

**Settlement Agreement**  
**between**  
**the United States of America**  
**and**  
**Wichita Public Schools**

## I. BACKGROUND AND GENERAL PROVISIONS

- A. The Board of Education (the “Board”) of the Wichita Public Schools (“WPS” or “the District”) voluntarily enters into this agreement (“Agreement”) with the United States Department of Justice (“Department”), Civil Rights Division, Educational Opportunities Section (the “United States”), regarding the Board’s use of seclusion and restraint, administration of student discipline, and referrals of students to law enforcement.
- B. This Agreement resolves the United States’ investigation under Title II of the Americans with Disabilities Act (“Title II” or “ADA”) as amended, 42 U.S.C. § 12131(2), and the Department’s Title II implementing regulations, 28 C.F.R. pt. 35, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) *et seq.* (“Section 504”) and the Department’s Section 504 implementing regulations, 28 C.F.R. § 42.502 *et seq.* The Agreement also resolves the United States’ investigation of whether the District violated the Equal Protection Clause (which the Department has the authority to enforce through Title IV of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000c *et seq.*) or Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. § 2000d *et seq.*, and its implementing regulations, 28 C.F.R. § 42.101 *et seq.* by discriminating on the basis of race in administering school discipline and referring students to law enforcement.
- C. During its investigation, the United States requested, obtained, and reviewed District policies and procedures, incident reports, and other relevant documents; interviewed District employees; and toured select District schools. The United States also conducted outreach to United Teachers of Wichita (“UTW”), the professional union that represents WPS teachers and other non-management employees. The District cooperated fully with the United States’ investigation and UTW provided valuable insight and feedback.
- D. After concluding its investigation, the United States met with the District to discuss its findings. The United States and the District (collectively, the “Parties”) agree to resolve the United States’ investigation through this Agreement. The Parties agree that settlement at this stage would be mutually beneficial because it would focus the Parties’ resources on the District taking effective steps to ensure that the District’s seclusion and restraint policies and practices, administration of school discipline, and referrals to law enforcement, as well as other policies and practices identified during the investigation, are consistent with the District’s obligations under federal law.
- E. In consideration of this Agreement, the United States agrees to close its investigation without further enforcement action, except as provided in Section XI. The United States and the District agree and acknowledge that this consideration is adequate and sufficient.
- F. This Agreement is intended to improve the delivery of services to students with disabilities in the District; to ensure that discipline is administered, and referrals to law enforcement are made, uniformly and consistently and without regard for impermissible considerations; and to otherwise resolve the investigation. The District

agrees to implement the measures in this Agreement. The District has made no admissions regarding any alleged violations of federal or state law, nor should this Agreement be interpreted as an admission by the District of a violation of Title II, Section 504, Title VI, or any other legal obligation.

## II. DEFINITIONS

- A. **“Administrators”** refers to all principals and assistant principals at any District school.
- B. **“Alternative Education Setting”** or **“AES”** refers to those terms as defined by state law.
- C. **“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.
- D. **“Classroom-wide Behavior Management Plan”** or **“Classroom Plan”** refers to written documentation of the systems, rules, routines, and techniques used by a teacher in a specialized classroom to support student positive behavior and address student misbehavior.
- E. **“CPI”** refers to the Crisis Prevention Institute, Inc. or any entity that replaces it in providing training to District staff on Physical Restraint and De-escalation Techniques.
- F. **“Crisis Prevention Team”** or **“CPT”** refers to the designated school staff in each building that are primarily responsible for responding to behavior that has escalated (or is likely to escalate) to the degree that it poses a risk of substantial physical harm. CPT members receive specialized training in De-escalation Techniques and the safe use of Physical Restraint, including CPI training.
- G. **“Day Schools”** refers to Sowers High School (“Sowers”), Greiffenstein-Wells Middle School (“Wells”), Bryant Opportunity Academy (“Bryant”), Levy Special Education Center, and any other dedicated special purpose school for exceptional children that provides specialized curricula; modified facilities and equipment; or interdisciplinary, ancillary, medical, psychiatric, or social services. This term includes any District schools created after the Effective Date of this Agreement that meet the criteria of this definition.
- H. **“Days,”** unless otherwise specified, refers to instructional days during which classes are generally held under the Board-approved academic calendar for the District. If this Agreement calls for an action to be completed by a date that falls on a weekend or another day when District offices are closed, that deadline will be extended to the next regular instructional day.
- I. **“De-escalation Techniques”** refers to a progression of non-verbal (e.g., body language, physical cues, and allowing personal space), verbal, and environmental interventions used to prevent or moderate escalation of student behavior.

- J. **“Detention”** refers to a consequence for a disciplinary offense that does not remove the student from the classroom during instructional time (which includes any special classes such as music, art, etc.) but requires a student to spend some amount of time in a particular school location during lunchtime or after school.
- K. **“Disciplinary Homebound Instruction”** refers to instruction in the student’s home or another non-school location for disciplinary or behavior management purposes. It does not include educational services provided to a student outside of a school for medical or health-related reasons.
- L. **“Emergency Safety Intervention”** or **“ESI”** refers to the use of Seclusion or Physical Restraint.
- M. **“Exclusionary Discipline”** refers to In-School Suspension, School Removal, or any disciplinary consequence that removes a student from the student’s regular classroom (which includes any special classes such as music, art, etc.) or moves them to a different in-school setting during the course of the regular instructional school day. A teacher’s exercise of rights under Article VIII, Section A, Paragraph 4 of the Collective Bargaining Agreement between the District and the UTW shall not be deemed Exclusionary Discipline unless it meets the definition of “In-School Suspension” or “School Removal” in this Agreement. Exclusionary Discipline does not include Detention.
- N. **“Focus Setting(s)”** refers collectively to the Day Schools, PBS Programs, and Mixed Abilities Programs.
- O. **“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.
- P. **“Guided Movement”** refers to the temporary touching of the hand, wrist, arm, shoulder, or back without applying pressure or force for the purpose of guiding or directing a student to a safe location, provided such contact occurs only for such purpose and only for so long as necessary to guide the student to safety.
- Q. **“In-School Suspension”** refers to a disciplinary consequence that removes a student from the regular classroom to a different in-school setting during the course of the regular instructional school day. It includes having a student go to any room or area designated for that purpose but does not include a transfer to another teacher who is teaching the same material at the same instructional level at the same time or the most similar available classroom where instruction is occurring.
- R. **“Instructional Staff”** refers to certified staff (e.g., teachers and counselors) and non-certified staff (e.g., teacher aides or paraprofessionals) who work directly with students.
- S. **“Mixed Abilities Programs”** refer to District programs (and the classes making up those programs) that serve students with developmental delays, intellectual disabilities,

or autism who require very substantial support with academics and behavior. This term includes any Mixed Abilities Programs created in the District's schools after the Effective Date of this Agreement, as well as programs or classes within any District school that meet the criteria of this definition.

- T. **“Out of School Suspension”** refers to the removal of a student from instruction in that student's assigned classroom and school building. An Out of School Suspension is either a “Short-Term Suspension” (a maximum time period of ten (10) consecutive Days) or an “Extended Term Suspension” (a maximum of ninety (90) consecutive Days).
- U. **“PBS Program(s)”** refers to designated Positive Behavior Support Classrooms at District schools where staff implement Behavior Intervention Plans and other research-based behavioral strategies in a smaller setting to develop a trust-based relationship with and provide social-emotional instruction to students who resist school expectations and behave in an unsafe or counterproductive manner, with the goal of developing coping strategies for situations that trigger escalating negative behavior while continuing to work on students' academic goals and eventually return the students to a less-restrictive environment. Currently, such classrooms exist at Enterprise, Isely, Cloud, and Griffith elementary schools and Coleman, Stucky, Hamilton, and Hadley middle schools; however, this term includes any Positive Behavior Support Classrooms created in the District's schools after the Effective Date of this Agreement.
- V. **“Parent”** refers to the legal guardian, education advocate (as defined under Kansas law), or natural or adoptive parent of a student. In an appropriate case, a Parent may also include a person acting in that capacity in the absence of a legal guardian, education advocate, or natural or adoptive parent.
- W. **“Physical Restraint”** refers to any physical contact between any District employee or contractor and a student in which the student involuntarily participates and that immobilizes a student or reduces the ability of that student to move the student's torso, arms, legs, or head freely. The term includes holding or grabbing a student to escort, compel, or coerce the student to move to another location. It does not include a voluntary Guided Movement or consensual, solicited, or unintentional contact to provide comfort, assistance, or instruction. An action need not be a trained technique to be a Physical Restraint.
- X. **“Qualified Behavior Interventionist”** refers to an individual (including a Board Certified Behavior Analyst) who has expertise (by education or licensure), in: (i) evidence-based class-wide, school-wide, and targeted behavior prevention and management strategies (i.e., tier 1 and tier 2 systems of support); (ii) FBA procedures and components, results analysis, and report generation; (iii) writing function-based BIPs based on FBA results including developing and implementing function-based antecedent and consequence strategies; (iv) functional communication training; (v) behavioral data collection methods and data-based decision-making; and (vi)

monitoring the fidelity of interventions and developing and implementing remedies when interventions are not implemented with fidelity.

- Y. **“Referral”** refers to any action by any District staff, including by an Administrator or contractor, in response to student behavior that could or does lead to a student receiving a disciplinary consequence.
- Z. **“School Removal”** refers to any disciplinary consequence that excludes a student from instruction in that student’s assigned classroom and school building, including Out of School Suspension, Expulsion, and informal removal of a student from school for behavior including any time a school requests that a Parent come to the school because of a student’s behavior and requests or requires that the Parent take the student home. It also includes any placement for disciplinary or behavior management reasons of a student on a Shortened Day Schedule or Disciplinary Homebound Instruction or assignment to an Alternative Education Setting.
- AA. **“School Resource Officer”** or **“SRO”** refers to a sworn law enforcement officer who is assigned to a District school. It does not include District Safety Services Officers.
- BB. **“Seclusion”** refers to the involuntary confinement of a student in any room or area in which the student is alone and physically prevented from leaving, or reasonably believes they are not free to leave regardless of its name (including “refocus,” “time-away,” “recovery,” or “reset” rooms). It does not include a student voluntarily going to an authorized location to engage in calming or de-escalating behavior.
- CC. **“Shortened Day Schedule”** refers to a student schedule that provides for the student to receive in-school educational services for less time than age/grade peers within the same school and/or school program.
- DD. **“Student Information System”** refers to the centralized electronic system(s) the District uses to record and maintain certain information as required by this Agreement. As of the Effective Date, the District’s Student Information System is Synergy, but this definition will be deemed to include any system that replaces Synergy and any system that serves as an adjunct or complement to Synergy that is created for the purposes of tracking information required by this Agreement that cannot be accommodated by Synergy.
- EE. **“Student with a Disability”** or **“Students with Disabilities”** refers to a student(s) who has qualified 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 ADA, or Section 504.

### III. OFFICE OF BEHAVIOR MANAGEMENT SUPPORT AND OVERSIGHT

- A. By the beginning of the 2024-25 school year, the District will create an Office of Behavior Management Support and Oversight (“Office”). The Office will: (i) oversee the operations of the Crisis Prevention Teams and the use of ESI, including reviewing ESIs from the Focus Settings; (ii) ensure required reporting, debriefing, and follow-up

occurs after any ESI; (iii) monitor whether schools are conducting required FBAs, including after ESIs, and consistently implementing BIPs; (iv) ensure the quality of District FBAs and BIPs (including through coaching and hands-on support and assistance); (v) work with the Focus Settings to provide evidence-based behavior interventions and supports to all students and to ensure that such interventions and supports are implemented with fidelity (including through observations, coaching, and hands-on support and assistance); (vi) develop intervention protocols (i.e., procedural guides) for staff at Focus Settings to follow in connection with Behavior Management Plans and Classroom Plans; (vii) develop, implement, and oversee training concerning the areas covered by this Agreement; and (viii) submit the reports described in this Agreement.

- B. The District will employ a full-time Office Director who is qualified to oversee all the responsibilities of that Office. The Office will also employ at least two additional full-time employees, at least one of whom has expertise in serving students with disabilities that involve social, emotional, and behavioral dysregulation, and at least one of whom has expertise in students with development delays, intellectual disabilities and/or autism. The District will employ or allocate additional qualified staff as necessary to permit the Office to effectively carry out its responsibilities as described above and throughout this Agreement.

#### **IV. EMERGENCY SAFETY INTERVENTIONS**

##### **A. Seclusion Practices**

1. Within ten (10) Days of the Effective Date of this Agreement, the District will prohibit the use of Seclusion in all District schools except the Day Schools. The District will prohibit the use of Seclusion at all of the Day Schools on or before January 1, 2025. The District will notify all employees of these prohibitions when they go into effect.
2. After the date on which Seclusion is prohibited at a school, the District will: (i) not designate or use any rooms or areas in that school building for Seclusion; (ii) not place students in any rooms in that school that have been used solely or regularly for Seclusion<sup>1</sup> for any disciplinary or behavior-management purpose; and (iii) will remove all locking mechanisms from any such rooms.
3. The following provisions govern the use of Seclusion at the Day Schools from the Effective Date of this Agreement until Seclusion is prohibited at those schools:
  - a. Seclusion is prohibited unless the student's behavior reasonably poses an immediate danger of substantial physical harm to the student or others and the student has the present ability to cause such physical harm.

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<sup>1</sup> This includes refocus, time-out, recovery, or reset rooms or any similar rooms. It does not include any classrooms, gyms, libraries, conference rooms, or any similar common spaces that may have been used for Seclusion in an exceptional circumstance.

- b. Seclusion may be used only at the explicit direction of a member of a Crisis Prevention Team. Such Team member may only order Seclusion as a last resort, after all appropriate De-escalation Techniques have been employed.
- c. The Office will be notified immediately by the school of any use of Seclusion and is required to go to the school to investigate the incident within one (1) Day. Within three (3) Days of the Seclusion, the Office will determine: (i) whether the Seclusion complied with the terms of this Agreement; (ii) whether the Seclusion is indicative of a pattern involving behavior, staff members, other students, or any other circumstances or stimulus; and (iii) what alternatives to Seclusion should have been used. The Office will use the results of its investigation to train staff on how to manage student behavior without the use of Seclusion.
- d. Any time a Seclusion occurs, the Office will debrief with staff involved in the Seclusion within five (5) Days to review the Office's conclusions and take any appropriate corrective action necessary to minimize or eliminate the risk of further Seclusions. The Office's review, analysis, staff debrief, and corrective action will be thoroughly documented.
- e. Any time a Seclusion occurs, the District will comply with the requirements of Paragraphs IV(D) and (F) below.

B. Physical Restraint Practices

1. The District will:

- a. Prohibit Physical Restraint unless the student's behavior reasonably poses an immediate danger of substantial physical harm to the student or others and the student has the present ability to cause such physical harm. For example, Physical Restraint may not be used to move a student from one location to another, hold a student in place, or prevent a student from leaving a classroom or any other physical space, unless the failure to do so will reasonably create an immediate danger of substantial physical harm to that student or others;
- b. Refrain from using Physical Restraint as a form of discipline or punishment, as a method of forcing compliance with staff directions, as a convenience to staff, or as a substitute for appropriate educational and/or behavioral support;
- c. Implement Physical Restraint safely, in accordance with CPI-approved standards;
- d. Limit the use of Physical Restraint on a student to Crisis Prevention Team members, unless: (i) staff reasonably believe an immediate danger of substantial physical harm necessitates their use of Physical Restraint



because there is no time to involve the Crisis Prevention Team;<sup>2</sup> or (ii) a Crisis Prevention Team member requests the assistance of a staff member who is not a member of the Crisis Prevention Team because the Team member reasonably believes that such intervention is necessary to avoid substantial physical harm;

- e. Use Physical Restraint only as a last resort after all appropriate De-escalation Techniques have been implemented without success and District staff reasonably believe less restrictive interventions would be ineffective at stopping the immediate danger of substantial physical harm; and
- f. End Physical Restraint as soon as the student's behavior no longer poses an immediate danger of substantial physical harm to the student or others or as soon as a less restrictive intervention can prevent/eliminate the risk of harm.

### C. ESI Policy

1. The District will revise all policies that govern the use of Seclusion or Physical Restraint to:
  - a. Prohibit the use of Seclusion at all District schools, as provided above;
  - b. Clarify that, except for voluntary Guided Movements, all techniques considered "escorts" or "transports" and any use of a blocking pad or similar device in a manner that meets the definition of a Physical Restraint must be treated accordingly and will be subject to the requirements of this Agreement; and
  - c. Otherwise conform to the requirements of this Agreement.
2. Within thirty (30) calendar days of the Effective Date of this Agreement, the District will submit proposed ESI-related policy revisions to the United States for review and approval. If the United States does not approve the proposed revisions, it will provide complete comments and edits to guide the District's revisions within thirty (30) calendar days. The Parties will work cooperatively to produce final revised policies that the United States approves. The District will adopt and thereafter follow the revised policies as soon as practical after approval by the United States. The policy revisions called for by this Agreement will not materially change while this Agreement is in effect without the prior written approval of the United States, which will not be unreasonably withheld.
3. When the prohibition on Seclusion at the Day Schools goes into effect, the District will revise all policies that govern the use of Seclusion accordingly.

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<sup>2</sup> If a staff member who is not on the Crisis Prevention Team begins a Physical Restraint, a Crisis Prevention Team member will take over implementation of that Physical Restraint, to the extent practicable, when they become available and arrive at the location of the incident.

#### D. Documenting Emergency Safety Interventions

1. District staff will document all ESIs in the Student Information System within one (1) Day of an incident. The documentation of an ESI will include at least the items shown in *Appendix A*, and staff will endeavor in good faith to include any additional information not identified in *Appendix A* that may be helpful to evaluate the propriety of the ESI.
2. The District will ensure that its Student Information System allows it to export ESI documentation to a tab- or character-delimited file in a form and format that will be sortable in Excel or Access, such that each of the items enumerated in *Appendix A* will be a separate field/column. The export of ESI data will include for each incident the following data elements in addition to the data listed in *Appendix A*, each of which will also be separated into a discrete field/column: school, date, student name, race, grade, disability status and category, number of discipline incidents in current school year, number of ESIs in current school year, and staff member(s) involved. The District will ensure that all building Administrators receive or can generate reports that show the frequency of ESIs meeting criteria that reference these variables.

#### E. Monitoring Emergency Safety Interventions

1. Within two (2) Days<sup>3</sup> of an ESI, the school principal will review the documentation associated with the ESI and any other relevant information about the incident to ensure that the procedures used by the staff involved in the ESI were consistent with District policy and the terms of this Agreement, CPI prevention and intervention procedures were properly implemented, and the incident was properly documented. Within the same period, the principal will debrief with staff involved in the ESI (“Staff Debrief”). The Staff Debrief will discuss, review, and provide feedback on: (i) staff awareness of and/or implementation of the student’s BIP; (ii) implementation of CPI procedures and protocols; (iii) actions that escalated student behavior; (iv) compliance with District policy and/or this Agreement while using the ESI; and (v) any corrective action necessary to address shortcomings identified during the debrief. Conclusions arrived at and corrective action identified during the principal’s review and the Staff Debrief will be documented in the Student Information System and the Office will work with the principal to implement any appropriate corrective action.
2. Within five (5) Days of an ESI occurring at a Focus Setting, the Office will review the documentation of the incident including the principal’s review required by Paragraph (IV)(E)(1) and the Staff Debrief to evaluate and document whether the use of the ESI satisfied the requirements of this Agreement. The Office will review any instance of non-compliance with the principal, and the District will take appropriate corrective action, including additional training, coaching, and

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<sup>3</sup> The District may take up to four (4) Days to complete this requirement to account for delays caused by staff availability, or other exceptional or exigent circumstances, if it documents the basis for that delay.

monitoring of staff. The Office will also share with the student's Parent any relevant and appropriate information not previously provided.

3. Monthly at each Focus Setting, all staff involved in an ESI occurring during the preceding month will meet and discuss each ESI to determine what strategies were ineffective and what strategies could generate better results. Staff will practice De-escalation Techniques, alternative interventions, and Physical Restraint procedures using role play.
4. At least once every semester, the Office will meet with the Administrators and appropriate staff of each Focus Setting ("Focus Setting Review"). Attendees will examine and review the school's ESI practices by reviewing incident reports and relevant data. The purpose of the Focus Setting Review will be to examine the items listed in *Appendix B*.
5. The Office will prepare a written report containing at least the items identified in *Appendix B* after each Focus Setting Review to summarize the review and its results, including any appropriate changes to be implemented following such review. Each school will implement appropriate changes identified by the Office.

F. Post-Emergency Safety Intervention Assessments, Notifications, and Interventions

1. At the conclusion of any ESI, a trained medical professional will evaluate the student for injury, provide any required medical treatment, and refer the student for any additional medical treatment as necessary.
2. After a student is subject to an ESI, a licensed behavioral health professional who was not involved in the ESI will, unless parental consent cannot be obtained, provide ongoing psychological evaluation and any appropriate support to the student, including to identify whether the student requires additional services and to ensure such services are provided. If such an evaluation determines there is a risk of self-harm, the District will immediately implement an appropriate safety plan.
3. When a student is subjected to an ESI, the student's Parent will be notified the same Day, provided with written documentation of the incident no later than the following Day and invited to discuss the circumstances of the incident and ways to avoid future ESIs ("Parent Debrief"). A summary of the Parent Debrief and any actions to be taken as a result will be recorded in the Student Information System.
4. Within two (2) Days after a student is subject to an ESI, unless it is an isolated incident,<sup>4</sup> the District will determine whether the student has a current BIP that was created from an FBA and that targets the behavior that led to the ESI. Any FBA or

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<sup>4</sup> For purposes of this Agreement, an "isolated incident" means the behavior that prompted the ESI 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 Parent. In such a case, the school must explain in writing why it has determined this standard is met and the Office must approve that explanation.

BIP required by this paragraph will meet the requirements of *Appendix C*. Any BIP required by this paragraph will be completed within twenty (20) Days absent exceptional circumstances<sup>5</sup> and thereafter implemented with fidelity.

- a. If the student has an FBA and BIP that does not target the behavior that led to the ESI, the District will conduct a new FBA and develop a new BIP that addresses the behavior leading to the ESI.
- b. Unless it is the first ESI that occurred since the BIP was developed or the BIP was developed within a month of the ESI, the District will conduct a new FBA and revise the student's BIP as appropriate even if the student has an FBA and BIP that targets the behavior that led to the ESI and that BIP was implemented with fidelity. If the District is not required to conduct a new FBA, it will still make any appropriate modifications to the BIP based on the ESI.
- c. If staff failed to fully and properly implement an existing BIP (created from an FBA) that targets the behavior leading to the ESI, and a Qualified Behavior Interventionist determines the BIP will be effective if implemented with fidelity, the District will take appropriate corrective action to ensure the BIP is implemented with fidelity in the future, including additional training, coaching, and monitoring of staff.
- d. If the student has no BIP, the District will conduct an FBA that targets the behavior leading to the ESI and develop a BIP that addresses that behavior.

## V. FOCUS SETTINGS

### A. Behavior Management Plans

1. Each Day School will implement a three-tiered model of behavior prevention and intervention<sup>6</sup> (Behavior Management Plan or "BMP") that uses evidence-based practices (including function-based interventions at Tier 3). Each Day School will:
  - a. Ensure that all school personnel understand the BMP and implement the BMP in their respective spaces (classrooms, the gym, etc.) as well as in the communal spaces of the school (hallways, recess locations, etc.);
  - b. Develop and implement a clearly articulated written plan for the BMP that describes: (i) Tier 1, 2 and 3 interventions and supports; (ii) how each Day School will monitor implementation of the BMP and address any implementation-related shortcomings; (iii) how the Day School will collect

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<sup>5</sup> "Exceptional circumstances" for purposes of this provision means circumstances that are outside the District's control such as delays in obtaining consent, student absence, or other legitimate logistical obstacles. The District will document the length and basis for any such delay.

<sup>6</sup> A three-tiered model provides Tier 1 interventions to all students, more intensive Tier 2 interventions to students whose behavior is not effectively managed on Tier 1, and very intensive Tier 3 interventions to the small percentage of students who engage in extreme behavior that does not respond to Tier 2 interventions.

data on Tier 2 and Tier 3 interventions; and (iv) how the Day School will respond when interventions implemented with fidelity prove ineffective or insufficient;

- c. Create and maintain a multi-disciplinary team to manage the implementation of the BMP that includes the principal (who will have ultimate responsibility for implementing the model with fidelity); and
  - d. Provide staff with training and supports necessary to initiate, implement, and maintain the BMP.
2. The District will create a Classroom Plan for each PBS Program and Mixed Abilities Program classroom that governs both activities in the classroom and the integration of students in the PBS and Mixed Abilities classrooms into the programming of the general education school where those classrooms are located (including transitions to and from lunch, recess, gym, art, music, or other classes). The District may determine how much variation to have in the Classroom Plans, including whether any elements will be standard across particular types of classrooms and grades (e.g., a plan for all elementary school PBS classrooms). Each Classroom Plan will address the following elements:<sup>7</sup>
- a. The Tier 1 practices that will be used in classrooms;
  - b. Clear and consistent routines and procedures for each day's scheduled activities, including student arrival, transitions between daily activities, independent and group work, managing student assignments, and student departure, among other things;
  - c. Positively phrased behavioral expectations for classroom and school settings (e.g., hallways, bathrooms, playground, lunchroom) that will be taught and reinforced;
  - d. Systems for motivating and reinforcing expected behavior in school and classroom settings including token systems of reinforcement, group contingencies, expected ratio of positive-negative/corrective teacher feedback, and systems for active student responding. Token systems will not include response-cost contingencies where earned tokens are lost or taken away for behavioral infractions;
  - e. Guidelines for the physical arrangement of the classroom to prevent and efficiently respond to student misbehavior; and
  - f. Strategies for providing academic instruction with high rates of opportunities to respond.

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<sup>7</sup> If a student has an IEP that varies, differs from, or conflicts with a given Classroom Plan, the student's IEP shall control.

3. Within seventy-five (75) calendar days of the Effective Date of this Agreement, the District will submit the Classroom Plans to the United States for review and approval. If the United States does not approve the Classroom Plans, it will provide complete comments and edits to guide the District's revisions within thirty (30) calendar days. The Parties will work cooperatively to produce final Classroom Plans that the United States approves. Once the United States approves the final Classroom Plans, the District will adopt and implement them as soon as practicable. The District will not change an approved Classroom Plan without the prior written approval of the United States, which will not be unreasonably withheld or delayed. The United States will respond to any request for changes to a Classroom Plan within thirty (30) calendar days. The District may implement a change to a Classroom Plan prior to and pending approval by the United States when, in the reasonable opinion of the Office, doing so is necessary for the safe and orderly operation of the PBS Program or Mixed Abilities classroom where such Classroom Plan is in effect and the change itself does not conflict with the explicit requirements of this Agreement.
4. The District will explain to Parents the Classroom Plan for each classroom with such a Plan to which their child is assigned and provide Parents with a copy of the same, as well as any subsequent updates thereto. The District will provide an opportunity for Parents to ask questions about and request reasonable modifications to their child's Classroom Plan.

**B. PBS Program Transitions**

1. If the District ceases to operate PBS Programs at a particular level (elementary or middle) while the Agreement is in effect, the District will provide all students who attended those programs as of the time the programs were closed the supports they need to transition to and succeed at a comprehensive school. The District will provide the same supports to any student who graduated from a school while attending a PBS Program and enters a grade in which the District does not provide PBS Programs.
2. After a student covered by Paragraph (V)(B)(1) transitions to a comprehensive school, the District shall require relevant administrators and staff to: (i) conduct monthly reviews of the services and supports provided to that student for one school year to ensure that they are being implemented correctly (including by looking at whether the student has been subject to any Exclusionary Discipline or involved in any incidents involving Safety Services Officers or law enforcement); (ii) take any remedial action that the monthly review identifies as being necessary; and (iii) document both the reviews and any resulting remedial actions.

**C. Administrators and Staff at Day Schools**

1. By the beginning of the 2024-25 school year, the District will ensure that each Day School has at least one Administrator who has:

- a. Both an administrator’s license and a license as a special education teacher;
  - b. An undergraduate or graduate degree in educational administration;
  - c. Expertise in the same type of disabilities served by the Administrator’s Day School as demonstrated through education, experience, or a combination of the same;
  - d. At least three years’ experience as a special education teacher and one year of experience as an administrator working in special education programs for students with the same types of disabilities as the students served at the Administrator’s Day School; and
  - e. Experience implementing and leading three-tiered models of behavioral supports or knowledge of three-tiered models of behavioral supports sufficient to lead implementation at the Administrator’s Day School.
2. By the beginning of the 2024-25 school year, the District will ensure that it employs at each Day School at least one Qualified Behavior Interventionist for every 15 enrolled students. These Qualified Behavior Interventionists will:
    - a. Regularly coach and consult with staff in implementing interventions;
    - b. Monitor staff fidelity to BIPs;
    - c. Model for staff all intervention procedures; and
    - d. Observe staff implementing interventions for procedural accuracy and provide feedback to improve fidelity to intervention procedures.
  3. By the beginning of the 2024-25 school year, the District will ensure that all staff who work at Day Schools have expertise (through education/licensure, training, experience, or some combination of those means) appropriate to each staff member’s role and duties in:
    - a. Behavioral interventions, including function-based antecedent and consequence strategies and functional communication training;
    - b. Working with the student population served at their school; and
    - c. Providing academic, social, communication, and functional skills instruction to students with intensive educational needs.
  4. At Bryant, Wells and Sowers, the Crisis Prevention Teams will only be staffed by Qualified Behavioral Interventionists.<sup>8</sup>

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<sup>8</sup> These Qualified Behavior Interventionists will be employed specifically to serve on the Crisis Prevention Teams and therefore will not count toward satisfying the student-to-staff ratio requirement of Paragraph (V)(C)(2).

D. Appearance of Day Schools

1. The District will assess the appearance of all Day Schools before the start of each school year, including hallways, common areas, classrooms and other spaces (cafeteria, gymnasium, playground, etc.) and take reasonable measures (in light of the District's budget and overall capital improvement priorities, and with due consideration of safety) to fix any identified deficiencies in physical condition, cleanliness, brightness, furniture, equipment, materials, and educational decorations (posters, announcements, etc.).

E. Assignment to Day Schools

1. Within ninety (90) calendar days of the Effective Date of this Agreement, the District will ensure that any student being assigned to a Day School has a written transition plan that clearly describes why the student is being assigned, what goals the District intends for the student to meet during that assignment, and how the District will determine when the student will exit the Day School. The District will give students the opportunity to transition to a Day School over time, including the opportunity to attend the placement for partial days for extended periods of time to acclimate to the new setting, unless the District can explain in writing to the Parent of the student why a gradual transition is not practicable.
2. The District will ensure that Parents can visit a Day School along with their child before the child is assigned to that Day School and that Parents are included in the District's regular reviews of a student's placement in a Day School, which will include discussions about the student's progress toward placement goals and timeline for transitioning out of the Day School.
3. The District will ensure that students have a formal transition process to return to a comprehensive school (including a return to a Focus Setting at a comprehensive school). This will include a written transition plan developed by personnel from the sending and receiving schools that includes opportunities for students to attend the new placement for partial days for extended periods of time to acclimate to the new setting, unless the District can explain in writing to the Parent of the student why a gradual transition is not practicable.

**VI. NOTICE AND COMPENSATORY SERVICES**

- A. Within thirty (30) calendar days from the Effective Date of this Agreement, the District will publish on the home page of its public website a prominently displayed link to the full text and a jointly created summary of this Agreement.
- B. For every student currently enrolled in the District who was subjected to Seclusion between the first day of the 2020-21 school year and the Effective Date of this Agreement, or who is subjected to Seclusion at the Day Schools until it is prohibited, the District will offer compensatory services in an amount at least equal to the number of hours the student was secluded. The Parent 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), WPS will make good faith efforts to complete the compensatory services within one year of the Effective Date of this Agreement. Notice of the availability of such services for eligible students will be provided to their Parent within sixty (60) calendar days of the Effective Date of this Agreement.

## **VII. SCHOOL DISCIPLINE**

### **A. Code of Conduct**

1. By October 15, 2024, the District will submit to the United States for its review and approval a Code of Conduct that includes a student Disciplinary Matrix (hereafter collectively the “Code of Conduct”) that will apply to all WPS schools. If the United States does not approve the Code of Conduct, it will provide complete comments and edits to guide the District’s revisions within thirty (30) calendar days. The Parties will work cooperatively to produce a final Code of Conduct that the United States approves and upon reaching agreement on the Code of Conduct, the Parties will develop a schedule that requires its implementation by the first Day of the spring 2025 semester, unless both Parties agree, in writing, that a later date is more practicable.
2. Prior to submitting the Code of Conduct to the United States for review and approval as required above, the District will solicit the input of Administrators, staff, Parents, students, and community members. The input of Parents, students, and community members will be solicited both online (through the District’s website and other means) and through public meetings at times and places that encourage participation.
3. The Code of Conduct will list and define all offenses for which students may receive interventions and disciplinary consequences and all interventions and disciplinary consequences that may be imposed for such disciplinary offenses. It will also specify the interventions(s) and consequence(s) that may be imposed for each offense. The Code of Conduct will apply to all District schools, although it will articulate differences in the interventions and disciplinary consequences used with students at different grades or grade levels.
4. The Code of Conduct will divide offenses into the following three categories:
  - a. Level 1 – offenses that do not threaten safety or significantly disrupt the operation of the classroom or another school activity and can be remedied quickly and safely by De-escalation Techniques or other interventions by District staff;
  - b. Level 2 – offenses that significantly disrupt the operation of the classroom or another school activity and cannot be remedied quickly and safely by De-escalation Techniques or other interventions by District staff; and

- c. Level 3 – offenses that pose a threat to safety and cannot be remedied quickly and safely by De-escalation Techniques or other interventions by District staff.
5. Dress code violations,<sup>9</sup> disrespect, disruptive behavior, insubordination, failing to have or display school identification, and offenses for not attending class or school will be treated as Level 1 offenses.
6. The Code of Conduct will prohibit the use of Exclusionary Discipline for Level 1 offenses and only allow School Removal for Level 3 offenses.
7. The Code of Conduct may allow the use of more serious specified disciplinary interventions and consequences when a student repeatedly commits the same disciplinary offense. However, the Code of Conduct will specify when a pattern of behavior warrants such increased interventions and consequences. Before a school imposes such consequences, the Code of Conduct will require that the school employ its Behavior Intervention Protocol with respect to that student without success and appropriately document that fact.

**B. Disciplinary Practices and Monitoring**

1. Once the Code of Conduct is adopted by the District, the District’s administration of discipline at each District school will comply in all respects with the Code of Conduct, including in assigning consequences for individual disciplinary offenses. The Code of Conduct will take precedence over and supersede any other guide, matrix, handbook, or other document pertaining to student behavior, discipline, disciplinary consequences, or other subject matter addressed by the Code of Conduct. While this Agreement is in effect, the District may modify its Code of Conduct only with the prior written approval of the United States, which approval will not be unreasonably withheld. The United States will respond to any request for changes to the Code of Conduct within twenty (20) calendar days.
2. All disciplinary incidents (including informal removals, such as calls to Parents to take a student home, and any actions taken under District Policy 5112 or Article VIII, Section III, paragraphs 4 and 5 of the Collective Bargaining Agreement between the District and the UTW) will be recorded in the Student Information System. Each entry will include at least the items identified in ***Appendix D***.
3. Administrators at each District school, in collaboration with the District’s Department of Diversity, Equity, and Inclusion and the District’s Department of Research and Assessments, will analyze discipline data from that school not less than once per semester to identify and examine the cause of disparities<sup>10</sup> or

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<sup>9</sup> These include refusal to follow staff direction to remedy a dress code violation or repeat dress code violations.

<sup>10</sup> For purposes of this data review paragraph, “disparities” refers to any instance where the proportion of students of a particular race, ethnicity, sex, or disability status (or combination thereof) being referred for discipline (including for a particular violation of the Code of Conduct), or receiving a particular disciplinary consequence, is greater than

outliers<sup>11</sup> in the data and, if such disparities or outliers are not adequately explained by non-discriminatory factors, identify and plan appropriate remedial measures, including training and professional development for staff (“Discipline Review”). Each Discipline Review will be fully documented in a report that includes at least the information identified in *Appendix E*. Subsequent Discipline Reviews will evaluate the efficacy of any actions taken as a result of a prior Review and address whether additional action is needed to appropriately address the cause of each disparity or outlier, if any.

4. In conducting each Discipline Review the District will examine the following variables:
  - a. Referrals by student’s race, student’s disability status, student’s sex, referrer and offense, and by the combinations of: (i) offense and student’s race; (ii) offense and student’s disability status; (iii) offense and student’s sex; (iv) referrer and student’s race; (v) referrer and student’s disability status; (vi) referrer and student’s sex (vii) referrer, offense, and student’s race; (viii) referrer, offense, and student’s disability status; (ix) referrer, offense, and student’s sex; (x) student’s race, student’s sex, and offense; and (xi) student’s race, student’s sex, and referrer; and
  - b. Exclusionary Discipline by student’s race, student’s disability status, student’s sex, and offense, and by the combinations of: (i) offense and student’s race, (ii) offense and student’s disability status; (iii) offense and student’s sex; (iv) name of Administrator<sup>12</sup> and student’s race; (iv) name of Administrator and student’s disability status; (v) name of Administrator and student’s sex; (vi) offense, name of Administrator, and student’s race; (vii) offense, name of Administrator, and student’s disability status; and (viii) offense, name of Administrator, and student’s sex.
5. The District will develop a plan that describes how Discipline Reviews will be conducted and the types of remedial measures that might be appropriate in responding to disparities and outliers (“Discipline Review Guide”). Within ninety (90) calendar days of the Effective Date of this Agreement, the District will submit a draft Discipline Review Guide to the United States for review and approval. If

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two times the proportion of students in the appropriate comparison group (Black/white, with a disability/without a disability, etc.) within the same school being referred for discipline (including for the same violation of the Code of Conduct) or receiving the same disciplinary consequence. The term is not intended to measure whether conduct is discriminatory as a legal matter, but only to identify situations that warrant further inquiry by the District to ensure nondiscrimination.

<sup>11</sup> For purposes of this data review paragraph, “outliers” refers to any instances where staff/teachers/Administrators are issuing Referrals or consequences (including to students of a particular race, ethnicity, etc. or involving a particular violation of the Code of Conduct) at more than two times the rate of the average staff/teacher/Administrator at the same school. The term is not intended to measure whether conduct is discriminatory as a legal matter, but only to identify situations that warrant further inquiry by the District to ensure nondiscrimination.

<sup>12</sup> The analysis by Administrator set forth in this paragraph is only required if there are more than two Administrators involved in assigning disciplinary consequences at a school.

the United States does not approve the Discipline Review Guide, it will provide complete comments and edits to guide the District's revisions within thirty (30) calendar days. The Parties will work cooperatively to produce a final Discipline Review Guide that the United States approves. Once the United States approves the final Discipline Review Guide, the District will adopt it as soon as reasonably practicable and will not materially change it while this Agreement is in effect without the prior written approval of the United States.

6. Within thirty (30) calendar days after each Discipline Review, the Superintendent's designee will review all of the required documentation from that Review and evaluate each school's compliance with this Agreement's requirements, including whether the analysis was completed properly, whether the school properly followed and implemented the Discipline Review Guide, whether the school accurately identified the causes of disparities and outliers, and whether appropriate action was taken in response to those identified disparities and outliers. The Superintendent's designee will document the results of this review.

### C. Behavior Intervention Protocol

1. By the start of the 2024-25 school year, each District school will adopt a Behavioral Intervention Protocol<sup>13</sup> to ensure all students receive appropriate behavioral interventions and supports and thereby seek to minimize Exclusionary Discipline.
2. Each school's Behavioral Intervention Protocol will identify, using objective numerical benchmarks, students who may need additional interventions and supports to manage their behavior. The benchmarks will rely on variables such as number of Referrals, frequency of Referrals, Referrals for particular Code of Conduct offenses, number of days of Exclusionary Discipline and/or School Removal, and will be set at an appropriate level given that school's overall frequency of student discipline.
3. Each school will designate a Behavioral Intervention Protocol Review Team composed of at least one Administrator and other relevant qualified staff. At each school, the Behavioral Intervention Protocol Review Team will meet monthly to discuss any students who meet the objective numerical benchmarks in the Behavioral Intervention Protocol for that month, to follow up on any students previously identified by the team, and to take appropriate action. Such appropriate action will include:
  - a. Putting in place appropriate interventions and supports if none are currently being provided to the student;

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<sup>13</sup> PBS Programs and Mixed Abilities Classrooms may decide whether and how to use their schools' Behavior Intervention Protocol once their Classroom Plans are in place.

- b. Reviewing and assessing the effectiveness of any interventions and supports currently being provided to the student and determining whether different or additional interventions and supports would be beneficial;
- c. Determining whether an FBA should be conducted and whether a BIP based on that FBA should be completed;
- d. Reviewing whether each student is identified as a Student with a Disability and if not, whether the student should be evaluated for special education eligibility; and
- e. Documenting all students reviewed, all decisions made, all interventions and supports provided, and all data collected and analyzed.

D. Student Dress Codes

1. The District will create two dress codes—a standardized dress code (i.e., for schools with uniforms or a fixed dress code) and a non-standard dress code for schools without uniforms or a fixed dress code—that schools may (but are not required to) adopt (collectively, “Optional Student Dress Codes” or “Dress Codes”). The Optional Student Dress Codes will:
  - a. Not include requirements that discriminate against a student on the basis of race or sex;
  - b. Provide consistent standards for staff to apply;
  - c. Refer staff to the Code of Conduct for guidance in responding to violations of the Dress Code(s), including non-compliance with staff direction and repeated violations of the Dress Code(s); and
  - d. Require staff to offer students compliant clothing if a student is not wearing clothes that satisfy the Dress Code(s).
2. By October 15, 2024, the District will submit its proposed Dress Codes to the United States for review and approval. If the United States does not approve the Dress Codes, it will provide complete comments and edits to guide the District’s revisions within thirty (30) calendar days. The Parties will work cooperatively to produce final Dress Codes that the United States approves. Upon approval of the Optional Student Dress Codes, all schools that wish to continue enforcing a dress code will adopt an Optional Student Dress Code and may only adapt it to reflect the school’s colors or mascot. During the Term of this Agreement, the District will not materially change the Dress Codes without the approval of the United States, which approval will not be unreasonably withheld. The United States will respond to any request for changes to the Dress Codes within twenty (20) calendar days.
3. At schools where a Dress Code has been adopted, disciplinary data concerning Dress Code violations will be examined as part of each Discipline Review.

## VIII. SAFETY SERVICES OFFICERS AND LAW ENFORCEMENT

### A. Use of Safety Services Officers

1. The District will not use Safety Services Officers to respond to conduct that meets the definition of a Level 1 offense. This includes incidents involving a Dress Code violation, the failure to have or display school identification, disrespect, insubordination, disruptive behavior, and skipping class or school (although Safety Services Officers can respond to an incident in which a student leaving school grounds poses a safety risk because of proximity to traffic).
2. Safety Services Officers will only make physical contact with a student when permitted under this Agreement and will report any physical contact with a student as required by this Agreement.
3. Safety Services Officers will make every reasonable effort to de-escalate situations when addressing student behavior using approved District De-escalation Techniques and will not take unreasonable actions that tend to escalate student behavior.

### B. Use of SROs

1. Unless required by law, District staff will not request the involvement of an SRO in an incident of student misbehavior unless it presents a significant safety risk, poses a threat of substantial physical harm, or is the kind of criminal offense that would cause the District to call law enforcement if no SRO were on campus.
2. Unless required by law, District staff will not report to the SRO a resolved incident of student misbehavior unless the incident resulted in a significant injury or is the kind of criminal offense that would cause the District to call law enforcement if no SRO were on campus. Nothing in this paragraph prevents District staff from reporting to the SRO an unresolved threat to safety. Students will not be reported to the SRO for:
  - a. Creating a disturbance if there was no significant injury or property damage;  
or
  - b. A mutual fight which did not create a substantial risk of significant injury.
3. The District will ensure that law enforcement agencies that provide SROs to the District are advised at least annually of the existence of this Agreement, its requirements, and that it is of great importance to the District that SROs limit their involvement as instructed by this Agreement. In deciding whether to partner with a particular law enforcement agency, the District will consider that agency's willingness to follow these guidelines.

### C. Safety Services Incident Reports

1. Within thirty (30) calendar days of the Effective Date of this Agreement, the District will revise its Safety Services Incident Report. During the Term of this Agreement, the Safety Services Incident Report will record at least the items identified in *Appendix F* and will be completed for each incident of student misbehavior involving a law enforcement officer or SRO.
2. When an SRO or other law enforcement officer becomes involved in an incident of student misbehavior, whether in progress or resolved, the District will completely and accurately fill out a Safety Services Incident Report. The narrative of the report for that incident will specify at what point during the incident the SRO (or another law enforcement officer) was contacted and/or arrived on the scene and, if contacted, why the SRO or law enforcement officer was contacted.
3. All Safety Services Incident Reports documenting incidents involving law enforcement will be reviewed within five (5) Days of the incident occurring by a District-level official designated by the Superintendent to assess whether the Safety Services Incident Report was properly completed and whether the involvement of law enforcement was warranted under this Agreement. If the District-level official identifies an instance of noncompliance, including any failure to properly complete required documentation, the District-level official will take appropriate remedial action including providing additional direction or training to District staff and discussing the incident with the involved SRO or law enforcement agency. The District-level official will document the review and any action taken.

## IX. TRAINING

- A. The District will implement an effective training program for all Administrators covering:
  1. Federal and state laws that address 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;
  2. The District's Emergency Safety Intervention policies, as modified by this Agreement;
  3. How to properly document ESIs (including in the District's Student Information System), review ESI documentation, and effectively debrief after an ESI;
  4. The requirements of this Agreement pertaining to the conduct of FBAs, BIPs, and the provision of individualized interventions and supports to students;
  5. How to administer the Code of Conduct, document disciplinary actions and conduct the data reviews required by this Agreement;
  6. How to ensure staff implement Classroom Plans with fidelity;

7. How to implement the Behavior Intervention Protocol required by this Agreement; and
  8. The provisions of this Agreement regarding the use of Safety Services Officers and SROs and other law enforcement.
- B. The District will provide role-appropriate training for all Instructional Staff covering:
1. The District's ESI policies, as modified by this Agreement;
  2. Role-appropriate training covering each report, form, and review required of Instructional Staff by this Agreement;
  3. The purposes of and process for effective debriefing after an ESI;
  4. Providing individualized interventions and supports to students and evaluating the effectiveness of those interventions and supports;
  5. The Code of Conduct and how to document disciplinary actions; and
  6. The provisions of this Agreement regarding the use of Safety Services Officers and SROs and other law enforcement.
- C. The District will provide role-appropriate training to all Instructional Staff at the Focus Settings on the following and ensure proper understanding of the underlying skills:
1. Principles of behavior, analyzing behavior with a focus on the Antecedent-Behavior-Consequence ("ABC") model, proactive behavior management, functional behavior interventions, antecedent strategies, replacement behaviors, De-escalation Techniques that account for known functions of student behavior, and simple non-intrusive strategies for handling misbehavior;
  2. Conducting FBAs and developing and implementing BIPs;
  3. Writing behavioral goals and implementing instruction aligned with those goals;
  4. Collecting and analyzing behavioral data to evaluate intervention effectiveness and inform intervention decisions; and
  5. Implementing Classroom Plans (including implementing instruction aligned with behavior goals).
- D. The District will provide professional development for all Safety Services Officers covering:
1. The provisions of this Agreement regarding Safety Services Officers and SROs and other law enforcement;



2. Principles of behavior, analyzing behavior with a focus on the ABC model, proactive behavior management, De-escalation Techniques that account for known functions of student behavior, and simple non-intrusive strategies for handling misbehavior; and
  3. Completing Safety Services Incident Reports as required by this Agreement.
- E. Within one year of the Effective Date of this Agreement, the District will ensure that all Crisis Prevention Team members are trained consistent with CPI standards and that all such training is provided by an instructor who has personally completed all training for trainers.<sup>14</sup>
- F. All training under this section will include:
1. Instruction that provides participants with examples (and non-examples), modeling, opportunities for practice and feedback, and time for review and reflection; and
  2. Yearly training supplemented with ongoing in-service coaching.

## **X. CO-EXISTENCE WITH FEDERAL AND STATE LAW AND REGULATIONS**

- A. The terms of this Agreement will exist alongside or in addition to other legal requirements imposed by state or federal law, and constructions that enable the District to remain in compliance with applicable law shall be favored over those that place the District's compliance in doubt or which make compliance with law impossible. If the District believes any change in state law conflicts with the District's obligations under this Agreement, the District shall promptly notify the United States in writing, and the Parties shall work together in good faith to resolve the issue.
- B. The District's ability to discharge certain of its obligations under the Agreement is contingent upon obtaining parental consent. Where parental consent is required before the District may perform a duty imposed by the Agreement, the District shall seek such consent in good faith and as required by law, in no event employing less than reasonable efforts. The District's failure to perform an obligation imposed by this Agreement because of a lack of parental consent shall not be deemed a breach of the Agreement.

## **XI. REPORTING AND ENFORCEMENT**

- A. Beginning in 2025, on or before January 31 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 for the six-month period preceding the date of the status report.
- B. Each District status report will provide, for each paragraph in Sections III-IX of this Agreement, 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

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<sup>14</sup> CPI trainers and Crisis Prevention Team members will take and complete this training anew, regardless of when they last took the training or whether their certification is current.

the first status report) and all documents that demonstrate the District's efforts to comply with that paragraph including:

1. A spreadsheet that includes, for each Emergency Safety Intervention, all of the information required to be documented for each such incident;
  2. The written evaluations of each ESI required by this Agreement, as well as copies of the documentation of each Focus Setting Review;
  3. All FBAs and BIPs completed at the Focus Settings, pursuant to the provisions of this Agreement;
  4. All documentation regarding all monthly reviews required by Paragraph V(B)(2) of this Agreement;
  5. A spreadsheet that includes all of the information about disciplinary actions required to be documented by this Agreement;
  6. All required documentation related to Discipline Reviews; and
  7. All Safety Services Incident Reports required by this Agreement and documentation of the review of those reports required by this Agreement.
- C. Upon reasonable notice to the District, the United States may request additional documents or data, tour schools, monitor training for quality and substance, interview District staff and conduct any other compliance activities that the United States determines are necessary to monitor the District's implementation of the Agreement.
- D. The United States may enforce the terms of this Agreement, as well as Title II, Section 504, Title VI, and the Equal Protection Clause as authorized by Title IV. If the United States determines that the District has failed to comply with the terms of this Agreement or the timeline this Agreement establishes for compliance, it will 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.
- E. Failure by the United States to enforce any provision in this Agreement is not a waiver of its right to enforce any provision of this Agreement.
- F. The Parties anticipate that the District will have complied fully with this Agreement by the end of the 2027-2028 school year. When the District provides the United States with the status report due July 15, 2028, the United States will have 90 calendar days to raise any remaining concerns regarding the District's compliance with the Agreement.
- G. If the United States does not raise concerns regarding the District's compliance, the Agreement will terminate.

- H. 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 mechanisms in this Agreement will apply.
- I. The Effective Date of this Agreement is the date of the last signature below.
- J. This Agreement constitutes the complete agreement between the Parties on the matters it addresses. No prior or contemporaneous communications, either written or oral, or prior drafts will be relevant or admissible for purposes of determining the meaning of any provision or in any other proceeding.
- K. This Agreement may be modified only with the written consent of the Parties. Any modification will be in writing and signed by the Parties through their authorized representatives.
- L. For purposes of construing this Agreement, this Agreement will be deemed to have been drafted by all Parties to this Agreement and will not, therefore, be construed against any Party for that reason in any subsequent dispute.
- M. If for any reason a court of competent jurisdiction finds a part of this Agreement to be invalid, unlawful, or otherwise unenforceable, that decision will not affect the validity of any other part of the Agreement. The District and United States will meet and confer within fifteen (15) calendar days after any such decision to determine whether the Agreement should be revised or supplemented in response.
- N. This Agreement is applicable to and binding on the District and the United States, including their respective officers, agents, employees, successors, and assigns.
- O. The undersigned representatives of the Parties certify that they are fully authorized to enter into and consent to the terms and conditions of this Agreement and to execute and legally bind the Parties to it.

**For the United States:**

KRISTEN CLARKE  
Assistant Attorney General

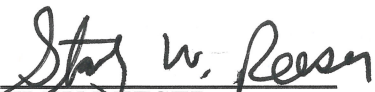


Date: 7/2/2024

SHAHEENA A. SIMONS, Chief  
KELLY GARDNER, Deputy Chief  
JAMES A. EICHNER, Trial Attorney  
AJAY SAINI, Trial Attorney  
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150 M St. NE  
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**For the District:**

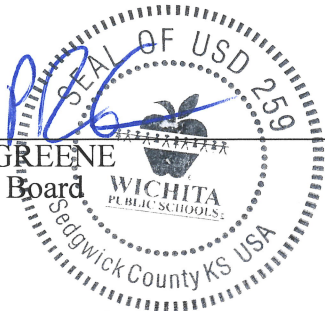
UNIFIED SCHOOL DISTRICT NO. 259, SEDGWICK COUNTY, KANSAS

By:   
STANLEY REESER  
President  
Board of Education

Date signed: 7-1-24

ATTEST:

By   
PATRICK GREENE  
Clerk of the Board



## APPENDIX A: MANDATORY ESI DOCUMENTATION

The documentation of each ESI in the Student Information System shall include at least the following items:

- a. A continuous narrative description of the incident, in chronological order, that includes each ESI (if there were multiple ESIs used) rather than breaking up the narrative by ESI;
- b. The time the incident started and ended, and the time each ESI started and ended;
- c. The context for the incident (for example, the individuals in the location, the behavior of those individuals, and what learning or other activity the student was engaged in when the incident began);
- d. The behavior of the student that prompted each ESI and the actions by staff immediately prior to that action by the student, including, as a unique field in the data system, the name of each staff member who performed such action;
- e. Objective descriptions of the student's behavior using behavioral language that avoids the use of subjective terms (e.g., "student knocked books off a peer's desk" rather than "student was angry");
- f. A description of all De-escalation Techniques implemented prior to the use of the ESI that demonstrate that less restrictive interventions would not have been effective, including, as a unique field in the data system, the name of each staff member who participated in the implementation of each such Technique;
- g. The student's response to each De-escalation Technique;
- h. A clear description of the Physical Restraint procedures, including a description of each hold and physical technique (attempted and successful), the name(s) of all CPI-approved physical holds and techniques, detailed descriptions of all non-CPI holds, and, as a unique field in the data system, the staff member(s) who employed or attempted to employ each CPI-approved or non-CPI-approved hold;
- i. Where the student went after the Physical Restraint;
- j. The name of each staff member who observed the incident and who has not yet been identified pursuant to any of the foregoing subsections (a) through (i); and
- k. A description of matters discussed during the initial debrief of the incident described in Paragraph (IV)(E)(1).

## **APPENDIX B: FOCUS SETTING REVIEW REPORT**

The Office shall prepare a written report following each Focus Setting Review summarizing the review and its results, including any appropriate changes to be implemented following such review. The report shall contain at a minimum, the following items:

- a. Identified patterns involving staff (including actions by staff that escalated student misbehavior) or particular students and ways to address those patterns to reduce the use of ESIs;
- b. Assessment of the effectiveness of the De-escalation Techniques used and ways to improve those techniques;
- c. Evaluation of whether staff were using appropriate Physical Restraint techniques;
- d. Ways to improve the debriefings prescribed by this Agreement;
- e. Evaluation of the quality of the FBAs conducted and BIPs developed, and ways to improve their effectiveness; and
- f. Evaluation of whether interventions put in place for students were implemented properly and proved effective and ways to increase fidelity and effectiveness.

## APPENDIX C: STANDARDS FOR FBAs AND BIPs

The process of conducting an **FBA** will include:

- a. A review and analysis of discipline data, attendance data, MTSS data, grades, and other relevant data;
- b. Interviews of the student, District staff who serve the student, family or caregivers of the student, and other professionals who are responsible for serving the student;
- c. The completion of informal checklists (e.g., Questions About Behavior Function, Functional Assessment Checklist for Teachers) by the relevant IEP team or child study team members, as applicable, responsible for serving the student;
- d. Multiple direct observations of the student in multiple settings at multiple times and across multiple days. The direct observations will include times and settings when the behavior is anticipated to occur, as well as times and settings the behavior is not anticipated to occur; and
- e. An Antecedent-Behavior-Consequence Analysis of the direct observation data.

The District will ensure that written FBA reports include the following:

- a. A clear and operationalized description of the target behavior(s);
- b. An identification of the contexts that predict the target behavior(s) including times the behavior occurs, locations the behavior occurs, people associated with the behavior, and the conditions under which the behaviors occur;
- c. An identification of the consequences that follow the target behavior(s); and
- d. A hypothesized function of the target behavior(s) derived from the FBA results.

The District will ensure that FBAs are consistently reviewed to verify FBA procedures were followed and the conclusions about the function of the target behavior are consistent with assessment results. A new FBA will be conducted when there is a substantial change in the student's educational placement.

All **BIPs** will:

- a. Be limited to a single behavior or set of functionally related behaviors. The BIP must specify the target behavior to be replaced, or a set of behaviors that serve the same function as identified in the FBA report;
- b. Include a clear, concise, and operationalized description of the target behavior consistent with the description of the target behavior from the FBA;

- c. Explicitly state the hypothesized function of the target behavior that was identified in the FBA report and explicitly describe the data collection method to be used for evaluating the BIP's effectiveness (e.g., frequency, duration, latency data, time sampling, partial interval data, whole interval data, etc.);
- d. Include: (1) a clearly described individualized antecedent-based intervention to reduce the frequency, duration, rate, and/or intensity of the target behavior, and/or (2) a clearly described replacement behavior intervention (supported by evidence) in which the replacement behavior is functionally equivalent or functionally superior to the target behavior and is socially desirable to the student;
  - i. When the BIP includes an antecedent-based intervention, it will include step-by-step instructions on how the antecedent-based intervention will be implemented, including any instruction that will take place with the student, and will also include a clear and concise description of how to reinforce appropriate behavior when that behavior occurs.
  - ii. When a BIP includes a replacement behavior, it will include a step-by-step set of instructions on how the replacement behavior will be taught to the student and will also include a clear and concise description of how the replacement behavior will be reinforced when it occurs.
- e. Include a clear and concise description of the response employees will use when the target behavior occurs. The identified response will not reinforce the target behavior or undermine the antecedent-based intervention or the replacement behavior intervention;
- f. Describe how to monitor fidelity to the BIP, including a formal process for measuring adherence to antecedent strategies, replacement behavior instructional procedures, and consequence strategies, and state how often such monitoring and measuring will occur;
- g. Include a system for collecting data on the target behavior, including how often such data should be collected;
- h. Specify the date by which data-based decisions about BIP effectiveness will be made and the steps to be taken if the BIP does not result in the desired outcome by that date; and
- i. Describe the steps to be taken if the target behavior improves, worsens or does not change within the specified timeline.



## APPENDIX D: DISCIPLINARY DOCUMENTATION

All disciplinary incidents or action taken under District Policy 5112 or Article VIII, Section III, paragraphs 4 and 5 of the Collective Bargaining Agreement between the District and the UTW shall be recorded in the Student Information System and will include the following:

- a. For each student<sup>15</sup> involved in a disciplinary incident, a single incident ID and a single infraction code from the revised Code of Conduct as determined by the Administrator who reviews the narrative;
- b. The precise disciplinary action(s) taken (e.g., call to Parent, removal under District Policy 5112, etc.);
- c. A written narrative that provides a complete account of the incident, including the behaviors of the involved adults;
- d. The justification for the disciplinary action(s) taken; and
- e. Explanation of why these actions complied with the requirements of the Code of Conduct.

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<sup>15</sup> If a single incident involves more than one student, there will be an Incident ID and infraction code specific to each individual student involved in that incident.

## **APPENDIX E: MANDATORY ITEMS FOR DISCIPLINE REVIEW REPORT**

Written reports of Discipline Reviews conducted in accordance with this Agreement will include, at a minimum, the following items:

- a. Description of the data reviewed;
- b. Explanation of the analysis conducted, including the disparities or outliers identified, the process for examining the cause of those disparities or outliers, and the results of that examination; and
- c. Description of the actions taken in response, including an explanation for why those actions were determined to be appropriate.

## **APPENDIX F: REVISED SAFETY SERVICES INCIDENT REPORT**

Safety Services Incident Reports shall be completed for each incident of student misbehavior involving a law enforcement officer or SRO, and must:

- a. Require staff to indicate whether an SRO or other law enforcement officer became involved in an incident;
- b. If an SRO or law enforcement officer became involved in an incident, explain how the SRO or law enforcement officer became involved in the incident (i.e., requested by staff? Observed the incident? Heard about the incident on the radio?, etc.); and
- c. If District personnel requested an SRO or law enforcement officer to be involved in an incident, identify who made the request and why.