

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LEON W. BRADLEY, JR., et al.,

Plaintiffs,

vs.

Case No. 8:64-CV-98-T-23B

THE PINELLAS COUNTY SCHOOL

BOARD, et al.,

Defendants.

**MEMORANDUM OF UNDERSTANDING
REGARDING QUALITY OF EDUCATION—STUDENT DISCIPLINE BY AND
BETWEEN PLAINTIFFS AND DEFENDANTS**

I. Purpose of this Memorandum of Understanding

On August 16, 2000, the U.S. District Court, in the case of Leon W. Bradley, Jr., et al v. Board of Public Instruction of Pinellas County, Case No. 8:64-CV-98-T-23TGW entered an Amended Final Order Withdrawing Federal Supervision and Granting Unitary Status, which approved an agreement between the parties embodied in an Amended Order dated August 30, 1999, a Stipulation dated December 22, 1999, and an Amended Stipulation dated June 29, 2000 (hereinafter sometimes referred to collectively as the “Agreement”); dismissed that case; and reserved ancillary jurisdiction to enforce the provisions of the Agreement, if necessary. The Agreement contained Alternative Dispute Resolution (ADR) Procedures which required in part that the parties first engage in informal discussions to attempt to resolve their differences, and, if that failed, to use mediation.

II. History of the Post-Unitary Status Order ADR

On January 1, 2006, Plaintiffs invoked the ADR Procedures claiming that the Defendants, Pinellas County School Board, et al, had failed to perform all of their obligations under the Agreement in the areas of Quality of Education – Student Achievement, Quality of Education – Discipline, Quality of Education – Assignment to Classes and Programs, Faculty, Administrative Staff, Student Assignment, Extracurricular Activities, and District Monitoring and Advisory Committee (DMAC) and had failed to provide Plaintiffs with information in those areas as well. The Defendants denied that they had failed to perform, denied that Plaintiffs had any right to the information in the manner in which Plaintiffs claimed, denied that the information was not made available, and denied that Plaintiffs had properly invoked the ADR Procedures.

Nevertheless, the parties engaged in a series of informal discussions in an attempt to resolve their differences. When those informal discussions failed to produce any resolution, the parties, without waiving any of their contentions, agreed to engage in mediation as provided in the

Agreement. The parties selected Peter Grilli, Esq. as Mediator, and have engaged in numerous mediation sessions. The parties agreed that the mediation sessions would be public, and have conducted them in that manner.

The parties entered into a Memorandum of Understanding on Quality of Education – Student Achievement on July 28, 2009. Mediation continued on the topic of Quality of Education – Student Discipline.

III. Effect of this Memorandum

This Memorandum sets forth the understanding the parties have reached to date through the mediation process in the area of Quality of Education – Student Discipline. This Memorandum is not intended to alter or modify the Agreement. Accordingly, to the extent any ambiguity exists or is alleged to exist between the Agreement and this Memorandum of Understanding, the terms of the Agreement shall control. This Memorandum does not constitute an admission by the parties that they have violated the Agreement. This Memorandum shall not provide the basis for an independent cause of action by either party for breach of the Agreement.

This Memorandum reflects the parties’ best efforts to agree on means and methods to comply with the Agreement in the area of Quality of Education - Student Discipline. The understandings reached through the mediation process shall not limit, impair or impede the Defendants’ exercise of their powers pursuant to and consistent with applicable law, the Federal Court Order and the Agreement it approved.

IV. Points of Understanding Reached During Post-Unitary Status Order ADR

The points of understanding reached through the mediation process regarding student discipline are set forth below.

Implementation and Attainment of Aspirational Goals

Making progress toward the achievement of the aspirational goals requires the School Board and its employees to apply discipline to all students fairly, and with sensitivity, without regard to race. It requires students to demonstrate the appropriate respect for the orderliness and importance of the learning environment. It requires parents to prepare the student to arrive at school ready to conform to normal standards of orderliness and discipline consistently applied and appropriate to their age, and to support discipline fairly and consistently administered to their children as part of the educational process, in order to achieve the aspirational goals for student discipline, which goals are set forth on pages 28 and 29 of the Stipulation For Unitary Status In the Areas of Extracurricular Activities, Faculty Assignment, Student Assignment, Relative Quality of Education, and Mandatory Injunction signed December 17, 1999 (“Stipulation”).

A. Disparity in Rates of Discipline

The parties recognize that black students are suspended at a higher rate than non-black students and that black students are arrested in the schools by police at a higher rate than non-black students. The parties are committed to the achievement of continuous improvement in the aspirational goals as they relate to student discipline, including the aspirational goal of improvements in the relative rates of student discipline, whether expulsion, suspension (in or out of school) or other. The parties agree that achieving continuous improvement in these student

discipline aspiration goals is best accomplished by applying the means and methods identified in this Memorandum of Understanding.

B. Philosophy of Discipline

Every school staff member will strive to create a positive, safe environment that encourages and supports student success. Underlying causes for misbehavior will be explored, and when possible, positive redirection will occur and acceptable alternative behaviors will be taught. Such redirection may involve a collaborative effort of parents, school, and community.

It is the objective and policy of the School Board to recognize, preserve, and protect the individual rights of all students; and, at the same time, to encourage and enforce the exercise of these rights within the framework of an orderly and efficient school program. Within this framework, it is the duty of the Board, the administrative staff, and the faculty of each school to prevent and to prohibit student conduct that becomes dangerous, disruptive, or destructive, and therefore endangers the proper maintenance and function of the school program. Staff members are expected to model core value behaviors that set an example for students. It is expected that all disciplinary measures will be conducted in a manner that is respectful to the student and preserves that student's dignity wherever possible. It is the expectation that each student will behave in a manner that does not threaten, interfere with, or deprive other students of their right to an education and will accept responsibility for their behavior. An effective school environment must be safe and free from disruption.

C. Means & Methods for Improvement

1. Positive Supports – Behavioral Interventions

Each school will implement a behavior intervention methodology that provides interventions matched to student need. The schools will monitor progress frequently and make data-driven decisions about the effectiveness of general and remedial interventions and early identification/intervention with behavioral problems. Changes will be made as necessary or appropriate.

Each District school will have the following components in its school-wide School-Wide Behavior Plan:

- 1) Clear expectations that are consistent across all settings in a school including common areas.
- 2) A motivation system that is established and integrated throughout the school.
- 3) A data collection and management system that allows analysis of school-wide data to make decisions about the effectiveness of the core behavior program, and that is consistent with the utilization of the EDS system described herein and will produce data for analysis on at least a monthly basis.
- 4) A system of data interpretation and analysis that is used to revise the implementation whenever needed that will allow interpretation and analysis on at least a monthly basis.
- 5) A method of assessing the fidelity of implementation and making revisions if poor fidelity is determined to be an issue that will provide such assessment on at least a monthly basis.

The District will provide support for Florida Positive Behavior Supports (FL – PBS) or Safe and

Civil Schools Foundations. As of January 2010, the District is in the beginning stages of integrating FL – PBS and Foundations, both are researched – based proactive, positive discipline programs. The resources in Foundations will be the actual professional development training and the FL-PBS tools will assist in assessing implementation fidelity at the schools. As the District moves toward having these components in each school, School-Wide Discipline Plans will be called School-Wide Behavior Plans. This philosophical shift will assist District schools in being more proactive in using data for identification of the underlying causes of negative behavior through problem solving. The parties agree that the District will provide such training as is appropriate to effectuate this provision.

2. District’s Statement of Philosophy Regarding Referral to Law Enforcement

The District promotes a safe and supportive learning environment in schools, to protect students and staff from conduct that poses a serious threat to school safety, and to use alternatives to expulsion or referral to law enforcement agencies. The parties agree that petty acts of misconduct and misdemeanors, including, but not limited to, minor fights or disturbances, should ordinarily not be referred to law enforcement and should not ordinarily result in student arrest.

The parties agree that the District will encourage schools to use alternatives to expulsion or referral to law enforcement agencies unless the use of such alternatives will pose a threat to school safety.

The parties agree that the District will encourage School Resource Officers to exercise their discretion to divert student offenders to appropriate school-based discipline, where appropriate and authorized by department policy and applicable law.

It is the District’s practice, to which the parties agree, that a school representative is present during questioning of students on campus by law enforcement concerning school-related offenses.

A school representative will ordinarily, when reasonably available, be present, in the absence of a parent, during suspect interrogation of students on campus by outside law enforcement concerning a non-school related offense. The law enforcement officer, parent, or student may direct that the school representative not be present. The school representative shall not be expected or required to advocate on behalf of the student, and neither the representative nor the School Board is responsible for the manner or outcome of the interrogation. The parties recognize that police interrogation is a law enforcement function. Chapter 39, F.S., prescribes different procedures in the case of child protective investigations, which shall be followed whenever applicable.

The parties agree that the District will provide such training as is appropriate to effectuate this provision.

3. School Improvement Plan

The Superintendent shall direct each school to include goals and measures addressing the aspirational goals in the Stipulation relating to student discipline. Such goals and measures as they relate to black student discipline may include some of those listed on pages 28, 29 and 34 of the Stipulation and shall be written in the School Improvement Plan or attached thereto.

Each School Improvement Plan will include the following:

- 1) Data identifying the discipline of black student relative to white students and relative to other students in general.
- 2) Behavioral strategies and interventions to improve student discipline, including black student discipline.
- 3) Identification of school-based individuals by title who will have the responsibility for implementing the foregoing as well as the identification of the process for evaluation of the performance of such individuals. An administrator reporting directly to the Superintendent shall be responsible for coordinating the efforts of administrators, supervisors and principals responsible for developing and implementing each School Improvement Plan and the School-Wide Behavior Plan. Other duties shall include performance evaluation of such individuals, and providing the Superintendent with a periodic analysis, review and interpretation of evaluative data on the attainment of goals and measures relating to student discipline, including black student discipline.

4. School-Wide Behavior Plan

Each year schools will develop a School-Wide Behavior Plan using input from the school advisory council, a school discipline committee, and staff. The Plan shall contain the essential features of the District-wide principles as set forth in the Code of Student Conduct and this Memorandum of Understanding. The Plan, which shall be consistent with the District's philosophy of discipline, will include the school's philosophy and plans for prevention/intervention methods to assist in providing a safe and positive learning environment. Each plan, which shall be aligned with the School Improvement Plan, shall use discipline data as a tool to provide student interventions as well as staff development opportunities.

Each school in its School-Wide Behavior Plan shall identify various strategies and supports, including positive behavioral supports that are to be employed at the school. Each Plan shall contain provisions for accountability for implementation of the School-Wide Behavior Plan and for professional development of teachers and other staff consistent with the District's philosophy of discipline, as well as identifying means and methods of utilizing outside resources and increasing parental involvement. The school will identify the top reasons for out-of-school suspensions and apply the strategies and supports to reduce the incidence of those suspensions. The school will monitor and measure the effectiveness of the strategies and supports. The school will review the data at least twice each school year to determine the need for revision of the Plan.

5. Educational Data System

The District introduced to Plaintiff's attorneys and representatives the District's data analysis tool known as EDS (Educational Data System), which is used by school administrators and teachers to view attendance, discipline, and assessment data to attempt to have all students performing at a high level. EDS is a tool used to monitor student progress and to guide instruction. Information obtained from EDS will be used to further the continuous improvement process referred to above. EDS loads on every principal's desktop and provides a dashboard look at how students of different ethnic groups are performing. From there, the principal or teachers can access specific information about individual students. EDS was created and is continually modified by District staff to provide pertinent information to the users. On the advice of the meditation group and working closely with the Superintendent, specific reports were developed for internal and external use to highlight performance trends for black students in key areas.

In this area, the Defendants will continue to develop and implement the EDS system and work with class counsel to attempt to identify methods by which data contained and managed by this system could be made available on a regular, ongoing basis, without disclosing individually identifiable student data.

The development and implementation of the EDS system, and the continued work and communication with the class and class counsel will be coordinated and supervised by the administrator reporting directly to the Superintendent referred to above.

6. Student, Parent, and Community Responsibility

The parties recognize that the aspirational goals in the area of student discipline contained in the Stipulation require efforts from the District, students, parents and the community. Community, as used in the Stipulation is not restricted by geographic boundaries or neighborhoods, but refers to the social interactions that transcend local boundaries to include health care organizations, universities and education institutions, government, faith-based organizations, community-based organizations, community volunteers, and cultural and recreational institutions that may provide resources and social support to youth, schools and families. Parent, as used in the Stipulation, is not restricted by biological or legal definitions, but includes any adult (age 18 years of age or older) who has agreed to be responsible to the school system for the individual student. The parties agree that the District will work proactively and collaboratively in the development of the above-described community involvement through such means as the Office of Strategic Partnership and other school-based and District-wide resources.

The aspirational goals of the Stipulation specifically assert that it is not the purpose of the Stipulation to assess blame. Instead, the Stipulation strives to provide a basis for making progress toward the achievement of the aspirational goals. The Stipulation states that making such progress, requires, in addition to the efforts of the School Board and its employees to apply discipline fairly and with sensitivity to all students without regard to race, that students demonstrate the appropriate respect for orderliness and the importance of the learning environment and for parents to support discipline that is fairly and consistently administered to their children.

The aspirational goals agreed to by the parties in the Stipulation are: 1) the District and community work together to provide a safe learning environment for each student; 2) each student demonstrate respect and responsibility for the learning environment; 3) each student will be disciplined fairly and consistently with the Code of Student Conduct and race will not be a factor; 4) District and community will work together to reduce disparate rates of discipline within the framework of a) responsibility of parents of each student to prepare each student to arrive at school ready to conform to normal standards and to support the School Board and its employees in fairly, consistently and appropriately applying any discipline standards; b) responsibility of each student for his or her own conduct; c) fair, equal and sensitive treatment of each student by the District and its employees.

V. Miscellaneous

A. Effective Date

This Memorandum shall be effective as of the date executed by both parties. If either party submits this MOU regarding Student Discipline to the Court for approval, the other party shall

have the right to agree or object.

B. Review Dates

The parties agree to meet in February and July of each year commencing in February 2011 at which times the Defendants shall report, including a detailed, written report on progress achieved through implementation of the means and methods set forth in this Memorandum. The Defendants shall furnish Plaintiff's attorneys with supporting data reasonably in advance of the meetings.

C. Term

This Memorandum shall be in effect for five (5) years from the effective date unless otherwise extended or replaced during that five years. It is specifically agreed that the obligations under the Court order and the Agreement will continue as outlined in that Court Order and in the Agreement. The parties shall meet no later than six (6) months prior to the expiration date to discuss whether or not an extension of this Memorandum and modification of its terms and conditions are reasonably necessary in order to ensure compliance with the Agreement. If the parties agree to an extension and/or modification of terms and conditions, they shall commit their agreement to writing, to be duly executed by the parties or their authorized officers. If the parties are unable to agree, either may invoke the ADR process for resolution of the dispute.

D. Amendment to Memorandum of Understanding on Student Achievement:

The parties have previously entered into a Memorandum of Understanding (MOU) on Student Achievement, which MOU is undated. The parties stipulate and agree that the MOU on Student Achievement was signed and entered by the parties on July 28, 2009. Its effective date is identified as the date "executed by both parties and approved by the Court upon joint stipulation of the parties." The parties agree that this is a scrivener's error, and that the parties had intended that MOU become effective as of the date executed by both parties, which the parties agree was July 28, 2009. If either party submits this MOU regarding Student Discipline to the Court for approval, the other party shall have the right to agree or object.

IN WITNESS WHEREOF, the parties have executed or caused this Memorandum to be executed by their undersigned officers or agents, duly authorized.

The School Board of Pinellas County, Florida

By:

Janet Clark
Janet Clark, Chairperson

Date:

5/25/2010

Attest:

Julie M. Janssen
Julie M. Janssen, Ed.D., Superintendent

Date:

5/25/10

Approved as to form:

James A. Robinson
James A. Robinson, General Counsel

Date:

5/24/10

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