

AGREEMENT OF PARTIES TO BLACKMAN/JONES CASE

Nature of the Agreement

1. This agreement grows out of an Alternative Dispute Resolution (ADR) process initiated by plaintiffs on July 6, 2007.
2. The parties anticipate that throughout the coming months, they will continue to work together, as they did during the ADR process, to identify new issues, as well as strategies and steps to address these issues.
3. This agreement does not affect the parties' rights and obligations under the Consent Decree entered on August 24, 2006 (hereinafter Decree).
4. This agreement is not enforceable. However, it is the parties' intent that the agreement be implemented. The Mayor's Office has made a commitment that the District will abide by this agreement. Plaintiffs have forgone seeking judicial relief at this time because of this commitment.
5. The parties have designated four individuals to work together to ensure that needed actions are taken to implement this agreement: Tameria Lewis, OSSE, Richard Nyankori, DCPS, Heather McCabe, Office of the CFO, and Ira Burnim, plaintiffs' counsel.
6. Defendants understand that plaintiffs may, at any time and in their sole discretion, seek judicial relief for alleged non-compliance with the Decree.
7. The parties agree that plaintiffs, before seeking judicial relief, will: (a) give 30 days advance notice to defendants of their intent and the basis for the relief sought, and (b) thereafter meet and confer with defendants to attempt to resolve the matter. If, within 30 days (or a longer period as agreed by the parties), the parties cannot resolve the matter, plaintiffs may proceed in court. Defendants will not require plaintiffs to go through the ADR process in the Decree before seeking judicial relief. If the Court believes that an order is required to effectuate this paragraph, the parties will submit a proposed order for the Court.
8. The parties have not asked the Monitor or Evaluation Team to specifically monitor implementation of this agreement. However, the parties recognize that implementation of this agreement will affect matters being examined by the Monitor and Evaluation Team. The parties recognize that the Monitor and Evaluation Team may seek information regarding, and report on implementation of, actions taken pursuant to this agreement.

Reducing the Initial and Subsequent Backlog

9. Each provision of this agreement is designed to reduce the initial backlog (overdue

HODs and SAs issued before 3/1/06) and the subsequent backlog (overdue HODs and SAs issued on or after 3/1/06), either directly or by reducing the number of HODs and SAs that are generated by defendants' failure to meet IDEA obligations.

10. By January 1, 2008, the parties will agree on a "Backlog Reduction Plan." The plan will consider: the role of case managers in reducing backlogs; a role for Rebecca Klemm and her staff in reducing backlogs; changing the job descriptions of the staff currently working directly on reducing backlogs (*e.g.*, disposition specialists, placement specialists); and redeploying positions created and/or staff hired under paragraph 51 of the Decree. The parties will consult with Special Master Elise Baach and *Petties* counsel concerning the plan.

11. The agreed Backlog Reduction Plan will specifically identify each staff person working directly on reducing backlogs, the job they perform, how the job will change (if at all) under the plan, and a schedule for any job changes.

12. By February 1, 2008, the parties will determine whether an exemption from the District's personnel system is needed to effectuate the Backlog Reduction Plan (*e.g.*, in order to timely change job descriptions, transfer staff devoted to reducing backlogs to other positions, and/or hire staff in positions devoted to directly reducing backlogs)¹. If so, the parties will immediately seek the Court's approval of an order effectuating the exemption.

13. The agreed Backlog Reduction Plan will identify whether and how the 70 FTE positions referenced in paragraph 51 of the Decree were created and filled.

14. By January 15, 2008, defendants will report in writing to the Monitor providing a full accounting of their compliance with paragraph 51 of the Decree.

Charter Schools

15. By December 14, 2007, defendants will file with the Court a statement accepting legal responsibility for ensuring timely hearings and timely implementation of HODs and SAs for charter school students. The parties agree that OSSE, as the District's designated SEA for IDEA purposes, has ultimate legal responsibility under both federal and District law for ensuring timely hearings and timely implementation of HODs and SAs. The statement filed with the Court under this provision will address the issue regarding jurisdiction over charter schools raised in the Report and Recommendation of the Special Master regarding D.H. filed with the Court on July 31, 2007.

16. Other provisions of this agreement commit defendants to developing a process for evaluating the special education and related services delivered at charter, as well as other, schools and a process at OSSE for resolving complaints about charter, as well as other, schools.

¹ Paragraph 139 of the Decree broadly exempts defendants from the District's procurement process in implementing the Decree.

Compensatory Education

17. Defendants will implement Attachment A, an agreement regarding compensatory education reached by the parties during the ADR process.

Parent Center

18. Defendants will contract with an independent agency to implement the provisions of paragraphs 67-69 of the Decree. Defendants will continue to work with Paula Goldberg, executive director of PACER in Minneapolis, Minnesota, on describing expectations for the Parent Center and evaluating prospective contractors.² The Parent Center will serve all students with a disability or suspected disability and their families, whether in DCPS, a charter school, or a nonpublic placement.

19. By February 1, 2008, defendants will enter into a contract with an independent agency to operate the parent center starting April 1, 2008. The contract will be for three years. During the pendency of the *Blackman/Jones* case, decisions about continuation and renewal of the contract will be made by a three person committee of: Paula Goldberg or her designee; an individual designated by defendants; and an individual designated by plaintiffs, who may be one of plaintiffs' counsel.

Joint Statement

20. By February 1, 2008, the parties will prepare a joint statement on (a) the "diligent efforts" required by paragraphs 7(a) and 52 of the Decree and (b) whether defendants will promulgate a written policy to guide staff in making "diligent efforts" under paragraphs 7(a) and 52, and if so, by what date and through what process. If the parties cannot agree on a joint statement, the written statement will identify and explain the parties' disagreement.

Staffing

21. By February 1, 2008, defendants will hire ten staff to work for Tameria Lewis and Richard Nyankori on implementation of this agreement. Four additional staff will be hired to work for Tameria Lewis, and six additional staff will be hired to work for Richard Nyankori.

22. If the parties determine that an exemption from the District's personnel processes is needed to implement paragraph 21 above, the parties will immediately seek the Court's approval of an appropriate order to this effect.

23. A plaintiffs' representative will participate in the hiring process for the ten staff.

² If Ms. Goldberg or any other consultant named in this agreement is unable to serve or continue to serve as a consultant, the parties will agree on the consultant's replacement.

Plaintiffs will have no formal say in the hiring process; however, the views of plaintiffs will be seriously considered.

24. By February 1, 2008, the parties will attempt to reach agreement on whether additional staff are needed to implement the Decree or this agreement and, if so, in what positions and how such positions should be created and/or staff hired.

25. By February 1, 2008, defendants will evaluate and report to plaintiffs whether implementation of the Decree or this agreement requires further exemptions from the District's personnel process in addition to any exemption that may be required to implement paragraph 21 above. If so, the parties will immediately seek the Court's approval of an appropriate order to this effect.

Case Managers

26. Defendants will contract for a case management program that will be operational on or before April 1, 2008. The initial budget for the program will be at least \$3 million (on an annual basis). Prior to the commencement of operations, defendants and plaintiffs will brief class counsel for *Petties* on the mission of the case management project, including any measurable performance indicators. Defendants and plaintiffs will brief *Petties* counsel on the project six months after the start of the project.

27. The program will be consistent with Attachment B, a draft scope of work for the contractor.

28. Defendants will continue to use Narrell Joyner and Michael Terkletaub as consultants for the case management program. Defendants will also use these individuals in evaluating the program.

29. By August 1, 2008, the parties will try to reach agreement on revisions to and/or expansion of the program.

Nonpublic Unit

30. By February 1, 2008, defendants, in collaboration with plaintiffs, will develop a plan for the Nonpublic Unit. The parties will consult with Special Master Elise Baach and *Petties* counsel concerning the plan.

31. Defendants will seriously consider plaintiffs' proposal that the Nonpublic Unit be abolished and its functions reside elsewhere. Under plaintiffs' proposal, bill payment would be performed by OSSE's business department under the supervision of the CFO. Program evaluation would be performed by OSSE as part of a larger (and integrated) effort to evaluate -- using a unified process and set of expectations -- DCPS schools, charter schools, and private placements. "Folder" schools would be responsible for participating in the IEP process.

32. No change to the Nonpublic Unit will be made unless it is reasonably certain that the special education system's performance will be improved by the change.

Program Evaluation

33. Beginning in January 2008, defendants, in collaboration with plaintiffs, will design a process, to be implemented on a significant scale by the beginning of the next school year (8/08-6/09), for evaluating the provision of special education and related services to students in DCPS schools, charter schools, and private placements. The process will evaluate fidelity to the expectations for the delivery of special education and related services at the school level developed pursuant to paragraph 61.

34. Information from the program evaluation process will be used to help manage D.C.'s special education system and to inform D.C.'s reform efforts.

35. Defendants will employ Paul Vincent of the Child Welfare Group in Montgomery, Alabama, as a consultant to this effort.

36. The parties will consult with Special Master Elise Baach and *Petties* counsel concerning the process.

Pilot Schools

37. Beginning in January 2008, defendants, in collaboration with plaintiffs, will develop a plan to create, by the beginning of the next school year (8/08-6/09), two clusters³ of schools that will be exemplary in their delivery of special education and related services. The plan will include using, in each pilot school, the School-Wide Applications Model, with a track record of improving the academic performance of special education students, as well as their regular education peers, in urban school districts with a high percentage of low-income students. The program relies on, among other things, a school-wide positive behavioral support model.

38. By December 1, 2008, defendant, in collaboration with plaintiffs, will develop a plan for expanding the pilot to at least four additional clusters of schools.

Initiative to Reduce Private Placements

39. Beginning in January 2008, defendants, in collaboration with plaintiffs, will develop a plan to create, by July 1, 2008, a mechanism for providing incentives to high quality schools to increase their capacity to serve special education students. The plan will focus on approximately 5-10 high performing schools. Priority will be given to creating capacity in these

³ A "cluster" in the School-Wide Applications Model is a group of schools: four elementary schools; two elementary schools and one middle school; two middle schools; or one high school.

schools to serve students now in private placements or at risk of being placed in a private school.

40. The purpose of this pilot is to provide additional choices to D.C. families. Defendants will not in any way use this pilot to coerce families, through an HOD or otherwise, into giving up or forgoing a private school placement for their child.

41. If a participating family is dissatisfied with a placement provided under this initiative, the student will be permitted to return to the student's prior placement in the next school year.

42. The pilot schools will commit to meeting students' needs in the most inclusive manner appropriate to the student's needs. Schools will receive a percentage of the amount that would have been spent on a nonpublic placement to invest in the creation of services desired by the family and to enrich the local school's offerings. It is anticipated that each participating school will serve approximately 10 students under the pilot.

43. The parties will consult with Special Master Elise Baach and *Petties* counsel concerning the plan.

Contract Schools or Programs

44. Beginning in January 2008, defendants, in collaboration with plaintiffs, will develop a plan to create, by the end of the current school year, contract schools and/or contract programs within schools. It is anticipated that the plan will rely on high quality performing private schools as contractors. The plan will be crafted so as not to increase the number of, or strengthen the role of, segregated settings.

45. The parties will consult with Special Master Elise Baach and *Petties* counsel concerning the plan.

Mental Health Services

46. By April 1, 2008, defendants will improve the delivery of mental health services to students in accordance with a plan developed in collaboration with plaintiffs. The plan will expand capacity and, as appropriate, modify existing services. Defendants will devote to implementation of the plan at least \$500,000 for the current school year and at least \$3 million for the next (8/08-6/09) school year.

47. Unless otherwise agreed by the parties, the plan will give priority to the provision of improved mental health services during the next (8/08-6/09) school year to: students in the pilot schools referenced in paragraphs 37-38 above; students in the pilot referenced in paragraphs 39-42 above; and students on the caseloads of case managers.

48. Defendants will use Knute Rotto of Choices, Inc., in Indianapolis, Indiana, as a consultant. By January 1, 2008, defendants will contract with Mr. Rotto. Mr. Rotto's scope of

work will include identifying and evaluating mental health services and evaluations presently provided in schools or as a related service, and making recommendations for improvement, as well as evaluating defendants' use of Medicaid to finance these services and recommending strategies for increasing federal reimbursements.

49. Defendants' plan will consider the available mental health resources in the District and describe how these resources will be used on behalf of students. As appropriate, the plan will be developed in collaboration with DMH, CFSA, and DYRS.

Other Related Services

50. By March 1, 2008, defendants, in collaboration with plaintiffs, will develop a plan for evaluating and improving the provision of related services other than mental health services, including development of an effective process for identifying and addressing related service lapses.

51. By March 1, 2008, defendants, in collaboration with plaintiffs, will develop and implement a written policy that identifies the process and criteria that DCPS will itself use to award compensatory education when related services are not adequately provided. The process, which will be tied to the IEP process, will involve parents and respect their views.

52. The policy developed pursuant to paragraph 51 will not be used to avoid or impede hearing officers awarding compensatory education or avoid or impede hearing officers determining the nature and amount of compensatory education that may be due.

Data

53. Defendants will use their best efforts to develop an accurate and reliable data system in conformity with paragraphs 60-65 of the Decree. By January 1, 2008, defendants will identify the date by which they expect to have an accurate and reliable data system that meets the requirements of the Decree.

54. Defendants will continue to contract with Rebecca Klemm to maintain the "Klemm data base" until a new data system is developed, and its functionality and accuracy is confirmed.

Student Hearing Office

55. Defendants will secure a consultant to help them improve the operations of the Student Hearing Office. The scope of work for the consultant will be consistent with Attachment C to this agreement.

State Complaint Process

56. By May 1, 2008, defendants will implement an effective state complaint process

that conforms with 34 C.F.R. 300.151-153.

57. The process will be available to resolve complaints regarding students in DCPS schools, charter schools, and private placements, including complaints regarding the implementation of HODs and SAs.⁴

58. The process must ensure that OSSE has the power to require corrective actions of – and, as appropriate, to withhold funds from and/or impose other sanctions on – DCPS, charter schools, and private placements.

Resolution Sessions

59. Defendants will implement Attachment D, an agreement regarding resolution sessions reached by the parties during the ADR process.

60. The parties recognize that, if defendants waive a large number of resolution sessions, this is likely to increase for a period of months the number of due process hearings that must be held and the number of HODs and SAs issued. During these months, defendants' compliance with their obligations under paragraphs 29 and 42(b) of the Decree is likely to decline.

Expectations for Schools

61. By January 15, 2008, the parties will agree on a schedule and process for identifying defendants' expectations for the delivery of special education and related services at the school level, as well as how those expectations might require changes in infrastructure at the school, regional, DCPS, and "state" level. In this process, defendants will consider: means by which the IEP process can be made more meaningful, the extent to which authority and resources should reside at the school level, and crafting appropriate financial incentives.

Miscellaneous

62. The parties will agree on a schedule for plaintiffs requesting upward adjustments pursuant to paragraph 49 of the Decree.

⁴ This provision is not intended to require that a parent use the state complaint process before or instead of requesting or participating in a due process hearing.

63. By February 1, 2008, the parties will meet to determine whether and how the February 1999 Order of Reference might be revised.

AGREED TO:

/s/

Peter J. Nickles
For Defendants

DATE: 12/10/07

/s/

Ira A. Burnim
For Plaintiffs

DATE: 12/10/07