



UNITED STATES DEPARTMENT OF EDUCATION  
OFFICE FOR CIVIL RIGHTS

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July 29, 2014

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Re: OCR Complaint No. 11-13-1058  
Letter of Findings

Dear Mr. Reichhardt, Mr. Gourley, and Ms. Coilfi:

This letter is to notify you of the outcome of the above-referenced complaint that you filed with the District of Columbia Office for Civil Rights (OCR), within the U.S. Department of Education (the Department), on November 26, 2012, against Prince William County Schools (the Division), specifically the Positive Attitude and Commitment to Education (PACE) East and West Program (the Program). You alleged in the complaint that the Program discriminates against students with disabilities through the use of improper restraint and seclusion practices. Additionally, the complaint alleged that the Program's improper restraint and seclusion practices have a disparate impact on African American and Hispanic students because African American and Hispanic students are disproportionately represented in the Program as compared with their representation in the Division as a whole.

OCR investigated this complaint pursuant to its authority to enforce Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. §794, and its implementing regulation, at 34 C.F.R. Part 104, which prohibit discrimination on the basis of disability in programs and

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activities that receive federal financial assistance from the Department. OCR also enforces Title II of the Americans with Disabilities Act of 1990 (Title II), 42 U.S.C. § 12131 *et seq.*, and its implementing regulation, at 28 C.F.R. Part 35, which prohibit discrimination against qualified individuals with disabilities by public entities, including public education systems. OCR is also responsible for enforcing Title VI of the Civil Rights Act of 1964 (Title VI), 42 U.S.C. § 2000d, and the regulation that implements Title VI, 34 C.F.R. Part 100, which prohibit discrimination on the basis of race, color or national origin in education programs and activities receiving federal financial assistance from the Department. The Division is a recipient of federal financial assistance from the Department and a public entity therefore it is subject to the provisions of Section 504, Title II, and Title VI.

To investigate this complaint, OCR conducted onsite visits to the Program, reviewed every incident of restraint and seclusion that occurred within the Program over three semesters, and conducted interviews with Program personnel, other Division personnel, and with you (the Complainants). OCR's review of restraint and seclusion records did not show that students were being physically injured by the use of restraint and seclusion. With that being said, as discussed more below, OCR found that the Division denied Program students a free appropriate public education (FAPE) by failing to re-evaluate students to determine if they needed additional or different related aids and services given the frequent use of restraint, seclusion, and Re-orientation (a process of removing students from their classrooms to an isolated area). A discussion of the basis for OCR's determinations follows.

### **Background**

#### *Restraint, Seclusion, and Re-orientation Area Practices*

The Program provides services exclusively to students with serious emotional and behavioral problems. According to Program personnel, it is considered a "last stop" for Division students who would otherwise attend a residential facility. The Program utilizes school-wide behavior management systems, which include a component termed the Re-Orientation, or RO, area.<sup>1</sup> According to the Division, the RO area is intended to provide students a place outside their classrooms but within the building if they are having difficulty maintaining their behavior; it is not, however, meant as punishment. Students can elect to go to the RO area on their own, teachers can require that students go to the RO area to de-escalate if they are disrupting the classroom, not following directions, or failing to complete their work, and Program personnel typically require that students transition to the RO area after they have been placed in restraint and/or seclusion before they return to their classrooms. Although there is a seclusion room within the RO area, RO is not seclusion because students are not physically prevented from leaving by a closed or locked door and are not alone in the RO area. While a variety of reasons may land a student in the RO area, students cannot exit the RO area until they follow and

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<sup>1</sup> Program staff at PACE East explained that RO is not a place, but a process. Both PACE East and PACE West have a location called the RO area in which students may go to engage in the RO process. Nonetheless, according to staff at PACE East, the RO process may take place anywhere outside of the classroom. For example, a student taking a walk around school grounds while talking with Program personnel could be considered in RO. However, unless otherwise specified, in this document the term RO refers to the physical space designated at both PACE East and West as the RO area.

complete a process designed by PACE personnel. Time completing the RO process varies, from ten minutes to several hours. Program personnel sometimes require students to remain in the RO area for the remainder of the school day or to serve In-School Suspension (ISS) in the RO area.<sup>2</sup> The RO process may include several behavioral interventions including counseling, downtime, and use of physical restraint and/or seclusion.

Interviews with PACE personnel and personal observation by OCR staff of the RO area show that students are not able to regularly access the curriculum or receive other types of educational services while in the RO area. While the PACE West Principal informed OCR that students are “asked if they’d like their school work,” students are not consistently asked and are not consistently given school work to do while in RO. PACE West RO personnel described RO as “a place students can get away and vent” and an area to supervise students and “help them de-escalate without disturbing others [in the classroom].” Pace East RO personnel acknowledged that little to no instruction is provided in the RO area. The PACE East Principal informed OCR that after a student returns from the RO area, the classroom teacher “may” pull the student aside to make up the work that s/he missed while in RO. However, even if students are able to access their school work, OCR staff observed that the noise level and chaos in the RO area were not conducive to a study environment. After all, students in RO – regardless of how they were referred – are all de-escalating. Students in the RO area are in direct earshot of students in seclusion,<sup>3</sup> which may require the student to listen to the process of a peer being placed, or resisting being placed, in seclusion.

In addition to the use of the RO area, Program personnel restrain students through the use of different physical holds. These holds, or primary restraint techniques (PRT), are employed by trained personnel, which include teachers, counselors, and other staff who work directly with students. Specifically, the types of holds include face-down or prone restraints,<sup>4</sup> standing restraints, and physical escorts to the RO area. The holds are conducted by one or more school personnel and are utilized to restrain students for several minutes at a time. The school personnel who restrain students receive annual training on the holds, information on the Division’s policies and regulations concerning restraint and seclusion (which is discussed more below), the types of situations that warrant the use of these interventions and the types of holds that may be appropriate in a given situation.

Program personnel also place students at the Program in seclusion. When placed in seclusion, a student is alone in a padded area and physically prevented from leaving through the use of a door that the student cannot open from the interior. At Pace West, the doors do not actually lock, so a staff member must stand at the door exterior to physically hold it closed. At Pace East, the doors lock from the exterior and staff members stand outside to observe the student through a window in the door. The rooms also have security cameras that serve as a back-up, in the event students

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<sup>2</sup> While a student placed in ISS may be housed in the same room as students placed in RO, RO itself is not disciplinary in nature and is separate and distinct from disciplinary measures like ISS.

<sup>3</sup> The PACE West Principal refers to the seclusion room as “the RO booth.”

<sup>4</sup> School personnel demonstrated various types of restraint holds for OCR. OCR’s observation of the use of prone restraint, and other restraints where a student’s chest was facing the ground was that the Program personnel did not constrain the student’s chest during the restraint. Instead, Program personnel ensured that the student’s chest was elevated – to prevent the student from asphyxiating, which can occur during prone restraints.

place themselves up against the door so that they are difficult for a staff member to observe through the window.<sup>5</sup>

As referenced above, OCR requested and reviewed all documents regarding any Program student placed in seclusion or restraint during the 2011-2012 and 2012-2013 school years. Additionally, OCR completed an onsite visit of both PACE East and West facilities. OCR inspected and photographed classrooms, reorientation areas, and seclusion rooms and conducted interviews with each PACE principal, the Program personnel who place students in restraint and seclusion, and the Division's Director of Special Education. OCR also received demonstrations in the restraint holds used by Program personnel at both schools. Based on this information, OCR found that staff members employing the restraint techniques are trained, and that seclusion rooms have padding, security cameras, and windows in doors in an effort to ensure safety.

### *Restraint and Seclusion Policy*

The Division's Regulation 746-1, entitled *Disruptive Student Behavior-Use of Physical Restraint and Seclusion* (the Policy), provides guidelines for the use of physical intervention, physical restraint, and seclusion techniques for school staff to respond to and manage aggressive or violent student behavior in emergency situations.

The Policy defines "physical restraint" as "the use of any physical method of restricting an individual's freedom of movement, or physical activity, or to prevent a student from moving his/her body to engage in a behavior that places him/her or others at a risk of physical harm." The Policy provides several standards for when restraint may be used. For example, the Policy specifies the following criteria for when physical intervention, restraint, or seclusion of a disruptive student may be used: 1) behavior that is sufficiently disruptive, aggressive, or violent, and 2) causes a risk to self or others, a likelihood of property destruction, or to cause interference with the educational process or school operations. The Policy goes on to say that physical intervention, physical restraint, and/or seclusion of disruptive students should only be used 1) under circumstances which create emergency situations, and 2) when other less intrusive alternatives are not possible or have failed. The Policy also states that restraint may be used in the case of "imminent risk to self or others, or imminent risk of property destruction or disruption to the educational process or school operations."

With regard to seclusion, the Policy states that "in certain emergency situations, staff may use seclusion techniques to respond to disruptive, aggressive, or violent student behavior where less restrictive interventions are not possible or have failed." Seclusion is defined as "the use of a quiet room to provide an opportunity for a student to regain self-control and composure."

The Director of Special Education, who is responsible for ensuring that the Policy is properly implemented in the Division, explained the Division's interpretation of the Policy, which is

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<sup>5</sup> Staff members also described incidents in which students voluntarily chose to be in seclusion. In those instances, the seclusion room door remained open. In this investigation OCR did not consider voluntary participation with the door open to constitute seclusion.

generally consistent with the fifteen principals articulated in the Department’s Restraint and Seclusion Resource Document. The Director of Special Education informed OCR that if a situation does not rise to the level of an emergency, it does not warrant the use of restraint or seclusion and that under the policy, “screaming threats, alone, are not enough to warrant restraint and seclusion.” In contrast, Program personnel informed OCR that students can be restrained or placed in seclusion for behavior “disruptive to the educational environment,” where a student is “screaming out or throwing paper at another student.” OCR’s review of the restraint and seclusion records illustrates that Program personnel regularly placed students in restraint and seclusion for destroying property and disturbing the educational environment, though they were not placing themselves or others at an imminent risk of physical harm. This is consistent with Program personnel’s liberal interpretation of the Division’s policy and is, likely, a contributing factor in the frequent use of these interventions in the Program.

### Discussion

#### **Denial of FAPE**

As discussed more below, OCR has determined through its investigation that the Program is denying the students a FAPE through its generalized behavioral approach that includes frequent use of restraint, seclusion, and time in the RO area. The students in the program have emotional disabilities that manifest in them acting out behaviorally, often in disruptive ways. Nonetheless, most Program students do not have individualized plans with specific behavioral interventions designed to meet their individual needs. Moreover, when placed in restraint, seclusion, or the RO area, students are effectively denied access to the curriculum. The frequency with which many of the students continue to act out behaviorally despite, or possibly even because of, the use of these interventions by the Program, provides the Program with reason to believe it should re-evaluate individual students to ensure that the Program is meeting each student’s behavioral and, consequently, educational, needs.

#### *PACE West*

During the 2011-2012 school year at PACE West, 60 students, or 40 percent of the total school population, were restrained and/or secluded a total of 219 times. From September through January of the 2012-2013 school year at PACE West, 29 students were restrained and/or secluded a total of 59 times. In addition to keeping track of the use of restraint and seclusion, PACE West maintains documentation of the length of time that students spend in the RO area each month. OCR’s review of the 2012-2013<sup>6</sup> RO documentation logs showed that, on average, 65 PACE West students or 52 percent of the PACE West student body were placed in RO each month. The length of time that each student spent in RO each month varied – from 8 minutes/month to 59 hours/month.<sup>7</sup> PACE West also documents the number of hours that all students spent in RO – total – each month. For example, in October 2012, PACE West students collectively spent 713 hours and 44 minutes in RO – averaging 10.6 hours/student/month – which is more than an entire school day.

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<sup>6</sup> The Division provided OCR with RO data up to March 2013.

<sup>7</sup> OCR notes that most students who were placed in RO spent at least a few hours in RO each month.

For some students, their individualized plans refer to “HWC,” which stands for “Handle with Care,” the name of the technique that Program personnel employ when restraining and secluding students, without any detail regarding when and how these interventions are to be used and no mention of less severe behavioral interventions that should be used first. Of the five IEPs that Pace West provided to OCR, references to restraint or seclusion were brief. Examples include: “[HWC] is utilized at the school;” “it becomes necessary to use [HWC] to help [student] calm down;” “[student] requires the use of a Time Out room during tantrums;” “[student] escalates to a stage where he requires physical restraints for safety;” and “the use of [HWC] with [student] is difficult because he is so small and strong.”

At Pace West, Program personnel rarely conduct functional behavioral assessments (FBAs) of students. In fact, the PACE West psychologist informed OCR that he conducts FBAs only about four or five times a school year. According to the psychologist, the FBA is meant to identify the cause of the problematic behavior by the student after which the corrective strategy would be implemented in a BIP. According to the social worker, PACE West has not created BIPs “in years.” Instead, the social worker mentioned, he sometimes creates an informal behavior contract with the student to address a student’s behavior.

#### *PACE East*

During the 2011-2012 school year at PACE East, 33 students were restrained and/or secluded a total of 144 times. From September 2012 through January 2013 at PACE East, 31 students were restrained and/or secluded a total of 154 times. Unlike PACE West, PACE East does not maintain documentation of the number of students sent to the RO area or the number of hours that each student spends in RO. However, given the interviews that OCR conducted with PACE East personnel and OCR’s observation of PACE East’s RO area, OCR determined that PACE East students were placed in PACE East’s RO area in a comparable manner to PACE West students.

OCR received few copies of IEPs for students at Pace East. Among those that we received, there were no references to the use of restraint or seclusion. The Pace East Principal explained that all PACE East students have a “universal BIP,” which she referred to as a “behavior management plan.” Consistent with her testimony, the behavior plans OCR received from PACE East are identical to one another. They are titled “School-Wide Universal Behavior Intervention Plan” and set forth general behavioral goals; school-wide instructional strategies, such as small-group instruction and flexible schedule; and generalized interventions, such as counseling support, social skills instruction, and behavior management system. While crisis support is also listed as an intervention, there is no specific reference to restraint or seclusion. Though PACE West and PACE East counselors have responsibility for convening an IEP team meeting to determine if an FBA and individualized BIP are needed, the PACE West counselor informed OCR that he developed only one BIP last year despite the frequent and repeat use of restraint and seclusion.

#### *Legal Standard*

Section 504 requires a public school district to provide a free appropriate public education (FAPE) to each qualified individual with a disability. To provide a FAPE, a school division

must meet the individual needs of a student with a disability, including behavioral needs, as adequately as it meets the needs of students without a disability. To satisfy the FAPE requirements described in the Section 504 regulation, the educational institution must comply with several evaluation and placement requirements, afford procedural safeguards, and inform students' parents or guardians of those safeguards. 34 C.F.R. §§ 104.35(a), 104.36. More specifically, the Section 504 regulation, 34 C.F.R. § 104.35(a), requires a recipient to conduct an evaluation of any person who, because of disability, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in regular or special education and any subsequent significant change in placement. In addition, §104.35(c) states that in interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with 104.34.

### *Analysis*

Generally, students have been placed in the Program because their emotional disabilities frequently manifest in disruptive behavior. However, almost none of the students in the Program has behavioral IEP components or separate behavior plans that individually address these behavioral issues. Instead, there are widespread and repeated use of restraint, seclusion, and the RO area as behavioral interventions – in essence, a one-size fits all behavioral management approach. As evidenced by the difference in interpretation of the Policy by the Division's Special Education Director and Program staff, Program staff use restraint and seclusion broadly to respond to disruptive behaviors. Yet, there is no systematic review of each incident when these highly restrictive interventions are used or an individualized assessment as to whether they are effective in meeting each student's individual behavioral needs. There also is no indication that the Program personnel have considered, on an individualized basis, other less restrictive interventions to address these students' individual behavioral needs and minimize the need for restraint and seclusion.

OCR's concern is elevated by the fact that when Program personnel use these interventions, students are effectively denied access to the curriculum. In fact, PACE East personnel acknowledged that it is not possible to provide educational instruction to students while they are in the RO area. OCR determined through observation of the RO area at PACE West that any attempt to provide educational instruction in the RO area is futile because the setting is not conducive to learning. The majority of Program students are removed from their classrooms on a regular basis for an average of several hours a month while they are placed in RO, restraint, and seclusion. Yet, the Program does not have in place an effective means for providing access to the curriculum to students once they are removed.

Accordingly, OCR finds that the repeated and frequent use of restraint, seclusion, and RO, in the absence of individualized assessments, is denying students in the Program who are consistently

subjected to these interventions FAPE under Section 504. The frequent use of these restrictive interventions suggests these strategies are not effective at changing or minimizing the problematic behavior. Moreover, once students are removed, they are effectively denied educational instruction or access to the curriculum for the duration of the removal. Nonetheless, there is neither consistent review of how these interventions are being used with each student nor an attempt to re-evaluate students who are frequently removed. OCR concludes that the Division has reason to believe that many of the students' placements, including frequent use of restraint, seclusion and time in RO, are not appropriate, and that it has failed to convene a knowledgeable group of people to examine whether additional evaluation and/or a change of placement (including a change in services provided by the Program) is needed, as required by Section 504.

OCR's concerns are compounded by the Program's failure to consistently and adequately notify parents when their children are restrained, secluded, or placed in RO, despite the fact that notification is required by the Division's policy using a standardized form. The Division provided OCR with copies of the Referral Discipline Incident and Injury (REDii) reports for Pace West only, and only since January 2013, suggesting the practice of issuing them at Pace West is relatively new. The Pace East principal told OCR that parents are generally notified when their child is placed in restraint or seclusion through a phone call or email and she acknowledged that they do not use the notification form that accompanies the Policy. Although the principal claimed they routinely advise parents of all of the information included on the form, the information is generally given verbally. If they fail to reach a parent by telephone, school personnel will either leave a voicemail message or send an email or letter. Crisis staff confirmed that they notify parents primarily through a phone call.

Although Section 504 does not require parental participation in placement decisions, parents are generally among the individuals with knowledge about a student and his or her disability. The Department's Resource Document emphasizes the importance of notifying parents "as soon as possible following each instance in which restraint or seclusion is used with their child," so that parents are in a position to participate in the process of ensuring a school is meeting the child's individual needs in providing a FAPE. This is especially true because inadequate parental notification can contribute to the lack of relevant information about the student's individualized behavioral needs. For example, a PACE West student's IEP states the student's parent reported the student's behavior escalates when restraint is used. This is important and relevant information for a team to consider in determining whether restraint and seclusion are effective in meeting the student's individual behavioral needs.

To address these compliance concerns, the Division has entered into the enclosed Resolution Agreement.

OCR notes that the Civil Rights Data Collection (CRDC) for the 2011-2012 school year, which was released to the public in March 2014, reflects zero incidents of physical restraint and seclusion for the Division as a whole, as well as for the Program specifically. Thus, the Division's reporting to the CRDC is inconsistent with the factual information OCR gathered during its investigation of this complaint. OCR expects that the Division will remedy this oversight and fulfill its obligation to report all information, including information regarding the use of restraint and seclusion, accurately in future reporting.



## **Disparate Impact Allegation**

The Complainants allege that the Program's *improper* restraint and seclusion practices have a disparate impact on African American and Hispanic students because African American and Hispanic students are disproportionately represented in the Program as compared with their representation in the Division as a whole.<sup>8</sup> OCR first considered whether there is sufficient evidence that the Program is placing students in restraint and seclusion *improperly*. As discussed earlier, OCR found that Program personnel were trained in how to conduct restraint and seclusion and were aware of the Division's policy on when to place students in restraint and seclusion. OCR did not find evidence that students were physically injured in the course of implementing restraint and seclusion. However, as discussed more above, OCR did identify compliance concerns about the Division's provision of FAPE to Program students.

To the extent the compliance concerns identified amount to improper use of restraint and seclusion, as alleged, OCR determined that these compliance concerns will be resolved through the implementation of the enclosed Resolution Agreement. The implementation of the Agreement will remedy the FAPE concerns by providing individual remedies for students, including African American and Hispanic students in the Program, and training to all Program personnel. Thus, the remedy will address any "improper" use of restraint and seclusion, regardless of whether OCR would find that a disparate impact exists. Because the Complainants alleged that it is the improper use of restraint and seclusion in the Program, not all use of restraint and seclusion, that has a disparate impact on minority students, OCR finds this allegation to be resolved upon the implementation of the Resolution Agreement.

OCR will monitor the Division's implementation of the Resolution Agreement.

## *Conclusion*

This concludes OCR's investigation of this complaint and should not be interpreted to address the Division's compliance with any other regulatory provision or to address any issues other than those addressed in this letter. This letter sets forth OCR's determination in an individual OCR case. This letter is not a formal statement of OCR policy and should not be relied upon, cited, or construed as such. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public. The Complainants may have the right to file a private suit in federal court whether or not OCR finds a violation.

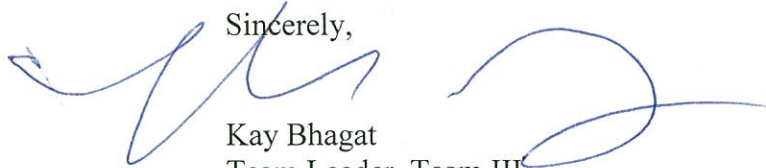
Please be advised that the Division may not harass, coerce, intimidate, or discriminate against any individual because that individual filed a complaint or participated in the complaint resolution process. If this happens, they may file another complaint alleging such treatment. Also, under the Freedom of Information Act, it may be necessary to release this document and related correspondence and records upon request. If OCR receives such a request, we will seek to protect, to the extent provided by law, personal information that, if released, could constitute an unwarranted invasion of privacy.

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<sup>8</sup> OCR notes that Hispanic students are actually *underrepresented* in the Program as compared with the Division as a whole, while White and African American students are both overrepresented in the Program.

We appreciate your patience and cooperation during the resolution of this complaint. If you have any questions, feel free to contact Sara Clash-Drexler at (202) 453-5906 or [Sara.Clash-Drexler@ed.gov](mailto:Sara.Clash-Drexler@ed.gov) or Christa Cothrel at (202) 453-5926 or [Christa.Cothrel@ed.gov](mailto:Christa.Cothrel@ed.gov) or Samantha Shofar at (202) 453-5929 or [Samantha.Shofar@ed.gov](mailto:Samantha.Shofar@ed.gov).

Sincerely,



Kay Bhagat  
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District of Columbia Office  
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