

**IN THE ALABAMA STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION DIVISION**

**G.P., I.S., and E.A.**, by and through their  
Parents and Next Friend, on behalf of  
themselves and similarly situated  
students,

Petitioners,

v.

**MONTGOMERY PUBLIC SCHOOLS**

Respondent.

Case Nos. 11-59, 11-60, 11-61

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**AGREEMENT**

1. Students G.P., I.S., and E.A. have filed due process complaints against the Montgomery Public Schools (“MPS”).<sup>1</sup> The students and MPS have agreed to resolve the due process complaints through this Agreement.

2. The students and MPS have a shared belief that:

- a) Students with emotional disturbance (ED) are capable of learning, graduating, and becoming successful adults who hold jobs, live independently, and are engaged in their communities.
- b) Students with emotional disturbance should receive quality instruction and mental health services so they can achieve these goals.
- c) Students with emotional disturbance should be educated in the most integrated setting appropriate. With appropriate planning and services, virtually all MPS students with emotional disturbance can be educated in regular classrooms with their non-disabled peers.
- d) Individualized Education Programs (“IEPs”) for students with emotional disturbance should be based on each student’s strengths, needs, interests, and preferences. They include individualized behavior assessments, behavior plans based on those assessments, and services that support the students’ success.
- e) Students with emotional disturbance learn better, and experience fewer behavioral difficulties, when their families are involved in their education.

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<sup>1</sup> Students G.P., I.S., and E.A. filed their complaints on May 31, 2011. They assert in their complaints that their claims are representative of claims held by similarly situated students in MPS with emotional disturbance. The circumstances of three such students, M.B., Z.B., and Z.M., are addressed in paragraphs 18-19 below.

- f) The related services that students with emotional disturbance need are reimbursable under Medicaid.<sup>2</sup>

### **Agreed Consultant**

3. The students and MPS will jointly retain Narrell Joyner, of Charlotte, N.C., as an agreed consultant.

4. The consultant will conduct a review of MPS's practices with respect to students with emotional disturbance, including:

- a) How MPS identifies students with emotional disturbance (child find),
- b) The specialized instruction and accommodations MPS provides to students with emotional disturbance,
- c) The planning and implementation of IEPs, including the FBAs conducted by MPS,
- d) MPS's use of resources from other agencies, including DHR, and the Montgomery Area Mental Health Authority, and private agencies providing community services,
- e) MPS's practices with respect to educating students with emotional disturbance in the most integrated setting appropriate,
- f) Disciplinary practices affecting students with emotional disturbance, including referrals to law enforcement and the courts, and
- g) Use of Medicaid funds to serve students with emotional disturbance.

5. The consultant will also participate in technical assistance activities, as requested by MPS. During the period the consultant is conducting her review, she will engage in such activities as time permits. The consultant may participate in professional development activities, review policies, engage other public agencies to aid MPS, and/or conduct other activities aimed at improving services to students with ED. The consultant will help MPS decrease non-mandatory referrals to the juvenile justice system for misdemeanors and violations of school disciplinary policies.

6. The consultant will also aid the IEP teams for G.P., I.S., E.A., M.B. Z.B, and Z.M. pursuant to paragraph 18 below.

7. Upon completing her review, the consultant will make recommendations for improvement, including identifying practices that, in her opinion, should be initiated,

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<sup>2</sup> Medicaid reimbursement is available for those students who are eligible for Medicaid. A high proportion of MPS students receiving special education are eligible for Medicaid.

refined, or ended. The consultant's recommendations will include strategies for maximizing federal funding, and may include recommendations for additional staffing or service capacity. The consultant may make interim recommendations before her review and report are completed.

8. The consultant will aid MPS in implementing her recommendations.

### **Consultant's Access to Information**

9. The consultant shall have access to information that, in her judgment, she needs to perform her duties under this Agreement.

10. The consultant, and any staff and contractors of the consultant,<sup>3</sup> may observe classrooms and school-related activities, interview MPS employees, employees of other public agencies, students, parents, and community stakeholders. The number and nature of such interviews will be determined by the consultant after input from MPS and the students' counsel. MPS will assist in scheduling visits to schools and meetings with MPS employees, students, and parents.

11. The consultant, and any staff and contractors of the consultant, may review student records, including records randomly selected, and other MPS documents.<sup>4</sup> The consultant, and any staff and contractors of the consultant, will enter into a written agreement with MPS protecting against improper disclosure of personally identifiable information to those not party to this Agreement.

12. The consultant, and her staff and contractors, may have ex parte communication with MPS staff and counsel and with the students' counsel. The consultant may share information she obtains, from whatever source, with MPS staff and counsel and with the students' counsel. The students' counsel will take appropriate measures to protect against the public disclosure of personally identifiable information.

### **Consultant's Budget and Contract**

13. Within 10 days of MPS and students' counsel signing this Agreement, the consultant will submit a proposed budget for her work under this Agreement, including conducting a review pursuant to paragraph 4, providing assistance pursuant to paragraph 5, aiding MPS with implementing her recommendations pursuant to paragraph 8, and consulting with the IEP teams for G.P., I.S., E.A., M.B., Z.B, and Z.M. pursuant to paragraph 18. The budget, including expenses, shall not exceed \$135,000. MPS and the students will have five days to comment on the proposed budget. The consultant will finalize the budget within seven days of submitting the proposed budget to MPS and the students' counsel.

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<sup>3</sup> The consultant may hire staff and/or contractors to assist in her work, consistent with her budget. See paragraph 13.

<sup>4</sup> However, neither the consultant nor her staff or contractors may review documents covered by attorney-client privilege or work product privilege.

14. MPS and the students will share the expense of the consultant. MPS and the students will each pay one-half of the expense.

15. If needed to facilitate payment, MPS will enter into a contract with the consultant consistent with this Agreement.

### **Timelines for Consultant's Report**

16. The consultant may begin her review immediately upon MPS and the students' counsel signing this Agreement. Time and expense expended by the consultant will be reimbursed, consistent with the final budget and the cost sharing described in paragraph 13-14 above.

17. The consultant will submit a written report of her findings and recommendations within 90 days of the MPS and the students' counsel signing this Agreement.

### **Students G.P., I.S., E.A., M.B., Z.B., and Z.M.**

18. The consultant will help MPS develop and implement IEPs, and identify placements, for students G.P., I.S., E.A., M.B., Z.B., and Z.M.

19. Within 21 days of MPS and the students' counsel signing this Agreement, the consultant will review the current IEPs and placements of G.P., I.S., E.A., M.B., Z.B., and Z.M. and recommend any changes to the IEPs and placements that the consultant considers appropriate. Within five school days of receiving the recommended changes if any, MPS will, with respect to each child for whom changes were recommended, convene an IEP meeting, in which the consultant will participate in person or by phone. The IEP team will review the recommendations and adopt them as the team deems appropriate. Following the meeting, the IEP team will provide written notice of any recommendation of the consultant not adopted and the reasons for not adopting the recommendation. If the student does not agree with the decisions of the IEP team concerning the consultant's recommendations, MPS counsel, the student's counsel, and the consultant will discuss strategies for the IEP team and the student reaching agreement.

20. For the remainder of the school year, MPS will consult with the consultant before expelling, or causing delinquency charges to be pursued against, G.P., I.S., E.A., M.B., Z.B., or Z.M.

### **Binding Agreement**

21. This Agreement is binding and enforceable. If at any time MPS or the students' counsel believe that this Agreement is not being implemented as anticipated, either may request mediation to resolve their concerns. Mediation will be completed within 30 days from the date of the request. If mediation is requested, MPS and students' counsel will engage an agreed upon mediator. The cost of the mediator will be shared equally by MPS and students' counsel.

**Attorneys' Fees**

22. MPS will pay the students' attorneys' fees of \$20,000, which is a significant discount of the students' fee claim.

**Submission to Hearing Officers**

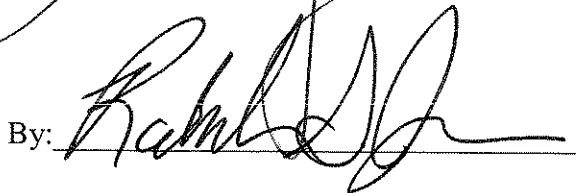
23. After signing this Agreement, MPS and the students will submit a copy of the Agreement to the hearing officers in G.P.'s, I.S.'s, and E.A.'s due process cases. MPS and the students will ask the hearing officer to enter an order directing MPS and the student to comply with this Agreement and dismissing the due process case.

MONTGOMERY PUBLIC SCHOOLS

Date: 11-16-11

By: 

Date: 11-14-11

By: 

Date: 11/17/11

By: 

ALABAMA DISABILITIES ADVOCACY PROGRAM

Date: 11/3/11

By: 

Date: 11-3-11

By: Victoria Moss for  
L.B. & L.M.

Date: 11/3/11

By: Patricia Halper I.S.

Date: 11-3-2011

By: William M. K. H. for E.A.

Date: 11/4/11

By: Shirvan Terrell for MB

Date: 11-4-11

By: Mark Palmer Sr GP