

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF LOUISIANA**

P.B., by and through his next friend,  
Cassandra Berry, et al.

Plaintiffs,

vs.

JOHN WHITE, et al.,

Defendants.

Civil Case No. 2:10-cv-04049  
Section A  
Judge Jay C. Zainey  
Magistrate Judge Karen Wells Roby

**CONSENT JUDGMENT**

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## **I. PARTIES**

This Consent Judgment (“Agreement”) is entered among and between the Settlement Class (defined below); the Louisiana State Superintendent of Education (in his official capacity); the Louisiana Department of Education; the Louisiana Board of Elementary and Secondary Education; and the Orleans Parish School Board.

## **II. INTRODUCTION**

1. The Plaintiffs filed this action on behalf of New Orleans students with disabilities pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”), 20 U.S.C. § 1400 *et seq.*, Section 504 of the Rehabilitation Act of 1973 (“Section 504”), 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101 *et seq.* This Agreement was entered into to resolve this litigation, and the Parties stipulate that nothing in this Agreement constitutes an admission of liability or evidence of liability.
2. The Plaintiffs are the named Plaintiffs, P.B., D.B., N.F., A.J., T.J., K.J., M.M., L.M., D.T., and L.W., on behalf of themselves and as representatives of the Settlement Class.
3. The State Defendants are the Louisiana State Superintendent of Education (in his official capacity); the Louisiana Department of Education; and the Louisiana Board of Elementary and Secondary Education (collectively, “State Defendants”).
4. The Defendant-Intervenor is the Orleans Parish School Board (“OPSB”).

## **III. DEFINITIONS**

1. “ADA” refers to Title II of the Americans with Disabilities Act, as amended, 42 U.S.C. §§ 12131-12165.
2. “BESE” refers to the Defendant Louisiana Board of Elementary and Secondary Education. BESE oversight responsibilities include the approval and adoption of rules, by-laws, and regulations for the government of the public elementary and secondary schools and other public schools and programs under its jurisdiction.
3. “Child Find” refers to the IDEA’s requirement that children with disabilities, “and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.” 20 U.S.C. § 1412(a)(3).
4. “Days” are measured in calendar days; weekend days are included.

5. “Deidentified” means edited to remove information that could be used, alone or in combination with other information, to allow a recipient of student educational records to personally identify any current or former student of a Louisiana public or nonpublic elementary, middle, or high school. Deidentification of student educational records shall include the removal of student names, phone numbers, electronic mail addresses, social security numbers, birth dates, physical addresses, biometric identifiers, and photographic images.
6. “Disciplinary removal” means an out-of-school suspension, or any other removal of a student from class during which the student (i) is not afforded the opportunity to continue to appropriately participate in the general curriculum; (ii) does not receive the services specified on the student’s IEP; or (iii) does not continue to participate with nondisabled children to the extent they would have in their current placement.
7. “Effective Date” means the date the Court enters an order approving this Agreement.
8. “Good cause” means fair and honest reasons, regulated by good faith on the part of either party, that are not arbitrary, capricious, trivial, or pretextual.
9. “IDEA” refers to the Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 *et seq.*
10. “Include,” “includes,” or “including” means “include, but not be limited to” or “including, but not limited to.”
11. “LDOE” refers to the Defendant Louisiana Department of Education, the state educational agency in Louisiana responsible for supervising the provision of public elementary and secondary education in the state of Louisiana.
12. “LEA” refers to local educational agency, as defined by 20 U.S.C. § 1401(19):

“[A] public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State . . . .”

LEAs in this settlement include OPSB as a single school district, each Type 2 charter school in New Orleans, and each Type 5 charter school in New Orleans.
13. “Monitor” means an individual selected by the Parties to oversee implementation of the Agreement and to report to the Court on the implementation of the Agreement.
14. “Noncompliance” means the failure to act in accordance with the requirements of the IDEA and its implementing regulations.

15. “Nonterminal grade” means any grade level at a particular LEA except for the final grade level served by the LEA (e.g., in a high school serving 9<sup>th</sup>-12<sup>th</sup> grade students, students in the 9<sup>th</sup>, 10<sup>th</sup>, or 11<sup>th</sup> grade levels are in a nonterminal grade).
16. “OPSB” refers to the Orleans Parish School Board, a local educational agency under the IDEA, which administers multiple schools within Orleans Parish.
17. “Parent” refers to “parent” as defined by 20 U.S.C. §1401(23).
18. “Plaintiffs’ counsel” refers to any attorney or group of attorneys approved by the Court to provide legal representation to the Settlement Class.
19. “RTI” refers to Response to Intervention, which is a general education program to provide research-based interventions for struggling students who are failing to respond to traditional classroom instruction. Most RTI models involve three “tiers” of increasingly intensive interventions, from Tier I to Tier III.
20. “RSD” refers to the Recovery School District, an intermediate unit of the LDOE subject to the oversight of the State Board of Elementary and Secondary Education. Pursuant to La. Rev. Stat. § 17:1990, the RSD is responsible for overseeing the Type 5 charter schools in its jurisdiction.
21. "School Building Level Committee" (SBLC), or similarly named committee, refers to "a general education, data-driven, decision-making committee" as further defined by La. Adm. Code tit. 28, pt. CI, Louisiana Bulletin 1508, § 303.
22. “Section 504” refers to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 701 *et seq.*
23. “Settlement Class” or “Class” means Subclass 1, Subclass 2, Subclass 3, Subclass 4, Subclass 5, Subclass 6, and Subclass 7, collectively and as defined below.
24. “Settlement Class Members” or “Class Members” means the set of members of the Class.
25. “Subclass 1” means present and future New Orleans students who have requested a special education evaluation at a New Orleans LEA, and whose request has not or will not be completed because the student is no longer at that particular LEA.
26. “Subclass 2” means present and future New Orleans students who have requested but not been provided with a special education evaluation because they have not completed a “Response to Intervention” program.
27. “Subclass 3” means present and future New Orleans students who have requested but not been provided with a special education evaluation and instead given a Section 504 Plan.

28. “Subclass 4” means present and future New Orleans students with disabilities attending RSD direct-run or Type 5 charter schools who have been or will be removed for more than 10 days in a school year without the timely provision of the disciplinary safeguards required by the IDEA.
29. “Subclass 5” means present and future New Orleans students with disabilities who have not or will not be provided a related service that is contained in their Individualized Education Programs (IEPs)
30. “Subclass 6” means present and future New Orleans students with disabilities who have been or will be denied admission or instructed not to apply to a public school in New Orleans on the basis of their disabilities.
31. “Subclass 7” means present and future New Orleans students with mobility impairments who have been or will be denied access to the programs and services of a New Orleans LEA as a result of structural or architectural barriers.
32. “Substantial Compliance” means a level of compliance that does not significantly deviate from the terms of this Agreement. Noncompliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. Temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance.
33. “Type 2 charter school” refers to a new school or a preexisting public school converted and operated as the result of and pursuant to a charter between the nonprofit corporation created to operate the school and the State Board of Elementary and Secondary Education.
34. “Type 5 charter school” refers to a preexisting public school transferred to the Recovery School District and operated as the result of and pursuant to a charter between a nonprofit corporation and the State Board of Elementary and Secondary Education.

#### **IV. SUBSTANTIVE PROVISIONS**

##### **A. CHILD FIND**

1. The State Defendants, after conferring with the Defendant-Intervenor, shall develop a schedule identifying the assignment of Child Find responsibilities within New Orleans.
  - a. The schedule shall allocate responsibility for identifying, locating, and evaluating individuals, aged 3 - 21, suspected of having a disability, including individuals who are: not currently enrolled in school; enrolled in a non-public school in New Orleans; detained in a juvenile detention center or adult correctional facility in New Orleans; and/or housed in a public or private hospital, institution, or other health care facility in New Orleans.

- b. The schedule shall include procedures for ensuring that an evaluation initiated at one New Orleans LEA is completed within applicable timelines, even where a child moves to another New Orleans LEA.
    - c. Within thirty (30) days of the assignment of an Independent Monitor, the State Defendants shall submit the schedule to the Independent Monitor for review and approval. The Independent Monitor will provide comments on the schedule to the Parties within twenty-one (21) days. The Parties may provide comments on the Independent Monitor's comments within seven (7) days. The Independent Monitor will consider the Parties' comments, mediate any disputes, and approve documents with any changes within fifteen (15) days.
2. The State Defendants shall require that the charter application and renewal processes for Type 2 and Type 5 charter schools in New Orleans require each organization seeking issuance or renewal of a charter to provide a description of the charter school staff and/or outside contractors who will provide pupil appraisal services, including a description of qualified pupil appraisal personnel designated to serve on each organization's School Building Level Committee.
3. The State Defendants shall annually calculate the rate at which each LEA in New Orleans identifies new students as eligible for services under the IDEA ("annual new identification rate"). Using this rate, the State Defendants shall annually select LEAs for targeted monitoring. As part of targeted monitoring, the State Defendants shall conduct file reviews of a random, representative sample of students who: have Section 504 Plans; are in the RTI process; are under consideration by a School Building Level Committee; failed two (2) or more academic subjects in the prior school year; or are subject to more than ten (10) days of disciplinary removal during the school year. LEA selection, student file selection, file reviews, staff interviews, and school site visits shall be conducted consistent with the processes detailed in Addendum A. If the State Defendants' targeted monitoring results in the identification of noncompliance, the State Defendants shall require each LEA with validated noncompliance to undertake corrective actions sufficient to remedy the noncompliance and to reasonably ensure that such noncompliance does not reoccur, as detailed in Addendum A.
  - a. The annual new identification rate for each LEA shall be calculated by dividing the number of students each LEA identifies for initial eligibility under the IDEA between July 1 and June 30 by the total number of students enrolled in the LEA on October 1.
  - b. The targeted monitoring activities described above and in Addendum A shall supplement, not supplant, the annual monitoring activities undertaken by LDOE pursuant to its general supervisory responsibilities under the IDEA. The monitoring of an LEA pursuant to the monitoring obligations identified in this Agreement shall not influence LDOE's selection of that LEA for monitoring pursuant to LDOE's general IDEA monitoring protocols.

4. The State Defendants shall annually disseminate written guidance to New Orleans LEAs explaining the Child Find responsibilities of Louisiana LEAs. The guidance shall be consistent with the schedule identified in Paragraph IV.A.1.
  - a. The guidance shall also explain that when a parent requests an evaluation for special education, the LEA must: (1) conduct an initial evaluation of the child; or (2) provide written reason(s) why a disability is not suspected. This guidance shall reference the general sixty (60) business day timelines for an initial evaluation in Louisiana Bulletin 1706, § 302(C) and Louisiana Bulletin 1508. If the LEA does not suspect a disability, this guidance shall explain that the LEA must provide the parent written reasons for its decision within thirty (30) business days of the parent request for evaluation.
  - b. The written guidance shall explain that an evaluation cannot be delayed because of the student's current or potential participation in a Response to Intervention (RTI) program.
  - c. The guidance shall further explain that a Section 504 Plan is not a substitute for a child who is in need of an evaluation under the IDEA.
  - d. The guidance shall be provided to the chief executive of each LEA in New Orleans annually by August 1 for the duration of this Agreement.
  - e. The State Defendants shall provide the guidance to the Independent Monitor for review and approval annually by May 1 for the duration of this Agreement. The Independent Monitor will provide comments on the guidance to the Parties within twenty-one (21) days. The Parties may provide comments on the Independent Monitor's comments within seven (7) days. The Independent Monitor will consider the Parties' comments, mediate any disputes, and approve documents with any changes within fifteen (15) days.

## **B. RELATED SERVICES**

1. The State Defendants shall require that the charter application and renewal processes for Type 2 and Type 5 charter schools in New Orleans require each organization seeking issuance or renewal of a charter to provide a description of:
  - a. the organization's plans for offering the full array of related services to students with qualifying disabilities who are or may come to be enrolled at the charter school, including without limitation the following categories of related services: physical therapy, occupational therapy, counseling services, orientation and mobility services, speech-language pathology, audiology services, school health/nurse services, special transportation, and adaptive physical education; and
  - b. the charter school staff and/or outside contractors who will provide such services.
2. The State Defendants shall annually calculate the rate at which each LEA in New Orleans provides related services to students eligible for such services under the IDEA ("service



provision rate”). Using this rate, the State Defendants shall annually select LEAs for targeted monitoring. As part of targeted monitoring, the State Defendants shall conduct file reviews of a random, representative sample of students with disabilities at the selected LEAs. LEA selection, student file selection, file reviews, staff interviews, and school site visits shall be conducted consistent with the processes detailed in Addendum A. If the State Defendants’ targeted monitoring results in the identification of noncompliance, the State Defendants shall require each LEA with validated noncompliance to undertake corrective actions sufficient to remedy the noncompliance and to reasonably ensure that such noncompliance does not reoccur, as detailed in Addendum A.

- a. The service provision rate shall be calculated by dividing the total number of minutes of related services per week identified in the IEPs of each student with a disability in an LEA on October 1 by the total number of students with disabilities enrolled in the LEA on October 1.
- b. The targeted monitoring activities described above and in Addendum A shall supplement, not supplant, the annual monitoring activities undertaken by LDOE pursuant to its general supervisory responsibilities under the IDEA. The monitoring of an LEA pursuant to the monitoring obligations identified in this Agreement shall not influence LDOE’s selection of that LEA for monitoring pursuant to LDOE’s general IDEA monitoring protocols.

### **C. DISCIPLINE**

1. The State Defendants shall, within 60 days of the implementation of this Agreement, review the code of conduct and/or discipline policy of each Type 2 or Type 5 charter school in New Orleans for compliance with the IDEA. The State Defendants shall require that the codes of conduct and/or discipline policies for each Type 2 or Type 5 charter school in New Orleans contain, at a minimum: (a) a written description of the IDEA’s disciplinary procedural protections and procedural safeguards for students with disabilities, which should be written in plain language that parents/guardians, students, and the general public can understand; and (b) a plan for supporting school behavior and discipline in compliance with the requirements of La. Rev. Stat. § 17:251-252.
  - a. For the duration of this Agreement, the State Defendants shall, on the anniversary of the initial reviews described above:
    - i. require each Type 2 or Type 5 charter school in New Orleans to submit a written assurance that the code of conduct and/or discipline policy for the school has not changed since the State Defendants last reviewed the code or policy; or,
    - ii. review, for compliance with the IDEA, the code of conduct and/or discipline policy of each Type 2 or Type 5 charter school in New Orleans that is unable to provide such an assurance.

2. The Defendant-Intervenor shall, within 60 days of the implementation of this Agreement, review the code of conduct and/or discipline policy of each school under its jurisdiction for compliance with the IDEA. The Defendant-Intervenor shall require that the codes of conduct and/or discipline policies for each school under its jurisdiction contain, at a minimum: (a) a written description of the IDEA's disciplinary procedural protections and procedural safeguards for students with disabilities, which should be written in plain language that parents/guardians, students, and the general public can understand; and (b) a plan for supporting school behavior and discipline in compliance with the requirements of La. Rev. Stat. § 17:251-252.
  - a. For the duration of this Agreement, the Defendant-Intervenor shall, on the anniversary of the initial reviews described above:
    - i. require each school under its jurisdiction to submit a written assurance that the code of conduct and/or discipline policy for the school has not changed since the Defendant-Intervenor last reviewed the code or policy; or,
    - ii. review, for compliance with the IDEA, the code of conduct and/or discipline policy of each school under its jurisdiction that is unable to provide such an assurance.
3. The State Defendants shall provide annual technical assistance to each Type 2 or Type 5 charter school in New Orleans regarding the prohibited practice of undocumented suspensions and shall develop and broadly disseminate information to parents of students at each Type 2 or Type 5 charter school in New Orleans about the prohibited practice of undocumented suspensions. Additionally, the State Defendants shall provide annual professional development to each Type 2 or Type 5 charter school in New Orleans on disciplinary procedures for students with disabilities and on best practices to reduce suspensions and expulsions for students with disabilities.
  - a. The State Defendants shall provide the required technical assistance and professional development to each Type 2 or Type 5 charter school in New Orleans annually by October 31 for the duration of this Agreement.
  - b. The State Defendants shall provide information detailing the methods and materials to be used to provide the required technical assistance and professional development to the Independent Monitor for review and approval annually by June 1 for the duration of this Agreement. The Independent Monitor will provide comments on the materials to the Parties within twenty-one (21) days. The Parties may provide comments on the Independent Monitor's comments within seven (7) days. The Independent Monitor will consider the Parties' comments, mediate any disputes, and approve documents with any changes within fifteen (15) days.
4. The Defendant-Intervenor shall provide annual technical assistance to each school under its jurisdiction regarding the prohibited practice of undocumented suspensions and shall develop and broadly disseminate information to parents of students at each school under its jurisdiction about the prohibited practice of undocumented suspensions. Additionally, the Defendant-Intervenor shall provide annual professional development to each school

under its jurisdiction on disciplinary procedures for students with disabilities and on best practices to reduce suspensions and expulsions for students with disabilities.

- a. The Defendant-Intervenor shall provide the required technical assistance and professional development to each school under its jurisdiction annually by October 31 for the duration of this Agreement.
  - b. The Defendant-Intervenor shall provide information detailing the methods and materials to be used to provide the required technical assistance and professional development to the Independent Monitor for review and approval annually by June 1 for the duration of this Agreement. The Independent Monitor will provide comments on the materials to the Parties within twenty-one (21) days. The Parties may provide comments on the Independent Monitor's comments within seven (7) days. The Independent Monitor will consider the Parties' comments, mediate any disputes, and approve documents with any changes within fifteen (15) days.
5. The State Defendants shall annually calculate the rate at which each LEA in New Orleans removes students with disabilities for disciplinary purposes for more than ten (10) cumulative days in an academic year ("extended disciplinary removal rate"). Using this rate, the State Defendants shall annually select LEAs for targeted monitoring. As part of targeted monitoring, the State Defendants shall conduct file reviews of a random, representative sample of students with disabilities who received six (6) or more Office Discipline Referrals or three (3) or more suspensions (in- or out-of-school) in a school year. LEA selection, student file selection, file reviews, staff interviews, and school site visits shall be conducted consistent with the processes detailed in Addendum A. If the State Defendants' targeted monitoring results in the identification of noncompliance, the State Defendants shall require each LEA with validated noncompliance to undertake corrective actions sufficient to remedy the noncompliance and to reasonably ensure that such noncompliance does not reoccur, as detailed in Addendum A.
- a. The extended disciplinary removal rate shall be calculated by dividing the total number of students with disabilities who experienced disciplinary removals for more than ten (10) cumulative days between July 1 and June 30 by the total number of students with disabilities enrolled in the LEA on October 1.
  - b. The targeted monitoring activities described above and in Addendum A shall supplement, not supplant, the annual monitoring activities undertaken by LDOE pursuant to its general supervisory responsibilities under the IDEA. The monitoring of an LEA pursuant to the monitoring obligations identified in this Agreement shall not influence LDOE's selection of that LEA for monitoring pursuant to LDOE's general IDEA monitoring protocols.

#### **D. ENROLLMENT**

1. The State Defendants shall annually disseminate to each Type 2 and Type 5 charter school in New Orleans policy guidance describing the legal obligations of each Type 2 and Type 5 charter school in New Orleans to enroll and serve students with disabilities pursuant to federal law. The State Defendants will request that the principal of each Type 2 and Type 5 charter school acknowledge receipt of this guidance. The guidance will, at a

minimum, contain: (a) a summary of the legal obligations of the school to provide necessary services and accommodations to students with disabilities; (b) a statement describing the obligations of the school to enroll students with disabilities without regard to their disabilities; (c) a statement advising the school that its staff is prohibited from informing or suggesting to parents of students with disabilities that the parents should not enroll their child in the school because the school does not provide the services or placement necessary for the child or because the child's disability would be better served at another school; and (d) a statement notifying the principal that he or she can incur personal monetary damages for intentional discrimination and operating in bad faith due to noncompliance with Section 504.

- a. The State Defendants shall disseminate the required policy guidance to each Type 2 or Type 5 charter school in New Orleans annually by March 1 for the duration of this Agreement.
  - b. The State Defendants shall provide the policy guidance to the Independent Monitor for review and approval annually by December 1 for the duration of this Agreement. The Independent Monitor will provide comments on the guidance to the Parties within twenty-one (21) days. The Parties may provide comments on the Independent Monitor's comments within seven (7) days. The Independent Monitor will consider the Parties' comments, mediate any disputes, and approve documents with any changes within fifteen (15) days.
2. The Defendant-Intervenor shall annually disseminate to each school under its jurisdiction policy guidance describing the legal obligations of each school under its jurisdiction to enroll and serve students with disabilities pursuant to federal law. The Defendant-Intervenor will require the principal of each school under its jurisdiction to acknowledge receipt of this guidance. The guidance will, at a minimum, contain: (a) a summary of the legal obligations of the school to provide all necessary services and accommodations to students with disabilities; (b) a statement describing the obligations of the school to enroll students with disabilities without regard to their disabilities; (c) a statement advising the school that its staff is prohibited from informing or suggesting to parents of students with disabilities that the parents should not enroll their child in the school because the school does not provide the services or placement necessary for the child or because the child's disability would be better served at another school; and (d) a statement notifying the principal that he or she can incur personal monetary damages for intentional discrimination and operating in bad faith due to noncompliance with Section 504.
  - a. The Defendant-Intervenor shall disseminate the required policy guidance to each school under its jurisdiction annually by March 1 for the duration of this Agreement.
  - b. The Defendant-Intervenor shall provide the policy guidance to the Independent Monitor for review and approval annually by December 1 for the duration of this Agreement. The Independent Monitor will provide comments on the guidance to the Parties within twenty-one (21) days. The Parties may provide comments on the Independent Monitor's comments within seven (7) days. The Independent

Monitor will consider the Parties' comments, mediate any disputes, and approve documents with any changes within fifteen (15) days.

3. The State Defendants shall require that each Type 2 and Type 5 charter school in New Orleans annually develops a written description of its special education program, including, at a minimum: (a) the name and contact information of the special education coordinator for the school; (b) a description of how pupil appraisal, special education, and related services are provided by the school; (c) a description of how the school plans to provide the continuum of special education placements for students whose IEP placement is outside of the regular education setting; (d) the current enrollment rate of students with disabilities served by the school; (e) the current suspension rate of students with disabilities served by the school; (f) the number of students with disabilities who are removed for disciplinary reasons for more than 10 school days in one academic year; and (g) an indication of the school's accessibility to individuals with mobility impairments. The State Defendants shall require that the program descriptions for all Type 2 and Type 5 charter schools in New Orleans are made available to parents of students with disabilities at each school site and on each school's website. RSD's website will provide a link to the descriptions available on each school website, and parents who express an interest will be guided to this portion of RSD's website when completing enrollment at an RSD Family Resource Center.
4. The Defendant-Intervenor shall annually develop a written description of OPSB's special education program, including, at a minimum: (a) the name and contact information of special education contacts at the district level and at the school level; (b) a description of how pupil appraisal, special education, and related services are provided; (c) a description of how the OPSB plans to provide the continuum of special education placements for students whose IEP placement is outside of the regular education setting; (d) the current enrollment rate of students with disabilities served by each OPSB school; (e) the current suspension rate of students with disabilities served by each OPSB school; (f) the number of students with disabilities who are removed for disciplinary reasons for more than 10 school days in one academic year; and (g) an indication of the OPSB schools' accessibility to individuals with mobility impairments. The Defendant-Intervenor shall require that the OPSB special education program description is made available to parents of students with disabilities at each school site, on each school's website under its jurisdiction, and on OPSB's website.
5. The State Defendants shall require each Type 2 and Type 5 charter school in New Orleans to develop a written complaint investigation protocol describing the school's process for investigating allegations of discrimination on the basis of disability. The protocol shall include the contact information of the individual at the school responsible for investigating complaints of alleged discrimination; a process by which parents may make complaints; a timeline for the school to conduct an investigation; the steps to be taken or the process by which the school will conduct the investigation; the process by which the school will disseminate the outcome of the investigation; and corrective action that may be undertaken as a result of noncompliance. A summary description of the protocol shall be widely disseminated to parents of students with disabilities enrolled at the school. The complaint investigation protocols shall be developed for the sole purpose

of investigating allegations of enrollment discrimination arising under Section 504 of the Rehabilitation Act or Title II of the ADA and shall not supplant the complaint management system or due process complaint procedures pursuant to the IDEA.

- a. The State shall develop a model written complaint investigation protocol that meets the requirements identified in this section. This model will be available to any school upon request, and will be provided to each Type 2 and Type 5 charter school by March 1, 2015 and every school year thereafter.
  - b. Upon receipt of a complaint related to the enrollment practices of Type 2 and Type 5 charter schools, the State will: (i) provide the complainant in writing, either via electronic or U.S. Mail, with the contact information for the Office of Civil Rights and low cost legal services providers; and (ii) where required under IDEA, initiate an investigation of the complaint.
6. The Defendant-Intervenor shall develop a written complaint investigation protocol describing the Defendant-Intervenor's process for investigating allegations of discrimination on the basis of disability for all schools within its jurisdiction. The protocol shall include the contact information of the division of OPSB responsible for investigating complaints of alleged discrimination; a process by which parents may make complaints; a timeline for the Defendant-Intervenor to conduct an investigation; the steps to be taken or the process by which the Defendant-Intervenor will conduct the investigation; the process by which the Defendant-Intervenor will disseminate the outcome of the investigation; and corrective action that may be undertaken as a result of noncompliance. A summary description of the protocol shall be widely disseminated to parents of students with disabilities enrolled in schools under the jurisdiction of the Defendant-Intervenor. This complaint investigation protocol shall be developed for the sole purpose of investigating allegations of enrollment discrimination pursuant to Section 504 of the Rehabilitation Act and Title II of the ADA, and shall not supplant the complaint management system or due process complaint procedures pursuant to the IDEA.
7. The State Defendants shall annually calculate the rate at which students with disabilities choose not to reenroll at each LEA in New Orleans each school year ("mobility rate"). Using this rate, the State Defendants shall annually select LEAs for targeted monitoring. LEA selection, student file selection, file reviews, staff interviews, and school site visits shall be conducted consistent with the processes detailed in in Addendum A. If the State Defendants' targeted monitoring results in the identification of noncompliance, the State Defendants shall require each LEA with validated noncompliance to undertake corrective actions sufficient to remedy the noncompliance and to reasonably ensure that such noncompliance does not reoccur, as detailed in Addendum A.
  - a. The mobility rate shall be calculated by dividing the total number of students with disabilities who are enrolled in a nonterminal grade at an LEA in New Orleans between September 1 and May 31 and are not enrolled at the LEA on October 1 of the following school year by the total number of students with disabilities enrolled in the LEA on October 1.

- b. The targeted monitoring activities described above and in Addendum A shall supplement, not supplant, the annual monitoring activities undertaken by LDOE pursuant to its general supervisory responsibilities under the IDEA. The monitoring of an LEA pursuant to the monitoring obligations identified in this Agreement shall not influence LDOE's selection of that LEA for monitoring pursuant to LDOE's general IDEA monitoring protocols.

## **V. INDEPENDENT MONITOR**

1. The Parties shall cooperatively select an Independent Monitor to oversee implementation of the Agreement. Within thirty (30) days of the implementation of this Agreement, the Plaintiffs and State Defendants shall exchange lists of at least three (3) individuals whom they believe are qualified and available to serve in the capacity of the Independent Monitor. The Plaintiffs and State Defendants shall also provide a copy of such lists to the Defendant-Intervenor. If the Plaintiffs and State Defendants cannot reach consensus regarding the designation of the Independent Monitor, the Parties shall confer within fourteen (14) days of written notice of a disagreement, and an Independent Monitor will be selected by the Plaintiffs and State Defendants therein. If the Plaintiffs and State Defendants do not agree upon an Independent Monitor after conferring, the matter shall be submitted to the Court for resolution. Should the Monitor position become vacant and the Plaintiffs and State Defendants are unable to agree on a replacement using the selection procedures identified above, the Plaintiffs and State Defendants shall recommend candidates to the Court, and the Court will appoint the Monitor from the names submitted by the Plaintiffs and State Defendants.
2. No Party, nor any employee or agent of any party, shall have any supervisory authority over the Monitor's activities, reports, findings, or recommendations.
3. Should all the Parties agree that the Monitor is not fulfilling his or her duties in accordance with this Agreement, the Parties may petition the Court for the Monitor's immediate removal and replacement. One party may unilaterally petition the Court for the Monitor's removal for good cause, and the other Parties will have the opportunity to respond to the petition. Good cause for the purposes of this Agreement shall mean, but not be limited to, the following: gross neglect of duties; willful misconduct; conflicts of interest; inappropriate personal relationship with any Party or their employees; or any criminal conduct during the pendency of this Agreement.
4. **Monitor Qualifications:** The Monitor shall have appropriate experience, education, and training related to the subject areas covered in this Agreement.
5. **Monitor Access:** The Monitor shall have full and complete access to the records and data necessary to determine compliance with the terms of this Agreement. All information obtained by the Monitor shall be maintained in a confidential manner.
6. **Monitor Ex Parte Communications:** The Monitor shall be permitted to initiate and receive ex parte communications with all Parties.

7. **Monitor Distribution of LDOE Documents, Reports, and Assessments:** The Monitor shall provide any reports, assessments, and compliance-related documents within seven (7) days of a request by any Party.
8. **Initial Monitor Meeting:** Within three (3) weeks of the date that the Independent Monitor is retained, counsel for all parties and the Monitor will schedule a meeting with the Court to discuss the activities of the Monitor under this Consent Judgment.
9. **Monitor's Reports:** The Monitor shall file with the Court and provide the Parties with reports describing the steps taken by the State Defendants and the Defendant-Intervenor to implement this Agreement and evaluate the extent to which the State Defendants and the Defendant-Intervenor have complied with each substantive provision of the Agreement.
  - a. **Timing of Reports:** The Monitor shall issue an initial report 60 days after the implementation date of this Agreement, and then every 60 days thereafter for the remainder of the first year, and every 120 days thereafter following the end of the first year. The reports shall be provided to the Parties in draft form for comment at least 14 days prior to their issuance. The Monitor shall consider the Parties' responses and make appropriate changes, if any, before issuing the report. These reports shall be written with due regard for the privacy interests of the students.
  - b. **Content of Reports:** The Monitor shall evaluate the state of compliance for each relevant provision of the Agreement using the following standards: (1) Substantial Compliance and (2) Noncompliance. In order to assess compliance, the Monitor shall review a sufficient number of pertinent documents to accurately assess compliance and interview any necessary staff or personnel. The Monitor shall be responsible for independently verifying representations from the State Defendants or Defendant-Intervenor regarding progress toward compliance, and examining supporting documentation. Each Monitor report shall describe the steps taken by the Monitor to assess compliance, including documents reviewed and individuals interviewed, and the factual basis for each of the Monitor's findings.
10. Reports issued by the Monitor shall not be admissible against the State Defendants and the Defendant-Intervenor in any proceeding other than a proceeding related to the enforcement of this Agreement initiated and handled exclusively by the State Defendants, the Defendant-Intervenor, or the Plaintiffs' counsel.
11. **Technical Assistance by the Monitor:** The Monitor shall provide the State Defendants and the Defendant-Intervenor with technical assistance as requested by the State Defendants and the Defendant-Intervenor. Technical assistance should be reasonable and should not interfere with the Monitor's ability to assess compliance.
12. Each party shall identify a single point of contact to serve as an Agreement Coordinator throughout the duration of this Agreement. Each party's Coordinator will serve as a



liaison between that Party and the Monitor. In addition, the Defendants' Coordinators will facilitate the provision of data, documents, and materials and provide access to appropriate personnel to the Monitor and Parties, as necessary. Each party shall provide the Monitor and other parties with notice of the initial assignment and any subsequent changes in the assignment of its Agreement Coordinator.

13. The State Defendants and the Defendant-Intervenor shall jointly bear all costs incurred in connection with Section V of the Agreement. The costs shall be divided pro rata between the State Defendants and the Defendant-Intervenor based upon total student enrollment in schools under the jurisdiction of each in New Orleans. The division of costs shall be determined annually based on the October 1 student count.

## **VI. REPORTING REQUIREMENTS**

1. The State Defendants and the Defendant-Intervenor shall maintain sufficient records to document that the requirements of this Agreement are being properly implemented and shall make such records available to the Monitor within seven business days of request for inspection and copying. In addition, the State Defendants and the Defendant-Intervenor shall maintain and provide to the Monitor upon request, all records or other documents that verify that they have taken the actions described in their compliance reports (e.g., policies, procedures, protocols, checklists, training materials, monitoring reports, investigations, corrective action plans).
2. Plaintiffs' counsel shall have access to data and documents described within this Agreement and/or developed as a result of this Agreement, including but not limited to any data, reports and other documents examined by the State Defendants during their monitoring activities; the State Defendants' and the Defendant-Intervenor's policies and procedures developed in contemplation of this Agreement; and directives, program instructions, and non-privileged communication and training documents. The State Defendants may replace student names contained in the data with unique identifiers and/or may redact student names from records as necessary. At any time during the duration of this Agreement, the Plaintiffs have the right to petition the Court to seek the un-redacted documents.
3. The Parties agree to respond to inquiries, written communications, and requests for information from any other Party or the Monitor in a timely manner.

## **VII. ENFORCEMENT**

1. The Parties agree that the terms of this Agreement shall be submitted to the Court for approval and the Court shall retain jurisdiction to enforce the terms of this Agreement.
2. During the period that the Agreement is in force, if the Monitor or Plaintiffs' counsel determines that State Defendants or the Defendant-Intervenor are not taking good faith

steps towards obtaining Substantial Compliance with the terms of the Agreement, Plaintiffs' counsel may initiate contempt or enforcement proceedings against State Defendants or the Defendant-Intervenor, respectively, for an alleged failure to fulfill an obligation under Sections IV through VIII of this Agreement in Court.

3. Before taking judicial action to initiate contempt or other enforcement proceedings, Plaintiffs' counsel shall give State Defendants or the Defendant-Intervenor written notice of its intent to initiate such proceedings, and the Parties shall engage in good-faith discussions to resolve the dispute and may petition the Court for a status conference to assist in resolution. If the dispute has not been resolved within 30 days of Plaintiffs' written notice to State Defendants or the Defendant-Intervenor, Plaintiffs' counsel may take judicial action to initiate contempt or other enforcement proceedings.

### **VIII. CONSTRUCTION, IMPLEMENTATION, AND TERMINATION**

1. The State Defendants and the Defendant-Intervenor shall implement all reforms, as designated within the provisions of this Agreement, that are necessary to effectuate this Agreement. The implementation of this Agreement will begin immediately upon the Effective Date.
2. The State Defendants shall be released from the terms of this Agreement when they have achieved Substantial Compliance with each provision of the Agreement for which they are assigned responsibility; have maintained Substantial Compliance for a period of two consecutive years; and subject to Court approval.
3. The Defendant-Intervenor shall be released from the terms of this Agreement when it has achieved Substantial Compliance with each provision of the Agreement for which it is assigned responsibility; have maintained Substantial Compliance for a period of two consecutive years; and subject to Court approval.
4. If any unforeseen circumstance occurs that causes a failure to timely carry out any requirements of this Agreement, State Defendants or the Defendant-Intervenor shall notify the Monitor in writing within seven days after State Defendants or the Defendant-Intervenor become aware of unforeseen circumstance and its impact on the Defendants' ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The State Defendants and the Defendant-Intervenor shall implement all reasonable measures to avoid or minimize any such failure.
5. This Agreement, including all addenda, shall constitute the entire integrated Agreement of the Parties. No prior or contemporaneous communications, oral or written, will be relevant or admissible for purposes of determining the meaning of any provisions herein, in this litigation or in any other proceeding.

6. This Agreement shall be applicable to, and binding upon, all Parties, their officers, agents, employees, assigns, and their successors in office.
7. Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of the party's right to enforce other deadlines or provisions of this Agreement.
8. If any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

### **IX. CLASS NOTICE**

1. Promptly after this Agreement has been fully executed, Plaintiffs' Counsel shall initiate a joint motion to the Court for entry of the Order for Notice and Hearing, substantially in the form annexed hereto as Exhibit A. In connection with that application, Plaintiffs' Counsel shall apply to the Court for preliminary approval of this Agreement and for a finding that the Class, as defined above, should be certified for settlement purposes. Plaintiffs' Counsel shall also request that the Court set a date for a fairness hearing on the proposed settlement no earlier than February 9, 2015 and to approve the Settlement Notice, in substantially the form annexed hereto as Exhibit B.
2. The State Defendants shall cause the notice to be published one time in *The Times-Picayune* and *The New Orleans Advocate*, in substantially the form annexed hereto as Exhibit C as soon as practicable after the Settlement Notice is approved, but in no event more than five (5) business days after such approval.
3. The State Defendants and the Defendant-Intervenor shall within the later of five (5) business days of the date of the Court's Order for Notice and Hearing and January 8, 2015, cause a one-page summary of the Settlement Notice to be posted in all public schools in New Orleans until at least February 8, 2015.
4. The State Defendants and the Defendant-Intervenor shall within ten (10) business days of the date of the Court's Order for Notice and Hearing cause a one-page summary of the Settlement Notice to be mailed via first class mail to the proposed Settlement Class.
5. The State Defendants and the Defendant-Intervenor shall within five (5) business days of the date of the Court's Order for Notice and Hearing cause the Settlement Notice to be posted prominently on the websites of LDOE, BESE, and OPSB until at least February 8, 2015.
6. Plaintiffs' Counsel shall within five (5) business days of the date of the Court's Order for Notice and Hearing cause the Settlement Notice to be posted on the website of the Southern Poverty Law Center, at its own cost, until at least February 8, 2015.

7. Plaintiffs' Counsel may disseminate the Settlement Notice to other media outlets, provide it to other community organizations, or otherwise disseminate the Settlement Notice as it sees fit, all at its own cost.
8. The State Defendants and the Defendant-Intervenor shall bear all the costs incurred in connection with subparagraphs 2-4, with State Defendants responsible for all costs associated with activities pertaining to non-OPSB schools, LDOE, and BESE.

#### **X. ATTORNEYS' FEES**

1. The State Defendants will seek a legislative appropriation in the 2015 legislative session for \$700,000.00, not to be paid from any state or federal education funds designated for the education of students with disabilities, to pay the State Defendants' share of Plaintiffs' attorneys' fees and costs. State Defendants shall use their best efforts with the Louisiana legislature to obtain a sufficient appropriation to make payment to Plaintiffs by the close of 2015. The State Defendants' payment of \$700,000.00 shall be in full satisfaction of its share of Plaintiffs' attorneys' fees and costs for all purposes under this agreement.
2. If the Louisiana legislature does not appropriate sufficient funds to pay State Defendants' share of Plaintiffs' attorneys' fees and costs, the State Defendants and the Plaintiffs agree to meet and confer to discuss options for fulfillment of this element of the Agreement. If the State Defendants and Plaintiffs cannot resolve this matter directly, they will seek non-binding mediation to discuss options regarding the State Defendants' share of fees and costs, including, if agreed to by Plaintiffs, the timing of payments to Plaintiffs beyond 2015. If no such agreement can be reached, Plaintiffs may seek an action for payment of said \$700,000 in accordance with applicable jurisprudence. However, any such payment shall not be taken from state or federal education funds designated for the education of students with disabilities.
3. Within 180 days of the approval of the State Defendants' requested appropriation, the Defendant-Intervenors will make payment to Plaintiffs' Counsel in the amount of \$100,000.00 for Defendant-Intervenors' share of Plaintiffs' attorneys' fees and costs. The Defendant-Intervenors' payment of \$100,000.00 shall be in full satisfaction of its share of Plaintiffs' attorneys' fees and costs for all purposes under this agreement.

#### **XI. MEDIA**

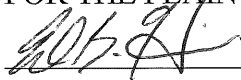
1. The parties and their counsel agree to issue a joint public statement concerning this Agreement at the time it is presented to the Court for approval ("joint statement"). The joint statement will indicate that the case has been resolved by mutual agreement of the parties and will portray the settlement and all parties in a positive light. The joint statement will be widely distributed and placed on the Defendants' and counsel for the Plaintiffs' respective websites. To the extent practicable, any party offering a public

comment concerning this Agreement separate from the joint statement shall use reasonable efforts to notify the other parties of the form, nature, and extent of the press release or public comment prior to its issuance. None of the parties will make any public statement regarding this Agreement that in any way disparages or criticizes another party or the Agreement.

## **XII. MISCELLANEOUS**

1. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, and all such counterparts together shall constitute one and the same agreement. This Agreement may be executed by facsimile or by original. A facsimile transmission of a signed original shall have the same effect as delivery of a signed original.

FOR THE PLAINTIFF SETTLEMENT CLASS:



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Jennifer Coco  
Jerri Katzerman  
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FOR THE STATE DEFENDANTS:

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Baton Rouge, LA 70804-9064  
(225) 342-3572

FOR THE DEFENDANT-INTERVENOR, ORLEANS PARISH SCHOOL BOARD:

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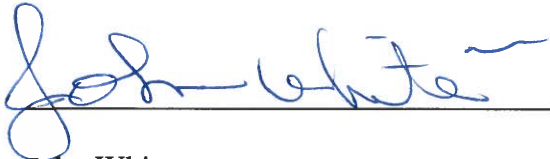
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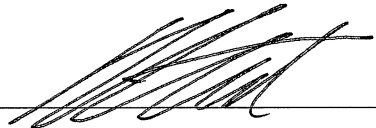
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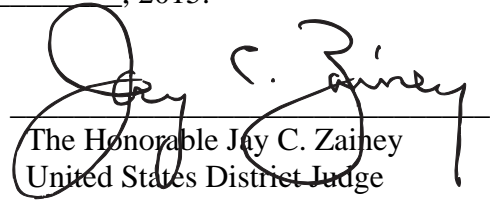


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So ORDERED this 24th day of March, 2015.



The Honorable Jay C. Zaihey  
United States District Judge