



Civil Rights Division, U.S. Department of Justice



Frederick County Public Schools

Summary of
Settlement Agreement
between
The United States of America
and
The Frederick County Public Schools



Overview

This document summarizes the Settlement Agreement between the United States and Frederick County Public Schools (“FCPS”) to address discrimination against students with disabilities in school seclusions and physical restraints.

The United States Department of Justice, Civil Rights Division, Educational Opportunities Section and the U.S. Attorney’s Office for the District of Maryland opened an investigation under Title II of the Americans with Disabilities Act in October 2020 and reached a settlement agreement with FCPS on December 1, 2021.

The goal of this summary is to raise awareness of the Settlement Agreement and share the steps FCPS is taking to address disability discrimination and inappropriate seclusions and physical restraints in its schools. It will also help students and parents better understand the changes that will take place as a result of this Agreement.

This summary is for people who may not have a legal background.



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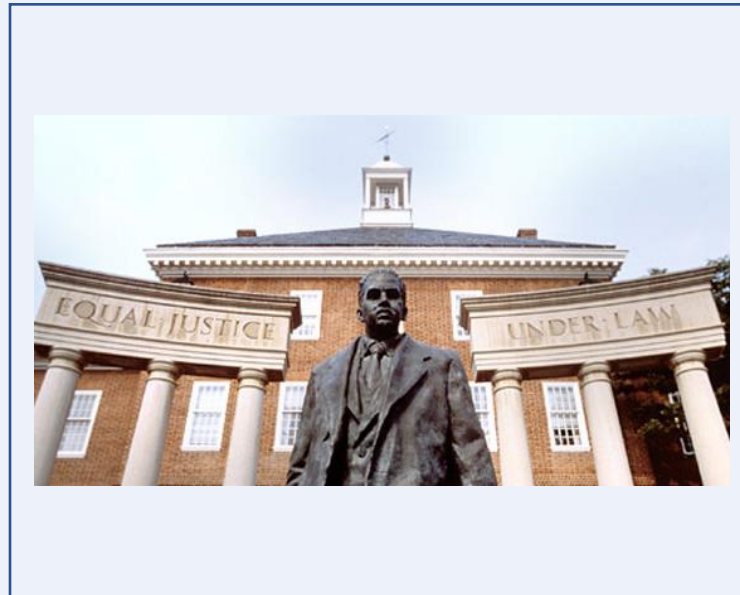


Sections 1 & 2: General Prohibitions Against Discrimination and District Policy

Highlights

FCPS will follow federal anti-discrimination laws, including Title II of the Americans with Disabilities Act (ADA). FCPS will update district policies to include the new ban on seclusions. The new policies will also describe appropriate physical restraint practices in schools.

Please go [here](#) for more information on the ban on seclusions and [here](#) for more information on appropriate physical restraint practices.





Staffing Changes and Requirements: Sections 3, 4 & 5

Section 3: Board Certified Assistant Behavior Analysts (Part 1 of 2)

Highlights

- All behavior support specialists who are assigned to self-contained classrooms will now need to be Board Certified Assistant Behavior Analysts (“BCaBAs”).
 - Until the start of the 2023-2024 school year, staff members who are currently enrolled in a BCaBA certificate program will satisfy this requirement.
 - FCPS behavior support specialists who are currently assigned to self-contained classrooms, but who are not BCaBAs, will have the opportunity to obtain the certification and will receive ongoing support and professional development.
- Every school with a self-contained classroom will have at least one BCaBA. There will be at least one BCaBA for every 20 students.
 - The BCaBA staffing requirement does **not** apply to self-contained classrooms in the Learning for Life program.



Board Certified Assistant Behavior Analyst (“BCaBA”): A person who has been certified by an accredited organization, like the Behavior Analyst Certification Board.



Staffing Changes and Requirements: Sections 3, 4 & 5

Section 3: Board Certified Assistant Behavior Analysts (Part 2 of 2)

- BCaBAs will:
 - Review all physical restraint forms within one school day of when the forms are completed.
 - Collect information on the number of physical restraints per student and schoolwide for their school.
 - Meet with staff involved in a physical restraint to review practices at their school and report findings to the BCaBA Supervisor and school principal.
 - Oversee the completion of Functional Behavior Assessments (FBAs) and the development of Behavior Intervention Plans (BIPs) for students in self-contained classrooms.
 - Review the BIPs of every student currently enrolled in FCPS who was physically restrained between the 2017-2018 and 2020-2021 school years. If the BCaBA finds that a BIP is inadequate, they will oversee changes to the BIP and conduct a new FBA if necessary.
 - Monitor the effectiveness of BIPs weekly and provide support to school-based teams on appropriate behavior interventions.

Functional Behavior Assessment (FBA): A process used to describe a student's behaviors, identify factors that are associated with a behavior, and determine the underlying reasons for or purpose of a behavior. The purpose of an FBA is to help develop an effective Behavior Intervention Plan (BIP).

Behavioral Intervention Plan (BIP): A plan created for a student that includes positive behavioral interventions, strategies, and supports. This plan could include reasonable changes to the form of instruction, curriculum, or school routine. These plans are usually based on an FBA, and they reflect feedback from parents/guardians about the emotional, mental, and physical health of the student and other relevant information.



Staffing Changes and Requirements: Sections 3, 4 & 5

Section 4: BCaBA Supervisor



Highlights

- FCPS will create a new position: BCaBA Supervisor. This person will be a full-time board-certified behavior analyst who supervises all BCaBAs.
- The BCaBA Supervisor will:
 - Hold school-level meetings at least once each semester with administrators, BCaBAs, and others who have used physical restraint since the last meeting.
 - Write reports on the number of physical restraints and how effectively each school used behavior interventions.
 - Resolve problems in coordination with the Superintendent, Directors of the Special Education Department, and relevant school administrators.
 - Report data to the U.S. Department of Education as part of the Civil Rights Data Collection.

Section 5: School Principals

Highlights

- School principals will identify any incomplete incident reports or incidents of physical restraint that did not comply with district policy and report them in writing to the Special Education Department Directors.
- School principals will work with BCaBAs to collect and review student-specific and schoolwide physical restraint data on a weekly basis.



Section 6: Seclusion Practices

Highlights

FCPS will immediately end the use of seclusion.

As of December 10, 2021, FCPS removed all locking mechanisms from seclusion rooms.

FCPS will not place students in the former seclusion rooms for any behavioral or disciplinary purposes.



Seclusion: When a student is put in a room or area against their will, with or without adult supervision, and the student is not allowed to leave the room. Seclusion does not include putting a student in an unlocked room that the student can leave. Seclusion also does not include placing a student in a separate location within a classroom with others or with a teacher where that student continues to receive instruction and can leave the location, and knows they can leave the location.



Section 7: Physical Restraint Practices

Highlights

Physical restraint may only be used in emergency situations in which physical restraint is necessary to protect a student or other person from imminent (about to happen), serious, physical harm after less intense, nonphysical responses have failed or been determined inappropriate.

- Physical restraint may only be used by certified teachers, administrators, or BCBAs who received training on the correct use of physical restraint.
- Physical restraint must end when it is no longer necessary to protect a student or other person from imminent (about to happen), serious, physical harm.
- Any time a student is physically restrained, within 10 school days, the school will hold an IEP meeting to determine the need for an FBA and get permission from the parent to conduct an FBA, if necessary. BCBAs will coordinate and oversee the FBA if one is deemed necessary.
- After every physical restraint, the BCBA assigned to the school or classroom, the classroom teacher, the school therapist, and all staff who performed the physical restraint will attend a debrief meeting and complete the newly created debrief form within three school days of each physical restraint.

Physical restraint: When school staff or another person restricts a student in a way that stops or reduces the student's ability to freely move their torso, arms, legs, or head. Physical restraint does not include a physical escort, which refers to a temporary touching or holding of the hand, wrist, arm, shoulder, or back of the student for the purpose of making a student walk to a safe location, when the contact does not continue after arriving at the safe location.



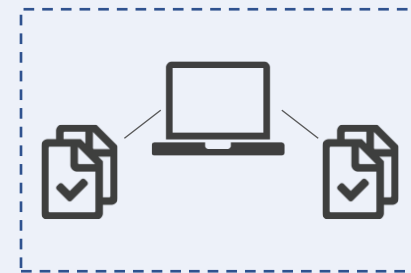
Section 8: Documentation

Highlights

FCPS will develop an electronic system for storing all physical restraint reports.

FCPS will use its updated “Physical Restraint Incident Report” to document:

- what happened immediately before the student’s behavior;
- behavior descriptions;
- techniques used to try to calm the student down;
- the physical restraint techniques used;
- the time the physical restraint began and ended; and
- the role each staff person played in the incident.



When staff fills out a physical restraint incident report, they will include all required information, provide detailed descriptions of the student’s behavior, and provide a copy to the appropriate BCaBA on the day the incident occurs.



Section 9: Complaint Procedure

Highlights

FCPS will develop a complaint process to ensure it quickly responds to all complaints about the use of physical restraint.

- Complaints can be spoken or in writing by any student, parent, guardian, staff member, or other person.
- Determinations regarding all complaints will be made within 60 calendar days.
- FCPS will take all appropriate action to fix problems in response to each complaint.
- FCPS will provide a written explanation of the resolution to everyone involved.
- FCPS will not allow any retaliation, harassment, or negative educational consequence against any person (or their family member) who makes a complaint or participates in the complaint process.



Student



Parent



Guardian



Staff
Member



Other
Person

FCPS will submit its proposed complaint process to the United States for review and approval. If the United States does not approve the complaint process, FCPS and the United States will work together to produce a final complaint process the United States approves.



Section 10: Special Education Procedures and Documentation

Highlights

FCPS will create Behavior Intervention Plans (BIPs) that will address each behavior in need of intervention, with prevention and intervention strategies for each behavior that include positive behavior supports and services.

Before the use of physical restraint can be allowed/permitted in an IEP or BIP, FCPS will consider the child's existing health, physical, psychological, and psychosocial information, and any reason not to use physical restraint due to a history of trauma, and document the consideration of these factors in the IEP.

FCPS will notify staff about the limits on physical restraint contained in students' IEPs.





Section 11: Law Enforcement

Highlights

Any time FCPS staff requests that a School Resource Office (“SRO”) or other law enforcement officer respond to student behavior, that staff person will complete a written report that includes:

- The date, location, and the name, race, grade, and disability status of the student;
- A description of the behavior that led to the SRO or law enforcement request;
- All efforts used to calm the student prior to contacting the SRO or law enforcement;
- The type of physical restraint performed, if restraint was performed; and
- The names and titles of all staff and SRO(s) involved.

The BCaBA Supervisor will review each report within two school days and will immediately let the Superintendent know if any incident did not comply with standards. FCPS will take immediate, effective action to address non-compliance.

FCPS will invite all SROs to attend FCPS’s Crisis Prevention Institute trainings and other physical restraint trainings.





Section 12: Staffing

Highlights

FCPS will create a multi-year plan to hire more teachers with special education certifications and will create incentives for current employees to get special education and BCaBA certifications.



FCPS will submit this plan to the United States for approval and will implement the plan as soon as they can after including the United States' comments.





Section 13: Training

Highlights

The BCaBA Supervisor will hold a required training for all BCaBAs, school administrators, and any person trained to use physical restraints on the appropriate use of physical restraint by March 2022. The training will also include an overview of the harms of physical restraint and FCPS' new documentation and debrief requirements.

All BCaBAs, school administrators, and certified teachers trained to use physical restraints will complete Crisis Prevention Institute training within 90 days and the training will be renewed every year.

The BCaBA Supervisor, in consultation with the Director or Supervisors of the Department of Special Education, will develop a yearly course for all instructional staff that addresses:

- Federal and state laws;
- Information about behaviors;
- Proper use of physical restraint;
- Individualized supports;
- How to properly complete the forms;
- Complaint procedure; and
- Successful debriefing.

The BCaBA Supervisor will also create a yearly course for special education teachers that addresses:

- Performing FBAs;
- Developing and using successful BIPs; and
- Writing behavioral goals and using instruction connected with those goals.



Section 14: Notice to Parents/Guardians

Highlights

The Settlement Agreement requires FCPS to:

By January 25, 2022, publish a summary of the Settlement Agreement with a link to the United States' website to access the full agreement.

By January 25, 2022, provide a summary of the Settlement Agreement to the parents/guardians of all FCPS students who were enrolled in self-contained classrooms at any time from August 2017 until the time of the agreement.

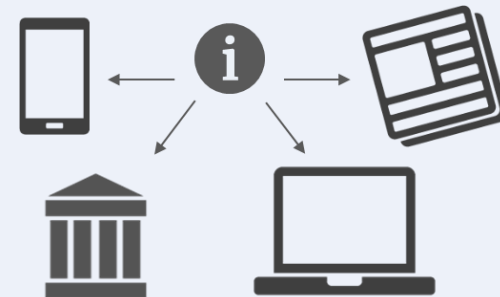
By January 3, 2022, notify all parents/guardians of currently enrolled students who were secluded or physically restrained of the number of times the student was secluded or restrained and the availability of compensatory education (more information on this below).

Going forward, when a student is physically restrained, FCPS must tell the student's parent/guardian by the end of the school day and provide the incident report to them within three school days.

Section 15: Reporting

Highlights

FCPS will provide status reports to the United States.





Section 16: Compensatory Education

Highlights

Every student currently enrolled in FCPS who was secluded and/or physically restrained during the 2017-2018 through the 2020-2021 school years will be offered three months of weekly, one-hour counseling sessions with a licensed therapist to be chosen and paid for by FCPS.

- FCPS will consider transportation needs and provide transportation assistance.

Additionally, every student who was secluded and/or physically restrained during the 2017-2018 through the 2020-2021 school years will be offered compensatory education for every hour, rounded up to the nearest hour, the student was denied educational services while being secluded or physically restrained.

- For example, if a student was subjected to 3.6 hours of seclusion/physical restraint during the 2017-2018 school year, FCPS will offer that student 4 hours of compensatory education.

Parents/guardians will select among the following options, which will be paid for by FCPS:

- Instruction/tutoring through distance learning outside of school hours;
- Instruction/tutoring provided in person outside of school hours;
- Summer school or other education programs outside of school hours for which the child would not have otherwise qualified or been allowed to attend;
- Additional therapy sessions; or
- Any other form of compensatory education chosen by FCPS in discussion with the parent/guardian and approved by the United States.





Contact Information

Frederick County Public Schools

If you have concerns about discrimination in any FCPS school, please reach out to the Director of Human Resources/Title IX Coordinator.

Contact Information: Chantress Baptist

Email: chantress.baptist@fcps.org or EEO-TitleIX@fcps.org

Phone: (301) 644-5081

U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section

If you have concerns or information about seclusion or physical restraint in FCPS, submit a complaint to the Department of Justice through the [Civil Rights Division Complaint Portal](#).