

Settlement Agreement
between
The United States of America
and
Okaloosa County School District

TABLE OF CONTENTS

Definitions of Agreement Terms	3
Section 1. Introduction & General Terms	7
Section 2. Behavior Management Supports	9
Section 3. Training	13
Section 4. The Use Of Seclusion & Restraint	16
Section 5. Documentation & Reporting of Restraint	20
Section 6. Restraint Incident Review	21
Section 7. Complaints & District Investigations	24
Section 8. Hiring, Transfers, & Human Resources	26
Section 9. Reporting Requirements	27
Section 10. Enforcement	31
Section 11. Terms & Termination	32
Signatures of Parties to the Agreement	33
Appendix A. Summary of Training Requirements	34
Appendix B. Reporting Deadlines	36

DEFINITIONS OF AGREEMENT TERMS

- A. **“Behavior Intervention Plan”** or **“BIP”** refers to a plan created by appropriately trained professionals for an individual student and agreed on by the student’s IEP team or parent/guardian and teacher(s), comprised 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 Behavior Assessment and reflect feedback from parents or guardians about the emotional, mental, and physical health of the student, as well as other relevant data.
- B. **“Behavioral Staff”** refers to the District’s hired Behavioral Interventionists, Behavioral Analysts, and Board Certified Behavior Analysts.
- C. **“Crisis Management”** refers to classroom management and verbal intervention strategies that enable teachers and staff to handle and respond to disruptive, threatening, and/or dangerous student behavior.
- D. **“Crisis Response Team”** refers to the group of Employees at a school who receive specialized Crisis Response Training in De-escalation and Restraint and are authorized to use Restraint in accordance with Section 1003.573, Florida Statutes and District policy and the terms set forth in this Agreement.
- E. **“Crisis Response Team Member”** refers to an Employee who has been designated as a Crisis Response Team Member by the Employee’s school or the Director of Transportation and meets the requirements of Section 4.C.2.
- F. **“Crisis Response Training”** refers to a qualified training program that teaches Employees De-escalation Techniques, alternatives to Restraint, and how and when to properly use Restraint if necessary. As of the date of execution of this Agreement, the District uses the Quality Behavioral Solutions Safety-Care Behavioral Safety Training or “QBS Training” program for its Crisis Response Training.
- G. **“Days”** means calendar days. If a deadline falls on a weekend, District, state, or federal holiday, or a date when the District is otherwise closed, that deadline will be extended to the next regular business day.
- H. **“DCF”** refers to the Florida Department of Children and Families.
- I. **“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 other students) interventions used to reduce the probability that behavior will reach crisis levels or that restraint would be needed.

- J. **“Document”** or **“Documentation”** includes all written, printed, and electronic records and communications.
- K. **“Employee”** means a person legally holding a position at the District as an employee. This term includes full-time, part-time, permanent, probationary, temporary, intermittent, casual, and per-diem employment positions.
- L. **“ESE”** refers to Exceptional Student Education.
- M. **“ESE Case Manager”** refers to the ESE-certified teacher who is responsible for overseeing a student’s IEP.
- N. **“Exclude,” “Exclusion,”** or **“Exclusionary”** means the formal (e.g., out-of-school suspension, in-school suspension, alternative placement, Shortened School Days, and expulsion) or informal (e.g., parent pickup or other involuntary removal) exclusion of a student from school.
- O. **“Functional Behavior Assessment”** or **“FBA”** refers to a process used to define a behavior, identify factors that support the behavior, and determine the underlying function or purpose of the behavior to inform the development of an effective Behavior Intervention Plan. The process identifies pupil-specific, socio-affective, cognitive, and/or environmental factors associated with the occurrence (and non-occurrence) of a behavior to understand the function of the behavior. An FBA describes the problem behavior, identifies preceding and subsequent events that control the behavior, and informs a testable theory of the behavior. Qualified professionals conduct an FBA by reviewing student records (including the student’s disciplinary record and other relevant data), conducting interviews with the teacher(s), student (when appropriate), and the student’s parents or guardian, conducting direct observations, and collecting and analyzing additional sources of assessment data (e.g., rating scales).
- P. **“Individualized Education Plan”** or **“IEP”** refers to a plan or program developed to ensure that a child with an identified disability who is attending an elementary or secondary educational institution receives specialized instruction and related services. *See* 20 U.S.C. § 1401(14).
- Q. **“Multi-Tiered Systems and Supports”** or **“MTSS”** refers to a three-tiered framework, such as Positive Behavior Interventions and Supports (“PBIS”), to enhance use of a continuum of evidence-based practices to achieve important outcomes for every student. Tier I refers to the systems and supports that are intended to be provided to all students; Tier II refers to systems and supports that are intended to be provided to a targeted group of students who need additional levels of support; and Tier III refers to systems and supports that are intended to be provided to certain students who need intensive individualized support.
- R. **“OCSO”** refers to the Okaloosa County Sheriff’s Office.

- S. **“Paraprofessional”** refers to any District-employed non-instructional classroom support staff.
- T. **“Restraint”** refers to physical contact between an Employee and a student in which the student unwillingly participates and that involves the use of a manual hold to restrict freedom of movement of all or a part of the student's body or to restrict normal access to the student’s body. The term includes holding or grabbing a student to compel or coerce the student to move to another location within the school. For the purposes of this Agreement, Restraint does not include mechanical restraint,¹ chemical restraint, or 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. An action need not be a Crisis Response Training technique to meet the definition of Restraint for purposes of this Agreement.
- U. **“School Administrator”** refers to a school’s principal or assistant principal.
- V. **“School Resource Officer”** or **“SRO”** refers to a police officer assigned to or stationed in the District’s schools, employed by either the District or the OCSO.
- W. **“Seclusion”** refers to the involuntary confinement of a student alone in a room or area. It includes the use of any room or area in which a student is involuntarily confined alone regardless of its name. It does not refer to any location where the school authorizes a student to go voluntarily to engage in calming or de-escalating behavior, so long as the student is permitted to leave at will. The State of Florida and school board policy prohibit Seclusion.
- X. **“Self-Contained Classroom”** refers to a classroom comprised only or primarily of Students with Disabilities where an ESE teacher is or should be responsible for instruction in all or nearly all academic subjects. This definition includes “Communication & Behavioral Disabilities,” “Emotional Disabilities,” and “Varying Exceptionalities” classrooms.
- Y. **“Shortened School Day”** refers to any day that a student receives educational services for less time than age/grade-level peers within the same school or school program at the direction of the District or its Employees for disciplinary or classroom management reasons.
- Z. **“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, or disability-related services or supports under the Individuals with Disabilities Education Act

¹ A “mechanical restraint” is any device that restricts a student’s freedom of movement. Mechanical restraint does not include the use of devices prescribed or recommended by physical or behavioral health professionals when used for indicated purposes. Fla. Stat. § 1003.573(1)(c)(1).

("IDEA"), the Americans with Disabilities Act ("ADA"), or Section 504 of the Rehabilitation Act of 1975 ("Section 504").

AA. "United States" refers to the U.S. Department of Justice.

* * *

Section 1. INTRODUCTION & GENERAL TERMS

A. Purpose of Agreement

In September 2020, the Educational Opportunities Section of the United States Department of Justice’s Civil Rights Division (the “United States”) opened an investigation into the Okaloosa County School District’s (the “District”) response to reported allegations of physical abuse, verbal abuse, and improper restraint and seclusion of students with disabilities by school employees in the District as early as the 2015-2016 school year. The United States conducted this investigation under Title II of the Americans with Disabilities Act (“Title II”), 42 U.S.C. § 12132. Among other materials, the United States reviewed District and school-level policies and procedures, training materials, both District and DCF investigative reports into allegations of abuse, and incident reports on restraint and seclusion. The United States also conducted interviews of District and school-level employees. Throughout the investigation, the District fully cooperated with and worked in good faith to respond to the United States’ requests for information; the United States appreciates the District’s cooperation.

The Parties agree to resolve the United States’ investigation through this Agreement. The purpose of this Agreement is to address allegations of discrimination on the basis of disability in the use of seclusion and restraint and to further improve services to students with disabilities in the District. The United States recognizes that prior to the initiation of its investigation, the District had already taken steps to strengthen its provision of services to students with disabilities; address its implementation of restraint and seclusion; and respond to allegations of physical and verbal abuse of students by District employees.

The District agrees to continue implementing its improvement to policies and practices and to incorporate the measures in this Agreement. The District expressly denies any violations of any laws applicable to any matters covered under this Agreement, including Title II of the ADA, or the United States’ investigation of these matters.

B. General Prohibition Against Disability Discrimination

The District will continue to comply with Title II of the ADA, 42 U.S.C. §§ 12132-1234, and its implementing regulation, 28 C.F.R. Pt. 35.

C. Revision of Policies and Procedures

The District will review and revise its existing policies and procedures as needed to align with the requirements of law that form the basis of this Agreement.

D. Co-Existence with Federal and State Law and Regulations

The Parties agree that this Agreement’s terms will exist in addition to or alongside existing state-law requirements. If either Party desires to modify any portion of this Agreement

because of a conflict between a new state law and the District's obligations under this Agreement, the requesting Party will promptly notify the other Party in writing setting forth the facts and circumstances thought to justify modification and the substance of the proposed modification. The requesting Party also will provide a proposed alternative provision. The proposed modification will not take effect until the other Party approves it in writing. The Parties will not unreasonably withhold or delay approval.

Section 2. BEHAVIOR MANAGEMENT SUPPORTS

A. Strengthening MTSS Processes

- 1.** The District will continue training all schools on how to address student needs, including behavior management concerns, with the goal of having a consistent MTSS program fully implemented with fidelity in all of its schools by the first day of the 2023-2024 school year.
- 2.** The District will revise its MTSS Manual to reflect the following conditions:
 - a.** The role of the MTSS Team will include developing Tier II and Tier III behavioral interventions; reviewing the effectiveness of behavioral interventions for individual students, including any student who has experienced two restraints in a semester and lacks an IEP team, *see* Sec. 4.G.; identifying Tier III interventions for any student who has been restrained two or more times in the prior semester; and evaluating for potential Tier II or Tier III interventions for any student with more than two incidents resulting in out-of-school suspensions in the prior month; and
 - b.** The MTSS Team will typically include at least one School Administrator, a MTSS Coordinator, one general education teacher, an ESE Case Manager (if applicable), and at least one school counselor, school psychologist, social worker, mental health counselor, or Behavioral Staff member.
- 3.** Each MTSS meeting will have a written agenda. The MTSS Team will document collaboration notes in the student’s Progress Monitoring Plan (“PMP”) or IEP for students with an eligibility. The School will maintain the agendas and PMP/IEP for at least three years.
- 4.** Within 30 days of the Agreement’s execution date, the District will:
 - a.** Submit to the United States a revised MTSS Manual. The United States will provide feedback within 45 Days of receipt. After the United States provides its feedback, the District and the United States will agree on a schedule to implement any required changes by the Spring 2023 semester or by the first day of the 2023-2024 school year, depending on the substantiality of the United States’ feedback and feasibility of implementation.
 - b.** Identify an MTSS Team at every school and provide the United States with the team rosters, including each member’s name and position.
 - c.** Submit to the United States each school’s tentative MTSS Team meeting schedule for the 2022-2023 school year.
 - d.** Submit its current plan for fully implementing MTSS with fidelity in all the District’s schools, including all major milestones and deadlines, to the United States. The

United States will review and either approve or provide feedback on the plan within 30 Days of receipt.

B. Related Services

- 1. ESE Paraprofessionals:**
 - a.** A District administrator will continue to oversee Paraprofessionals' professional development and training.
 - b.** At the beginning of each school year, the District will clarify to school staff the following District practices: A School Administrator for each school holds supervisory authority over Paraprofessionals in the school and provides Paraprofessionals with annual written evaluations. School Administrators may designate teachers to provide Paraprofessionals with day-to-day tasks and feedback.
 - c.** The school/ESE Case Manager will include ESE Paraprofessionals in meetings and trainings that relate to the disabilities, supports, or management techniques for their assigned students or classroom.
- 2. Transportation:** The following provisions apply to buses that primarily transport ESE students.
 - a.** As soon as practicable each school year, and no later than the 30th Day of the fall semester, Behavioral Staff will identify Students with Disabilities who experienced at least one Restraint in the past school year on the bus or whom the District reasonably believes have behaviors that may manifest during transport and will develop transportation-focused behavior plans for these students. If any student on the bus gets a new plan, support, or strategy related to transportation, including the provision of an additional or individual aide when appropriate on the bus, the transportation staff must be made aware of the new plan, support, or strategy and be equipped to implement it effectively. Behavioral Staff will coach transportation staff on how to implement modifications in transportation behavior plans for any student on their bus.
 - b.** Before the 30th day of each school year, the District will inform and train bus drivers and transportation assistants in the use of behavior management supports and De-escalation Techniques; IEP accommodations, if any; BIP, if any; or other individualized considerations relevant to bus conduct for any Students with Disabilities they will transport. Any bus driver or transportation assistant assigned to a bus that primarily transports ESE students after the school year begins will attend the next scheduled training on behavior management supports and De-escalation Techniques.

- c. Only Employees informed about and trained to effectively implement a specific student’s behavior-management supports and interventions that may be necessary during transportation; IEP accommodations, if any; BIP, if any; or other individualized considerations relevant to bus conduct may load or off-load that student to and from the bus. If such Employees are not available, a similarly informed School Administrator may load or off-load the student.
 - d. When a Restraint is conducted on a bus, the District will review bus camera footage of the Restraint, with sufficient time before and after the Restraint to assess the appropriateness of the Restraint. The District will also review at least five hours of that bus’s camera footage for the month the Restraint occurred to determine if other Restraints were conducted. The District will pursue any unlawful acts by bus drivers or transportation assistants shown in the footage.
 - e. Annually, the District will train transportation staff on when it is appropriate to involve a police officer, including any SRO, in student incidents. The District will explain that police are not expected to respond when an incident neither poses a direct threat to safety nor would be considered a crime.
- 3. Behavioral Staff:**
- a. Behavioral Staff will collaborate with teachers and Paraprofessionals to implement the individualized supports for specific Students with Disabilities in their classrooms; to assist with the creation of BIPs and crisis intervention plans; to provide coaching, modeling, and constructive feedback on implementation of supports; to advise, as needed, on classroom-wide age- and disability-appropriate behavior-management and De-escalation Techniques; to support collection of behavioral data on students; to implement antecedent interventions that reliably prevent severe behavior; and to assess the effectiveness of existing behavior-management and De-escalation Techniques for each student;
 - i. Behavioral Staff will support the District’s processes for students after a Restraint occurs. *See Sec. 4.G.*
 - ii. Behavioral Staff will also provide District teachers and Paraprofessionals with modeling and constructive feedback to support the District’s use of non-restrictive behavior management techniques. *See Sec. 3.D.*
 - b. Florida Statutes require a crisis intervention plan be started after two Restraints with the same student within a semester. For any student who experiences two Restraints in a semester, the District will provide to that student additional supports from Behavioral Staff.

- c. The District will align its BIP template with evidence-based practices and require use of the updated template for all BIPs. Within 30 Days of the Agreement's execution date, the District will provide the BIP template to the United States for the United States' review and approval. As BIPs are created and routinely revised, the District will replace all current BIPs with BIPs that are consistent with the updated BIP template. The District will ensure that all BIPs expected to be used by the first day of the 2024-2025 school year reflect the updated BIP template.

Section 3. TRAINING

A. Intervention Coordinator:

1. Within 90 Days of the Agreement's execution date, the District will designate an Intervention Coordinator who is qualified to carry out all the responsibilities of the position, as detailed below.
2. Consistent with the requirements of this Agreement, the responsibilities of the Intervention Coordinator are the following:
 - a. To develop, coordinate, and supervise all initiatives described in Sec. 2.B. and Sec. 3 of this Agreement;
 - b. As requested, to advise the ESE Program Director in the review of Restraint Incident monthly data, per Sec. 6 of this Agreement;
 - c. To review Restraint Incident Reports, per Sec. 6 of this Agreement; and
 - d. To evaluate, assess fidelity of implementation of, and improve the District's Restraint practices, including its provision of preventive behavior management and Crisis Prevention strategies, implementation of Restraint, and appropriate debriefing and responsive actions after a Restraint occurs.
3. Within five months of the Agreement's execution date, the District will provide the Intervention Coordinator with all training required to fulfill the responsibilities of their position.

B. Mandatory Training: In addition to the District's current mandatory training program, the District's Intervention Coordinator will facilitate the implementation of the professional development provisions described below. All trainings provided to meet this Section's requirements will include instruction that provides participants with examples of what to do and not do, modeling, opportunities for practice and feedback, and time for review and reflection.

1. All MTSS Team Members, ESE teachers assigned to a Self-Contained Classroom, and Paraprofessionals assigned to a Self-Contained Classroom will receive the following professional development during the 2022-2023 school year and annually after:
 - a. Training on the fundamentals of function-based perspectives and approaches to behavior, including on principles of behavior and principles of reinforcement; function-based assessments and interventions, including full and brief FBA processes; appropriate behavioral data collection methods; and how to appropriately use data to evaluate and assess fidelity to an intervention plan;

- b.** An orientation session on Behavioral Staff's role in supporting the provision of services to Students with Disabilities, including collaborating with teachers on developing behavior-management strategies and providing constructive feedback on implementation of those supports to individual students.

All ESE teachers and Paraprofessionals assigned to a Self-Contained Classroom for the 2022-2023 school year will receive these trainings as soon as practicable and no later than February 1, 2023. All ESE teachers and Paraprofessionals assigned to a Self-Contained Classroom after January 1, 2023, will receive these trainings as soon as practicable and no later than 45 Days after their assignment to the Self-Contained Classroom.

- 2.** The District will supplement its annual mandatory Child Abuse and Neglect Training with examples of Employee-on-student abuse. This supplement will explain how to distinguish between appropriate and inappropriate touching of a student in the school setting; what constitutes physical and verbal abuse; and the negative impacts of abuse.
- 3.** All Employees who receive Crisis Response Training will also receive a training supplement that effectively trains them on the use of De-escalation Techniques, including how to use function-based perspectives to select De-escalation Techniques.
- 4.** Before the 30th Day of each school year, the District will ensure all ESE teachers and Paraprofessionals in Self-Contained Classrooms are familiar with and trained to implement effectively the behavior-management supports, De-escalation Techniques, and IEP or BIP accommodations for each student in their classroom.

C. Training on Use and Reporting of Physical Restraint:

- 1.** All Crisis Response Trainings conducted by an Employee about the use of Restraint will explain the risks and harms associated with Restraint.
- 2.** The two school employees identified as Restraint reporters, the ESE Program Director, and the Director of ESE will complete annual training on documenting Restraint. The training will explain the rationale for documentation; the requirements for and how to write clear and objective reports; how to evaluate reports for sufficient detail, accuracy, and appropriate use of Restraint; procedures for responding to inappropriate Restraint; and remediating poor reporting practices. This training will include direct, hands-on practice writing sample reports, which the trainers will review.

D. Observations and Feedback of ESE Instructional Coaches and Behavioral Staff:

1. The District will ensure that ESE instructional coaches and Behavioral Staff are available to train general education and ESE teachers on how to effectively document use of behavior management techniques.
 2. The District will provide training as needed so ESE instructional coaches and Behavioral Staff can effectively execute their duties.
- E. At least 30 Days before the beginning of each semester, the District will submit to the United States a proposed overview and schedule of the trainings that will be conducted the upcoming semester to fulfill the requirements of this Section.

Section 4. THE USE OF SECLUSION & RESTRAINT

A. Seclusion

1. The use of Seclusion is prohibited by Florida law and District Policy. The District has eliminated rooms or areas in all school buildings for Seclusion. The District will continue prohibiting Seclusion.
2. The District will continue to use behavior management strategies, supports, and De-escalation Techniques to reduce the incidents of Students with Disabilities being disciplined and/or Excluded from their classroom because of behaviors related to their disabilities.
3. The District will electronically track in FOCUS or its replacement system all Exclusions of Students with Disabilities from either educational instruction or from BIP/IEP/Crisis Intervention Plan-approved therapeutic supports.

B. Restraint

1. The District will require compliance with School Board Policy 04-45 on the use of Restraint throughout the District.
2. If the District desires to modify School Board Policy 04-45 or implement new policies, procedures, or guidelines about using Restraint, it will submit those proposed modifications to the United States for review and approval. The District will provide the United States at least 45 Days to review and either approve or provide feedback on the proposed modifications. The District may implement the proposed modification only after the United States approves it.

C. School Crisis Response Teams

1. The District will develop a procedure explaining the role and responsibilities of Crisis Response Teams, including who is eligible to serve on a Crisis Response Team; what members' roles and responsibilities are; when the Crisis Response Team should be called; that a Restraint is appropriate only as a last resort to prevent the imminent risk of serious injury to the student or others and if appropriate De-escalation Techniques have been implemented without success; that a Restraint must end when the student's behavior no longer poses an imminent risk of serious injury to the student or others; and the potential risks and harms of a Restraint. Within 45 Days of the Agreement's execution date, the District will submit the proposed procedure to the United States for review and approval. The District will provide the United States at least 45 Days to review and either approve or provide feedback on the proposed procedure. The District may implement the proposed procedure only after the United States approves it.

2. A School Administrator will designate for their school a Crisis Response Team that meets the following requirements:
 - a. Every Crisis Response Team will consist of at least two school-based Employees.
 - b. At least one of the Employees on the Crisis Response Team will be a School Administrator.
 - c. SROs may not be on the Crisis Response Team.
 - d. When designating the Crisis Response Team for their school, the School Administrator will inform the Central Office in writing of the school's Crisis Response Team Members for that school year. The School Administrator will also inform the Central Office in writing of how it plans to address incidents when fewer than two Crisis Response Team Members are available and authorized to implement a Restraint. *See Sec. 4.F.3.*
3. An Employee designated to join a Crisis Response Team will meet the following requirements before the Employee is a Crisis Response Team Member:
 - a. Take the initial or refresher Crisis Response Training before joining the Crisis Response Team. Consistent with the District's existing policy requiring annual refresher training, Crisis Response Training is valid for one year from the date of successful completion; and
 - b. Confirm they have received and agree to the District's procedures on the Crisis Response Team's roles and responsibilities.
4. Employees who do not timely complete their annual Crisis Response Training will be removed from the Crisis Response Team on the day their annual Crisis Response Training expires. School or District Administrators also may remove Employees from the Crisis Response Team at will, with written notice to the Employee and the School Administrator on the school's Crisis Response Team.

D. Tracking Crisis Response Team Membership

1. The District's Central Office will systematically track the Crisis Response Team Members at each school and when an Employee last completed Crisis Response Training.
2. The District will quarterly identify any Crisis Response Team Member whose annual Crisis Response Training will expire in the next three months. The District will notify any such identified Crisis Response Team Member and the relevant school principal that the Crisis Response Team Member's annual Crisis Response Training will expire in the next three months.

3. If at any point the District identifies an Employee who is listed as a Crisis Response Team Member, but whose Crisis Response Training has expired, the District will promptly notify the relevant school principal, explain that the Employee is ineligible for the Crisis Response Team, and confirm that the Employee has been removed from the Crisis Response Team.

E. Restraint Procedures

1. Employees will engage in appropriate behavior-management strategies, including individualized interventions and supports, before a student is in crisis and requires Crisis Management.
2. If a student needs Crisis Management, the Employee(s) interacting with the student will request assistance from the Crisis Response Team.
3. At least two Crisis Response Team Members will respond to any request for assistance in a school.

F. Post-Restraint Procedures

1. Within one Day of any Restraint, the Crisis Response Team Member(s) who imposed the Restraint will notify the school's assigned Behavioral Staff and ESE Case Manager, if applicable, that the Restraint occurred.
2. If any student who does not have an applicable BIP experiences two Restraints in a semester, the District will immediately initiate an FBA, subject to parent/guardian consent, and begin developing an accompanying BIP for that student. The FBA and BIP will be properly completed by an appropriately trained professional and implemented.
3. After a student's second Restraint in a semester and after each subsequent Restraint that school year, the Crisis Response Team will consult with the student's IEP Team, if the student who was restrained has an IEP, or the school's MTSS Team, if the student who was restrained does not have an IEP. During the consultation, the Crisis Response Team, ESE Case Manager, and/or representatives from the IEP/MTSS Team will review the student's existing BIP, IEP, crisis plan, or other behavioral plans or assessments to identify what was ineffective; whether existing interventions, either codified in a BIP or elsewhere, should be revised or implemented with more consistency; whether the student should be re-assessed with any component of an FBA; how the team will enact changes to reduce the need for future Restraint; and who will be responsible for implementing and monitoring any changes to the student's BIP, IEP, or other behavior-related plan.
4. Within seven Days of a student's second Restraint in a semester, the Crisis Response Team Members at the student's school must familiarize themselves with and be

equipped to implement effectively the behavior-management supports and De-escalation Techniques for that student.

G. Dissemination of Crisis Response Team Policies and Information

1. Before the first day of each school year, all school principals, or their designee, will notify all school-level Employees about the role of the Crisis Response Team and identify who is on the Crisis Response Team for that school year. The notification will include an explanation that Employees are responsible for engaging in behavior-management strategies before a student is in crisis; that Employees will request assistance from the Crisis Response Team if Crisis Management is necessary; and that only Crisis Response Team Members may use a Restraint on a student.
2. Before the first day of each school year, the District will publicize on its main website an explanation of the Crisis Response Team's role.

Section 5. DOCUMENTATION & REPORTING OF RESTRAINT

- A.** The District will continue to use FOCUS, or its replacement, to document and retain for its own records each incident of Restraint.
- B.** The system will meet the following requirements:
 - 1.** A student’s file on FOCUS, or the replacement system, will include every Restraint Incident coded in their electronic record.
 - 2.** The system must permit the District to attach to each Restraint Incident the relevant Restraint Incident Report the District submitted to the Florida Department of Education (“FDOE”). *See infra* Sec. 5.C.
 - 3.** The District must be able to print out any Restraint Incident Report in a student’s electronic record upon request.
 - 4.** The system must permit the District to note any information relevant to the Restraint Incident Report that was discovered after the District submitted the Restraint Incident Report to FDOE.
 - 5.** The system will include a search function that permits the District to identify every submitted Restraint Incident Report.
- C.** Within 24 hours after the debriefing meeting with the Crisis Response Team, the Crisis Response Team Member(s) who conducted the Restraint and the school designated reporter will complete and submit a Restraint Incident Form. When Employees complete and submit the Restraint Incident Form, they will provide objective descriptions of the student’s behavior instead of characterizing that behavior (e.g., “student was yelling” rather than “student was angry”); start the narrative description of the incident from before the student appeared agitated; and provide sufficient description for a reader to understand what may have triggered or increased a student’s escalation, what crisis-management or De-escalation Techniques were used, and how those techniques were received. The submitted Restraint Incident Form is the Restraint Incident Report created and required by FDOE.
- D.** The District will send to parents/guardians a copy of the Restraint Incident Report within 24 hours of submission. A parent/guardian’s signature of receipt will be requested on the signature line of the final document.
- E.** Within two Days after a Restraint Incident is reported to FDOE, the District will log the incident in the restrained student’s electronic record and attach a copy of the FDOE Restraint Incident Report.

Section 6. RESTRAINT INCIDENT REVIEW

- A.** The Intervention Coordinator will review every Restraint Incident Report within three Days of submission for adequacy of report detail, justification for the use of Restraint, and compliance with District policy and procedures.
1. If, on reviewing the report, the Intervention Coordinator concludes the report is incomplete or factually incorrect, the ESE Program Director will discuss the report with the individual(s) who submitted the report, note any incomplete or incorrect information on the Restraint incident logged in the student's electronic record, and notify parents/guardians of the corrected information in a timely manner. The ESE Program Director also will remind the individuals who submitted the report of the District's policies on adequately reporting incidents of Restraint.
 2. If the Intervention Coordinator determines that an Employee inadequately reports the use of Restraint more than once in a semester, the Intervention Coordinator or their designee will inform the ESE Program Director, who shall contact that Employee, and ensure the Employee receives additional training or guidance on adequate reporting practices and Documentation of Restraint.
 3. If, on reviewing the report, the Intervention Coordinator has concerns that the Restraint did not comply with District policy or procedures, the Intervention Coordinator will report such concerns to the ESE Program Director, who will contact the Human Resources Department and work collaboratively to determine whether the Restraint was in compliance with District policy. The Human Resources Department will create documentation of the investigation and findings. The District may impose any additional remedy or disciplinary measure permitted by District policy for substantiated investigations.
- B.** On a monthly basis, the ESE Program Director will review the ongoing semester's Restraint Incident data. The review will include assessing the number of Restraint Incidents in the past month and the ongoing semester, disaggregated by student, school, student's disability, student's race/ethnicity, location of Restraint, and individual who conducted the Restraint. From the monthly review, the ESE Program Director will:
1. Identify monthly trends in the use of Restraint;
 2. Determine whether any student is being subjected to multiple incidents of Restraint and whether additional supports or training of Employee(s) may reduce the probability of future Restraint of the student(s);
 3. Determine which schools use Restraint and, if so, whether additional individual or classroom-wide supports or training may reduce the probability of future incidents of Restraint at those school(s); and

4. Evaluate whether supports provided to previously identified students, schools, and Employees are reducing the use of and need for Restraint.
- C. After conducting the monthly review, the ESE Program Director will provide to every school principal a report on the school's number of Restraint Incidents in the past month and the ongoing semester, disaggregated by student, school, student's disability, and student's race/ethnicity, location of Restraint, and Employee(s) who conducted the Restraint.
 - D. Along with the monthly report, *see* Sec. 6.C., the ESE Program Director will communicate information about any students, schools, or Employees identified as potentially benefiting from additional supports or services to the following individuals, as appropriate: Director of ESE, relevant school principal, relevant school MTSS Team's point of contact, relevant IEP team's points of contact, Behavioral Staff assigned to the relevant school, and instructional coaches. Those parties will collaborate to assess whether additional supports are appropriate, and if so, will identify and implement appropriate supports. The ESE Program Director will document whether any additional support was deemed appropriate—and if so, what was provided and when it was provided.
 - E. At the end of each semester, the ESE Program Director will prepare a report for the Director of ESE and Superintendent about that semester's Restraint data. The report will include the following:
 1. Any concerns the ESE Program Director has about the improper use of Restraint (e.g., Restraints that do not meet the standard under the District's policy or schools with disproportionate Restraint) or inadequate reporting (e.g., reports that lack adequate information to justify the use of Restraint) as a result of the ESE Program Director's review of each Incident Form, *see* Sec. 6.A.;
 2. The number of Restraints that occurred in each semester, disaggregated by school, student restrained, student's disability, and student's race/ethnicity; and
 3. The percentage of students in the District with a given disability who experienced at least one Restraint that semester (i.e., ___% of students with an Emotional and Behavioral Disorder in the District were restrained in Spring 2022, ___% of students with a Specific Learning Disability in the District were restrained in Spring 2022). When preparing this portion of the report, the ESE Program Director will review which disabilities had the largest proportion of their enrollment restrained and assess whether teachers or staff serving that population of students would benefit from additional supports.

- F.** At the end of each semester, the ESE Program Director will prepare and distribute a report to each school summarizing the school's Restraint data. The report will include the following:
- 1.** The number of Restraint Incidents that occurred in each semester at that school, disaggregated by student restrained, student's disability, student's race/ethnicity, location of Restraint, and Employee(s) who conducted the Restraint; and
 - 2.** The number of Restraint Incidents that occurred in each of the past five semesters.

Section 7. COMPLAINTS & DISTRICT INVESTIGATIONS

A. Personnel Complaints

1. Before the first day of the 2023-2024 school year, the District will revise its Human Resources Formal Complaint Form (“MIS 4377”) for individuals to report concerns that Employees may have violated any District policies related to Restraint, Seclusion, discrimination, or abuse, or otherwise engaged in improper conduct toward students. The revised form will contain the name of the Employee(s) being reported (if known) and, if the form is submitted by an Employee, whether they notified OCSO or their School Administrator.
2. If the alleged conduct would constitute a violation if substantiated, the Human Resources Department will initiate a District investigation. If the school principal is not a party to the complaint, the complaint does not implicate student safety, and information is more efficiently obtained or more readily available if referred, the District may alternatively refer the matter to the school principal for investigation. In cases where allegations are being investigated by law enforcement or DCF, the District will ensure that District actions will not hinder those agencies’ investigations before initiating a District investigation.
3. Consistent with Board policies, the District will continue to prohibit any retaliation, interference, coercion, or intimidation, *see* 42 U.S. § 12203, taken against an Employee for reporting a complaint that an Employee allegedly abused, improperly restrained or secluded, or otherwise engaged in improper conduct toward a Student with a Disability.

B. District Investigations

1. General:

- a. The District will ensure that investigations into whether Employees violate a District policy include adequate fact-finding and analysis to substantiate the investigator’s findings. Investigators will interview and appropriately assess all relevant individuals’ credibility and analyze whether alleged misconduct violates *any* implicated District policy.

2. Administrative Leave:

- a. The District has revised School Board Policy 06-33: “Administrative Leave, Suspension and Dismissal of Employees” to identify the circumstances in which Employees may be placed on and brought back from administrative leave during the pendency and after the conclusion of an investigation. Within 60 Days of the Agreement’s execution date, the District will submit the policy for the United

States' review and approval. The District will implement the required changes upon School Board adoption of the revised policy.

- b.** If an Employee is permitted to return to work while a District investigation is ongoing, the District's policy will require reasonable safeguards intended to protect against the alleged conduct. Such safeguards may include, but not be limited to, changed or increased student supervision, supervision of the employee being investigated, or change of placement of the investigated employee.
- c.** When an Employee is permitted to return to work from administrative leave, the District will provide written notice to the relevant supervisor, as applicable, and include a copy of the notice in the Employee's personnel file. The written notice will specify all conditions that apply to the Employee's return to work, including whether the Employee's return to work is pending the conclusion of a District investigation; and whether the Employee is subject to any safeguards as noted above, *see* Sec. 7.B.2.b.; and if so, what those safeguards are.

C. Remedies for Substantiated Violations of District Policy

- 1.** The District will provide written notice to the relevant supervisor of an Employee that is being disciplined due to a substantiated finding in a District investigation and explain the nature of that discipline, including any conditions or consequences the Employee will meet as a result of the investigation and whether any of those conditions have been satisfied.

Section 8. HIRING, TRANSFERS, & HUMAN RESOURCES

- A.** The District will complete its development of notations on personnel records related to pending or substantiated investigations of complaints alleging a violation of a student’s civil rights and/or allegations of child abuse, neglect, or harassment by a District employee before the first day of the 2023-2024 school year. Notations will display prominently on the Employee’s personnel records in the District’s central Human Resources system. Notations will also appear on all personnel Documents given to School Board Members approving Employee promotions, transfers, or rehires. The notations will include the following:
- 1.** The number of pending District investigations against the Employee;
 - 2.** The number of substantiated District investigations against the Employee since the last annual renewal of that Employee’s contract, and whether the Employee has completed all remedies required from such investigation; and
 - 3.** Whether the Employee is on administrative leave.
- B.** At least seven Days before the Board meets to approve annual contract renewals, the District will provide to all Board members a list of all Employees with pending District investigations or a District investigation substantiated in the past 12 months, when those investigations relate to complaints alleging a violation of a student’s civil rights and/or allegations of child abuse, neglect, or harassment by a District employee.
- C.** Before the first day of the 2023-2024 school year, the District will develop a notation that appears on all transfer or previously employed applicants’ files so that principals considering an applicant know whether an applicant has any pending or substantiated investigation(s) regarding complaints as described in subsection “A” above and the contact information for a District Employee the principal should contact to learn more about the investigative file.

Section 9. REPORTING REQUIREMENTS

- A.** The District will provide to the United States all Documentation and information identified in Sections 1 through 8 of this Agreement per the timelines set forth above and summarized in the table attached as Appendix B, using the United States' Justice Enterprise File Sharing system.
- B.** By January 31 and July 31 of each year covered by this Agreement, the District will submit a progress status report to the United States for review. The January status report will cover the preceding July through December; the July status report will cover the preceding January through June.
- C.** Each status report will include:
 - 1.** An Excel spreadsheet documenting all Restraints conducted in the prior semester. The spreadsheet will include the following columns of information, with a row filled for each report:
 - a.** Student's name;
 - b.** Student's unique student ID number;
 - c.** Student's grade;
 - d.** Student's race/ethnicity;
 - e.** Student's sex;
 - f.** Student's primary exceptionality, if applicable;
 - g.** Student's school;
 - h.** The name of the person/people who restrained the student;
 - i.** The name of any nonstudent who witnessed the Restraint;
 - j.** The date of the Restraint;
 - k.** The time the Restraint started and ended;
 - l.** The location of the Restraint;
 - m.** The type of Restraint used;
 - n.** A description of the incident, explaining the context in which the Restraint occurred, the student's behavior before and after the use of Restraint, and an indication as to why there was an imminent risk of serious injury;
 - o.** The behavior interventions and supports used to prevent and de-escalate the behavior;

- p. Any injuries or medical emergencies that occurred during the Restraint;
 - q. Whether parents or guardians were notified of the Restraint, including evidence of attempts made to inform the student's parent/guardian about the situation, and the date, time, and method by which parents/guardians were informed;
 - r. Procedures used after the Restraint to debrief the student;
 - s. If the student has two Restraints in a semester, summary of the Crisis Response Team and IEP/MTSS debriefing meeting, including the date the student's crisis intervention plan was last reviewed and what, if anything, will be changed in the plan or in other documented interventions to reduce the probability of future Restraint incidents; and
2. If the District has responsive information for any Restraint conducted in the past semester, include the following columns of information in the Excel spreadsheet defined in Section 9.C.1.:
- a. A description of additional information discovered through the District's restraint review process, *see* Sec. 6.A.;
 - b. Date the additional information was added;
 - c. The name and role of the person who added the additional information;
 - d. A description of any Documents attached to the Restraint in the District's student information system, other than the FDOE reporting form for that Restraint;
 - e. If the Restraint resulted in a referral to law enforcement, a state or county government other than the FDOE Restraint reporting process, or social services, the date and time of the referral, and the entity referred; and
 - f. Whether the Restraint or related behavior was used as the basis of a Baker Act process.
3. Copies of all Documented complaints alleging that an Employee subjected a Student with a Disability to physical abuse, verbal abuse, or improper Restraint or Seclusion, and an Excel Spreadsheet detailing the District's response to such reports. The Excel spreadsheet will include for each complaint the following information where available to the District:
- a. The name and unique student ID number of the student(s) subject to the alleged conduct;
 - b. The date of the incident;
 - c. All actions the District took in response to the complaint, including whether the District conducted an investigation; the dates the investigation was initiated and

m. Any other administrative notes in the student information system.

This term does not apply to briefly placing a student in a separate location either within a classroom with others or with an instructor or administrator with the goal and intent to return to the student to the learning environment when de-escalated.

- 8.** A list of all ESE students who were placed on Shortened School Days, including unique student ID number, race/ethnicity, sex, primary exceptionality (if applicable), grade, school, reason for Shortened School Day, start date of Shortened School Day, end date of Shortened School Day, and services provided during Shortened School Day.
- 9.** A list and description of all trainings conducted to satisfy the requirements of Sec. 3, including copies of or access to trainings if they include online components and all materials used during trainings.
- 10.** A list and description of all training the District plans to conduct in the following 6 months to satisfy the requirements of Sec. 3.
- 11.** Rosters for every school's Crisis Response Team Members that semester. If any member of the Crisis Response Team is a non-instructional Employee and not a Paraprofessional (for example, custodial staff or facilities staff), the District will include an explanation for why including that Employee was necessary and why instructional personnel could not fill the position.

Section 10. ENFORCEMENT

- A.** For the duration of this Agreement, the District will preserve and maintain all hard copy and electronically stored Documents pertinent to its compliance with the Agreement.
- B.** The District will provide responsive Documents and other responses to any reasonable United States request, including requests: for additional Documents or data; to tour schools; to have a representative attend any training for assessing quality and substance; and to conduct any other compliance activities that the United States determines are necessary to monitor the District's implementation of the Agreement.
- C.** If the District, despite its good faith efforts, anticipates that it will be unable to meet any timeline set forth in this Agreement, it will timely notify the United States of the delay and reason. The Parties will negotiate in good faith to agree on a reasonable adjusted timeline.
- D.** Once the District implements changes required by this Agreement and approved by the United States, the District will not substantively modify those changes during the period of the Agreement without obtaining the United States' prior written approval, which the United States will not unreasonably withhold.
- E.** The United States may enforce the terms of this Agreement and Title II. If the United States determines that the District has failed to comply in a timely manner with any term of this Agreement, it will notify the District in writing of the basis for the determination and a specific description of the issue(s). If the Parties are unable to reach a satisfactory resolution of the issue(s) within 60 Days of the United States providing notice to the District, the United States may initiate civil proceedings in federal court to enforce the Agreement, the District's underlying obligations under Title II, or both.

Section 11. TERMS & TERMINATION

- A.** The date of the execution of this Agreement is the date by which both Parties have signed it.
- B.** The Parties anticipate that the District will have complied with this Agreement by the end of the 2024-2025 school year. When the District provides the United States with the status report due July 31, 2025, the United States will have 90 Days to raise any remaining concerns about the District's compliance with the Agreement.
 - 1.** If the United States does not raise any concerns about the District's compliance, the Agreement will terminate.
 - 2.** If the United States raises any concerns about 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 Sec. 10.E. will apply.
- C.** 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 on the matters raised in this Agreement.
- D.** This Agreement is final and binding on the District, including its principals, administrators, representatives, successors in interest, and legal representatives.
- E.** If any part of this Agreement is for any reason held to be invalid, unlawful, or otherwise unenforceable by a court of competent jurisdiction, that decision will not affect the validity of any other part of the Agreement. The District and the United States will meet within 15 Days of any decision to negotiate in good faith whether the Agreement should be revised or supplemented in response to the court's decision.
- F.** This Agreement is entered for the purpose of voluntarily resolving the United States' concerns, which the District disputes. This Agreement is not and will not be construed as an admission of liability by the District. The District expressly denies any violations of any laws applicable to any matters covered under this Agreement, including Title II of the ADA, or the United States' investigation of these matters.
- G.** 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.
- H.** This Agreement will not bar any individual from pursuing a complaint under Title II against the District, but any benefits the District provides to any individual through this Agreement may be used as an offset, as appropriate.

SIGNATURES OF PARTIES TO THE AGREEMENT

For Okaloosa County School District:



MARCUS CHAMBERS
Superintendent
Okaloosa County School District
202 Highway 85 North
Niceville, Florida 32589
chambersm@okaloosaschools.com

Date: 12/19/22

For the United States:

KRISTEN CLARKE
Assistant Attorney General



SHAHEENA A. SIMONS, Chief
RENEE M. WOHLNHAUS, Deputy Chief
BRIGID M. BENINCASA, Trial Attorney
NATACHA Y. LAM, Trial Attorney
Educational Opportunities Section
Civil Rights Division
United States Department of Justice
150 M Street NE
Washington, DC 20002
Brigid.Benincasa@usdoj.gov
Natacha.Lam@usdoj.gov

Date: Dec. 19, 2022

Attorneys for the United States

APPENDIX A

Summary of Training Requirements

The following table summarizes the training schedule and topics the District must develop.

AUDIENCE	TOPICS	DEADLINE
Section 2.B. Transportation		
Bus drivers and transportation assistants	<ul style="list-style-type: none"> Use of behavior management supports, De-escalation Techniques, accommodations, and considerations relevant to bus conduct for any Students with Disabilities they transport 	Before 30 th Day of each school year
Bus drivers and transportation assistants assigned to a bus that primarily transports ESE students	<ul style="list-style-type: none"> Behavior management supports and De-escalation Techniques 	Next scheduled training after Employee's assignment
Section 3.A. Intervention Coordinator		
Intervention Coordinator	<ul style="list-style-type: none"> Intervention Coordinator designated 	Within 90 Days
	<ul style="list-style-type: none"> All training required to fulfill responsibilities of the position 	Within five months
Section 3.B. Mandatory Training		
All MTSS Team Members	<ul style="list-style-type: none"> Fundamentals of function-based perspectives and approaches to behavior: Principles of behavior and principles of reinforcement; function-based assessments and interventions, including full and brief FBA processes; appropriate behavioral data collection methods; and how to appropriately use data to evaluate and assess fidelity to an intervention plan Behavioral Staff's role in supporting the provision of services to Students with Disabilities, including collaborating with teachers on developing behavior-management strategies and providing constructive feedback on implementation of those supports to individual students 	Annually
ESE teachers and Paraprofessionals assigned to a <u>Self-Contained Classroom</u>		<p>All assigned for 2022-23 SY: No later than February 1, 2023</p> <p>All assigned after January 1, 2023: no later than 45 days after assignment</p> <p>AND Annually thereafter</p>
Employees who receive Child Abuse and Neglect Training	<ul style="list-style-type: none"> Examples of Employee-on-student abuse; how to distinguish between appropriate and inappropriate touching of a student in the school setting; what constitutes physical and verbal abuse; and the negative impacts of abuse 	With Child Abuse and Neglect Training
Employees who receive Crisis	<ul style="list-style-type: none"> Training supplement on the use of De-escalation Techniques 	With Crisis Response Training

AUDIENCE	TOPICS	DEADLINE
Response Training	<ul style="list-style-type: none"> • How to use function-based perspectives to select De-escalation Techniques • The risks and harms associated with Restraint 	
ESE teachers and Paraprofessionals assigned to a <u>Self-Contained Classroom</u>	<ul style="list-style-type: none"> • Effective implementation of behavior management supports, De-escalation Techniques, and IEP or BIP accommodations for each student in their classroom 	Before 30 th Day of each school year
<u>Section 3.C. Training on Use and Reporting of Physical Restraint</u>		
The two school employees identified as Restraint reporters, the ESE Program Director, and the Director of ESE	<ul style="list-style-type: none"> • Documenting Restraint: The rationale for documentation; the requirements for and how to write clear and objective reports; how to evaluate reports for sufficient detail, accuracy, and appropriate use of Restraint; procedures for responding to inappropriate Restraint; and remediating poor reporting practices 	Annually
<u>Section 3.D. Observations and Feedback of Instructional Coaches and Behavioral Staff</u>		
Instructional coaches and Behavioral Staff	<ul style="list-style-type: none"> • How to effectively execute their duties 	As needed

APPENDIX B

Reporting Deadlines

The following table summarizes the District’s reporting deadlines to the Department as required by the terms of this Agreement.

REQUIREMENTS		DEADLINE
Section 2. Behavior Management Supports		
<input type="checkbox"/>	Submit a revised MTSS Manual	Within 30 Days
<input type="checkbox"/>	Submit each school’s MTSS Team roster	Within 30 Days
<input type="checkbox"/>	Submit each school’s tentative MTSS Team meeting schedule for the 2022-2023 school year	Within 30 Days
<input type="checkbox"/>	Submit the current plan for fully implementing MTSS with fidelity in all schools	Within 30 Days
<input type="checkbox"/>	Submit BIP template	Within 30 Days
Section 3. Training		
<input type="checkbox"/>	Submit a proposed overview and schedule of trainings for upcoming semester	30 Days before each semester
Section 4. The Use of Seclusion and Restraint		
<input type="checkbox"/>	Submit proposed Crisis Response Team procedure explaining the role and responsibilities of Crisis Response Teams	Within 45 days
<input type="checkbox"/>	Notify all school-level Employees about the role of the Crisis Response Team and identify the Team’s members	Before the first day of school each year
<input type="checkbox"/>	Publish on the District main website an explanation of the Crisis Response Team’s role	Before the first day of school each year
Section 7. Complaints and District Investigations		
<input type="checkbox"/>	Revise the Human Resources Formal Complaint Form	Before the first day of the 2023-2024 school year
<input type="checkbox"/>	Submit revised School Board Policy 06-33: “Administrative Leave, Suspension and Dismissal of Employees”	Within 60 Days
Section 9. Reporting Requirements		
<input type="checkbox"/>	Submit status report	By January 31 and July 31 each year