



U.S. Department of Justice

Civil Rights Division

Educational Opportunities Section – 4CON
950 Pennsylvania Ave, NW
Washington, DC 20530

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DJ 169-35-108

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Keith Harris, Ed.D.
Executive Director, Accelerating Achievement & Equity
Frederick County Public Schools
191 South East Street
Frederick, MD 21701
keith.harris@fcps.org

Re: Investigation of Frederick County Public Schools and Related Findings

Dear Dr. Harris:

We write regarding the U.S. Department of Justice’s (the “Department”) investigation into Frederick County Public Schools’ (the “District”) practices related to secluding and restraining students with disabilities. The Department, through its Civil Rights Division and the United States Attorney’s Office (“USAO”) for the District of Maryland, conducted the investigation under Title II of the Americans with Disabilities Act (“ADA”) as amended, 42 U.S.C. § 12131(2), and the Department’s implementing regulations, 28 C.F.R. pt. 35, which prohibit disability discrimination by public entities.

The Department’s investigation concluded that the District engaged in disability discrimination through its seclusion and restraint practices by: (1) denying students with disabilities equal opportunity to participate in or benefit from the District’s education program, *see* 28 C.F.R. § 35.130(b)(1)(i); (2) using eligibility criteria that effectively subjected students with disabilities to discrimination, *see* 28 C.F.R. § 35.130(b)(8); and (3) failing to make reasonable modifications to avoid disability discrimination in the District’s program, *see* 28 C.F.R. § 35.130(b)(7). Further, the District’s practices violated Title II’s requirement that public entities provide services in the most integrated setting appropriate to the needs of individuals with disabilities. *See* 28 C.F.R. § 35.130(d).

Our review principally focused on school years 2017-18, 2018-19, and the first half of 2019-20 (the “Relevant Period”). The Department considered the following documents and data: district and school-level policies and procedures on seclusion and restraint; Maryland state statutes, regulations, and guidance on seclusion and restraint; employee training materials related to seclusion and restraint and managing the behavior of students with disabilities; more than 1,000 student incident reports describing seclusions and restraints; Individualized Education Programs (“IEPs”), Functional Behavior Assessments (“FBAs”), and Behavioral Intervention Plans (“BIPs”) for students who had been secluded or restrained during the Relevant Period; spreadsheets containing student and school-level seclusion and restraint data; and other documents related to the District’s seclusion and restraint practices. The Department also conducted interviews with District and school administrators, teachers, support staff, other employees, and guardians of four

District students who were secluded or restrained.

The investigation uncovered pervasive noncompliance with Title II. Over the Relevant Period, the District performed 7,253 seclusions and restraints on 125 students. Although students with disabilities make up approximately 11% of students enrolled in the District, *every single student* the District secluded was a student with disabilities, as were 99% — all but one — of the students the District restrained. The District secluded and restrained 34 students with disabilities more than 50 times. Eighty-nine percent of the reported seclusions and restraints took place at three schools: Lewistown Elementary and Spring Ridge Elementary, the only elementary schools in the District that host the Pyramid program, which serves students with significant social and emotional needs, and the Rock Creek School, which exclusively serves students with severe intellectual, physical, emotional, hearing, visual, and learning disabilities. Despite state law and the District’s own policy, the District did not limit its use of seclusion and restraint to “emergency situations” in which seclusion or restraint were “necessary to protect a student or other person from imminent, serious, physical harm.” Instead, the District systematically and improperly used seclusion and restraint to address noncompliant behavior that it should have anticipated and managed as part of educating students with emotional and behavioral disabilities. For example, the District routinely secluded and restrained students for “elopement,” a behavior common in children with autism in which they run or wander away from caregivers or locations. Instead of revising students’ BIPs and IEPs to address challenging behavior, the District secluded and restrained students repeatedly, often multiple times in a single day. The District continued to use seclusion and restraint on students with disabilities even when those techniques appeared to escalate behavior.

We further found that the District’s use of seclusion and restraint escalated students’ behaviors and often heightened their distress, with some students engaging in self-harm and showing signs of trauma while in seclusion. Further, the District did not stop individual seclusion incidents despite students demonstrating that they were in crisis and in need of support. Instead, the District imposed vague, arbitrary criteria for when a student could be released from seclusion that did not consider individual students’ disabilities. The District’s seclusion practices segregated students with disabilities from their classmates and resulted in them missing weeks, or in some cases months, of instructional time.

In October 2021, the District approached the Department to express interest in voluntarily entering into a settlement agreement to address the Department’s concerns about the District’s use of seclusion and restraint on students with disabilities. On November 30, 2021, the District and the Department entered into the attached settlement agreement to remedy the non-compliance the Department identified. We appreciate the cooperation of the District and its counsel throughout the course of this investigation and look forward to working with the District to ensure that its seclusion and restraint practices comply with Title II of the ADA. If you have any questions regarding this letter or the attached proposed agreement, please do not hesitate to contact Natane Singleton (natane.singleton@usdoj.gov) with the Civil Rights Division or Sarah Marquardt (sarah.marquardt@usdoj.gov) with the U.S. Attorney’s Office.

Sincerely,

Shaheena A. Simons, Chief



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