discuss the issue and remedial action. After review and debriefs are complete, the Coordinator or designee will sign the Incident Report to signify its review and completion. All notes from debriefs and action items from any remedial action taken will be recorded in the central database described in Paragraph VI(E); and

- ii. Determine if the student has a current BIP, and, if so, whether it was implemented consistent with its purpose and terms during the incident (including during the actions by staff that preceded the use of Restraint).
 - (a) If the BIP was not implemented consistent with its purpose and terms, the District will take appropriate corrective action to ensure it will be followed in the future, including re-training, coaching, and monitoring.
 - (b) If no BIP was in place, or the BIP was implemented consistent with its purpose and terms but proved ineffective, except for in the event of an isolated incident,³ the District will immediately begin conducting an FBA and, if the results of the FBA show a BIP is necessary, developing an accompanying BIP for that student.
 - (c) The FBA and any resulting BIP must be properly completed by an appropriately trained professional and implemented within 35 school days of the incident occurring.⁴ During this process, the District will take all reasonable steps to avoid the recurrence of Isolation or Restraint. All BIPs will be individualized. The District will document this determination and any action steps taken as a result in the student's files and in the central database described in Paragraph VI(E). The Coordinator will also ensure that all FBAs and BIPs required because of the use of Isolation or Restraint are properly completed by the deadlines provided in this Agreement.

- I. Monthly at each District school with CPI-trained staff, all staff involved in an incident of Restraint or Isolation, and any other relevant staff at that school, will

³ "Isolated incident" means the behavior that prompted the Isolation or Restraint was unprecedented for that student or the result of a unique circumstance that is unlikely to recur or have a lasting impact on the student's behavior. To determine if the behavior was an isolated incident the school must review the student's behavioral history and gather information from District staff and the student's parents/guardians. In such a case the school must explain in writing why it has determined this standard is met and the Coordinator must approve that explanation.

⁴ Wash. Admin. Code §§ 392-172A-03005(3), 392-172A-03015(3).

discuss all incidents of Restraint or Isolation, including discussing what went well and what could be improved, reviewing implementation of function-based interventions for compliance with CPI-approved practices and for consistency with the purpose and terms of student plans, evaluating Incident Reports for missing or insufficient information, and troubleshooting any difficulties in implementing interventions. The staff will then simulate the events leading up to the incident to practice De-escalation Techniques, alternative interventions, and Restraint procedures and CPI-approved techniques. If there were no incidents of Isolation or Restraint that month, staff should choose an incident from a prior academic year or another school to review and practice. Notes from these meetings should be recorded and maintained at each school and shared with the Coordinator. At the end of the 2023-2024 school year, the United States will reevaluate the District's need for these monthly meetings to determine whether this requirement may be modified.

- J. At least every 6 months, the Coordinator or their designee, will meet with the Administrators and relevant staff from any school with a BI, DI, or ABLÉ Program that has used Restraint or Isolation in the prior 6 months, as well as the ten District schools with the highest rates of Restraint and Isolation in the prior 6 months. During the review meeting, the attendees will examine the school's Restraint and Isolation practices by reviewing Incident Reports and all relevant data in order to:
- i. Identify patterns involving particular students, staff (including action by staff that escalated student misbehavior), classrooms, or programs; patterns among students at the school in general (e.g., high rates of elopement or patterns by disability classification, race/ethnicity, behavior type, gender, or grade level); and particular risks at the school (e.g., near a high-traffic street) and determine how to address those patterns and risks to reduce the use of Restraint and Isolation;
 - ii. Assess the effectiveness of the De-escalation Techniques used and devise ways to improve those techniques;
 - iii. Evaluate whether staff are using appropriate Restraint techniques;
 - iv. Discuss ways to improve the school's staff, student, and parent debrief process;
 - v. Evaluate the quality of the FBAs conducted and BIPs developed, and identify ways to improve their effectiveness; and
 - vi. Evaluate whether interventions put in place for students were implemented consistent with the purpose and terms of the plan and whether the interventions proved effective, and identify ways to increase effectiveness of interventions and promote consistent and full implementation of the plan.
- K. After each school review provided for in Paragraph VI(J) above, each school will implement all appropriate school-level changes identified by the review. Within 14 days of the review meeting, the school Administrators will submit a written report to

the Coordinator summarizing the results of the review meeting, including all changes being made at the school level, all changes the school recommends be made at the District level, and all training needs identified. Each school will maintain records of its implementation of each change. For every recommended change at the District level, including the identification of training needs, the District will document how it has implemented the recommended change or record the reasons why it has not implemented the change.

- L. At the end of each school year, the Coordinator will review Restraint and Isolation data from the preceding school year, including from the central database described in Paragraph VI(E) and complaints received pursuant to the complaint procedure described in Section VIII, to identify patterns at particular schools, within particular programs, or among students (e.g., students who have attended multiple District schools). The Coordinator will work with the Director of Special Education to identify any remedial action needed in the District, such as needs for additional training, hiring additional staff, policy revisions, increased monitoring and observation, or any other effort to reduce rates of Restraint and Isolation. The Coordinator will submit a written report to the Superintendent identifying the results of the review and any remedial action recommended. For each recommended action, the District will document how it implemented the action or record why it is not implementing the recommended action. If, during this review, the Coordinator identifies additional schools, other than those provided for in Paragraph VI(J), that have problematic patterns of Restraint or Isolation, the Coordinator will add those schools to the biannual school review requirements in Paragraph VI(J).

VII. STUDENT BEHAVIOR PLANS

- A. The District will review the BIPs of each currently enrolled District student who was subjected to Isolation and/or Restraint from August 2018 through the effective date of this Agreement. If the District determines that any BIP is inadequate (e.g., not current, not individualized, not aligned with the functions of a student's target behaviors, or not in compliance with the terms of this Agreement), it will revise that BIP and conduct a new FBA to inform development of the revised BIP, if necessary. All BIPs will be individualized. By the end the 2023 calendar year, the District will complete this review and will provide to the United States in writing the total number of BIPs that were updated pursuant to this review.
- B. To the extent that the District continues to use ERPs to permit use of Restraint, the District will create ERPs on an individual basis and only when the documented history of the intensity of the student's behaviors in the past makes it necessary. To avoid improper use of Restraint, the ERP will explicitly describe the behaviors and conditions that constitute imminent likelihood of serious harm under which the student may be Restrained and will encourage use of De-escalation Techniques. All staff who may be in a position to Restrain the student under this protocol must be familiar with the student's individualized ERP (including triggers, De-escalation Techniques, and history of self-harm) and BIP. ERPs will be individualized and added to the end of a student's special education documents.

- C. Before the start of the 2023-2024 school year, the District will review all ERPs of current District students to ensure they comply with the terms of this Agreement. To the extent that an ERP does not comply with the terms of this Agreement, the District will promptly revise the ERP or will remove it from a student’s special education documents. Once completed, the District will provide to the United States in writing the total number of ERPs reviewed, updated, and removed pursuant to this review.
- D. Before the start of the 2023-2024 school year, the District will eliminate use of “Success Plans” in lieu of BIPs for all Students with Disabilities. For any student currently subject to a “Success Plan,” the District will evaluate whether the student instead requires an FBA and a BIP. If so, the District will promptly conduct an FBA and develop a BIP within 35 school days of this determination.

VIII. COMPLAINT PROCEDURE

- A. The District will develop a complaint procedure to ensure that the District responds in a timely fashion to all complaints regarding the use of Isolation and Restraint.⁵
- B. The new complaint procedure will:
 - i. Allow complaints to be made orally or in writing by any student, parent, guardian, advocate, staff member, or other individual;
 - ii. Designate the individual(s) who will accept, process, and adjudicate complaints and require all District employees to refer complaints to the individual(s) designated;
 - iii. Require the District to include, in its policies and procedures on Isolation and Restraint and everywhere else information about Isolation and Restraint is provided (e.g., the District’s website, Incident Reports, and student handbooks), a notice informing students, parents, guardians, staff members, and other individuals of their ability to file a complaint and of the complaint procedure;
 - iv. Ensure that verbal complaints are reduced to writing and that all complaints are maintained in a central District database;
 - v. Ensure that all complaints will be adjudicated within 60 school days of receipt by the District and that, as a part of the adjudication, a written explanation of the resolution is provided simultaneously to all parties involved;
 - vi. Ensure that the District will take all appropriate remedial action in response to each complaint and will document all remedial action taken; and

⁵ This complaint procedure is a separate process and in no way impacts the District’s obligations to respond to complaints under any other statute, including, but not limited to, the IDEA.

- vii. Prohibit any adverse action including, but not limited to, retaliation, harassment, or negative educational consequence, against the student or complainant (or any member of their family) or any other individual (or any member of their family) for filing the complaint or otherwise participating in the complaint process.
- C. Within 60 days of the effective date of this Agreement, the District will submit the complaint procedure to the United States for review and approval. If the United States does not approve the complaint procedure it will provide comments and edits to guide the District's revisions.

IX. NOTICE TO PARENTS/GUARDIANS

- A. Within 10 days of the effective date of this Agreement, the District will publish on the home page of its public website and on all school websites a summary of this Agreement with a link to the United States' website to access the full text of this Agreement.
- B. Within 10 days of the effective date of this Agreement, the District will disseminate this summary to every District employee via email and confirm dissemination in writing to the United States.
- C. Within 20 days of the effective date of this Agreement, the District will notify in writing all parent(s)/guardian(s) of currently enrolled students who were subjected to Isolation and/or Restraint, from August 2018 through the effective date of this Agreement, of the number of times the student was subjected to each of these practices during that period. The notice will include information about the availability of compensatory education and counseling as provided for in Section X for families who request these services.
- D. When a student is subjected to Isolation or Restraint, the principal or designee must make every reasonable effort to notify the student's parent or guardian orally by the end of the school day. A copy of the official, completed Incident Report will be provided to the student's parent(s) or guardian(s) within 3 school days.
- E. If a school requests that a parent or guardian of a Student with a Disability come to the school because of that student's behavior, the District may not require the parent or guardian to take a student home from school (or encourage the parent or guardian to do so) unless the student has been assigned an out-of-school suspension or expulsion, provided, however, that a parent who is called to school because of a student's behavior and requests (without any prompting or coercion) to take the student home may be permitted to take the student home from school.

X. COMPENSATORY EDUCATION AND COUNSELING

- A. For each currently enrolled District student who was subjected to Isolation and/or Restraint from August 2018 through the effective date of this Agreement, the District will offer counseling to address the effects of Isolation and/or Restraint and any

events that contributed to the behaviors involved in the Isolation and/or Restraint. For each student who elects to receive such counseling in response to the District's offer, the District will offer no less than one hour of counseling per documented incident and as much time as the counselor determines is needed. The District will offer counseling from a qualified mental health counselor, which may include a qualified District or school counselor.

- B. For each District student subjected to Isolation and/or Restraint since August 2018 through the effective date of this Agreement, the District will offer compensatory education for every hour, rounded up to the nearest hour, the student was denied educational services while being Restrained or Isolated. For each student who elects to receive compensatory education, the District will offer the opportunity to select among the following form(s) of compensatory education to be provided at District expense:
 - i. Instruction/remedial tutoring through distance learning outside of school hours;
 - ii. Instruction/remedial tutoring provided in person outside of school hours;
 - iii. Summer school or other education programs outside of school hours for which the child would not have otherwise qualified or been allowed to attend; and/or
 - iv. Additional counseling sessions as described in Paragraph X(A) to supplement what is provided in X(A).
- C. The District will designate a point of contact to facilitate such services who will serve as a liaison for families.

XI. TRAINING

- A. All training provided under this Agreement will be conducted live (in person or via video-conference) and will include instruction for participants with examples (and non-examples), modeling, opportunities for practice and feedback, and time for review and reflection.
- B. Within 90 days of the date the District appoints the Coordinator, the District will provide the Coordinator with all training required to fulfill the responsibilities of that position.
- C. The Coordinator will ensure implementation of annual training for BCBA's, Program Coordinators, MTSS Specialists, and Administrators. The Coordinator will also ensure annual training for certified staff in each BI, DI, and ABLE Program, supplemented with ongoing observation and in-service coaching in coordination with the BCBA's. The training will cover federal and state laws prohibiting discrimination on the basis of disability including, Title II of the ADA, Section 504, and the IDEA, and how to develop reasonable modifications requested by families; the District's Isolation and Restraint policies; conducting FBAs and developing and implementing

individualized BIPs; and the terms of this Agreement, including all procedures, forms, and responsibilities described herein.

- D. In addition to the training described in Paragraph XI(C), the Coordinator will ensure implementation of annual training to MTSS Specialists and Instructional Staff in each BI, DI, and ABLE Program on topics including the proper use of Restraint, with opportunities to practice techniques; non-intrusive alternatives to Restraint and Isolation that address underlying behaviors that lead to Restraint or Isolation (including De-escalation Techniques, when the “take a break” directive is appropriate, and discussion of principles and functions of behavior); and all aspects of PBIS as a method of behavior management (including how to provide and evaluate the effectiveness of individualized supports and interventions).
- E. For each training required by this Agreement, the District will maintain:
 - i. An attendance log reflecting the date of the training, name and title of the instructor, and names and titles of attendees; and
 - ii. A log of employees who were required to, but did not, attend the training and the date the employee subsequently completed the required training.
- F. The Coordinator will ensure that all staff attend the required training outlined in this Agreement. If a staff member misses the training for any reason, the Coordinator will promptly notify the delinquent staff member and ensure that the training is completed within 3 months. If the staff member fails to complete the training within 3 months, the District’s standard progressive discipline policies for staff members delinquent on mandatory trainings will apply.
- G. All newly-hired staff will complete the mandatory training for their position within 3 months of being hired.
- H. Within 120 days of the effective date of this Agreement, the District will submit a detailed overview of the training described in this Section to the United States for review and approval. If the United States does not approve the trainings, it will provide comments and edits to guide the District’s revisions.

XII. REPORTING

- A. On or before January 31 and July 31 of each year this Agreement is in effect, the District will provide a status report to the United States that includes all information below. The January status report will cover the preceding July through December; the July status report will cover the preceding January through June.
- B. Each District status report will provide, for each paragraph in Sections II through XI, a narrative describing the District’s efforts to comply with that paragraph since the last status report (or since the effective date of the Agreement in the case of the first status report) and all documents that demonstrate the District’s efforts to comply with that paragraph, including, but not limited to:

- i. A spreadsheet, listing separately for each school, the number of times students were subject to (1) Restraint and (2) Isolation;
- ii. A spreadsheet of every instance in which a student was subjected to Restraint or Isolation, including, for each incident, the student's name, a unique student identifier, the student's race/ethnicity, the student's gender, the student's disability status, the student's disability (if applicable), the student's grade level, the date and location of the incident, the school at which the incident occurred, and the name(s) of the staff member(s) who performed the Restraint or Isolation;
- iii. Copies of all Incident Reports regarding the use of Restraint or Isolation from every District school completed in the prior 6 months, the written evaluations of those reports, and documentation of any remedial action taken as a result of that evaluation as required by Paragraph VI(G) and VI(H);
- iv. Copies of all reports submitted to the Coordinator and/or Superintendent pursuant to Paragraphs VI(K) and VI(L), accompanied by a narrative describing the District's implementation or decision not to implement each recommended action;
- v. Copies of all complaints received pursuant to Section VIII and their adjudications;
- vi. A spreadsheet of each student receiving compensatory education or counseling in accordance with Section X, including the student's name, grade, school, and a description of the compensatory education or counseling the student has opted to receive;
- vii. A list, date, and description of all trainings conducted in the prior 6 months to satisfy the requirements of Section XI, including, for each school, the number of staff members who were required to complete the training and the number who successfully completed the training;
- viii. A list, date, and description of all training the District plans to conduct in the following 6 months to satisfy the requirements of Section XI;
- ix. Copies of the most recent versions of all FBAs and BIPs completed for students in any BI, DI, or ABLE Program classroom pursuant to the provisions of this Agreement; and
- x. Copies of all ERPs permitting Restraint or Isolation completed since the prior status report.

XIII. TERMS & ENFORCEMENT

- A. Upon reasonable notice to the District, the United States may request additional documents or data, tour schools, monitor trainings for quality and substance, and

conduct any other compliance activities that the United States determines are necessary to monitor the District's implementation of the Agreement.

- B. For any term of this Agreement that requires the District to submit policies, training materials, notices, or other documents to the United States for review and approval, if the United States does not approve any such policies, training materials, notices, or other documents, it will provide comments and edits to guide the District's revisions and the Parties will in good faith negotiate new timelines under which the District must have completed the relevant task. The United States agrees to work in good faith with the District to provide such comments and edits and to agree on adjusted timelines as needed to ensure compliance with the Agreement.
- C. In consideration for entering this Agreement, the United States will refrain from undertaking further enforcement action relating to this investigation or from filing a civil action alleging discrimination based on the findings of the United States' investigation, except as provided in Paragraph XIII(D).
- D. If the United States determines that the District has failed to comply with the terms of this Agreement or has failed to comply in a timely manner with any term of the Agreement it will so notify the District in writing. If the Parties are unable reach a satisfactory resolution of the issue(s) within 30 days of the United States providing notice to the District, the United States may initiate civil proceedings in federal court to enforce the Agreement and/or the District's underlying obligations under Title II.
- E. Subject to paragraph XIII(B), the Parties anticipate that the District will have complied with this Agreement by the end of the 2025-26 school year. When the District provides the United States with the last status report, due July 31, 2026, the United States will have 90 days to raise any remaining concerns regarding the District's compliance with the Agreement.
 - i. If the United States does not raise any concerns regarding the District's compliance, the Agreement will terminate.
 - ii. If the United States does raise any concerns regarding the District's compliance, the Parties will attempt to resolve those concerns cooperatively. If the Parties are unable to reach a negotiated resolution, the enforcement mechanism in Paragraph XIII(D) will apply.
- F. To the extent that the District uses contractors or other providers to serve its students, it is the responsibility of the District to ensure those entities fully comply with the terms of this Agreement.
- G. If any part of this Agreement is held to be unlawful, or otherwise unenforceable for any reason by a court of competent jurisdiction, such decision will not affect the validity of any other part of this Agreement.
- H. This Agreement constitutes the entire agreement by the Parties, and no other statement, promise, or agreement, whether written or oral, made by any party or

agents of any party, that is not contained in this written Agreement will be enforceable regarding the matters raised in this Agreement.

- I. This Agreement is between the United States and the District and is not enforceable by third parties.
- J. This Agreement is applicable to and binding on the District, including its officers, agents, employees, successors, and assigns.
- K. The undersigned representatives of the Parties certify that they are authorized to enter into and consent to the terms and conditions of this Agreement and to execute and legally bind the Parties to it.
- L. The effective date of this Agreement is the date of signature below.

SIGNATURES OF PARTIES TO THE AGREEMENT

For Spokane Public Schools:

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Date: April 17, 2023