



## U.S. Department of Justice

SS:KG:JE:AS:MG:SG:AE  
DJ 169-29-34

### Civil Rights Division Educational Opportunities Section

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July 2, 2024

### ***Via Electronic Mail Only***

William P. Tretbar, Esq.  
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### **Re: Wichita Public Schools Investigation**

Dear Mr. Tretbar:

We write regarding the investigation by the U.S. Department of Justice (the “Department”) into the administration of school discipline, referral of student conduct to law enforcement, and use of seclusion and restraint within Wichita Public Schools (the “District”). We conducted the investigation under Title IV of the Civil Rights Act of 1964, 42 U.S.C. § 2000c *et seq.*, which authorizes the Department to address equal protection violations based on race in public schools; Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*, which prohibits discrimination against students on the basis of race by recipients of federal financial assistance; and the Americans with Disabilities Act, 42 U.S.C. § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) *et seq.*, which prohibit discrimination against students with disabilities.<sup>1</sup>

We appreciate the District’s cooperation throughout our investigation, particularly District administrators’ and staff’s responses to our requests for documents and data and their willingness to meet with us. We also acknowledge the cooperation of the United Teachers of Wichita who also met and shared information with us during the investigation. Before we

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<sup>1</sup> The District receives federal funds from the Department’s Office of Justice Programs, Bureau of Justice Assistance, which provides the District a grant through the Students, Teachers, and Officers Preventing (STOP) School Violence Program.

concluded our investigation, the District expressed a desire to make positive improvements for its students. The District and the Department then worked together to find a resolution that would achieve this goal and ensure the District's compliance with its legal obligations under federal law. Ultimately, the District and the Department entered into the attached settlement agreement to resolve the Department's investigation.

### *Overview*

The Department's investigation examined the District's 87 schools and special programs from the beginning of the 2020-21 school year through the end of the fall semester of the 2022-23 school year (the "Relevant Period") and included review of thousands of documents and interviews with dozens of people, including administrators, school staff, local advocates, and parents. During the investigation, we reviewed District- and school-level policies and procedures related to restraint and seclusion, discipline, and the use of security officers and law enforcement; Kansas state statutes, regulations, and guidance on these issues; notification letters and database narratives describing restraints and seclusions; data and narratives about disciplinary incidents; incident reports completed by security officers documenting their actions and the actions of law enforcement; complaints filed by or on behalf of students alleging problems with restraints and seclusions or discrimination on the basis of disability or race; Individualized Education Programs, Functional Behavioral Assessments, and Behavior Intervention Plans for students who had been secluded and/or restrained; and information about placement and programming at specialized schools and programs in the District serving students with disabilities. We also conducted a site visit to the District in March 2023 where we toured and interviewed administrators and staff at 17 schools, including schools with programs that exclusively or primarily serve students with disabilities, schools with concerning restraint and seclusion or discipline practices, and schools with security officers and School Resource Officers.

Our investigation concluded that, during the Relevant Period,<sup>2</sup> the District discriminated against students based on race and disability. In particular, we substantiated allegations that the District discriminated against Black students in its administration of school discipline and referral of student conduct to law enforcement. We also found evidence that the District denied students with disabilities equal opportunity to participate in or benefit from its education program, *see* 28 C.F.R. § 35.130(b)(1)(i); and failed to make reasonable modifications to avoid disability discrimination in its education program, *see* 28 C.F.R. § 35.130(b)(7). Below we include a summary of the results of our investigation.

### *School Discipline and Referrals to Law Enforcement*

The Department's investigation revealed evidence that Black students are disciplined more frequently and more severely than white students who engage in similar conduct and have similar backgrounds (e.g., grade, disability status, and prior disciplinary history). We found that this pattern was most evident when it came to subjective and vaguely defined offenses, such as "disruptive conduct" and "insubordination," and was especially stark when it came to discipline of Black girls. We also found that the District's lack of appropriate policies, training, and monitoring likely permitted this different treatment to go unchecked.

As an initial matter, the information produced by the District showed that at several

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<sup>2</sup> Our conclusions pertain only to the years covered by our investigation.

District schools, Black students were more likely to receive disciplinary referrals and suspensions than their white peers during the Relevant Period, especially for more subjective infractions. At one District high school, Black students were five times as likely as their white peers to receive a disciplinary referral and five times as likely to be suspended as a result of that referral. At several middle and elementary schools, Black students were more than three times as likely as their white peers to be suspended. Across the District, Black students were more likely than white peers to receive multiple disciplinary referrals, and to receive referrals for subjective offenses such as “disruptive conduct” and “insubordination,” which were not clearly defined. For example, at the high school cited above, Black students received referrals for subjective offenses at nearly nine times the rate of their white peers. Further, Black students were more likely than white students to be referred to law enforcement for such subjective offenses as “disorderly conduct”—at one high school, 3.7 times more likely.

For Black girls, these differences in rates of disciplinary referrals were particularly pronounced, especially in the context of perceived insubordination and in dress code enforcement. At one District middle school, Black girls were referred for insubordination at more than 4.5 times the rate as white girls, and about 2.7 times the rate as black boys. In addition, there were 19.3 referrals for dress code violations for every 100 Black girls at that school, compared to 5.4 referrals for every 100 white girls. At another middle school Black girls were referred for dress code violations at more than nine times the rate as white girls, and more than 16 times the rate as Black boys.

The Department’s interviews and our close review of incident files revealed evidence of differences in perceptions and treatment of Black students, consistent with the patterns described above. For example, in incident reports for “insubordination” offenses across the District, Black girls were 3.5 times as likely as white girls to be described with stereotypical terms like “attitude” and “drama.” Additionally, incident files showed disparate treatment of similarly situated students, and District personnel could not explain this different treatment of Black students in our interviews. In one such incident involving a Black and white student fighting, the Black student was disciplined more severely than the white student even though the Black student was not more violent during the incident, neither student was injured, and the white student had instigated the fight by using a racial slur. In addition, Black students in District high schools were referred to law enforcement for minor conduct even though similarly situated white students were not referred for similar conduct. This included a Black student being referred to the police for pushing another student to the ground during a game of tag in gym class, but no such referral being made when a white student in the same grade engaged in similar conduct. Our investigation also revealed examples, often involving non-white students, of security officers escalating student behavior while responding to routine discipline matters. This practice resulted in avoidable referrals to law enforcement.

Further, we found that the District lacks the kinds of policies and procedures or supervision of discipline and law enforcement referral practices that would help ensure nondiscrimination. The District has no uniform code of conduct or disciplinary matrix specifying the disciplinary consequence or range of consequences that administrators should impose for prohibited conduct. Likewise, the District does not have a program for monitoring discipline practices that would lead officials at the District level to identify and appropriately respond to evidence of possible discrimination. Because the District also lacks standardized review processes at the school-level, principals and staff are left to create ad hoc approaches to

monitoring that often fail to recognize discriminatory practices.

### *Restraint and Seclusion*

The Department’s investigation also revealed that District personnel frequently relied on restraint and seclusion when responding to the conduct of students with disabilities. During the Relevant Period, the District reported conducting 1,570 restraints and 1,450 seclusions.<sup>3</sup> Nearly all of these incidents—98%—involved a student with a disability. Indeed, the only schools that had dedicated seclusion rooms were schools that housed special programs for students with emotional or behavioral disabilities. Young children in the District were most at-risk for restraint and seclusion; there were hundreds of incidents involving students in kindergarten through second grade. In many cases, students were repeatedly restrained or secluded, including over 40 students who were restrained or secluded 20 or more times. District reports indicate that students lost over 10,000 minutes of instruction because of restraint and seclusion.

Based on our investigation, we concluded that most of the District’s restraints and all its seclusions were improper under both District policy and generally accepted practice, which limit the use of restraint and seclusion to situations involving a “reasonable and immediate danger of physical harm.”<sup>4</sup> In practice, the District used restraints and seclusions in its schools when there was no safety threat, and instead to enforce school rules, to address refusals to comply with staff directives, to prevent students from leaving a room or area, and to transport students. For example, restraints were used to remove a student after he refused to take off his hat and to move a student after he kicked over a trash can and refused to pick it up, and a student was secluded for peeling paint off a school wall. Moreover, the District regularly failed to provide students with disabilities the supports and services they needed to manage the behaviors that resulted in their restraint and seclusion. For students who were repeatedly restrained or secluded, many had behavior plans that the District was not implementing, and others had plans that the District did not revise after an incident to ensure their effectiveness.

The District’s specialized programs for students with behavioral and emotional disabilities, especially its Day Schools serving such students in buildings separate from the general education program, raise particular concerns. The Day Schools were among those with the highest number of improper restraints and seclusion during the Relevant Period. In addition, students enrolled at those schools were offered inferior educational opportunities and housed in facilities devoid of furniture, educational equipment or the décor typical of a school. The schools did not have the support from professionals with experience or expertise needed to effectively implement their specialized programs. And behavioral interventions were not regularly used to address student conduct. Instead, security officers regularly responded to student behaviors, even though they lacked the training necessary to work with the population served in the Day Schools.

We note that the District has taken initial steps to address the issues identified in this letter, including beginning work on a draft uniform code of conduct and scheduling training in crisis prevention for groups of relevant administrators and staff this summer. We appreciate these

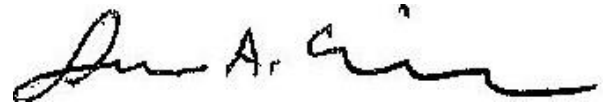
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<sup>3</sup> The number of restraints was likely understated because, as we learned during the investigation, prior to the 2022-23 school year District personnel regularly failed to report involuntary physical transports of students as restraints. <sup>4</sup> WICHITA PUBLIC SCHOOLS, Board Policy (“BP”) 5116, Emergency Safety Interventions, <https://www.usd259.org/cms/lib/KS01906405/Centricity/domain/622/boe%20policies/5116%20Emergency%20Safety%20Interventions.pdf> (last visited June 25, 2024); see also K.S.A. § 91-42-2(a).

efforts, as well as the assistance that the District and its counsel rendered throughout our investigation, and we look forward to working with the District to ensure the successful implementation of the settlement agreement. If you have any questions about this letter, please do not hesitate to contact James Eichner (james.eichner@usdoj.gov), Ajay Saini, (ajay.saini@usdoj.gov), or Matthew Gillespie (matthew.gillespie2@usdoj.gov).

Sincerely,

Shaheena A. Simons  
Chief  
Kelly Gardner  
Deputy Chief

A handwritten signature in black ink, appearing to read "James A. Eichner". The signature is fluid and cursive, with a long horizontal stroke at the end.

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James A. Eichner  
Ajay P. Saini  
Matthew Gillespie  
Trial Attorneys  
Educational Opportunities Section