



U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section

SAS:WMP:ARS:ACP
DJ 169-81-5

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April 17, 2023

Via Electronic Mail Only

Superintendent Dr. Adam Swinyard
Spokane Public Schools
200 North Bernard Street
Spokane, WA 99201
adamsw@spokaneschools.org

Re: Investigation of Spokane Public Schools

Dear Dr. Swinyard:

We write about the U.S. Department of Justice’s (the Department) investigation into Spokane Public Schools’ (the District) isolation and restraint practices with respect to students with disabilities.¹ The Civil Rights Division’s Educational Opportunities Section conducted the investigation under Title II of the Americans with Disabilities Act (Title II) as amended, 42 U.S.C. § 12132, and the Department’s implementing regulations, 28 C.F.R. pt. 35, which prohibit disability discrimination by public entities. The Department appreciates the District’s cooperation throughout our investigation.

The Department’s investigation concluded that the District engaged in disability discrimination through its isolation and restraint practices by: (1) denying students with disabilities equal opportunity to participate in or benefit from the District’s education program, *see* 28 C.F.R. § 35.130(b)(1)(i); (2) using eligibility criteria that effectively subject students with disabilities to discrimination, *see* 28 C.F.R. § 35.130(b)(8); and (3) failing to make reasonable modifications to avoid disability discrimination in the District’s program, *see* 28 C.F.R. § 35.130(b)(7).

Our review principally focused on twenty schools and school years 2017-18, 2018-19, 2019-20, 2020-21, and 2021-22 (through January 2022) (the “Relevant Period”). The Department considered the following documents and data: District and school-level policies and procedures on isolation and restraint; Washington state statutes, regulations, and guidance on isolation and

¹ Washington state law and Spokane Public Schools use the term “isolation” to refer to seclusion practices. For the purposes of this letter and accompanying settlement agreement, “isolation” is used interchangeably with “seclusion.”

restraint; employee training materials related to isolation and restraint and classroom behavior management; more than 1,000 student incident reports describing isolations and restraints; and individual student records, including Individualized Education Plans, Functional Behavior Assessments (FBAs), Behavioral Intervention Plans (BIPs), and Emergency Response Protocols for students who were isolated or restrained during the Relevant Period; classroom-based behavioral data; student discipline reports, summaries, and data; personnel files; isolation and restraint complaints; position descriptions for Board Certified Behavior Analysts (BCBA) and Multi-Tiered System of Supports (MTSS) Specialists; spreadsheets containing restraint and isolation data; and other documents related to the District's isolation and restraint practices. The Department also conducted interviews with more than 40 District and school administrators, BCBAs, MTSS Specialists, teachers, support staff, and other employees. We appreciate the time that District staff dedicated to responding to our information requests and participating in meetings and interviews.

During the Relevant Period, the District reported isolating and/or restraining 480 students in more than 7,800 individual incidents. Of the incidents reported, more than 99% of restraints and isolations involved students with disabilities. Some students with disabilities were restrained or isolated repeatedly; thirty-three students with high rates of restraints and isolations, who attended multiple District schools, spent 583.3 hours in restraint or isolation, collectively. The District "acknowledge[d] that the use of isolation and restraint is almost exclusively used on students with [special education plans]." SPS Policy No. 3246, at 1.

The investigation identified various practices during the Relevant Period that contributed to the District's noncompliance with Title II. Despite state law and the District's own policy, the District did not limit its use of isolation and restraint "to control spontaneous behavior that poses an imminent likelihood of serious bodily harm to self or others." SPS Procedure No. 3246, at 2. Rather, the District routinely used restraint and isolation to address noncompliant student behavior in the absence of any imminent likelihood of serious bodily harm to self or others and for periods of time beyond what was necessary to subdue any immediate risk of harm. Instead of implementing and reviewing students' BIPs and revising them as necessary by conducting new FBAs, the District regularly and repeatedly restrained and isolated students in response to behavior it should have anticipated and managed as part of educating students with emotional and behavioral needs. The District continued to restrain and isolate students even when it appeared to escalate noncompliant behavior or when students exhibited clear signs of trauma. The District also imposed vague and arbitrary criteria to determine when a restraint or isolation should end. The District's restraint and isolation practices segregated hundreds of students with disabilities from their classmates and resulted in students missing hundreds of hours of instructional time.

The Department began meeting with District administrators and counsel in fall 2022 to share the results of the Department's investigation. During those meetings and throughout the investigation, the District expressed a commitment to improving its practices to better serve its students with disabilities, including by prohibiting the use of isolation in its schools. On April 17, 2023, the District and the Department entered into the attached settlement agreement to remedy the non-compliance with Title II that the Department identified. We recognize and commend the District for the positive steps it has already taken, including, for example, appointing an Intervention Coordinator who will, among other things, review restraint and isolation incidents,

ensure comprehensive follow-up occurs after each incident, evaluate and improve the District's restraint practices, and oversee critical training.

We appreciate the District's and its counsel's assistance throughout our investigation and look forward to working with the District to ensure that it ends its isolation practices and its restraint practices comply with Title II. If you have any questions regarding this letter or the attached agreement, please contact Alyson Schwartz (Alyson.Schwartz@usdoj.gov) or Anne Parham (Anne.Parham@usdoj.gov).

Sincerely,

Shaheena A. Simons,
Chief
Whitney M. Pellegrino,
Principal Deputy Chief

A handwritten signature in blue ink that reads "Alyson R. Schwartz". The signature is written in a cursive style with a large initial 'A'.

Alyson R. Schwartz
Anne C. Parham
Trial Attorneys
Educational Opportunities Section

cc:

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