

**MEDIATION AGREEMENT**

**DATE:** September 18, 2006

**SCHOOL SYSTEM:** East Baton Rouge Parish School System

*In the Matter of Mediation Between:*

**Petitioners:** Jeremy Stewart, Nicholas Matthewa, Zurimartinique Franklin and Others Similarly Situated

**Respondent:** East Baton Rouge Parish School System

**AGREEMENT**

We, the undersigned (hereinafter also "Parties"), having participated in a mediation session on September 18, 2006 and being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

1. The East Baton Rouge Parish School System (EBRPSS) agrees to obtain specific and individualized technical assistance/training from an individual or organization (Consultant) with school-based experience and recognized expertise in the development and implementation of school-wide Positive Behavioral Support (PBS) programs and services and development of capacity-building for school personnel in implementation of PBS in the school setting by executing a contract or other agreement (Contract) for such Consultant services within sixty (60) days of the mutual selection of a Consultant by the EBRPSS and the Petitioners. This Contract shall run for the term of this Mediation Agreement (Agreement) as specified in Paragraph #14. Within 30 days of the execution of this Agreement, the Petitioners shall provide the EBRPSS with a list of at least three (3) Consultants whom they feel are qualified and available to provide such technical assistance/training. The EBRPSS may contract with any of the Consultants proposed by the Petitioners, or it may, within 45 days of receipt of the Petitioners' list of available Consultants as specified herein above, provide the Petitioners with the names of other individuals/organizations with whom it would like to contract to provide those services. If the parties cannot reach a mutual agreement regarding designation of the Consultant, then a meeting between the parties will be conducted within 14 days of written notice to the other party regarding a disagreement and a Consultant will be selected therein. If the parties are unable to agree upon a Consultant at this meeting, then the Mediation Agreement is null and void and Petitioners reserve the right to request that the Louisiana Department of Education (LDE) decide their

original class action complaint filed on May 10, 2006. In the event that Petitioners should make such request, then the EBRPSS reserves the right to object to the propriety of a "class action complaint" and reserves the right to defend against such complaint.

2. The Consultant will be required to develop and implement a PBS training and implementation protocol as part of the PBS Implementation Initiative in EBRPSS within ninety (90) days of the date of execution of the contract. Such training and implementation protocol shall include but not be limited to strategies, objectives, and timelines for students with disabilities identified as having Emotional Disturbance/Behavior Disorders (ED) related to: implementation of school-wide PBS, the development of functional behavioral assessments (FBAs), the development and implementation of behavior intervention plans, and conducting manifestation determination reviews. It is understood that the Consultant is authorized to delegate technical assistance/training responsibilities to other individuals under his/her supervision and control and/or colleagues in the field with similar training and experience.
3. Within thirty days (30) of its completion, the PBS training and implementation protocol shall commence and shall include all pupil appraisal staff, teachers, paraprofessionals, disciplinarians, other school administrators, and other educational service providers working at schools which have ED students and shall also include bus drivers who transport ED students to such schools. The EBRPSS agrees to fully implement the PBS training and implementation protocol developed by the Consultant pursuant to this agreement for the term of this agreement specified in Paragraph # 14 below
4. The EBRPSS shall develop and implement in agreement with the Consultant for the term of this agreement specified in Paragraph #14 and commencing no later than the beginning of the 2007-08 school year specific strategies, objectives, and timelines for reducing the number of long-term suspension/expulsions of students identified with the exceptionality of Emotional Disturbance and for increasing these same students' access to regular education, including access to the general education curriculum and regular education classes.
5. The EBRPSS agrees to provide ED students who are determined to be more than two (2) years behind their chronological grade level in reading and/or math (based upon standardized test scores or curriculum based assessment) with access to intensive reading and math remediation opportunities. ED students shall be screened or otherwise assessed by the EBRPSS during the 2006-2007 regular school year to determine whether or not such students are

more than two (2) years behind their chronological grade level in reading and/or math. Access to intensive reading and math remediation opportunities shall be provided to such ED students beginning in Fall of 2007-2008 school year and shall continue throughout the term of this agreement.

6. The EBRPSS agrees to continue its efforts to actively recruit teachers and other instructional personnel who meet the qualifications and standards established by the State of Louisiana for each service provider and to place such special education service providers in EBRPSS classrooms and alternative schools serving students identified with the exceptionality of Emotional Disturbance.
7. The EBRPSS agrees to develop and implement a tracking system for recording the number of disciplinary referrals and removals for students identified as ED.
8. The EBRPSS agrees that, within sixty (60) days of the execution of this Mediation Agreement, the Superintendent will disseminate to all school building administrators, including vice-principals and disciplinarians, an administrative directive requiring strict compliance with state and federal discipline requirements for students with disabilities, including the requirements for conducting Manifestation Determination Reviews (MDRs), providing IEP services beginning with the 11<sup>th</sup> cumulative day of out-of-school suspensions during the school year, and development and/or review of appropriate FBAs and BIPs.
9. The EBRPSS agrees that such administrative directive from the Superintendent will specifically prohibit undocumented removals of students with disabilities for disciplinary reasons via "cooling off", "parent pick-up" or other undocumented methods of removals for disciplinary reasons and will require the transmittal of IEPs via designated school system personnel to alternative schools on the date a decision is made by school officials to assign a student with disabilities to an alternative school which will result in removal of the student from his assigned school for disciplinary reasons for more than ten (10) cumulative days in a school year.
10. Prior to the beginning of the 2007-2008 school year, the EBRPSS will develop and disseminate to every school a "Discipline Handbook" or other written procedural document detailing the IDEA's disciplinary protections and procedures, including those outlined in Paragraphs # 8 and # 9 hereinabove, for students with disabilities. Petitioner's contact person shall be provided with a draft of the handbook/procedural document and shall be afforded an opportunity to furnish comments prior to its completion.

11. The EBRPSS agrees to provide special educational services to the Petitioners named hereinabove as follows:
  - (a) Jeremy Stewart will be provided the opportunity to receive 3 hours per week of tutoring services for the remainder of the 2006-07 school year (not ESY), which services shall commence within one week following execution of this agreement.
  - (b) Nicholas Matthews will be provided the opportunity during the 2006-07 regular school year (not ESY) to receive 10 hours of tutoring services, which services shall commence within one week following execution of this agreement.
  - (c) Zurimartnique Franklin will be provided the opportunity during the 2006-07 regular school year (not ESY) to receive 30 hours of tutoring services, which services shall commence within one week following execution of this agreement.
  - (d) The EBRPSS shall not be responsible for providing the above referenced tutoring services in the event that any or all such Petitioners voluntarily withdraw, or withdraw for reasons outside of the control of the EBRPSS, from enrollment in the EBRPSS. In addition, the EBRPSS shall not be required to make up scheduled tutoring sessions not attended by any or all such Petitioners unless the Petitioner provides notice by 9:00 a.m. on the date and time of the scheduled delivery of services of valid illness or other excused absence. Such tutoring will be provided to Petitioners during attendance at alternative schools as a result of suspension or expulsion from school during the 2007-2008 school year.
12. A qualified school social worker, qualified school psychologist, qualified school counselor, or other personnel qualified to provide counseling services in the educational setting will be present at all IEP meetings involving the three named Petitioners during the 2006-2007 and 2007-2008 school years (unless the Petitioner withdraws from enrollment in the EBRPSS as described in Paragraph # 11) unless such attendance has been excused by the Petitioner and the Officially Designated Representative of the EBRPSS in accordance with the provisions of IDEA 2004.
13. It is expressly agreed that all terms of this Agreement are contractual and not merely recitals. The parties to this Agreement intend that this document will incorporate the complete terms and conditions of their agreement.

14. This agreement shall terminate at the conclusion of the 2008-2009 regular school year if EBRPSS has complied with the Agreement's provisions and EBRPSS shall have no obligations under this agreement thereafter.
15. A single point of contact will be mutually selected by the Petitioners and the EBRPSS to address concerns related to compliance with the terms of this agreement. The designated contact point for the EBRPSS will be the Chief Academic Officer, who is presently Robert Stockwell. The designated contact point for the Petitioners will be their attorney, who is presently James Comstock-Galagan. The individual selected as the single point of contact will provide written notice to the other party regarding any concern(s) related to compliance with the terms of this agreement and the receiving party shall investigate said concern(s) and shall provide a response to the other party within a 10-day period unless it is clearly not feasible to do so due to pre-established breaks in the EBRPSS calendar and/or other events outside of the control of the designated contact individual.
16. If the parties hereto (through their designated contact persons) cannot agree on whether there has been compliance with the terms of this agreement and/or with the proper remedy for non-compliance, the parties shall meet and negotiate in good faith to resolve such issues between themselves. If such concerns are not amicably resolved within fifteen (15) days of such meeting, then either party shall have the right to seek enforcement of the terms of this Mediation Agreement in any State court of competent jurisdiction or in a district court of the United States.
17. In consideration of this agreement, and, after EBRPSS has executed a contract with the Consultant referenced in Paragraph 1 above, the three named Petitioners agree to withdraw with prejudice their formal complaint in this matter pending before the Louisiana Department of Education and to waive any and all rights that each such Petitioner may have to request a special education due process hearing to address any and all issues involving the EBRPSS that might exist as of the date of this agreement.
18. This Mediation Agreement shall not diminish or affect the individual rights of any students receiving special education services and identified as emotionally disturbed in EBRPSS who are not specifically referenced in this Agreement.
19. The EBRPSS does not acknowledge the validity of a "class action" complaint under the Individuals with Disabilities Education Improvement Act (IDEA

2004) and attendant state laws and regulations in effect at the time of execution of this agreement and reserves any and all rights related to same if the complaint is reinstated under the terms of Paragraph 1 above. This agreement is entered into in good faith for the purpose of amicably resolving concerns raised by the Petitioners and in no way constitutes any admission of error, omission, or wrongdoing on the part of the EBRPSS.

20. The undersigned parents certify that their representatives/attorneys have reviewed all of the terms of this Mediation Agreement with them and that they fully agree with all of the terms of this Mediation Agreement.

Parents of Petitioners:

Carla Scott  
Parent of Jeremy Stewart

Date: 10-17-06

Maria Walker  
Parent of Nicholas Matthews

Date: 10-13-06

Bernette Hasty  
Parent of Zurimartinique Franklin

Date: 10-17-06

School Official: Robert Stockwell  
Robert Stockwell  
Chief Academic Officer  
East Baton Rouge Parish School System

Date: 10/20/06

Mediator: \_\_\_\_\_  
Murphy F. Bell, Jr.

Date: \_\_\_\_\_