

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—
ASSIGNMENT TO PROGRAMS AND CLASSES**

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 referred to 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 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, and a Memorandum of Understanding on Quality of Education – Student Discipline on June 8, 2010. Mediation continued on the topic of Quality of Education – Assignment to Classes and Programs.

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 – Assignment to Classes and Programs. 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 - Assignment to Classes and Programs. 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 assignment to classes and programs are set forth below.

Implementation and Attainment of Aspirational Goals

The Defendants are committed to making continuous improvement toward achievement of the aspirational goals regarding Assignment to Classes and Programs set forth on pages 30 and 31 and 35 through 37 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"). This will require that the School Board and its employees work to maximize the realization of

the potential of each and every student. It requires that each student, including each black student, work to maximize his or her potential and attain the prerequisite knowledge, skill and course-work for participation in more advanced and challenging classes and programs. It requires that students be assigned to exceptional student education programs in accordance with conscientiously non-discriminatory application of federal and state laws. Continuous progress will further require consistent, non-discriminatory criteria applied in a non-discriminatory manner, as well as wide-spread knowledge and awareness of those criteria and program availability. With respect to each of the programs and classes discussed in paragraphs A. and B. below, the Defendants shall be obligated to undertake the reporting and training specified in paragraph IV. C. 3 below.

A. *Exceptional Student Education*

Defendants shall assign students to exceptional student education programs, including gifted programs, in accordance with conscientiously non-discriminatory application of federal and state laws and the Stipulation described above.

The parties are aware that nomenclature describing exceptional student education has changed over the years and acknowledge that it may change again in the future. In order to assure continued relevancy of the Stipulation of the parties and continuity regarding assignment of students to exceptional education programs, the Defendants agree to annually identify each category of exceptional student education program, annually define each category of exceptional student education program, and describe any significant annual changes in categorization or definition of exceptional student education. The Defendants will relate the then-current categorization to the language of the Stipulation.

Defendants have represented that the State has declared that the number of black students in the District who are identified in the category Emotional/Behavioral Disabilities (“EBD”) is disproportionate to the number of white students and other students in general who are so identified. The District is in its third year of application of the revised State Board of Education EBD eligibility criteria and believes it is making progress on reducing the disparity with respect to initial eligibility for all students, but the disparity with respect to black students remains even as the number of EBD identifications declines overall. Thus, the District will pay particular attention to reviewing the EBD eligibility of those students who are currently identified as EBD. As part of the School Wide Behavior Plan, the District will also develop and teach student social – emotional benchmarks in order that students may understand and meet behavioral expectations. These efforts should help to ensure that students are not unnecessarily or unreasonably referred for discipline. Students who are repeatedly referred for discipline are at a higher risk of being evaluated for EBD eligibility. Culturally responsive teaching, coupled with fidelity in implementation of the School Wide Behavior Plan, should have a positive effect on the number and frequency of discipline referrals and the disparity in the rates of discipline. All of the foregoing efforts shall be consistent with and subject to the

District's obligation to find, evaluate, identify and serve students with exceptionalities, including EBD, consistent with Federal and State law and regulation.

B. *Accelerated Classes and Other Programs/Classes*

1. Accelerated Classes

Pinellas schools offer a range of advanced and honors secondary classes that provide a greater range and depth of subject matter with an emphasis on higher-level critical thinking skills. Middle school students who successfully complete high school honors courses earn high school credit. High schools also offer college-level courses that enable students to earn college credit while in high school including Advanced Placement, International Baccalaureate, and college Dual Enrollment.

The parties agree to, and the District embraces a philosophy of “access for all” for accelerated courses to challenge all students who are capable. Arbitrary barriers or preconceptions of student ability, especially among those populations of students who are underrepresented in rigorous courses, do not play a role in assignment of students to accelerated high school courses. The parties acknowledge that State statute sets certain academic admission requirements for Dual Enrollment courses, and, of course, agree to the application of those requirements within the parameters of the “philosophy” described herein.

2. Countywide Programs

Pinellas County Schools offer a range of countywide programs including themed magnets, fundamental schools, career academies, and Centers of Excellence. These programs provide options for students and families based on interests, skills, and talents. Board approved Policies for application and the structures and procedures for these programs are detailed in the Procedures for Countywide Programs Handbook.

Assignment to countywide programs is made by random selection among all eligible students who apply during the annual application period. Late applicants are accepted on a space available basis. Some countywide programs have admission criteria that may include minimum academic qualifications, course prerequisites, and/or a demonstrated record of appropriate behavior. Continued participation in countywide programs may require students to meet certain academic and/or behavioral standards. Students can be dismissed from countywide programs for a variety of reasons detailed in the Procedures for Countywide Programs Handbook.

3. Advancement via Individual Determination (AVID)

AVID is a nationally recognized program with the stated mission to “close the achievement gap by preparing all students for college readiness and success in a global society.” In Pinellas, AVID is expanding annually to be a part of all secondary schools.

The AVID program consists of both comprehensive and targeted strategies and methodologies to increase instructional rigor and college readiness. AVID schools provide teacher training to infuse proven rigorous instruction into all classrooms and provide a targeted academic elective class to provide additional support to students in the academic middle who accept the challenge of the most rigorous courses.

Students are recruited to the AVID elective based on a set of characteristics that include demonstrated desire for academic success, average academic ability, and special circumstances including targeting black and other students who have traditionally been underrepresented in postsecondary education. The parties agree that the AVID program should be available to all eligible students within the District.

4. Gifted Services

Pinellas County Schools provide a continuum of services for gifted students, ranging from part-time to full-time services. Students must meet state criteria for gifted eligibility to be enrolled in gifted classes. Nominations for gifted may be made by a parent, teacher or other school personnel. Efforts to increase representation of black student membership in gifted have included: annual Florida Department of Education Continuous Improvement Plan (2001-2008); district initiatives, such as universal screening of all Title I first graders with the Naglieri Nonverbal Ability Test; and, professional development on special populations of gifted learners.

C. Means & Methods for Improvement

1. School Improvement Plan

The Superintendent shall direct each school to include goals and measures addressing the aspirational goals in the Stipulation relating to assignment to programs and classes. Such goals and measures will be those applicable to the school, including those applicable from among the following: improvements in student participation and success in honors classes, advanced placement classes, accelerated courses; college dual enrollment courses and other similar courses, magnet and fundamental programs, gifted programs, and other high achievement programs; and improvements in providing each student with the highest degree of challenge appropriate for that student.

In establishing eligibility for programs and services for exceptional education, including children with disabilities, objective, non-discriminatory criteria will be utilized in accordance with state and federal law. With regard to eligibility for gifted programs, objective, non-discriminatory criteria will also be utilized.

Each School Improvement Plan will include the following:

1) Data identifying the assignment to programs and classes of the number of students by race assigned to exceptional education programs, accelerated classes, countywide programs, AVID and/or gifted programs.

2) Means and methods employed at the school to achieve continuous improvement in attainment of the aspirational goals for assignment to exceptional education programs, accelerated classes, countywide programs, AVID and/or gifted programs.

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. 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 assignment to programs and classes.

2. Communication and Outreach

A variety of outreach materials and methods will be developed annually promoting the benefits of accelerated course participation all countywide programs, participation in AVID, and gifted class participation. These methods and materials will be up to date, utilizing all modern communication methods possible, including print media, internet, telephone, text messaging, Twitter, Facebook, and individual and group meetings. Special effort will be made to target neighborhoods and communities with populations of students who are underrepresented in countywide programs and accelerated courses. Outreach efforts and communication efforts will be coordinated with the Office of Strategic Partnerships (or any successor District office), and will be ongoing throughout each school year. The Defendants will include the development of plans for the communication and development of student, parental and community awareness of the prerequisites for eligibility for accelerated classes and countywide programs so as to increase black student participation in such classes and programs.

3. Objectives and Monitoring

Accelerated Classes: Black student enrollment in accelerated courses should increase annually to be proportionate to black student membership in the general education population of the school. Data will be collected as described above on participation of black students in accelerated courses to monitor participation and retention.

Countywide Programs: Black student applications, invitations, and acceptances to countywide programs should be proportionate to those of non-black students. Data will be collected as described above.

Black student retention or dismissal from countywide programs should not be disproportionate from other groups. Data on the proportion of students leaving countywide programs will be monitored as described above.

Advancement via Individual Determination (AVID): To address participation and achievement gaps, black and other traditionally underrepresented student participation in the AVID elective should exceed membership in the general education population. Data on AVID elective participation will be monitored as described above to monitor participation and retention.

Of the total number of AVID elective students, the number graduating and reporting matriculation to postsecondary education should exceed 90% annually and be racially proportionate.

Gifted Services: Black student enrollment in gifted should increase annually to be proportionate to black student membership in the general education population of the school. Data will be collected as described above.

Reporting and Training: With respect to ESE categories, accelerated classes, AVID, gifted, countywide programs, area magnets, career academies, centers of excellence, and any other similar programs and classes developed in the future, the Defendants will report by school and overall within the District, by race 1) the number of students assigned at the beginning of each term, 2) the number of students by race who have been added by the end of each term, and 3) the number of students by race who have been removed by the end of each term. These reports will be at the beginning and end of each term, and at such other times as is necessary.

The District will provide and require training to all instructional professional and para-professional personnel, including teachers, psychologists, administrators or any other professional or para-professional personnel who have input into the decision-making or teaching process in the District in culturally responsive, content competent and objectively free of bias implementation, including assigning and teaching.

DMAC: The Superintendent shall report to DMAC information disaggregated by race and sex that DMAC needs in order to evaluate whether the schools have attained gains in assignment of black students to classes and programs. DMAC will evaluate the data and advise the Board of any changes DMAC recommends to improve gains. The Board will consider these recommendations as well as recommendations from any other source the Board wishes.

4. Student, Parent and Community Responsibility

The parties recognize that the aspirational goals in the area of assignment to programs and classes 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 the School Board and its employees work to maximize the realization of the potential of each and every student. It requires that each student, including each black student, work to maximize his or her potential and attain the prerequisite knowledge, skill and course-work for participation in more advanced and challenging classes and programs. It requires that students be assigned to exceptional student education programs in accordance with strict, conscientiously non-discriminatory application of federal and state laws.

V. *Miscellaneous*

A. *Effective Date*

This Memorandum shall be effective as of the date executed by both parties ~~and approved by the Court upon joint stipulation of the parties.~~



B. *Review Dates*

The parties agree to meet in February and July of each year commencing in 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.

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

Attorneys for Plaintiff:

By: Janet R. Clark
Janet R. Clark, Chairperson

Enrique Escarraz, III
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Date: 9-14-10

Date: 12-1-10

Attest:

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

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Approved as to form:

Date: 12-1-10

James A. Robinson
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General Counsel