

STATE OF LOUISIANA
ADMINISTRATIVE DUE PROCESS

IN RE:

G.D.; K.S.; and J.T., *et. al.*

v.

**Louisiana Department of Education, Board of Elementary
and Secondary Education**

Log 45-H-41

MEDIATED SETTLEMENT AGREEMENT

INTRODUCTION

1. This Settlement Agreement is made and entered into by and between Petitioners G. D., J.T., K.S., (hereinafter collectively “Petitioners”), and the Louisiana Department of Education and the Board of Elementary and Secondary Education (hereinafter collectively “DOE”).
2. On February 2, 2005, Petitioners filed a class action administrative due process complaint against defendant DOE (“Complaint”). The complaint was filed on Petitioners own behalf and on behalf of all similarly situated and treated students with emotional disturbance in the Jefferson Parish Public School System (“JPSS”). The allegations in the complaint arose from DOE’s alleged failure to fulfill its general supervisory responsibilities under the Individuals with Disabilities Education Act (“IDEA”) by failing to appropriately monitor, identify and/or compel JPSS to eliminate numerous systemic violations of IDEA involving students classified as Emotionally Disturbed. Specifically, the complaint alleges – among other things -- JPSS denied students classified as

Emotionally Disturbed a free and appropriate public education (“FAPE”) by failing to provide specially designed instruction and related services. The complaint alleges that JPSS failed to provide services that are related to and address present levels of performance as well as the inherent characteristics and issues (both academic and nonacademic) associated with students classified as Emotionally Disturbed; failed to confer meaningful educational benefit; failed to educate Emotionally Disturbed students in the least restrictive environment; failed to comply with IDEA’s discipline provisions; failed to provide appropriate transition services; and failed to comply with the procedural and substantive requirements governing the development and implementation of IEPs for Emotionally Disturbed students.

3. In response to the Complaint, DOE met with counsel for the Petitioners and the hearing officer (Steven W. Cook) on February 22, 2005. During this meeting the parties agreed to conduct mediation in an effort to resolve the issues raised in the Complaint. The parties also agreed that should mediation fail, IDEA’s administrative hearing process could not address the Complaint’s class claims and thus further exhaustion of administrative remedies would be futile and that the proper forum for addressing and resolving the allegations raised in the Complaint is State or Federal Court. The parties entered a Joint Stipulation and submitted a Joint Stipulated Order to this effect, which was signed by the Hearing Officer on March 14, 2005.

4. The parties’ first mediation session occurred on March 8, 2005. Following the mediation, DOE decided to appoint a special monitoring team to investigate the Complaint’s allegations. A second mediation session occurred via a conference call on March 14, 2005. During the conference call, DOE outlined details of the planned on-site

monitoring visit to JPSS including the individuals selected to participate on the monitoring team and the dates of the visit.

5. The DOE monitoring team was assembled and conducted an on-site monitoring visit in JPSS during the week of April 18, 2005. The monitoring team's findings, which are detailed in a fifteen (15) page Monitoring Report ("Monitoring Report"), confirmed many of the Complaint's allegations of systemic violations of IDEA by JPSS previously detailed in Paragraph 2 above.

6. DOE does not admit liability, however in order to avoid the cost and uncertainty of litigation, the parties now enter into this Settlement Agreement to resolve the claims arising out of the Petitioners' Complaint.

7. This Settlement Agreement shall be effective on the date that it is signed by all parties.

8. This Settlement Agreement settles all claims asserted in the Complaint by Petitioners. Moreover, Petitioners' counsel also agrees to waive any claims against DOE that they could raise on behalf of fifteen additional clients they currently represent in JPSS and who could raise claims similar to those of Petitioners. These fifteen (15) students are identified below by their initials and their birthdays:

- a. T.A. (8/24/91)
- b. L.B. (5/27/87)
- c. D.B. (5/08/92)
- d. K.B. (5/08/92)
- e. A.E. (11/24/87)
- f. T.F. (7/17/95)

- g. D.G. (10/13/88)
- h. M.J. (12/4/92)
- i. B.M. (5/28/90)
- j. K.S. (9/4/89)
- k. K.S. (4/17/91)
- l. R.S. (5/17/97)
- m. J.W. (12/4/87)
- n. V.W. (11/23/91)

9. Notwithstanding Paragraph 8, the above-referenced individuals and the three (3) Petitioners specifically reserve the right to pursue judicial action in either state or federal district court against DOE should this Settlement Agreement be breached.

10. This Settlement Agreement shall not diminish or affect the individual rights of any students receiving special education services and identified as emotionally disturbed in JPSS that are not specifically referenced in the Agreement.

RESOLUTION

APPOINTMENT OF A SPECIAL MASTER

11. A Special Master shall be appointed to redress the allegations in the Complaint and the findings in DOE’s Monitoring Report referenced above. The Special Master shall be separate from any other Special Master that may be appointed by DOE to address IDEA violations found through previous federal and DOE monitoring activities in JPSS unrelated to monitoring emanating from Petitioners’ Complaint.

12. DOE shall allow stakeholders (including, but not limited to undersigned counsel from the Southern Disability Law Center, Southern Poverty Law Center, and Juvenile

Justice Project of Louisiana) to provide input into the responsibilities and authority of the Special Master which shall be designated in a DOE developed Request for Proposal (RFP). DOE shall provide stakeholders with a template of the Special Master RFP prior to its release for their review and DOE shall afford serious consideration to their recommendations regarding the appropriate qualifications, responsibilities and the corresponding weights to be assigned to each within the RFP. Among other things, the Special Master's qualifications shall include recognized expertise in positive behavioral supports. DOE shall also afford serious consideration to any individuals referred by stakeholders for possible appointment as the Special Master.

13. DOE shall provide the stakeholders with on-going, formalized access to the Special Master throughout the course of the Special Master's assignment under this Settlement Agreement. The stakeholders shall be permitted to provide quarterly written information to the Special Master and DOE involving either the claims raised in the Complaint or the activities outlined in this Agreement. The Stakeholders shall also be permitted to meet with DOE and the Special Master at least annually to discuss the implementation status of the Special Master's Plan of Correction. The stakeholders shall be provided with a copy of the Special Master's Plan of Correction detailed in Paragraphs 14-18 below within fourteen (14) days of its completion. The stakeholders shall also be provided two annual written updates on the Plan's implementation by DOE. These updates shall be provided in January and June of each year.

SPECIAL MASTER’S PLAN OF CORRECTION

RELATED SERVICES VIOLATIONS

14. DOE shall ensure that the Special Master’s Plan of Correction addresses all violations found in the Monitoring Report and contains the following minimum corrective measure with regard to JPSS’ systemic violations of IDEA’s Related Services requirements involving Emotionally Disturbed students: development and implementation of specific strategies that shall ensure JPSS significantly increases the frequency and duration of social work and/or counseling and/or psychological services provided to Emotionally Disturbed students and that also shall ensure that these related services are provided based upon individual need and not staff availability.

DISCIPLINE VIOLATIONS

15. DOE shall ensure that the Special Master’s Plan of Correction addresses all violations found in the Monitoring Report and contains the following minimum corrective measures with regard to JPSS’s systemic violations of IDEA’s discipline procedures:

a. District-wide Training Protocol and Program

i. Development and implementation of a district-wide Training Protocol and Program that shall be provided to JPSS pupil appraisal staff as well as all teachers, paraprofessionals, disciplinarians, and other school administrators working at schools which have Emotionally Disturbed students.

ii. The Training Protocol and Program shall address appropriate methods for conducting Functional Behavioral Assessments (FBA); for drafting and implementing effective Behavior Intervention Plans (BIP) that entail and emphasize positive behavioral interventions and supports.

b. Central Administrative Tracking System

Creation and implementation of a reliable central administrative electronic tracking system for recording the number of disciplinary referrals and removals from school for special education students including students identified as emotionally disturbed in JPSS.

c. Discipline Policies and Practices

i. Elimination of JPSS' policy that requires an aide to accompany and remain with any Emotionally Disturbed student who is issued an in-school suspension. The policy effectively denies Emotionally Disturbed students access to in-school suspensions and guarantees that these students will be subject to out-of-school suspensions. The elimination of the current policy will allow Emotionally Disturbed students to have the same opportunity to participate in in-school suspensions as their non-disabled peers.

ii. Elimination of the policy and/or practice involving the use of "Until Parent Conference" (UPC) or "Cool -Off" suspensions with Emotionally Disturbed students.

iii. Elimination of the policy that limits the number of in-school-suspension days per school year to nine (9) days. This policy shall be

eliminated for special education students identified as emotionally disturbed.

iv. Development of a written district policy and accompanying form for the JPSS Violence Prevention Program (VPP) which clearly states that special education students identified as emotionally disturbed are exempt from the \$75 fee associated with the VPP due to IDEA's fundamental requirement of FAPE. This policy and form shall be disseminated and communicated to every principal and disciplinarian in JPSS.

v. Development and implementation of a written policy that requires Manifestation Determination Reviews ("MDR"s) be held prior to the commencement of any suspension which result in a special education student identified as emotionally disturbed being removed for more than ten (10) cumulative school days in a year. The policy shall include a method for providing prior notice to parents regarding MDR meetings and for the determination to be made with parents regarding the requisite MDR participants.

vi. Development and implementation of a written policy requiring that prior to any suspension resulting in a special education student identified as emotionally disturbed being removed for more than ten (10) cumulative school days in the school year a meeting shall be held to determine the educational services that must be provided to the student to enable him\her to participate in the general curriculum and to progress toward meeting his\her IEP goals. The policy shall provide guidance as to the

types of educational services and instructional personnel that must be provided to students during such suspensions (in or out-of school). The policy shall also state that the issuance of homework and assignment packages alone shall not constitute the provision of educational services as mandated by IDEA.

LEAST RESTRICTIVE ENVIRONMENT (LRE) VIOLATIONS

16. DOE shall ensure that the Special Master’s Plan of Correction addresses all violations found in the Monitoring Report and contains the following minimum corrective measures with regard to JPSS systemic violations of IDEA’s Least Restrictive Environment (“LRE”) provisions involving Emotionally Disturbed students:
- a. The closure of all “John Martyn” or “Most Restrictive Environment” (MRE) classrooms in JPSS within twelve to eighteen (12-18) months of the appointment of the Special Master.
 - b. Specific strategies and objectives for significantly increasing Emotionally Disturbed students’ access to less restrictive environments including increased access to the general education curriculum and general education classrooms over the next three to four (3-4) years.

EDUCATIONAL BENEFIT VIOLATIONS

17. DOE shall ensure that the Special Master Plan addresses all violations found in the Monitoring Report and contains the following minimum corrective measures with regard to JPSS’ systemic violations of IDEA’s Educational Benefit mandate:
- a. Development and implementation of a menu of intervention strategies that include but are not limited to intensive reading and math remediation for

Emotionally Disturbed students in elementary school who are determined to be more than two years behind their chronological grade level in reading and/or math based upon standardized test scores or curriculum based assessment.

- b. Development and implementation of a menu of intervention strategies that include but are not limited to the provision of compensatory education for Emotionally Disturbed students who are determined to be three years or more behind their chronological grade level in middle school, junior high or high school based on either standardized test scores or curriculum based assessment.

TRANSITION SERVICES VIOLATIONS

18. DOE shall ensure that the Special Master's Plan addresses all violations found in the Monitoring Report and contains the following minimum corrective measures with regard to JPSS' systemic violations of IDEA's Transition Services requirements involving Emotionally Disturbed students:

- a. Development and implementation of specific strategies to increase coordination between JPSS' middle schools, junior high and high schools and district operated career and technical education/vocational/Pre-GED/Skills Option programs.
- b. Development and implementation of a written district policy requiring the district operated career and technical education/vocational/Pre-GED/Skills Option programs to provide IEP services including behavior intervention plans for enrolled special education students.

- c. Development and implementation of specific strategies to increase Emotionally Disturbed students' participation in district operated career and technical education/vocational/Pre-GED/Skills Option programs over the next three to four (3-4) years.
- d. Development and implementation of a Training Protocol and Program for all administrative personnel at the district operated career and technical education/vocational/Pre-GED/Skills Option programs and all middle school, junior high and high school principals, counselors and special education teachers regarding the rights of special education students to attend and receive IEP services in Jefferson Parish schools that offer career and technical education/vocational/Pre-GED/Skills Option programs. This training will include a description of the courses offered, specific admissions criteria for each course and requirements for successful completion.

ATTORNEYS' FEES

19. DOE shall pay petitioners' counsel the amount of \$5,000 (five thousand dollars) in attorneys' fees. A check made payable to the Southern Poverty Law Center for \$5,000 shall be mailed from DOE to petitioners' counsel within ninety (90) days of the execution of this Agreement.

RELEASE

20. Petitioners and DOE expressly acknowledge and agree that the terms of this Settlement Agreement are contractual and not merely recitals, and that the terms, conditions, and provisions of the Agreement are for the sole purpose of compromising disputed claims and avoiding further litigation, and that releases or other consideration

given hereunder shall not be construed as an admission of liability by or on behalf of either the Petitioners or DOE, all such liability being expressly denied. Petitioners and DOE also expressly acknowledge and agree that this Agreement contains the entire agreement between them, and hereby mutually release each other from any and all matters, claims, complaints, or charges including attorneys' fees arising out of the same subject matter or occurrence as this Complaint. The Petitioners further agree not to add any additional claims to their Complaint versus DOE.

21. The parties agree that this Agreement may not be modified, amended or altered except upon written consent by each of the parties hereto. Should any provision of this Settlement Agreement be held invalid or unenforceable by a court of competent jurisdiction, the parties agree that such provision shall be severed from the remainder of the Agreement and the Agreement shall be construed as if the invalid provision did not exist.

22. The parties expressly acknowledge and agree that this Settlement Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

23. The parties agree that this Settlement Agreement shall be governed by and construed in accordance with the laws of the state of Louisiana and the laws of the United States of America. The parties also agree that this contract may be enforced in state or federal court in the state of Louisiana.

24. The parties agree that all undersigned counsel and undersigned representatives of DOE have the authority to enter into and execute this Settlement Agreement on behalf of their clients.

SIGNED THIS ___ DAY OF AUGUST, 2005.

On behalf of Petitioners,

James Comstock-Galagan, Esq.
Southern Disability Law Center
976 Beach Blvd.
Bay St. Louis, MS 39520
(Ph.) 228-467-0092
(Fax) 228-467-0856

Courtney A. Bowie, Esq.
Southern Poverty Law Center
400 Washington Ave.
Montgomery, AL 36104
(Ph.) 334-956-8200
(Fax) 334-956-8481

Hector Linares, Esq
Juvenile Justice Project of Louisiana
1600 Oretha Castle Haley Blvd.
New Orleans, LA 70113
(Ph.) 504-522-5437
(Fax) 504-522-5430

On behalf of Louisiana Dept. of Education and BESE,

**Cecil J. Picard
State Superintendent of Education
Louisiana Department of Education
1201 N. 3rd St.
Claiborne Building
Baton Rouge, LA 70804**

**L. Adrienne Dupont
Staff Attorney
Louisiana Department of Education
1201 N. 3rd St.
Claiborne Building
Baton Rouge, LA 70804**

**Glenny Lee Buquet
President
Board of Elementary and Secondary Education
1201 N. 3rd St.
Claiborne Building
Baton Rouge, LA 70804**

**Kathrine J. Whitney
Assistant Attorney General
Board of Elementary and Secondary Education
1201 N. 3rd St.
Claiborne Building
Baton Rouge, LA 70804**