

MEMORANDUM

To: Anchorage School Board
From: Matthew Singer
Date: February 3, 2023
Subject: Proposed Settlement Agreement with U.S. Department of Justice
File No.: 136650-260421

Introduction

This memorandum explains a proposed settlement agreement with the United States Department of Justice (DOJ). As the Board may recall from past executive session updates, ASD has been under investigation by the DOJ with regard to its use of restraint and seclusion. Data indicated that ASD's use of seclusion rooms in certain schools (primarily the SBBS elementary programs and Whaley school) resulted in some of the highest use of seclusion in the nation as compared to peer school districts.

DOJ has proposed a settlement to resolve its contention that ASD's use of restraint and seclusion violated the civil rights of students with disabilities. DOJ threatened that in the absence of a settlement, it could bring a lawsuit in federal court asserting disability discrimination under the Americans with Disabilities Act, in which it could seek injunctive relief and monetary damages. ASD's counsel has negotiated with DOJ for the past several months to reach the attached proposed agreement. For reasons we can discuss in executive session, counsel advises that it would be worthwhile to avoid litigation with DOJ. As we will also discuss in our executive session, counsel is satisfied that the attached is the best agreement we can obtain through negotiation with DOJ.

Summary of Settlement

The settlement contains the following key terms:

- ASD will hire a new Behavior Supports Administrator to implement programmatic changes contemplated in the agreement. (Note – this person has been hired).
- Classroom-Wide Behavior Management Plans. ASD will implement these plans in the Whaley and SBBS programs.

- End use of seclusion. ASD will eliminate seclusion rooms in ASD schools (defined as rooms with locks where student is isolated without adult supervision).
- Modifications to use of physical restraint to conform to federal regulations and best practices.
- Certain Documentation and Monitoring/Reporting requirements.
- Allow for a parent complaint procedure (through clarification of ASD's existing citizen complaint form).
- Training and Professional Development.
- Compensatory education for students who were secluded five hours or more.
- Modify Board Policy 5142.3 to be consistent with the settlement. A redline and clean copy of the modified Board Policy is attached to this memorandum.

Attached you will find the proposed settlements agreement, and also a clean and redline copy showing the revised school board policy that would be required as part of the settlement. We are providing confidential drafts to the Board for review in advance of our executive session on February 7, 2023. Please treat the attached as confidential and do not circulate to others. Counsel will be available to answer questions at the executive session.

Attachments: As stated

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**Settlement Agreement
between
The United States of America
and
the Anchorage School District**

I. BACKGROUND AND GENERAL PROVISIONS

- A. On November 3, 2020, the United States Department of Justice, Civil Rights Division, Educational Opportunities Section (the “United States”) notified the Anchorage School District (“ASD” or “the District”) (collectively “the Parties”) that it was initiating an investigation to determine whether the District engages in improper seclusion and restraint practices that deny students with disabilities access to the District’s programs and services in violation of Title II of the Americans with Disabilities Act (“Title II”), 42 U.S.C. § 12132.
- B. Since that time, the United States has requested, obtained, and reviewed policies and procedures, incident reports, and other relevant documents, and conducted interviews of ASD’s district- and school-level employees. ASD cooperated fully with the United States’ investigation.
- C. At the close of its investigation, the United States informed the District of its conclusion that the District improperly secluded and restrained students with disabilities and failed to use appropriate behavior interventions. Specifically, the United States concluded that the District discriminated against students on the basis of disability by denying them the opportunity to participate in or benefit from the District’s education program, *see* 28 C.F.R. § 35.130(b)(1)(i); utilizing eligibility criteria that effectively subjects students with disabilities to discrimination, *see* 28 C.F.R. § 35.130(b)(8); and failing to make reasonable modifications to avoid disability discrimination in the District’s program, *see* 28 C.F.R. § 35.130(b)(7).
- D. The District denies the United States’ allegations of discrimination, but wishes to avoid the costs, time-burdens, and risks of further legal proceedings. The District also approves of this Agreement because it believes that the programmatic changes it contains are in the best interests of Anchorage students.
- E. The Parties acknowledge that in resolution of the current investigation, the District commits to take measures intended to improve its restraint and seclusion practices by implementing evidence-based practices. To accomplish this work, the District has contracted with two independent consultants. The first consultant will provide technical assistance and professional development to focus on leadership and organization change, installation of de-escalation settings to replace seclusion rooms and debriefing tools consistent with evidence-based practices. The second consultant will provide technical assistance and professional development regarding the District-wide implementation of Positive Behavioral Interventions and Supports (“PBIS”).
- F. The District agrees that it will administer its education program, services, and activities in a manner that does not discriminate on the basis of disability and complies with Title II, 42 U.S.C. §§ 12132-12134, and its implementing regulation, 28 C.F.R. Pt. 35.

II. DEFINITIONS

- A. **“Administrators”** refers to all principals and assistant principals at any District school, and District-level directors and District senior level leadership who oversee or evaluate their performance.
- B. **“Behavior Intervention Plan” or “BIP”** refers to a plan created by appropriately trained professionals for an individual student, 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 based on the outcome of a Functional Behavioral Assessment and reflect feedback from parents or guardians regarding the emotional, mental, and physical health of the student, as well as other relevant data.
- C. **“CPI”** refers to the Crisis Prevention Institute, Inc. or any entity that replaces CPI in providing training to District staff on how to use Physical Restraint.
- D. **“debrief”** refers to a discussion after an incident occurs with those ASD employees involved or having relevant information about the incident, conducted with the goal of improving the District’s future practices or operations.
- E. **“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 prevent or moderate escalation of student behavior.
- F. **“Functional Behavioral Assessment” or “FBA”** refers to a systematic process that is used to operationally define a behavior, identify factors that support the behavior, and determine the underlying function or purpose of a behavior, so that an effective Behavior Intervention Plan can be developed. An FBA describes the problem behavior, identifies preceding and subsequent events that control the behavior, and develops and tests a theory of behavior.
- G. **“Instructional Staff”** refers to certificated staff (e.g. teachers and counselors) and non-certificated staff (e.g. paraprofessionals, including “Intervention Coaches” and “Behavior Coaches”) who work directly with students.
- H. **“Physical Restraint”** refers to a personal restriction that immobilizes or reduces the ability of a student to move the student's arms, legs, or head freely. The term includes holding a student to compel or coerce the student to move to another location within the school. It does not include a temporary touching or holding of the hand, wrist, arm, shoulder, or back without applying pressure or force to prompt a student to walk to a safe location. An action need not be a trained technique to meet the definition of “Physical Restraint” for purposes of this Agreement.

- I. **“Review”** refers to the examination of a document, incident, process, or procedure to ensure it complies in all respects with all applicable requirements of this Agreement and ASD policy.
- J. **“Seclusion”** refers to the involuntary confinement of a student alone in a room or area that the student is physically prevented from leaving. It does not include a classroom time-out, supervised detention, or suspension from school if the student is not both alone and prevented from leaving. It includes the use of any room or area in which the student is alone and not free to leave regardless of its name.
- K. **“SBBS Program”** refers to the District’s School Based Behavior Support Programs for students in kindergarten through 5th or 6th grade who are eligible for special education services. These programs are intended to “provide high quality services for students with challenging behavior” by providing “intensive interventions” delivered by “special trained staff in specific environments in order to successfully access their education, while developing the skills to return to a less restrictive environment.” It currently refers to programs at Kasuun, Lake Hood, and Tyson Elementary Schools, but will also include any new such programs operated by the District and any replacements for the programs currently offered at any of those three schools (including any program that serves the same student population).
- L. **“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 (“IDEA”), the Americans with Disabilities Act (“ADA”), or Section 504 of the Rehabilitation Act of 1975 (“Section 504”).
- M. **“Whaley”** refers to the current Whaley School and any District school or program that takes the place of the current Whaley School or serves the same student population. The Whaley School serves kindergarten through 12th grade students who exhibit chronic behavioral/emotional problems that cannot be supported within their home school environment.

III. BEHAVIOR SUPPORTS ADMINISTRATOR

- A. Within 60 days of the effective date of this Agreement, the District will recruit and hire a Behavior Supports Administrator (“BSA”) who is qualified to carry out all the responsibilities of that position.
- B. It will be the responsibility of the BSA to carry out the responsibilities described below including reviewing incidents; ensuring required follow-up occurs after each incident; evaluating and improving the District’s Physical Restraint practices; overseeing training; and submitting status reports to the United States.

IV. CLASSROOM-WIDE BEHAVIOR MANAGEMENT PLANS

- A. The District will create Classroom-wide Behavior Management Plans (“Classroom Plans”) for every classroom at Whaley and every classroom at each SBBS Program.
- B. The District will collaborate with its consultants to create such Classroom Plans that are consistent with the District’s Schoolwide Positive Behavior Supports program and are reasonable and appropriate given the abilities of the students in Whaley and the SBBS Program. Thus, Classroom Plans will discourage the use of Physical Restraint, promote and reinforce positive behaviors, ensure that Instructional Staff employ appropriate De-escalation Techniques designed to address student misbehavior without causing more extreme behavior,¹ modify learning environments to decrease behavior problems, and require direct teaching and the practice of appropriate pro-social behaviors. To the extent the Classroom Plans use an incentive system involving points, points will be awarded, but never subtracted based on behavior. Under the Classroom Plans, students will not be deprived of recess, access to food, the ability to participate in special classes (e.g. gym, art, etc.), or activities for engaging in misbehavior.
- C. The District will explain to parents/guardians the Classroom Plans, and all subsequent updates, for each classroom to which their child is assigned, and provide them with a copy of all such Classroom Plans.
- D. The District will provide reasonable modifications to its Classroom Plans for individual students when necessary to accommodate their disabilities and integrate them into the classroom population.

V. SECLUSION PRACTICES

- A. The District has contracted with its consultants for a period of two years to provide professional development and school-level consultation to eliminate the use of Seclusion as a response to student behavior in ASD schools and train District staff with alternative responses that provide safe and effective support to all students.
- B. The District will end the use of Seclusion at all ASD schools (except Whaley and the SBBS Program schools) by March 20, 2023. The District will end the use of Seclusion at all ASD schools (including Whaley and the SBBS Program schools) on or before the first day of the 2023-24 District school year.
- C. As part of ending Seclusion as of the dates specified in Paragraph V(B) above, the District will by the date Seclusion is required to end at a particular school, notify all employees regarding the prohibition on secluding students, remove all locking mechanisms from any room that has been used as a Seclusion room, no longer designate or use any rooms or areas in any school buildings for Seclusion, and will

¹ Examples of techniques that could escalate behavior include cornering students, invading their personal space, or blocking an agitated student from leaving a space.

not place students in any rooms that have been used for Seclusion for any student behavior or disciplinary purpose.

- D. Any time a student is subject to Seclusion, unless the result of an isolated incident,² the District will within two school days determine if the student has a current BIP, and, if so, whether it was implemented with fidelity during the incident (including during the actions by staff that preceded the use of Seclusion). If the BIP was not implemented with fidelity the District will take appropriate corrective action to ensure it will be followed in the future, including re-training, coaching and monitoring). If the BIP was implemented with fidelity but proved ineffective, the District will conduct a new FBA and revise the student's BIP as appropriate. If no BIP was in place, the District will initiate a new FBA and use it to create a BIP. Absent exceptional circumstances,³ the FBA and BIP must be properly completed by an appropriately trained professional and implemented within 20 instructional days. The District will collaborate with its consultants to develop a protocol to implement this provision.

The Parties have agreed on revisions to Board Policy 5142.3 to prohibit the use of Seclusion at all District schools. The District shall adopt the revised policy in time to be implemented as of the beginning of the 2023-24 District school year.

VI. PHYSICAL RESTRAINT PRACTICES

- A. Physical Restraint is prohibited unless the student's behavior poses an imminent danger of serious physical injury to the student or others. Physical Restraint may not be used as a form of discipline or punishment, to force compliance with staff directions to a student, as a convenience to staff, or as a substitute for appropriate educational support.
- B. Physical Restraint may not be used to move a student from one location to another or prevent a student from leaving a classroom or any other physical space, unless the staff person reasonably believes the failure to move that student or to prevent that student from leaving the classroom or other physical space will create an imminent danger of serious physical injury to that student or another person.
- C. Physical Restraint may be used only as a last resort after all appropriate De-escalation Techniques have been implemented without success and District staff reasonably

² "Isolated Incident" here and in the next section means the behavior that prompted the seclusion was unprecedented for that student or the result of a unique circumstance that is unlikely to recur or have a lasting impact on the student's behavior. To determine if the behavior was an isolated incident the school must review the student's behavioral history and gather information from District staff and the student's parents/guardians. In such a case the school must explain in writing why it has determined this standard is met and the BSA must approve that explanation.

³ "Exceptional circumstances" here and in the next section means the need for more time to conduct observations or obtain parental consent (or if parental consent cannot be obtained despite good faith efforts). The BSA must agree that exceptional circumstances exist.

believes less restrictive interventions would be ineffective at stopping the imminent danger of serious physical injury.

- D. Physical Restraint of a student must end when the student's behavior no longer poses an imminent danger of serious injury to the student or others or when a less restrictive intervention would be effective to stop the danger.
- E. Any time a student is subject to Physical Restraint, unless the result of an isolated incident, the District will within two school days determine if the student has a current BIP, and, if so, whether it was implemented with fidelity during the incident (including during the actions by staff that preceded the use of Physical Restraint). If the BIP was not implemented with fidelity the District will take appropriate corrective action to ensure it will be followed in the future, including re-training, coaching and monitoring). If the BIP was implemented with fidelity but proved ineffective, the District will conduct a new FBA and revise the student's BIP as appropriate. If no BIP was in place, the District will initiate a new FBA and use it to create a BIP. Absent exceptional circumstances, the FBA and BIP must be properly completed by an appropriately trained professional and implemented within 20 instructional days. The District will collaborate with its consultants to develop a protocol to implement this provision.
- F. Any use of a CPI "Low or Medium Level Hold" or what the District previously called a "low" or "medium" "level physical assist" will be considered a Physical Restraint for all purposes under District policy and this Agreement.
- G. The Parties have agreed on revisions to Board Policy 5142.3 to comply with the requirements of this Agreement (including incorporating the definitions and limitations included herein). The District shall adopt the revised policy in time to be implemented as of the beginning of the 2023-24 District School year.
- H. When appropriate based on the documented history of the intensity of the student's past behaviors, the District will inform families of the potential need for Physical Restraint on an individual basis. In cases where the District may reasonably anticipate the use of Physical Restraint, an individualized plan to ensure the safety of the student and others will be put in place using a Safety Plan, 504 Plan or IEP provision or BIP provision. To avoid improper use of Physical Restraint, the plan will explicitly describe the behaviors and conditions under which the student may be restrained. All staff who may be in a position to restrain the student, to the extent practical, must be familiar with the student's individualized plan (including triggers, De-escalation Techniques, history of self-harm, cool-down plans, and re-integration plans) and BIP.

VII. DOCUMENTATION AND MONITORING

- A. The District has revised its Restraint/Seclusion Documentation Form ("Form") to remove reference to a physical assist and to classify Low and Medium Level Holds and what the District previously called a "low" or "medium level physical assist" as types of Physical Restraint.

- B. The District will complete additional revisions to its Form by June 30, 2023 to aid staff in complying with the requirements of Paragraph VII(C) below and to remove the word “Seclusion” from the title in anticipation of ending the use of Seclusion on or before the first day of the 2023-24 school year. In the event that a Seclusion takes place after the Form is revised, the District must complete the Form and satisfy all the requirements in Paragraph VII(C) below.
- C. The District will train staff that properly completing the Form requires them to:
- i. Make clear the context for the incident and the sequence of events, including the action by the student that prompted each use of Physical Restraint and the actions by the staff immediately prior to the action by the student that prompted the Physical Restraint;
 - ii. Provide objective descriptions of the student’s behavior and use action words instead of characterizing that behavior (e.g., “student was yelling” rather than “student was angry”);
 - iii. Identify all De-Escalation Techniques used;
 - iv. Identify all Physical Restraint techniques used and explain why less restrictive interventions would have been ineffective; and
 - v. Provide an account of what was specifically discussed during the staff, student, and parent/guardian debriefs of the incident, and the results of each debrief.
- D. The District will develop a database or spreadsheet that captures all relevant information from the Form and supports the reviews and analysis provided for below. This database or spreadsheet will allow the District to sort the data by all of the relevant variables included on the Form (including school, date, student name, grade, number of Physical Restraints, type of Physical Restraint, staff member(s) involved, etc.) and run reports that show the frequency of Physical Restraints meeting those criteria.
- E. All Forms completed under Paragraph VII(B-C) above will be reviewed by the school’s principal with the relevant staff within one school day to: identify all failures to properly complete the Form (including failing to provide all required information on the form or make clear the sequence of events), cases in which staff was not aware of or did not adequately implement the student’s BIP or engaged in escalating behavior or ineffective practices, or instances where the use of Seclusion or Physical Restraint did not comply with District policy (as modified by this Agreement). The school principal will immediately work with staff to correct failures to properly complete the Form. If the principal identifies a case in which staff did not adequately implement the student’s BIP or engaged in escalating behavior or ineffective practices, or a use of Seclusion or Physical Restraint that did not comply with District policy, the principal will immediately notify the BSA in writing and work with the

- BSA to take appropriate corrective action (including providing additional guidance or training to the involved staff or putting in place additional monitoring).
- F. Beginning April 1, 2023, all Incident Forms completed under Paragraph VII(B-C) above involving a student at Whaley or any of the SBBS Program schools will be reviewed by the BSA within two school days to determine whether the principal satisfied the requirements of Paragraph VII(E) and all Seclusions and Physical Restraints met the requirements of Sections V and VI of this Agreement. The BSA will evaluate and explain in writing whether the use of Seclusion or Physical Restraint met each requirement of this Agreement, including, but not limited to, whether District staff completed the Forms properly, conducted required debriefs, and determined appropriate follow-up. Should the BSA determine that a use of Seclusion or Physical Restraint did not comply with this Agreement, or the report was not properly completed, the District will take immediate appropriate remedial action. The BSA will also ensure that all FBAs and BIPs required because of the use of Seclusion or Physical Restraint are properly completed by the deadlines in this Agreement.
- G. Beginning April 1, 2023, the BSA will meet monthly with the administrators and the relevant staff at Whaley and each of the SBBS Program schools that have used Physical Restraint or Seclusion in the prior month. During that meeting, the attendees will examine the school's Seclusion and Physical Restraint practices by discussing incident reports and all relevant data in order to:
- i. Identify patterns involving particular students or staff (including action by staff that escalated student misbehavior) and determine how to address those patterns to reduce the use of Seclusion and Physical Restraint;
 - ii. Assess the effectiveness of the De-escalation Techniques used and devise ways to improve those techniques;
 - iii. Evaluate whether staff are using appropriate Seclusion and Physical Restraint techniques;
 - iv. Discuss ways to improve the school's staff, student, and parent debrief process;
 - v. Evaluate the quality of the FBAs conducted and BIPs developed, and identify ways to improve their effectiveness; and
 - vi. Evaluate whether interventions put in place for students were implemented with fidelity and whether they proved effective, and identify ways to increase fidelity and effectiveness.
- H. After each school meeting provided for in Paragraph VII(G) above, each school will implement all appropriate school-level changes identified by the review.

VIII. COMPLAINT PROCEDURE

- A. Within 90 days of the effective date of this Agreement, the District will revise its “Citizen Complaint Form” to explicitly provide that it can be used to address complaints regarding the treatment of students with disabilities and the use of Seclusion and Physical Restraint and to make clear that such complaints can be filed even if the complainant is not aware of the specific District staff involved.
- B. The District will fully inform parents/guardians of the Districts Citizen’s Complaint Procedure and the procedural safeguards afforded to students with disabilities, including by revising the District Form to include a link to the Complaint Procedure.

IX. TRAINING AND PROFESSIONAL DEVELOPMENT

- A. Within 30 days of the hiring of the BSA, the District will have its consultant review the BSA’s education, work experience and training to design a training plan for the BSA to complete any requisite training on the topics included below:
 - i. Information about federal and state laws on how to serve students with disabilities, including the ADA and Section 504, which covers, among other topics, how to consider and respond appropriately to requests for reasonable modifications;
 - ii. The District’s Seclusion and Physical Restraint policies, as modified by this Agreement including the prohibition on Seclusion and that Low and Medium Level Holds, or any actions that meet the definition of Physical Restraint in this Agreement, will be only used if a student’s behavior poses an imminent danger of serious physical injury to the student or others; and
 - iii. How to complete and review all reports completed under Paragraph VII(C) including to determine whether staff completed the forms properly.
- B. The BSA will ensure implementation of professional development for all Administrators covering:
 - i. The Topics in IX(A)(i)-(iii) above; and
 - ii. Effective debriefing after an incident of Seclusion or Physical Restraint.
- C. The BSA will ensure implementation of professional development for all Instructional Staff at Whaley and each SBBS Program covering:
 - i. The District’s Seclusion and Physical Restraint policies, as modified by this Agreement (including the prohibition on Seclusion and that Low and Medium Level Physical Assists and Holds, or any actions that meet the definition of Physical Restraint in this Agreement, will be only used if a student’s behavior poses an imminent danger of serious physical injury to the student or others);

- ii. Principles of behavior, analyzing behavior with a focus on the ABC model, proactive behavior management, De-escalation Techniques, and simple non-intrusive strategies for handling misbehavior;
 - iii. How to complete all reports, forms, and reviews required by this Agreement;
 - iv. Conducting FBAs and developing and implementing BIPs;
 - v. Writing behavioral goals and implementing instruction aligned with those goals;
 - vi. Implementing Classroom Plans (including implementing instruction aligned with behavior goals); and
 - vii. Providing individualized supports and interventions to students and evaluating the effectiveness of those supports and interventions.
- D. All training given under this section will include:
- i. Instruction that provides participants with examples (and non-examples), modeling, opportunities for practice and feedback, and time for review and reflection; and
 - ii. Yearly training supplemented with in-service coaching.
- E. The District will work with its consultants to develop a multi-year plan to increase the educational qualifications of its Instructional Staff in Whaley and the schools that have an SBBS Program, particularly its paraprofessionals. By July 1, 2023, the District will submit this plan to the United States for approval. If the United States does not approve the plan, it will provide comments and edits to guide the District's revisions, and the Parties will work cooperatively to produce a final plan that the United States approves.

X. NOTICE TO PARENTS/GUARDIANS AND COMPENSATORY SERVICES

- A. Within 30 school days from the effective date of this Agreement, the District will publish on the home page of its public website the full text and a jointly created summary of this Agreement.
- B. When a student is subjected to Physical Restraint or Seclusion, the student's parent or guardian must be notified orally or in writing by the end of the school day. A copy of the official, completed Form will be provided to the student's parent(s) or guardian(s) within two school days.
- C. For every student currently enrolled in the District who was subjected to five hours or more of Seclusion from August 2018 through the effective date of this Agreement ("the Relevant Period"), the District will offer compensatory services in an amount at least equal to the number of hours the student was secluded. The parent/guardian of each such student may select whether such compensatory services take the form of

counseling or academic tutoring. For any student who accepts this offer of compensatory services (through the affirmation of the parent/guardian), ASD will make good faith efforts to complete the compensatory education by August 15, 2024. Notice of the availability of such services for eligible students will be provided to their parents/guardians on or before April 1, 2023.

XI. REPORTING AND ENFORCEMENT

- A. On or before January 15 and July 15 of each year this Agreement is in effect, the District will provide a status report to the United States that includes all information below regarding the most recently completed six months.
- B. The July 15, 2023 status report will include copies of all Classroom Plans and each subsequent report will include examples of fidelity data collection documenting their use. It will also include the training plan for the BSA and documentation of the BSA's completed training.
- C. Each District status report will provide, for each paragraph in Sections III-X (above), a narrative describing the District's efforts to comply with that paragraph since the last status report (or since the effective date of the Agreement in the case of the first status report) and all documents that demonstrate the District's efforts to comply with that paragraph including:
 - i. A spreadsheet, listing separately for each District school, the number of times students were subject to a) Physical Restraint and b) Seclusion;
 - ii. Copies of all reports regarding the use of Physical Restraint or Seclusion at Whaley and each SBBS Program completed pursuant to Paragraph VII(B-C), and the written evaluations of those reports by the BSA and documentation of any corrective action taken as a result of that evaluation as required by Paragraph VII(E);
 - iii. A list and description of all trainings conducted in the prior six months to satisfy the requirements of Section IX of this Agreement;
 - iv. A list and description of all training the District plans to conduct in the following six months to satisfy the requirements of Section IX of this Agreement;
 - v. Documentation of all training provided under Section IX of this Agreement; and
 - vi. All FBAs and BIPs completed at Whaley or each SBBS Program school under the provisions of this Agreement.
- D. Upon reasonable notice to the District, the United States may request additional documents or data, tour schools, monitor training for quality and substance, and conduct any other compliance activities that the United States determines are necessary to monitor the District's implementation of the Agreement.

- 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 with the terms of this Agreement or has failed to comply in a timely manner with any term of the Agreement it will so notify the District in writing. If the Parties are unable reach a satisfactory resolution of the issue(s) within 30 days of the United States providing notice to the District, the United States may initiate civil proceedings in federal court to enforce the Agreement and/or the District's underlying obligations under Title II.
- F. The Parties anticipate that the District will have complied with this Agreement by the end of the 2025-26 school year. When the District provides the United States with the status report due July 15, 2026, the United States will have 90 days to raise any remaining concerns regarding the District's compliance with the Agreement.
 - i. If the United States does not raise concerns regarding the District's compliance, the Agreement will terminate.
 - ii. If the United States does raise concerns regarding the District's compliance, the Parties will attempt to resolve those concerns cooperatively. If the Parties are unable to reach a negotiated resolution, the enforcement mechanism in Paragraph XII(E) will apply.
- G. If any part of this Agreement is held to be unlawful, or otherwise unenforceable for any reason by a court of competent jurisdiction, such decision will not affect the validity of any other part of this Agreement.
- H. This Agreement will be enforceable only by the Parties and nothing in this Agreement will be construed to give rise to an action by a third party to enforce its terms.
- I. This Agreement constitutes the entire agreement by the Parties, and no other statement, promise, or agreement, whether written or oral, made by any party or agents of any party, that is not contained in this written Agreement will be enforceable regarding the matters raised in this Agreement.
- J. This Agreement is applicable to and binding on the District, including its officers, agents, employers, successors, and assigns.
- K. The undersigned representatives of the Parties certify that they are authorized to enter into and consent to the terms and conditions of this Agreement and to execute and legally bind the Parties to it.
- L. The effective date of this Agreement is the date of the last signature below.

For the United States:

KRISTEN CLARKE
Assistant Attorney General

SHAHEENA A. SIMONS, Chief
FRANZ R. MARSHALL, Deputy Chief
JAMES A. EICHNER, Trial Attorney
AMELIA K. HUCKINS, Trial Attorney
Educational Opportunities Section
Civil Rights Division
United States Department of Justice
150 M St., NE
Washington, DC 20002

Date: _____

For the District:

ANCHORAGE SCHOOL DISTRICT

Dr. Jharrett Bryantt, Superintendent
5530 E Northern Lights Blvd
Anchorage, AK 99504

Date: _____

BP 5142.3 RESTRAINT AND SECLUSION

The Board believes that a safe educational environment is necessary for learning and understands there are times when student behavior may impact the safety of that student or others. To the maximum extent appropriate, the safety and welfare of students and staff should be secured through positive behavioral interventions. The use of seclusion is prohibited, and the use of physical restraint is prohibited except in emergency situations as set forth below.

Chemical or mechanical restraint of students is never allowed. Chemical restraint means a psychopharmacological drug that is administered to a student for discipline or convenience and that is not required to treat a medical symptom. Mechanical restraint refers to the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as: 1) adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; 2) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

This policy shall be annually reviewed with school personnel.

(cf. 5030 - School Discipline and Safety)

(cf. 5137 - Positive School Climate)

Physical Restraint

“Physical Restraint” refers to a personal restriction that immobilizes or reduces the ability of a student to move the student's arms, legs, or head freely. The term includes holding a student to compel or coerce the student to move to another location within the school. It does not include a temporary touching or holding of the hand, wrist, arm, shoulder, or back without applying pressure or force to prompt a student to walk to a safe location. An action need not be a trained technique to meet the definition of “Physical Restraint” for purposes of this policy. Physical Restraint is prohibited unless the student's behavior poses an imminent danger of serious physical injury to the student or others and less restrictive interventions would be ineffective at stopping the imminent danger. Physical Restraint may be used only as a last resort after all appropriate de-escalation techniques have been implemented without success and staff reasonably believes less restrictive interventions would be ineffective at stopping the imminent danger of serious physical injury. Physical Restraint of a student must end when the student's behavior no longer poses an imminent danger of serious injury to

the student or others or when a less restrictive intervention would be effective to stop the danger.

(cf. 4158 - Employee Security)

(cf. 5131.41 - Violent and Aggressive Conduct)

(cf. 5131.7 - Weapons and Dangerous Instruments)

Physical Restraint may not be used as a form of discipline or punishment, to force compliance with staff directions to a student, as a convenience for staff, or as a substitute for appropriate educational support. The use of emergency Physical Restraint under this policy does not constitute corporal punishment.

“Physical Restraint” includes the use of a “Low” or “Medium Level Hold” or a “low” or “medium level physical assist.” Physical Restraint may not be used to move a student from one location to another or prevent a student from leaving a classroom or any other physical space, unless the staff person reasonably believes the failure to move that student or to prevent that student from leaving the classroom or other physical space will create an imminent danger of serious physical injury to that student or another person.

Physical Restraint must be implemented in a manner that protects the health and safety of the student and others. Physical Restraint may be administered only by staff trained in crisis intervention, de-escalation, and safe restraint, unless a trained person is not immediately available and the circumstances are rare and present an unavoidable and unforeseen emergency. Physical Restraint may not prevent or restrict the student from breathing or speaking nor may it restrict circulation. Prone or supine restraint, which occurs when the student is placed on his or her stomach or back, is expressly prohibited. A student's well-being must be monitored during restraint through the use of continuous face-to-face contact or, if face-to-face contact is unsafe, by continuous direct visual supervision.

Seclusion

Seclusion means the involuntary confinement of a student alone in a room or area that the student is physically prevented from leaving. Seclusion includes the use of any room or area in which the student is alone and not free to leave regardless of its name. Seclusion does not include a classroom time-out, a student's voluntary use of a space to de-escalate or refocus, supervised detention or in-school suspension rooms that are utilized for instructional purposes, or suspension from school if the student is not both alone and prevented from leaving. "Time-outs" are behavior interventions to provide a student with an opportunity to regain self-control or engage in problem solving where the student is separated from other students for a limited period in a setting from which the student is not physically prevented from leaving. Time-out includes placing a student

in an area of the classroom where the student observes classroom instruction but does not participate.

Seclusion of a student is prohibited.

(cf. 4158 - Employee Security)

(cf. 5131.41 - Violent and Aggressive Conduct)

(cf. 5131.7 - Weapons and Dangerous Instruments)

Follow-up and Review

Any time a student is subject to Physical Restraint, unless the result of an isolated incident,¹ the District will within two school days determine if the student has a current Behavior Intervention Plan (“BIP”), and, if so, whether it was implemented with fidelity during the incident (including during the actions by staff that preceded the use of Physical Restraint). If the BIP was not implemented with fidelity the District will take appropriate corrective action to ensure it will be followed in the future, including re-training, coaching and monitoring. If the BIP was implemented with fidelity but proved ineffective, the District will conduct a new Functional Behavior Assessment (“FBA”) and revise the student’s BIP as appropriate. If no BIP was in place, the District will initiate a new FBA and use it to create a BIP. Absent exceptional circumstances,² the FBA and BIP must be properly completed by an appropriately trained professional and implemented within 20 instructional days.

All forms documenting the use of Physical Restraint will be reviewed by the school’s principal with the relevant staff within one school day to ensure compliance with all District policy and procedure.

Students with Disabilities

This policy does not prohibit the inclusion of safe Physical Restraint in a student’s Individualized Education Plan (“IEP”) or BIP if determined appropriate by the IEP team after considering all less restrictive alternatives. However, in all instances, the use of Physical Restraint must be in compliance with this policy and federal and state law regarding the restraint of students with disabilities.

(cf. 6159 - Individualized Education Program)

¹ “Isolated Incident” means the behavior that prompted the Physical Restraint was unprecedented for that student or the result of a unique circumstance that is unlikely to recur or have a lasting impact on the student’s behavior. To determine if the behavior was an isolated incident the school must review the student’s behavioral history and gather information from District staff and the student’s parents/guardians.

² “Exceptional circumstances” means the need for more time to conduct observations or obtain parental consent (or if parental consent cannot be obtained despite good faith efforts).

Reporting/Notification Requirements

The parent/legal guardian of a student who has been physically restrained shall be notified on the same day and provided information about the incident.

Instances of Physical Restraint or Seclusion shall be documented on a standardized form prepared by the District. A written report must be prepared by school personnel who restrain or seclude a student and provided to the school administrator. The report must include: the date and time of the incident; names and job titles of the school personnel who participated or supervised; a description of the conduct that preceded the incident, including efforts and strategies utilized prior to restraint or seclusion; a description of the restraint or seclusion, including duration; and a description of how the incident ended, including any further action taken. A copy of the written report shall be provided to the parent/legal guardian.

Annually, the District shall report to the Department of Education and Early Development the following information: the total number of restraints and seclusion; the number of injuries or deaths of students or personnel; the number of restraints or seclusion by untrained personnel; and the number of students with a disability who were restrained or secluded, including the category of disability.

Crisis Intervention Training

The Superintendent or designee shall provide for periodic crisis intervention training for a sufficient number of school staff members to meet the needs of the school population. Training should include evidence based techniques effective at preventing restraint and seclusion; evidence-based skills related to positive behavior supports, conflict prevention and management techniques, skills to de-escalate student behavior, and understanding antecedents; the safe use of restraint or seclusion in emergency situations; first aid and cardiopulmonary resuscitations; and applicable policies and procedures. The form of training may vary depending upon the staff member's role and the instructional setting.

(cf. 4131 - Staff Development)

Policy Not Applicable to Law Enforcement

This policy is applicable to District employees. It is not intended to limit the use or type of restraint or seclusion by law enforcement personnel who may need to utilize these methods while on District property.

(cf. 1410 - Interagency Cooperation for Student and Staff Safety)

Legal Reference:

UNITED STATES CODE

[20 U.S.C. §§ 1400](#), et seq. *Individuals with Disabilities Education Act*

Every Student Succeeds Act, [20 U.S.C. §§ 7941-7948](#) ([P.L. 114-95](#),
December 10, 2015)

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[11.81.430](#) *Justification, use of force, special relationships*

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[4 AAC 06.172 -177](#) *Reporting of school disciplinary and safety programs and incidents of R&S and crisis intervention programs*

[4 AAC 06.200-.270](#) *Safe schools*

[4 AAC 06.250](#) *Reporting*

[4 AAC 07.010-4 AAC 07.900](#) *Student rights and responsibilities*

[4 AAC 52.010-.990](#) *Education for exceptional children*

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Anchorage School District

BP 5142.3 RESTRAINT AND SECLUSION

The Board believes that a safe educational environment is necessary for learning and understands there are times when student behavior may impact the safety of that student or others. To the maximum extent appropriate, the safety and welfare of students and staff should be secured through positive behavioral interventions. The use of seclusion is prohibited, and the use of physical restraint is prohibited except in emergency situations as set forth below.

Chemical or mechanical restraint of students is never allowed. Chemical restraint means a psychopharmacological drug that is administered to a student for discipline or convenience and that is not required to treat a medical symptom. Mechanical restraint refers to the use of any device or equipment to restrict a student's freedom of movement. The term does not include devices implemented by trained school personnel, or utilized by a student that have been prescribed by an appropriate medical or related services professional and are used for the specific and approved purposes for which such devices were designed, such as: 1) adaptive devices or mechanical supports used to achieve proper body position, balance, or alignment to allow greater freedom of mobility than would be possible without the use of such devices or mechanical supports; 2) vehicle safety restraints when used as intended during the transport of a student in a moving vehicle; restraints for medical immobilization; or orthopedically prescribed devices that permit a student to participate in activities without risk of harm.

This policy shall be annually reviewed with school personnel.

(cf. 5030 - School Discipline and Safety)

(cf. 5137 - Positive School Climate)

Physical Restraint

“Physical ~~restraint means~~ Restraint” refers to a personal restriction that immobilizes or reduces the ability of a student to move the student's arms, legs, or head freely. ~~Physical restraint does not include briefly~~ The term includes holding a student ~~in order to calm~~ compel or ~~comfort, or~~ coerce the ~~use of contact that is reasonably necessary~~ student to ~~safely escort a person from one area~~ move to another.

location within the school. It does not include a temporary touching or holding of the hand, wrist, arm, shoulder, or back without applying pressure or force to prompt a student to walk to a safe location. An action need not be a trained technique to meet the definition of “Physical Restraint” for purposes of this policy. Physical ~~restraint~~ Restraint is prohibited unless the student's behavior poses an imminent danger of serious physical injury to the student or others and less restrictive interventions would be ineffective at stopping the imminent danger. ~~To the extent possible~~ Physical Restraint may be used only as a last resort after all appropriate de-escalation techniques have

been implemented without ~~compromising safety, other~~ success and staff reasonably believes less restrictive interventions ~~should~~would be ~~attempted prior to~~ineffective at stopping the ~~use~~imminent danger of ~~restraint~~serious physical injury. Physical Restraint of a student must ~~be limited to that necessary to address the emergency and must be immediately discontinued~~end when the ~~student~~student's behavior no longer poses an imminent danger of serious injury to the student or others or when a less restrictive intervention ~~is~~would be effective to stop the danger.

(cf. 4158 - Employee Security)

(cf. 5131.41 - Violent and Aggressive Conduct)

(cf. 5131.7 - Weapons and Dangerous Instruments)

Physical Restraint may not be used as a form of discipline or punishment, to force compliance with staff directions to a student, as a convenience for staff, or as a substitute for appropriate educational support. The use of emergency ~~restraint~~Physical Restraint under this policy does not constitute corporal punishment.

~~Physical restraint~~“Physical Restraint” includes the use of a “Low” or “Medium Level Hold” or a “low” or “medium level physical assist.” Physical Restraint may not be used to move a student from one location to another or prevent a student from leaving a classroom or any other physical space, unless the staff person reasonably believes the failure to move that student or to prevent that student from leaving the classroom or other physical space will create an imminent danger of serious physical injury to that student or another person.

Physical Restraint must be implemented in a manner that protects the health and safety of the student and others. Physical Restraint may be administered only by staff trained in crisis intervention, de-escalation, and safe restraint, unless a trained person is not immediately available and the circumstances are rare and present an unavoidable and unforeseen emergency. Physical Restraint may not prevent or restrict the student from breathing or speaking nor may it restrict circulation. Prone or supine restraint, which occurs when the student is placed on his or her stomach or back, is expressly prohibited. A student's well-being must be monitored during restraint through the use of continuous face-to face contact or, if face-to-face contact is unsafe, by continuous direct visual supervision.

Seclusion

Seclusion means the involuntary confinement of a student alone in a room or area that the student is physically prevented from leaving. Seclusion includes the use of any room or area in which the student is alone and not free to leave regardless of its name. Seclusion does not include a classroom time-outs, a ~~student's~~student's voluntary ~~choice to enter a secluded environment~~use of a space to de-escalate or refocus, supervised detention or in-school suspension rooms that are utilized for instructional

purposes, or suspension from school. if the student is not both alone and prevented from leaving. "Time-outs" are behavior interventions to provide a student with an opportunity to regain self-control or engage in problem solving where the student is separated from other students for a limited period in a setting from which the student is not physically prevented from leaving. Time-out includes placing a student in an area of the classroom where the student observes classroom instruction but does not participate.

Seclusion of a student is prohibited ~~unless the student's behavior poses an imminent danger of physical injury to the student or others and less restrictive interventions would be ineffective at stopping the imminent danger.~~

(cf. 4158 - Employee Security)

(cf. 5131.41 - Violent and Aggressive Conduct)

(cf. 5131.7 - Weapons and Dangerous Instruments)

~~Seclusion should last only as long as necessary to resolve the actual risk of imminent danger or when a less restrictive intervention is effective to stop the danger. Seclusion should never be used as a form of discipline, to force compliance, as a convenience for staff, or as a substitute for appropriate educational support.~~

~~While in a seclusion setting, a student must be continuously monitored by an adult in face-to-face contact or, if face-to-face contact is unsafe, by continuous direct visual contact with the student. Students must be provided necessities such as restroom breaks and food and water as needed. Any signs of medical distress should be immediately addressed. Seclusion must be sensitive to any particular vulnerabilities of the student and to the student's developmental level.~~

Follow-up and Review

~~As soon as practicable after restraint or seclusion have been used, staff shall review the incident. The review shall include review of and recommendations for adjusting or amending, as applicable, procedures, strategies, accommodations, the IEP, a student behavior plan, or additional staff training. Follow-up communication shall occur with the student and parent/legal guardian regarding the review process and outcomes.~~

Any time a student is subject to Physical Restraint, unless the result of an isolated incident,¹ the District will within two school days determine if the student has a current Behavior Intervention Plan ("BIP"), and, if so, whether it was implemented with fidelity during the incident (including during the actions by staff that preceded the use of

¹ "Isolated Incident" means the behavior that prompted the Physical Restraint was unprecedented for that student or the result of a unique circumstance that is unlikely to recur or have a lasting impact on the student's behavior. To determine if the behavior was an isolated incident the school must review the student's behavioral history and gather information from District staff and the student's parents/guardians.

Physical Restraint). If the BIP was not implemented with fidelity the District will take appropriate corrective action to ensure it will be followed in the future, including re-training, coaching and monitoring. If the BIP was implemented with fidelity but proved ineffective, the District will conduct a new Functional Behavior Assessment (“FBA”) and revise the student’s BIP as appropriate. If no BIP was in place, the District will initiate a new FBA and use it to create a BIP. Absent exceptional circumstances,² the FBA and BIP must be properly completed by an appropriately trained professional and implemented within 20 instructional days.

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(cf. 6159 - Individualized Education Program)

Reporting/Notification Requirements

The parent/legal guardian of a student who has been physically restrained ~~or secluded~~ shall be notified on the same day and provided information about the incident.

Instances of ~~physical restraint~~Physical Restraint or ~~seclusion~~Seclusion shall be documented on a standardized form prepared by the District. A written report must be prepared by school personnel who restrain or seclude a student and provided to the school administrator. The report must include: the date and time of the incident; names and job titles of the school personnel who participated or supervised; a description of the conduct that preceded the incident, including efforts and strategies utilized prior to restraint or seclusion; a description of the restraint or seclusion, including duration; and a description of how the incident ended, including any further action taken. A copy of the written report shall be provided to the parent/legal guardian.

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² “Exceptional circumstances” means the need for more time to conduct observations or obtain parental consent (or if parental consent cannot be obtained despite good faith efforts).

seclusion by untrained personnel; and the number of students with a disability who were restrained or secluded, including the category of disability.

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(cf. 4131 - Staff Development)

Policy Not Applicable to Law Enforcement

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(cf. 1410 - Interagency Cooperation for Student and Staff Safety)

Legal Reference:

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