

**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**



## **I. PARTIES**

This Consent Judgment (“Agreement”) is

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 St

- 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”)( requ)( requ)( requ)(-ntifica -.00(35299 Tw[(r3395(r)-1.5qu)( ,835 -1.15 D)7i)]TJ41

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.





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

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

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

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



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

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

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.


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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 c

FOR THE PLAINTIFF SETTLEMENT CLASS:

  
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FOR THE STATE DEFENDANTS:

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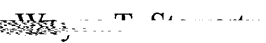
John White  
State Superintendent of Education  
LOUISIANA DEPARTMENT OF EDUCATION  
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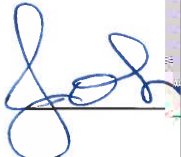
FOR THE DEFENDANT-INTERVENOR, ORLEANS PARISH SCHOOL BOARD:

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FOR THE PLAINTIFF SETTLEMENT CLASS:

FOR THE STATE DEFENDANTS:



J h



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So ORDERED this \_\_\_\_\_ day of \_\_\_\_\_ March \_\_\_\_\_, 2015.

A large black rectangular redaction covers the signature and name of the court officer. The text "United States District Judge" is partially visible at the bottom of the redacted area.