

Board Office Use: <b>Legislative File Info.</b>	
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Enactment Number	16-0913
Enactment Date	6/8/16 <i>AM</i>



OAKLAND UNIFIED  
SCHOOL DISTRICT

Community Schools. Thriving Students

# Memo

**To** Board of Education

**From** Jacqueline Minor, Co-General Counsel  
Marion McWilliams, Co-General Counsel  
Andrea Epps, Staff Attorney

**Board Meeting Date** June 8, 2016

**Subject** **Resolution Agreement, Office for Civil Rights – Matter Number 09-14-1465**

**Action Requested** **Approval by the Board of Education of the Office for Civil Rights Resolution Agreement for Matter No. 09-14-1465**

**Background** A complaint was filed with the Office for Civil Rights ("OCR") that alleged impermissible use of prone restraints and student seclusion by a Non-Public School under contract with the District. District met with OCR's attorneys to finalize a resolution agreement to resolve the matter.

**Discussion** Attached is the Resolution Agreement. The system-wide changes the District has agreed to are: terminate the contract with the non-public school; revise District policies and procedures regarding restraint and seclusion; oversee non-public schools ("NPS"s) at which District students are placed to ensure prone restraints are not utilized; modify the District's NPS master contracts; develop internal protocols to promptly address NPS reports regarding the use of restraint or seclusion on a District student; and, provide trainings for administrators and staff regarding the use of restraint and seclusion.

**Recommendation** **Approval by the Board of Education of Office for Civil Rights Resolution Agreement for Matter No. 09-14-1465.**

**Fiscal Impact** N/A

**Attachments** • **Resolution 1516-0221**

**RESOLUTION  
OF THE  
BOARD OF EDUCATION  
OF THE  
OAKLAND UNIFIED SCHOOL DISTRICT**

**Resolution No. 1516-0221**

**AGREEMENT TO RESOLVE UNITED STATES DEPARTMENT OF EDUCATION,  
OFFICE FOR CIVIL RIGHTS COMPLAINT, TITLE VI OF THE CIVIL RIGHTS ACT  
OF 1964 - CASE NUMBER 09-14-1465**

WHEREAS, on September 23, 2014, under the authority of Section 504 of Rehabilitation Act and the Individuals with Disabilities Education Act, the US Department of Education, Office for Civil Rights (“OCR”) initiated an investigation to determine whether a Non-Public School under contract with the District impermissibly used prone restraint and student seclusion on a student eligible for special education and related services under the Individuals with Disabilities Education Act (OCR Docket No 09-14-1465);

WHEREAS, pursuant to OCR’s Case Processing Manual, OCR has the authority to resolve this compliance review by means of a resolution agreement before the conclusion of the investigation;

WHEREAS, without admitting to any violation of law, the District voluntarily agrees to the following terms:

- A) Terminate the contract with the Non-Public School;
- B) Revise District policies and procedures regarding restraint and seclusion;
- C) Oversee non-public schools at which District students are placed to ensure prone restraints are not utilized;
- D) Modify the District’s non-public school master contracts;
- E) Develop internal protocols to promptly address non-public school reports regarding the use of restraint or seclusion on a District student; and
- F) Provide training for Programs for Exceptional Children administrators and staff regarding the use of restraint and seclusion.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Education of the Oakland Unified School District does approve the agreement to resolve the U.S. Department of Education, Office for Civil Rights Docket No. No 09-14-1465 by agreeing to enter into the Resolution Agreement which is attached hereto and incorporated by reference herein.

**PASSED AND ADOPTED** by the Governing Board of the Oakland Unified School District this 8th day of June, 2016; by the following vote, to wit:

AYES: Aimee Eng, Shanthi Gonzales, Jody London, Jumoke Hinton Hodge,  
Roseann Torres, Vice President Nina Senn, President James

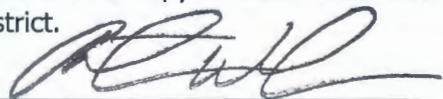
NOES: None

ABSTAINED: None

ABSENT: None

#### **CERTIFICATION**

I, Antwan Wilson, Superintendent and Secretary of the Board of Education of the Oakland Unified School District, Alameda County, State of California, do hereby certify that the foregoing Resolution was duly approved and adopted by the Board of Education of said district at a Special Meeting I thereof held on the 8<sup>th</sup> day of June, 2016 with a copy of such Resolution being on file in the Administrative Office of said District.



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Antwan Wilson  
Superintendent and Secretary of the Board



REDACTED FOR STUDENT PRIVACY

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REDACTED FOR STUDENT PRIVACY

## II. Prone Restraint Use

- A. Effective immediately, the District will not make any new referrals to or new offers of placement for District students at Anova unless Anova agrees and the District has substantiated that Anova has: 1) discontinued the use of prone restraint; 2) implemented a practice to review and revise strategies in place when an individual student is subjected to physical restraint, when there are multiple uses of physical restraint within the same classroom, or multiple uses of physical restraint by the same individual; (3) implemented positive behavior intervention plans which identify, with specificity, problem behaviors, triggers for those behaviors and comprehensive support designed to meet an individual student's needs.
- B. The District will review, and revise as necessary, all relevant District policies and procedures to be consistent with the fifteen principles set forth in the U.S. Department of Education's Restraint and Seclusion: Resource Document.
- C. The District will take steps to ensure that NPSs with which the District enters into new contracts, for new placements of District students, do not use prone restraints against District students or otherwise utilize restraints as a substitute for individualized positive behavior planning, and that the NPSs have strategies in place to identify and address the needs of students who are subjected to a physical restraint and a system and strategy for identifying and remedying multiple uses of physical restraint within the same classroom, or multiple uses of physical restraint by the same individual.
- D. Upon renewal and execution of new NPS master contracts, the District shall engage in good faith to include the following modifications which will be applicable to those contracts into which the District enters following the effective date of this Agreement:
  - 1. The NPS will not use prone restraint against District students who are placed at the NPS.
  - 2. Restraint practices must be reviewed and revised when they have an adverse effect on a student and are used repeatedly for an individual child, either on

- multiple occasions within the same classroom or multiple uses by the same individual.
3. The protocol for reporting to the District the use of any type of physical or mechanical restraint against or seclusion of a District student that includes the timeframe for filing the report with the District and the identification of the individual(s) in the District who should receive the report.
  4. The NPS is responsible for notifying a District student's parent/guardian of the use of any type of physical or mechanical restraint or seclusion and the timeframe in which the non-public school should notify the parent/guardian.
- E. The District will develop a written protocol to be followed whenever it receives a report from a NPS that it has subjected a District student to physical or mechanical restraint or seclusion. The protocol will include:
1. How the District will monitor the reports for the manner, frequency and duration of restraint use.
  2. How the District will analyze the information on the manner, frequency and duration of restraint use to prompt the need to evaluate the student's behavior and convene an IEP team or Section 504 team meeting to review and revise strategies in place for a student.
  3. How the District will ensure that the student's behaviors are appropriately analyzed and that a comprehensive plan of support is put into place that eliminates or substantially reduces the use of restraint. Among other things this process should:
    - a. Define the behavior with observable precision;
    - b. Conduct a formal process (interviews, direct observation and, if necessary, functional analysis) to determine the context (when, where, with whom) the problem behavior is most and least likely to occur;
    - c. Define the primary maintaining consequence for the problem behavior in that context; and
    - d. Determine whether all other appropriate alternative strategies have been identified and tried and the effectiveness of each alternative strategy.
  4. How the District will ensure that the student has a comprehensive plan of support that addresses the identified behavior that:
    - a. Includes strategies for arranging the student's learning environment for academic and social success on a continuous basis;
    - b. Includes strategies for avoiding situations that are likely to lead to problematic behavior;

- c. Teaches socially appropriate behaviors that achieve the same effect for the student as the problem behavior;
- d. Ensures that the student has immediate and regular access to reinforcers/rewards for pro-social behavior;
- e. Minimizes the likelihood that the problem behavior is rewarded;
- f. Ensures that adequate safety procedures are in place for the student, staff and peers;
- g. Include a data system for continuous monitoring of the fidelity of staff implementation of the plan, intervention effects, and impact on student outcomes which will be used to improve the support being provided to the student; and
- h. Ensures that staff working with the student is trained on implementing the plan of support.

#### F. Training

1. The District will hire an expert who has expertise and experience regarding the adverse effects caused by repeated use of restraint, including prone restraint, on children diagnosed with autism or who have other disabilities that may affect their behavior, as well as successful non-restraint strategies, to provide training on positive, pro-social, non-aversive alternatives interventions and strategies for addressing serious maladaptive behaviors ("Training"). The Training will include information about the trauma caused by the use of restraints on students. The Training will be provided to District special education administrators and staff who are responsible for monitoring children placed at NPSs. The District will offer to make the Training available to staff of local NPSs with which it has contracts.
  - a. The training will be conducted no later than November 1, 2016.
  - b. The materials from the training will be made available to the District to train newly hired District staff who are responsible for monitoring children placed at NPSs, who must be trained within three months of hire.
2. The District will provide training to special education administrators and staff with responsibilities for students placed at NPSs on the protocol described in Item II. E.



**Reporting Requirements for Section II:**

- 1) Within 45 days of the date this Agreement is signed, the District will provide OCR with the following:
  - a. documentation that it has implemented Item II.A.;
  - b. a list of the policies and procedures that need to be revised in accordance with Item II.B, and proposed revisions for OCR review and approval;
  - c. a list of the non-public schools with which the District has contracts; and
  - d. identification of the expert described in Item F.1.
  
- 2) Within 60 days of the date this Agreement is signed, the District will provide OCR with the following:
  - a. documentation that shows it has implemented Item II.C.; and
  - b. the draft protocol described in Item II.E for OCR's review and approval.
  
- 3) Within 90 days of the date this Agreement is signed, the District will provide OCR with documentation that shows it has implemented Item II.B
  
- 4) By November 1, 2016, the District will provide OCR with documentation that shows it has implemented Items II.D and II.F.

**Monitoring**


The District understands that OCR will not close the monitoring of this Agreement until OCR determines that the District has fulfilled the terms of this Agreement in compliance with Section 504 and Title II.

The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that during the monitoring of this Agreement, if necessary, OCR may visit the District, interview staff and students, and request such additional reports or data as are necessary for OCR to determine whether the District has fulfilled the terms of this Agreement and is in compliance with Section 504 and Title II.

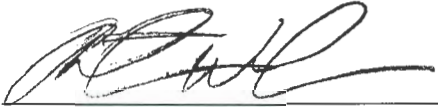
The District understands and acknowledges that OCR may initiate administrative enforcement or judicial proceedings to enforce the specific terms and obligations of this Agreement. Before initiating administrative enforcement (34 C.F.R. §§ 100.9, 100.10),

or judicial proceedings to enforce this Agreement, OCR shall give the District written notice of the alleged breach and sixty (60) calendar days to cure the alleged breach.

**Oakland Unified School District**

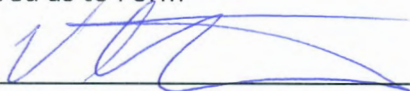
By:   
James Harris  
President, Board of Education

Date: 6/29/16

By:   
Antwan Wilson  
Superintendent & Board Secretary

Date: 6/29/16

Approved as to Form

By:   
Michael L. Smith  
Deputy General Counsel

Date: 6/20/16

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