

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

M.R., *et al.*,

Plaintiffs,

v.

BOARD OF SCHOOL COMMISSIONERS
OF MOBILE COUNTY,

Defendant.

Case No. 11-cv-245-WS-C

SETTLEMENT AGREEMENT

The Board of School Commissioners of Mobile County ("Board", "School System" or "MCPS") and the Plaintiffs M.R., E.M., K.S., S.A., D.M., G.H., C.H., Mary Simmons, Pinkie Manassa, Michelle Manassa, Emma Irby, and Margaret Hobson ("Plaintiffs") (collectively, "the Parties") enter into this Settlement Agreement ("Agreement").

In an effort to provide relief to the Plaintiffs and to decrease out-of-school suspensions in the Mobile County Public School System, Plaintiffs and the Defendant Board have agreed to resolve this Matter on the terms set forth below.

DEFINITIONS

For the purposes of this Agreement, the following definitions should apply throughout:

1. "Alternatives to suspension" refers to School System responses to student behavior that that do not involve removal of students from school.
2. "Central Office" refers to the Mobile County Public Schools Central Office currently located at 1 Magnum Pass, Mobile, Alabama 36618.
3. "Code of Conduct" or "Code" refers to the Mobile County Public Schools Student Handbook & Code of Conduct and to the policies described therein, including policies related to discipline violations and due process protections. Where reference is made to specific provisions, such provisions are contained in the version of the Code of Conduct approved June 28, 2012 or as revised during the term of the Agreement.

4. "ALSDE consultant" refers to an appropriately-experienced employee at the Alabama State Department of Education who will work with the School System as first described in paragraph 49 below. It is understood that the identity of the ALSDE consultant may change from time to time for reasons beyond the control of the Parties.
5. "Due process hearing" refers to the conference held when a long-term suspension is proposed, as described in Section V(D)(5) of the Code of Conduct.
6. "Electronic Dashboard" refers to the School System-wide computer-based data system being developed to monitor and track the School System's academic and discipline data.
7. "EEOP" refers to the Evening Educational Options Program, an accelerated computer-based learning and career development program facilitated by the Mobile County Public School System and the Mobile Area Education Foundation.
8. "High disparity rate groups" refers to groups of students in the School System who may be identified as having experienced higher suspension rates than other groups.
9. "Long-term suspension" refers to an out-of-school suspension that lasts 11 or more school days, as described in Section V(D)(2) of the Code of Conduct.
10. "Out-of-school suspension" refers to a short or long-term suspension during which the suspended student is not permitted to attend school, as described in Section V(D)(1) of the Code of Conduct.
11. "Parent" refers to the biological parent, adoptive parent, a student's legal guardian, or primary caretaker.
12. "Short-term suspension" refers to an out-of-school suspension that lasts between 1 and 10 school days, as described in Section V(D)(2) of the Code of Conduct.
13. "Student Support Services" refers to the MCPS Division that, among other things, handles discipline, alternative placement, and student records.

PURPOSE AND INTENT

14. To attempt to reduce the number of suspensions imposed in the School System while maintaining safe, orderly, and effective schools.

DUE PROCESS HEARING FOR LONG-TERM SUSPENSIONS

15. Subject to the provisions of the Agreement, due process hearings will be conducted in conformance with the procedures described in Section V(D)(5)-(6) of the Code of Conduct. To the extent the provisions of this Agreement conflict with the requirements of the Code of

Conduct, the Agreement will control. The School System will not modify the due process hearing requirements in the Code of Conduct without good faith discussion with Plaintiffs' counsel to ensure that proposed modifications are appropriate in light of the purposes and aspirational goals of the Agreement.

16. When a principal recommends a long-term suspension for a student, that student's parent will be provided written notice of the proposed long-term suspension, and a due process hearing will be conducted.

17. The purpose of the due process hearing is for the principal to finish gathering information and to allow the student and the parent to provide additional information and ask questions.

18. As described in Section V(D)(5) of the Code of Conduct, at the due process hearing, the student will be given an opportunity to explain his or her involvement, defend his or her action, present a witness list, and written evidence and/or exhibits to support his or her case. The parent will be given an opportunity to comment on the incident.

19. As described in Section V(D)(5) of the Code of Conduct, the student and parent may exercise the right to have legal counsel at the due process hearing.

20. In lieu of exercising the right to have legal counsel attend the due process hearing as described in Section V(D)(5) of the Code of Conduct, the student and parents may request that the school counselor attend the due process hearing on a possible long term suspension to act as a liason for parents and students, as long as reasonable notice is provided in advance.

21. In lieu of exercising the right to have legal counsel attend the due process hearing as described in Section V(D)(7) of the Code of Conduct, the student and parents may request that a non-lawyer advocate attend the appeals hearing, as long as reasonable notice is provided in advance, including the name of the non-lawyer advocate.

22. The decision whether to impose a long-term suspension will not be made until after the due process hearing. As described in Section V(D)(6) of the Code of Conduct, a student will be presumed innocent until after the due process hearing is held.

23. Once a decision to long-term suspend a student is made, the parent will be provided written notice of the suspension.

24. A student will not be sent home pending the due process hearing unless that student presents a threat to the safety of other students, teachers, and/or staff, or if the student is significantly impairing the ability of the teachers to teach and the other students to learn.

25. When a student is not allowed to attend school pending the due process hearing, and then receives a long-term suspension, that time spent out of school prior to the due process hearing will count towards the final suspension days.

MAKE-UP WORK

26. When a student is not allowed to attend school pending the due process hearing, whenever possible that student will receive homework assignments and make-up work.

27. When a student is suspended, the school will make its best efforts to provide make-up work during the suspension. The student will be allowed to make up work missed when he or she returns to school.

APPEAL HEARINGS

28. As described in Section V(D)(7) of the Code of Conduct, a parent has the right to appeal the principal's decision to long-term suspend a student.

29. Suspension appeal forms will be available at every school, and will be reasonably clear and easy to understand. If a parent needs assistance in writing and filing appeals, that assistance will be made available, subject to economic realities and feasibility.

SUSPENSION POLICIES AND PROCEDURES

30. The School System's discipline policies and procedures should be simple, clear, and easy to understand. These policies and procedures include the Student Handbook & Code of Conduct, Student Support Services Handbook, Notice of Proposed Suspension and Notice of Suspension.

31. The School System's discipline policies should be consistent if they are contained in more than one place, including for example the Student Support Services Handbook and the Student Handbook & Code of Conduct.

32. The Code of Conduct will be simplified, preferably made shorter, and printed in larger font.

33. The Code of Conduct will be made available in Spanish and Vietnamese for parents and students with limited English proficiency to the extent practicable.

34. Elementary schools in the School System will continue to have grade-appropriate Codes of Conduct. Examples of the elementary school Codes of Conduct will be provided by June 30, 2013.

35. The School System will include in the Code of Conduct an e-mail address, phone number and fax number, to give parents a way to notify Student Support Services if there are problems with the disciplinary process, and to have questions answered.

36. The School System has reviewed the substance and format of the Baltimore City Schools Code of Conduct and will implement something similar in format. The School System will provide definitions and detailed examples of code offenses, in a grid format similar to that used by the Baltimore City Schools.

37. The School System will consider changing the definition of long-term suspension from 11 or more school days to 5 or more school days.

ALTERNATIVES TO SUSPENSION

38. Suspension will be reserved for serious infractions. Alternatives to suspension will be used when reasonably possible.

39. For some infractions, suspension will not be an option. Students will not be suspended for offenses categorized as A1: "Excessive talking in the classroom"; A4: "Being improperly dressed or out of uniform"; and A9: "Possessing of nuisance items as defined by the principal."

40. Code offense A-12, which is "[a]ny other offense which the principal may deem reasonable to fall within this category of misconduct", will be removed from the Code.

41. School System policy materials will stress that a short-term suspension for children under age eight is a last resort. Children under age eight will not be long-term suspended for A or B offenses. The School System will make every reasonable effort to avoid giving short-term suspensions to students under age eight.

42. The School System, through Student Support Services and PK-12 assistant superintendents, will identify schools with high suspension rates and high disparity rate groups and evaluate whether a plan should be implemented for those schools to improve disciplinary compliance and decrease suspensions.

43. The School System will consider ideas, strategies and specific measures outlined in the National School Boards Association April, 2013 Policy Guide "*Addressing the Out-of-School Suspension Crisis*".

STUDENT, PARENT AND COMMUNITY OUTREACH AND ENGAGEMENT

44. At the beginning of each school year, each school will hold an informational session for parents and students at to explain the discipline policies and procedures.

45. The School System will create a working group to develop a menu of research-based and restorative alternatives to suspension. The group will include parents, students and community members, along with administrators, teachers, counselors, and School System officials.

46. The School System will solicit and consider creative ideas from administrators, principals, teachers, parents, and students on how to reduce suspensions and improve discipline.

TRAINING AND SUPERVISION

47. The School System will institute a program of formal training for administrators and Central Office staff on short and long term suspensions. The program will cover suspensions, due process, alternatives to suspension, improving school climate and classroom management. The program will be incorporated within the Professional Learning Unit Program. The program will require signing in, and proof of participation and understanding. Administrators will receive professional education credit for their participation in the program.

48. At the beginning of the settlement period (subject to the instructor's availability), the School System will bring in a professional development instructor at its reasonable expense. This training will last one to two days. The instructor will provide training on behavior intervention and supports and will assist the School System with how to achieve the aspirational goal of reducing student suspension rates in a way that works best for the School System. Those who receive this targeted training will use this information to train other administrators and staff throughout the School System.

49. The School System will consult with the appropriate person (the "ALSDE consultant") at the Alabama State Department of Education (ALSDE) to help implement the measures agreed-upon and to assist the School System with the aspirational goal of reducing long-term suspensions. The ALSDE consultant will collaborate with the School System on developing a professional development program, data analysis and monitoring and implementing changes to policies and procedures. (The School System will, if reasonably possible by June 30, 2013, attempt to facilitate contact between Plaintiffs' counsel and the above-described person from the Alabama Department of Education.)

50. To help the School System meet the aspirational goals, the School System will compile three years of discipline data about suspensions, including school by school, and evaluate it carefully.

51. One component of the evaluation of School System principals within standards 7 and 8 of "Lead Alabama" will be compliance with the School System's discipline and suspension policies.

52. The School System will increase and improve monitoring of the suspension policies and procedures. The Executive Director of Student Support Services will review all long-term suspensions and forward data on suspensions to the PK-12 assistant superintendents. In addition, all suspensions will be included on the School System's "Electronic Dashboard", and graphic reports documenting suspensions by offense and length and other relevant features will be generated and reviewed. This will enable policy makers, administrators and teachers as well as the public to know how often students are being suspended.

53. The Superintendent or her administrator designee will review any proposed suspensions over 20 school days, and his or her approval of any such long-term suspension will be required. If the Superintendent selects a designee, that designee will either be an Assistant Superintendent, the Deputy Superintendent, or the Executive Director of Student Support Services.

MONITORING

54. The parties have agreed on "aspirational goals" and "settlement terms" to help monitor successful implementation of this Agreement. The identification of aspirational goals and settlement terms does not relieve the Parties from other obligations identified in this Agreement.

55. Monitoring will be done of both "aspirational goals" and "settlement terms." Aspirational goals are goals which the School System desires to attain and will try diligently to attain. Attaining the aspirational goals is not, however, a requirement of the settlement, nor is failure to attain an aspirational goal a breach of the Agreement. Aspirational goals will be evaluated at the end of years 1, 2 and 3 of the settlement. If one or more aspirational goals have not been met, the School System, in conjunction with the ALSDE consultant, will analyze why they have not been met, and if appropriate, what reasonable measures should be taken to attain them. The School System will then implement those measures within a reasonable period of time. The aspirational goals are:

1. Reduce total number of out-of-school suspensions.
2. Reduce number of students who receive two or more out-of-school suspensions in one academic year.

3. Reduce total number of suspensions over 20 days for A and B offenses.
4. Reduce average number of academic days lost to suspensions.
5. Avoid concentrating suspensions within any group or demographic, including males, minorities, or students with disabilities. Plaintiffs acknowledge that they have made no allegation of this.

56. At the end of the first school year, the Parties will confer and discuss whether it would be productive and helpful to assign target percentages to some or all of the reductions above. Any agreed-upon percentage targets would be for internal and reference use only.

57. Settlement terms are the criteria that the parties will use to determine if the School System has met the terms of the Agreement. Failure to attain a settlement term will constitute a partial breach of the settlement, unless there is a compelling or good faith reason for the failure. The settlement terms are:

1. Amend the Code of Conduct as described in the Agreement by October 1, 2013.
2. Hold the one to two-day professional development training by the end of summer, 2013, subject to the availability of the agreed-upon ALSDE consultant.
3. Provide a professional development program over the course of the 2013-2014 school year for school administrators and key staff members involved in administering discipline.
4. By September 1, 2013, identify schools with high suspension and high-disparity rates and evaluate whether a plan should be implemented for those schools to address these issues and by October 1, 2013 implement such plans for those schools.
5. Compile and analyze three years' worth of discipline data by September, 2013. By October 18, 2013, the Executive Director of Student Support Services will begin reviewing all long-term suspensions and forwarded data on suspensions to the PK-12 assistant superintendents including graphic reports documenting the suspensions. These reports or some variation will be made publicly available on the System's website.
6. By October 18, 2013, add out-of-school suspension data to the "Electronic Dashboard."
7. By September 2013, initiate Superintendent (or designee) review and approval of proposed long-term suspensions lasting longer than 20 school days.

8. Convene working group and develop menu of alternatives to suspension by February 2014.
9. Implement a suspension template similar to that used by the Baltimore City Schools by September, 2013.
10. Incorporate suspension policy compliance into principal evaluations beginning with the 2014-2015 school year.

58. A designated School System employee, the ALSDE consultant, and a representative of Plaintiffs will address whether the terms of this agreement have been met. There will be a schedule or timetable to track compliance and there will be a process established by agreement to address any failure to comply.

59. The ALSDE consultant and a designated School System employee will have the primary responsibility for monitoring implementation of the changes and progress in reaching the settlement terms.

60. Central Office personnel will conduct a regular review of discipline data, complaints, problems, progress, etc., to identify impediments to performing the settlement terms and address them.

61. There will be open and periodic communications between Plaintiff's counsel, School System counsel, and the ALSDE consultant (subject to the ALSDE consultant's availability), regarding satisfaction of the Agreement.

62. The Parties will jointly assess and discuss compliance as follows: During the first year, at the end of each quarter; during the second year, at the end of each semester; during the third year, at the end of each semester.

63. Neither Party, nor any employee or agent of either Party, has any supervisory authority over the ALSDE consultant's activities, reports, findings or recommendations.

INDIVIDUAL PLAINTIFFS

64. **K.S.:** The School System will arrange K.S.'s enrollment in summer school or EEOP, if possible. Bus passes will be provided for transport to EEOP after 4:00 p.m.

65. **C.H.:** The School System will provide reasonable career preparation assistance and assistance with the graduation exam. C.H.'s long-term suspension will be expunged if she successfully completes EEOP. C.H. is now six credits from completing EEOP. She will be permitted to attend the next EEOP session. Bus passes will be provided.

66. **D.M.:** The School System will arrange for an EEOP counselor to contact D.M. and provide reasonable assistance through EEOP with life skills and career preparation.
67. **E.M.:** The School System will help E.M. catch-up by admitting him to summer school. During the regular school year, he will be included in tutoring sessions for the graduation exam.
68. **S.A.:** The School System will admit S.A. to EEOP with bus passes provided. The School System can also assist S.A. with enrollment in the Bishop State GED program.
69. **G.H.:** The School System will help G.H. gain admission to P.O.I.N.T.E. The School System can also assist G.H. with enrollment in the Bishop State GED program.
70. **M.R.:** After transitioning through P.O.I.N.T.E., the School System will allow M.R. to enroll at Vigor High School. M.R. will receive a bus pass for such time as he attends Vigor High School, if the regular System bus service is unavailable from his residence.

ENFORCEMENT

71. The signatories undertake this Agreement to save valuable resources and litigation expenses. This Agreement resolves the case and releases the claims in *M.R., et al. v. Board of School Commissioners*, 11-CV-245. The Court dismissed the case with prejudice. This commitment does not relieve the School System from fulfilling other obligations under federal, state, or local law.
72. This Agreement will become effective upon execution and will remain in effect until August 2016.
73. The undersigned representatives of the Parties certify that they are authorized to enter into this Agreement and to execute and legally bind the Parties to it. This Agreement is final and shall inure to the benefit of Plaintiffs and to students who attend MCPS during the term of the Agreement; and shall be binding upon the legal representatives and any successors of Defendant.
74. If any section of this Agreement is held to be unlawful, invalid or otherwise unenforceable by a court of competent jurisdiction, such holding will not affect the validity of the other sections in this Agreement. If this occurs, representatives of the Plaintiffs and Defendant will meet within 20 days to determine if this Agreement should be amended or revised to be in compliance with the court's decision.
75. The intent of the Parties is that the Plaintiffs will not be prevented from seeking enforcement of the Agreement if a breach of the Agreement occurs. The School System acknowledges and agrees that in the event of an alleged breach of this Agreement, the Plaintiffs may seek injunctive relief in federal court to cure such breach. The Plaintiffs agree that they will not pursue any enforcement action without first attempting to resolve issues in good faith.

76. Other than with respect to the claims specifically released by this Agreement, this Agreement shall not preclude any MCPS student from pursuing a claim related to his or her discipline or suspension in either state or federal court. Nothing in this Agreement shall prohibit any student or parent from pursuing their legal remedies regarding the discipline or suspension of a MCPS student.

OTHER

77. Each Party will bear its own costs and attorneys' fees.

78. Neither Party will make any public statement that in any way disparages or criticizes the other as to this lawsuit or settlement. Neither side will portray itself as the winner or the other side as the loser. The Parties will say that the case has been resolved by agreement and will portray the settlement and the other Party in a neutral or positive light. Both sides can say that they agreed to the settlement to benefit the students of the School System.

BOARD OF SCHOOL COMMISSIONERS
OF MOBILE COUNTY

BY: Martha L. Peek
MARTHA PEEK
As Superintendent of Schools

DATE: 6-27-13

PLAINTIFF D [REDACTED] M [REDACTED] on behalf of all
the Plaintiffs in *M.R., ET AL., v. BOARD OF*
SCHOOL COMMISSIONERS OF MOBILE
COUNTY

BY: D [REDACTED] M [REDACTED]
PLAINTIFF D [REDACTED] M [REDACTED]
DATE: 6/27/13