

**Settlement Agreement between  
the United States  
and  
Frederick County Public School District**

## BACKGROUND

The parties to this Settlement Agreement (“Agreement”) are the United States and Frederick County Public School District (“FCPS” or the “District”) (collectively the “Parties”).

On October 16, 2020, the U.S. Department of Justice, Civil Rights Division, Educational Opportunities Section, and the U.S. Attorney’s Office, District of Maryland (together the “United States”) notified FCPS that it was investigating whether the District’s seclusion and restraint practices violate Title II of the Americans with Disabilities Act (“Title II”), 42 U.S.C. § 12132, by discriminating against students with disabilities or denying those students the benefits of the District’s “services, programs or activities.” The investigation found 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). Specifically, United States concluded that the District improperly secluded and restrained students with disabilities, failed to use appropriate behavior interventions, and failed to adequately train and hire appropriate staff.

The Parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in litigation. The Parties have, therefore, voluntarily entered into this Agreement, as follows:

## DEFINITIONS

- a. **“Administrators”** refers, for purposes of identifying those who will be trained pursuant to the terms of this Agreement, to all principals, assistant principals, and District-level supervisors who oversee or evaluate the performance of principals or assistant principals.
- 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 typically developed based on the outcome of a Functional Behavior 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. **“De-escalation Techniques”** refers to a progression of non-verbal (e.g., body language, physical cues, and allowing personal space), verbal, and environmental (e.g., clearing a room of all other students to reduce risk to the individual or to other

students) interventions used to reduce behavior of a student that might pose a danger.

- e. **“Functional Behavior Assessment” or “FBA”** refers to a systematic process used to 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.
- f. **“Instructional Staff”** refers to certified staff (e.g., teachers and counselors) and noncertified staff (e.g., teacher aides or paraprofessionals) who work directly with students.
- g. **“Physical Restraint”** refers to a personal restriction, imposed by a school staff member or other individual, that immobilizes or reduces the ability of a student to move his or her torso, arms, legs, or head freely. The term Physical Restraint does not include a physical escort, which refers to a temporary touching or holding of the hand, wrist, arm, shoulder, or back of a student for the purpose of inducing a student to walk to a safe location, when the contact does not continue after arriving at the safe location.
- h. **“Seclusion”** refers to the involuntary confinement of a student in a room or area, with or without adult supervision, from which the student is not permitted to leave. The term does not include a behavior management technique that is part of an approved program, which involves the monitored separation of the student in a non-locked setting, from which the student is allowed to leave. Seclusion does not include placing a student in a separate location within a classroom with others or with an instructor where that student continues to receive instruction, is free to leave the location, and believes they can leave the location.
- i. **“Incident Report”** refers to the District document titled “Physical Restraint Incident Report,” which the District uses to record what happened during a Physical Restraint, its evaluation of that incident, parental notification, and any actions to be taken as a result.
- j. **“Self-Contained Classroom”** refers to a classroom comprised only or primarily of students with disabilities where a Special Education teacher is or should be responsible for instruction in all or nearly all academic subjects. This includes classrooms at the Rock Creek School and those that are a part of the “Pyramid” and “Expressions” (formerly called “Challenges”) programs at FCPS. This does not include classrooms that are a part of the “Learning for Life” program.
- k. **“SRO”** refers to a School Resource Officer.
- 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 1973 (“Section 504”).

- m. **“Board Certified Assistant Behavior Analyst” or “BCaBA”** refers to an individual who has been certified by an accredited organization, like the BACB (Behavior Analyst Certification Board).
- n. **“BCaBA Supervisor”** refers to a Board Certified Behavior Analyst (BCBA) who has been certified by an accredited organization, like the BACB (Behavior Analyst Certification Board).<sup>1</sup>

## TERMS OF AGREEMENT

### **I. General Prohibitions Against Discrimination**

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

### **II. District Policy**

- a. The District will formalize in District policy the prohibition on using Seclusion, as set forth in Section VI of this Agreement.
- b. The District will formalize in District policy the appropriate implementation of Physical Restraint practices, as set forth in Section VII of this Agreement.

### **III. Board Certified Assistant Behavior Analysts**

- a. The District will require all behavior support specialists who are assigned to Self-Contained Classrooms to be BCaBAs. Until the start of the 2023-24 school year, an individual who is currently enrolled in a program conferring an assistant behavior analyst certificate will be considered a BCaBA for purposes of this Agreement.<sup>2</sup>
- b. The District will promptly ensure any current FCPS behavior support specialists who are assigned to self-contained classrooms and who are not BCaBAs will be provided an opportunity to obtain the required certification.
- c. The District will ensure that the BCaBA Supervisor will provide ongoing professional development and support to any current FCPS behavior support specialists who are not BCaBAs and assigned to self-contained classrooms.

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<sup>1</sup> The District may appoint an Interim BCaBA Supervisor to fulfill the responsibilities of the BCaBA Supervisor for any period in which the BCaBA Supervisor position is vacant.

<sup>2</sup> The District may request an extension of this timeline upon a showing of demonstrated hardship in filling the BCaBA position. If the parties agree that the timeline should be extended, the District will provide additional professional development for each BCaBA who has not yet received the required certificate.

- d. The District will assign at least one BCaBA to every school that has a Self-Contained Classroom, including but not limited to the Rock Creek School and any schools that house the Pyramid and/or Expressions program(s) or successor programs designed to serve similar populations of students.
- e. The minimum ratio will be one BCaBA for every 20 students in Self-Contained Classrooms.
- f. BCaBAs will review all Incident Reports and debrief forms to ensure completeness and fidelity to District policy. This review will occur within one school day of the date on which the Incident Report(s) and debrief forms are completed.
- g. BCaBAs will report in writing all incomplete Incident Reports and Incident Reports that document Physical Restraints that violate District policy to the school Principal and the BCaBA Supervisor within two school days of receiving each Incident Report.
- h. BCaBAs will coordinate with school principals to notify all staff involved in any Physical Restraint that violates District policy of such violation(s) and take corrective steps to prevent the recurrence of similar violations.
- i. BCaBAs will collect data on the number of Physical Restraints per student and schoolwide for each school to which they are assigned. BCaBAs will summarize this data in writing and provide it to the BCaBA Supervisor on a weekly basis.
- j. At the end of each semester, BCaBAs will hold a meeting with all staff involved in one or more Physical Restraints to review the use of Physical Restraint, including whether the use of Physical Restraints complied with District policy. During this meeting, the BCaBAs will discuss observed violations of District Policy and any other deficiencies and/or areas for improvement.
  - i. Within ten calendar days of the meeting, the BCaBA will provide a written report to the school principal and BCaBA Supervisor. The report will summarize the substance of the meeting and the Incident Reports and debrief forms tracked throughout the semester, the nature and frequency of Policy violations and corrective steps taken, and outline recommendations for improvement.
- k. BCaBAs will oversee the completion of FBAs and the development and implementation of function-based BIPs based on FBA results for all students in Self-Contained Classrooms.
  - i. BCaBAs will ensure that all FBAs document, at a minimum: (i) specific socio-affective, cognitive, and/or environmental factors associated with

the occurrence (and non-occurrence) of specific behavior(s); (ii) the problem behavior(s); and (iii) the preceding and subsequent events that control the behavior(s).

1. BCaBAs will review the BIPs of all students currently enrolled in the District who have undergone Physical Restraint between the 2017-18 and 2020-21 school years. If the BCaBA determines that any BIP is inadequate, the BCaBA will oversee the revision of that BIP. The BCaBA will conduct a new FBA to inform the development of the revised BIP, if necessary.
  - i. BCaBAs will be responsible for monitoring the effectiveness of BIPs and provide ongoing technical support to school-based teams when new plans are introduced and when intervention plans appear ineffective or the team otherwise needs expert consultation.
  - ii. BCaBAs will hold weekly observations of Self-Contained Classrooms to evaluate and support the appropriate use of behavior interventions and provide feedback and coaching, where needed.

#### **IV. BCaBA Supervisor**

- a. The District will hire a full-time board-certified behavioral analyst to supervise all BCaBAs (“BCaBA Supervisor”). Within 120 calendar days from the effective date of this Agreement, the District will provide the United States with the credentials and resume of the proposed BCaBA Supervisor for the United States’ approval. The United States will respond to the District’s request for approval of the District’s proposed BCaBA Supervisor within 10 calendar days. The BCaBA Supervisor will be appointed within 30 calendar days from receipt of approval by the United States.
- b. At least once each semester, the BCaBA Supervisor will hold school-level meetings with Administrators, BCaBAs, and other relevant staff who have used Physical Restraint since the last time the BCaBA Supervisor met with that school. During the meeting, the attendees will review Incident Reports and all relevant data to:
  - i. Identify patterns involving particular students or staff (including any actions that may have escalated student behavior) and determine how to address those patterns to reduce the use of 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 Physical Restraint techniques;
  - iv. Discuss ways to improve the debrief process;

- v. Evaluate the quality of the FBAs and BIPs and identify ways to improve their effectiveness;
  - vi. Evaluate whether interventions were implemented with fidelity and whether they proved effective, and identify ways to increase fidelity and effectiveness;
  - vii. Review examples of incomplete forms to ensure proper recordkeeping practices; and
  - viii. Examine the school's parental notification practices and how they can be improved.
- c. Within 10 calendar days of the school-level meetings required under Section IV(b), the BCaBA Supervisor will write a report summarizing the substance of the meeting. The report will include data on the number of Physical Restraints in the prior four months, broken down by school and individual student. The report will also address the effectiveness of each school's use of behavior interventions. The BCaBA Supervisor will provide copies of this report to the Superintendent and Directors of the Special Education Department within two calendar days of completing the report.
- i. The BCaBA Supervisor will make any necessary changes to resolve problems identified in the report that are approved by the Superintendent in coordination with the Directors of the Special Education Department and relevant school Administrators.
- d. The BCaBA Supervisor will be responsible for timely reporting all correct and updated data to the U.S. Department of Education as part of the Civil Rights Data Collection.
- e. The District may replace the BCaBA Supervisor during the term of this Agreement. If the District does decide to replace the BCaBA Supervisor, it will provide the United States with a detailed written explanation within seven calendar days of making the decision. The District will provide the United States with the credentials and resume of any new proposed BCaBA Supervisor for the United States' approval. The United States will respond to the District's request for approval of a new BCaBA Supervisor within 10 calendar days.

## **V. School Principals**

- a. School Principals will identify any incomplete Incident Reports or instances in which Physical Restraint did not comply with District policy. Principals will report those incidents in writing to the Directors of the Special Education Department within seven calendar days.

- b. School Principals will collaborate with BCaBAs to collect and review individual student and schoolwide Physical Restraint data on a weekly basis. This data will be reviewed during school-level meetings described in Section IV(b), and summarized in the report described in Section (IV)(c).

## **VI. Seclusion Practices**

- a. The District will immediately end the use of Seclusion.
- b. The District will no longer designate or use any rooms or areas in any school buildings for the seclusion of students.
- c. Within 10 calendar days of the effective date of this Agreement, the District will notify all employees regarding the prohibition on secluding students.
- d. Within 10 calendar days of the effective date of this Agreement, the District will remove the locking mechanisms from seclusion rooms.
- e. The District will not place students in the former seclusion rooms for any student behavioral or disciplinary purposes.

## **VII. Physical Restraint Practices**

- a. Physical Restraint may not be used except in an emergency situation in which Physical Restraint is necessary to protect a student or other person from imminent, serious, physical harm after other less intrusive, nonphysical interventions have failed or been determined inappropriate. *See* Md. Code Regs. § 13A.08.04.05. Imminent, serious physical harm has the same meaning as “serious bodily injury” as used in the Individuals with Disabilities Education Act (“IDEA”) and means bodily injury which involves: (i) A substantial risk of death; (ii) Extreme physical pain; (iii) Protracted and obvious disfigurement; or (iv) Protracted loss or impairment of the function of a bodily member, organ, or mental faculty. Md. State. Dept. of Ed., Student Behavior Interventions: Restraint and Seclusion 3 (2019) (citing 20 U.S.C. § 1415(k)(7)(D)).
- b. Physical Restraint may only be executed by certified teachers, administrators, or BCaBAs who have received training on the appropriate use of Physical Restraint, CPI training, and any other training required by State law. Physical Restraint may only be executed by individuals who use appropriate CPI techniques.
- c. Physical Restraint of a student must end when it is no longer necessary to protect a student or other person from imminent, serious, physical harm.
- d. Any time a student is subjected to Physical Restraint, within 10 school days, the school, with support from the BCaBA assigned to the school or classroom, will convene an IEP meeting to determine the need for an FBA and obtain parental



consent to conduct an FBA, if necessary. Within 20 school days from the date of parental consent, the BCaBA assigned to the school or classroom will coordinate with school staff to conduct an FBA and will oversee development and implementation of a BIP based on the results of the FBA, unless an FBA and BIP have been completed within the last month. The BCaBA(s) assigned to Lewistown Elementary and the Rock Creek School will consult with the BCaBA Supervisor to complete all FBAs and BIPs required under this Subsection.

- e. The District will revise its policies to require a meeting to debrief after every incident of Physical Restraint. The BCaBA assigned to the school or classroom, the classroom teacher, the school therapist, and all staff who performed and observed the Physical Restraint must attend the debrief meeting. This meeting must occur within two school days of the Physical Restraint. During the meeting, participants will discuss the precipitating event(s) to the behavior that led to the Physical Restraint and steps that will be taken to avoid the use of Physical Restraint in the future, such as changing the environment or action that triggered the behavior.
- f. The District will create a debrief form to be completed within three school days of each Physical Restraint. This form will summarize the substance of the debrief meeting. The BCaBA assigned to each school or classroom will collect and maintain all debrief forms.

### **VIII. Documentation**

- a. The District will develop a secure electronic system under the control of the BCaBA Supervisor for storing all Physical Restraint Incident Reports in the District.
- b. Only one Physical Restraint should be documented per Incident Report form.
- c. The District will revise the title of the Incident Report form from “Physical Restraint/Seclusion Incident Report” to “Physical Restraint Incident Report” to account for the District’s discontinuation of Seclusion.
- d. The District will revise its Incident Report form to provide places for staff to:
  - i. List the precipitating event to the behavior that led to the Physical Restraint.
  - ii. List a description of the behavior that led to the Physical Restraint.
  - iii. List all De-escalation Techniques used or other actions taken prior to the use of Physical Restraint.
  - iv. Describe the Physical Restraint technique used and the time it began and ended.

- v. Specify the role each staff person played in the incident.
- e. Within 60 calendar days of the effective date of this Agreement, the District will submit the revised Incident Report form to the United States for review and approval. If the United States does not approve the revised Incident Report form, it will provide comments to guide the District's revisions. The Parties will work cooperatively to produce a final Incident Report form that the United States approves.
- f. Once the United States approves the final Incident Report form, the District will fully and accurately complete an Incident Report each time a student is subjected to Physical Restraint.
- g. When staff complete the Incident Report form, they will:
  - i. Include all required information on the form itself, rather than referring to attached behavior reports or other documents. If all of the required information cannot be included on the Incident Report form due to space limitations, staff will use additional blank pages to complete the required documentation.
  - ii. Provide objective descriptions of the student's behavior instead of characterizing that behavior (e.g., "student was yelling" rather than "student was angry").
  - iii. Provide a copy of the completed Incident Report to the BCaBA on the day the incident occurs.

## **IX. Complaint Procedure**

- a. Within 30 days of the effective date of this Agreement, the District will develop a complaint procedure to ensure that the District promptly responds to all complaints about the use of Physical Restraint.
  - i. The District will designate the individual(s) who will accept, process and make determinations regarding complaints. The District will require all District employees to refer complaints to the designated individual(s).
  - ii. The new complaint procedure will allow complaints to be made orally or in writing by any student, parent, guardian, staff member, or other individual.
  - iii. Determinations regarding all complaints will be made within 60 calendar days.
  - iv. The District will take all appropriate remedial action in response to each

complaint.

- v. The District will provide a written explanation of the resolution simultaneously to all parties involved.
  - vi. The District will prohibit any adverse action including, but not limited to, retaliation, harassment, or negative educational consequence, against the student or complainant (or any member of their family) or any other individual (or any member of their family) for filing the complaint or otherwise participating in the complaint process.
- b. Within 60 calendar days of the effective date of this Agreement, the District will submit the complaint procedure to the United States for review and approval. If the United States does not approve the complaint procedure it will provide comments and edits to guide the District's revisions. The Parties will work cooperatively to produce a final complaint procedure that the United States approves.
  - c. Once the United States approves the final complaint procedure, the District will adopt it immediately, implement it effectively thereafter, including providing any needed training to District staff, and will not change the complaint procedure while this Agreement is in effect without the approval of the United States.

## **X. Special Education Procedures and Documentation**

- a. The District will modify its BIP forms so that multiple function statements and function-based interventions can be listed, if necessary. BIP forms will provide space to address every problematic behavior exhibited by a student, regardless of the number. The BIP forms will include space for a description of each problem behavior, global and specific hypotheses as to why the problem behavior(s) occurs, and prevention and intervention strategies that include positive behavioral supports and services to address the behavior(s).
- b. For every student whose BIP and/or IEP includes Physical Restraint and clear documentation of the factors, the District will include in the IEP what the District considered in determining whether restraint could be used, including but not limited to considerations of existing health, physical, psychological, and psychosocial information, as well as any contraindications to the use of restraint based on medical history of past trauma.
- c. The District will notify staff to be aware of limits on restraint contained in the student's IEP and to prevent unnecessary restraint. All staff, regardless of position, will be encouraged to report any violations of those terms to the BCaBA Supervisor immediately. The District will not retaliate against employees who report potential violations.

## **XI. Law Enforcement**

- a. Any time District staff requests that an SRO or other law enforcement officer respond to student behavior, that staff person will complete a written report that lists the date and location of the event and the name, race, grade, and disability status of the student and describes:
  - i. The precipitating event leading up to the behavior;
  - ii. A description of the behavior that led the staff person to request the SRO;
  - iii. All De-escalation Techniques and other efforts used to address the student behavior before contacting the SRO or other law enforcement officer;
  - iv. The type of Physical Restraint performed, if applicable; and
  - v. The names and titles of all staff and SRO(s) involved.
- b. All reports completed as required by Paragraph XI(a) above will be reviewed by the BCaBA Supervisor within two school days of their completion to evaluate compliance with the standards in Paragraph XI(a). The BCaBA Supervisor will immediately report to the Superintendent in writing any incident that does not comply with these standards. For each such incident, the District will take immediate, effective remedial action.
- c. The District will offer all SROs the opportunity to attend the District's CPI and Physical Restraint trainings and any other District trainings that address the District's disciplinary policies and procedures and behavioral interventions for students with disabilities.

## **XII. Staffing**

- a. The District will develop a multi-year plan to hire more teachers with a special education certification and create incentives for current employees to obtain special education certification and BCaBA certification. This plan will incorporate more special education expertise within the District, including the hiring of multiple BCaBAs and a BCaBA Supervisor as set forth in Sections III and IV above. The plan will include concrete targets for the start of the 2022-23, 2023-24, and 2024-25 school years.
- b. The District will submit this plan to the United States by April 30, 2022 for review and comment. The United States will provide comments within 60 calendar days. The District will begin implementing the plan as soon as practicable following the District's incorporation of the United States' comments on the draft plan.

### **XIII. Training**

- a. Within 90 calendar days of the effective date of this Agreement, but no later than March 1, 2022, the BCaBA Supervisor will hold a mandatory training for all BCaBAs, school Administrators, and any individual trained to implement Physical Restraint on the appropriate use of Physical Restraint. This training will also provide an overview of the actual and potential harms associated with Physical Restraint, and the requirements for documentation and debriefing following a Physical Restraint.
- b. All BCaBAs, school Administrators, and certified teachers trained to implement Physical Restraint will complete CPI training within 90 calendar days of the effective date of this Agreement. The CPI training will be renewed on a yearly basis.
- c. The BCaBA Supervisor will develop and coordinate implementation of a yearly professional development course for all BCaBAs and Administrators that addresses how to review all Incident Reports and debriefing forms as described in Section VIII.
- d. In consultation with the Directors and/or Supervisors of the Department of Special Education, the BCaBA Supervisor will develop and coordinate implementation of a yearly professional development course for all Instructional Staff (including paraprofessionals and all aides who work with any Students with a Disability) that addresses:
  - i. 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. Principles of behavior, analyzing behavior, proactive behavior management, de-escalation, and simple non-intrusive strategies for replacing inappropriate behavior with appropriate behavior;
  - iii. Proper use of Physical Restraint, including supervised practice of Physical Restraint techniques for all CPI-trained staff until they can perform all of the CPI holds with fidelity;
  - iv. Providing individualized supports and interventions to students and evaluating the effectiveness of those supports and interventions;
  - v. How to complete all reports, forms, and reviews required by this Agreement;
  - vi. How to refer complaints filed under the complaint procedure as set forth

in Section IX; and

- vii. Effective debriefing after an incident of Physical Restraint.
- e. In consultation with the Directors and/or Supervisors of the Department of Special Education, the BCaBA Supervisor will develop and coordinate implementation of an additional yearly professional development course for all special education teachers that addresses:
  - i. Conducting FBAs that generate accurate results and developing and implementing effective BIPs; and
  - ii. Writing behavioral goals and implementing instruction aligned with those goals.
- f. All professional development provided to meet the requirements of Section XIII will include instruction that provides participants with examples, modeling, opportunities for practice and feedback, and time for review and reflection.
- g. The BCaBA Supervisor will ensure that all staff attend the requisite professional development outlined in this Section. If a staff member misses the training for any reason, the BCaBA Supervisor will ensure that the training is completed in a timely manner.
- h. For each session of training conducted under this Agreement, the District will maintain (i) attendance logs reflecting the date of the training, names and titles of attendees, and the attendees' signatures, and (ii) logs of employees who were required to but did not attend and the date the employee completed the required training.
- i. The District will provide the yearly professional development outlined in this Section before the start of the 2022-23 school year and then annually thereafter. The District will notify the United States of the time, date, and location of each session of training conducted under this Agreement, at least one week before the training takes place. The United States may attend any trainings conducted under this Agreement with at least 3 days' notice to the District before the training is scheduled to take place.

#### **XIV. Notice to Parents/Guardians**

- a. Within 30 school days from the effective date of this Agreement, the District will publish on the main page of FCPS's public website a summary of this Agreement with a link to the United States' website to access the full text of this Agreement.
- b. Within 30 school days from the effective date of this Agreement, FCPS will provide a summary of this Agreement to the parent(s)/guardian(s) of all FCPS students who

were enrolled in Self Contained Classrooms at any time from August 2017 through the effective date of this Agreement. This summary will be provided via electronic communication in a language parent(s)/guardian(s) can understand.

- i. The electronic summary will: (i) state that the District has immediately discontinued the use of seclusion; (ii) summarize the District's change in practices and commitment to complying with the law; and (iii) provide instructions to the parent(s)/guardian(s) on how to file a complaint with the District as set forth in Section IX.
  - ii. The District will submit this electronic summary to the United States for review and approval prior to transmittal. If the United States does not approve of the proposed language in this summary, it will provide comments to guide the District's revisions. The Parties will work cooperatively to produce a final summary that the United States approves.
- c. Within 30 calendar days of the effective date of this Agreement, the District will notify in writing all parent(s)/guardian(s) of currently enrolled students who have been subjected to Seclusion and/or Physical Restraint of the number of times the student was subjected to each of these practices throughout the entire period that the student has attended FCPS. The notice will include information about the availability of compensatory education and services.
  - d. When a student is subjected to Physical Restraint, the student's parent or guardian must be notified orally by the end of the school day. A copy of the official, completed Physical Restraint Incident Report will be provided to the student's parent(s) or guardian(s) within three school days.

## **XV. Reporting**

- 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 previous six months.
- b. Each District status report will provide, for each paragraph in Sections III-XIV (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, but not limited to:
  - i. Copies of all BCaBA and BCaBA Supervisor required under Sections III, IV, and XI;
  - ii. Copies of all complaints received under Section IX;
  - iii. Copies of all complaint determinations required by Paragraph

IX(b)(vi);

- iv. Copies of all Physical Restraint Incident Reports completed in the prior six months;
- v. A table listing the number of Physical Restraints that occurred at each school, further broken down by grade, race/ethnicity, sex, disability status, and classroom teacher;
- vi. A table of every instance in which a District employee or agent Physically Restrained a student. For each such incident, the District will specify: the date and location of the incident, the student's name, a unique student identifier, the school at which it occurred, the student's grade, the student's race/ethnicity, the student's sex, the student's disability status, and the student's disability (if applicable);
- vii. A list and description of all trainings conducted in the prior six months to satisfy the requirements of Section XIII of this Agreement; a copy of all materials used, handed out, or discussed during those trainings; and attendance sheets for each training;
- viii. A list and description of all training the District plans to conduct in the following six months to satisfy the requirements of Section XIII of this Agreement;
- ix. A list of all employees who, in the prior six months:
  - A. Did not complete the required training(s) for the year;
  - B. Were transferred out of their previous position due to the lack of certification required under this Agreement;
  - C. Were transferred back into their prior position after completing the certification(s) required under this Agreement;
  - D. Obtained BCaBA or special education certification(s);
  - E. Were hired into or removed from positions that interact with students with disabilities;
  - F. Were disciplined for failing to comply with the requirements of this Agreement or State or Federal law as it relates to seclusion and restraint;
- x. A list of the current District vacancies for positions that interact with students with disabilities that exist at the time of the report; and



- xi. Copies of any internal District analyses conducted to determine compliance with this Agreement or State or Federal law as it relates to seclusion or restraint.

## **XVI. Compensatory Education**

- a. For every student currently enrolled in the District who was subjected to Seclusion and/or Physical Restraint during the 2017-18 through the 2020-21 school years, the District will offer three months of weekly, one-hour counseling sessions with a licensed therapist to be chosen and paid for by the District. The District will consider transportation burdens on families when selecting the location of counseling services and will provide transportation assistance to ensure all families can access counseling services.
- b. For each student subjected to Seclusion and/or Physical Restraint during the 2017-18 through the 2020-21 school years, the District will offer compensatory education to each student for every hour, rounded up to the nearest hour, the student was denied educational services while being Physically Restrained or Secluded. The District will designate a point of contact to facilitate such services who will serve as a liaison for families. The District will offer parents/guardians the opportunity to select among the following form(s) of compensatory education that will be provided at District expense:
  - i. Instruction/remedial tutoring through distance learning outside of school hours;
  - ii. Instruction/remedial tutoring provided in person outside of school hours;
  - iii. Summer school or other education programs outside of school hours for which the child would not have otherwise qualified or been allowed to attend;
  - iv. Additional therapy sessions as described in XVI(a) to supplement what is provided in XVI(a); or
  - v. Any other form of compensatory education chosen by the District in consultation with the parent/guardian of the student and approved by the United States.

## **XVII. Enforcement**

- a. Upon reasonable notice to the District, the United States may request additional documents or data, tour schools, monitor trainings for quality and substance, and conduct any other compliance activities that the United States determines are necessary to monitor the District's implementation of this Agreement.

- b. 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 calendar 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.
- c. The Parties anticipate that the District will have complied with this Agreement by the end of the 2024-25 school year. When the District provides the United States with the status report due July 15, 2025, the United States will have 90 calendar days to raise any remaining concerns regarding the District's compliance with the Agreement.
  - i. If the United States does not raise any concerns regarding the District's compliance, the Agreement will terminate.
  - ii. If the United States does raise any 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 XVII(b) will apply.

## **XVIII. Other Provisions**

- a. Effective Date - The effective date of this Agreement is the date of the last signature below.
- b. Consideration - In consideration for entering this Agreement, the United States will refrain from undertaking further enforcement action relating to this investigation or from filing a civil action alleging discrimination based on the findings of the United States' investigation, except as provided in Section XVII(b).
- c. Severability - 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.
- d. Binding Nature of Agreement - This Agreement is applicable to and binding on the District, including its officers, agents, employees, successors, and assigns.
- e. Enforceability - 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.

- f. Communications with the United States - All documents and communications required to be sent to the United States under the terms of this Agreement will be sent to the following individuals, or other persons as may be designated by the United States, by overnight courier, or where practicable, by e-mail:

**Natane Singleton**  
Senior Trial Attorney  
Educational Opportunities Section  
Civil Rights Division  
U.S. Department of Justice  
150 M St., NE  
Washington, DC 20002  
[natane.singleton@usdoj.gov](mailto:natane.singleton@usdoj.gov)

**Sarah Marquardt**  
Assistant United States Attorney  
Civil Rights Coordinator  
U.S. Attorney's Office  
36 South Charles, 4<sup>th</sup> Floor  
Baltimore, Maryland 21201  
[sarah.marquardt@usdoj.gov](mailto:sarah.marquardt@usdoj.gov)

- g. Authority - The undersigned representatives of the Parties certify that they are authorized to enter into and consent to the terms and conditions of this Agreement and to execute and legally bind the Parties to it.
- h. Entire Agreement - 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.

**[Signatures on following page]**

**For the Frederick County Public Schools, Maryland School District:**

Dr. Theresa Alban, Superintendent  
Frederick County Public School District

Dr. Theresa Alban Digitally signed by Dr. Theresa Alban  
Date: 2021.12.01 08:18:30 -05'00'

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Frederick County Public School District  
191 East Street  
Frederick, Maryland 21701  
(301) 644-5000

**For the United States of America:**

KRISTEN CLARKE  
Assistant Attorney General

NATANE SINGLETON Digitally signed by NATANE SINGLETON  
Date: 2021.12.01 09:50:00 -05'00'

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SHAHEENA A. SIMONS, Chief  
WHITNEY PELLEGRINO, Principal Deputy  
NATANE SINGLETON, Senior Trial Attorney  
CLAIRE CHEVRIER, Trial Attorney  
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claire.chevrier@usdoj.gov

EREK L. BARRON  
United States Attorney

 Digitally signed by SARAH MARQUARDT  
Date: 2021.12.01 09:21:41 -05'00'

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SARAH A. MARQUARDT  
Assistant United States Attorney  
Civil Rights Coordinator  
Office of the United States Attorney  
District of Maryland  
36 South Charles Street, Fourth Floor  
Baltimore, Maryland 21201  
(410) 209-4801  
Sarah.Marquardt@usdoj.gov

Date: December 1, 2021