

SETTLEMENT AGREEMENT

This Settlement Agreement (herein referred to as the “Agreement”) between the Plaintiff class (hereinafter collectively referred to as the “Plaintiffs”) and the Defendant (hereinafter referred to as the “School Board” or the “District”) in the litigation brought in the United States District Court for the Middle District of Florida and styled Evelyn R. Ellis, et al. v. The Board of Public Instruction of Orange County, Florida, Case No. 6:62-cv-01215-ACC-GJK, provides for the resolution and termination of that litigation, including any pending or possible appeals. This Agreement follows the issuance of an Order in the litigation by Chief Judge Anne C. Conway, dated August 2, 2010, declaring that the School Board had achieved unitary status and dismissing the case. Despite that Order, from which the Plaintiffs have appealed, the parties wish to honor the cogent components of a prior settlement agreement that had been submitted to the District Court for its approval on February 12, 2010. While the School Board and the Plaintiffs, and their respective counsel, have different views on a number of matters that could have been the subject of contested litigation over the Board’s entitlement to a declaration of unitary status, both parties believe that a negotiated resolution of this matter is preferable. This Agreement provides the framework for accomplishing that goal in a manner

that is consistent with applicable legal principles and decisions of the Supreme Court and is fair, reasonable, adequate and equitable to all parties and which does not rely on the federal courts or the retention by the School Board of outside monitors to supervise its implementation or to resolve any further disputes.

1. Standards for Construction. All school replacement/renovation/addition projects identified below shall be designed and implemented so as to provide facilities that are fully adequate to support and provide a complete range of educational opportunities, and to take advantage of existing and new technologies as they are developed, to the extent they can be identified (e.g., computer system capacity, laboratories, media centers and individual classroom capacity, etc.), equal to those available at the appropriate (by grade level) educational prototype designs that have been created and constructed by the Orange County Public Schools.

2. Replacement Projects Scheduled for Fiscal Year 2010. The following school replacement projects, scheduled for Fiscal Year 2010 in the Tentative Capital Outlay Budget approved by the Orange County School Board on September 8, 2009, shall be completed on a timely basis and in accordance with the building standards articulated in paragraph 1 herein:

- (1) Evans High School;
- (2) Oak Ridge High School;
- (3) Lee Middle School; and,
- (4) Orange Center Elementary School.

3. Portable Facilities for Oak Ridge. During the construction of the replacement facility for Oak Ridge High School, its students shall be housed in portable or temporary facilities located on or near its present campus, in the same manner as was utilized by the District in connection with other recent high school replacements such as Apopka and Edgewater.

4. School Renovations/Addition/Replacement Projects Scheduled for Fiscal Years 2012-2016. The plans for the following school renovation/addition/replacement projects scheduled for funding (in the Tentative Capital Outlay Budget approved by the Orange County School Board on September 8, 2009 and scheduled for funding in Fiscal Years 2012-2016 in that budget) shall be supplemented, if and to the extent necessary, to meet the building standards articulated in paragraph 1 herein:

- (1) Eccleston Elementary School;
- (2) Grand Avenue Primary Center;

- (3) Pineloch Elementary School;
- (4) Wheatley Elementary School;
- (5) Carver Middle School; and,
- (6) Tangelo Park Elementary School.

The amended or supplemented replacement/renovation/addition projects developed through the process described above shall, in each instance, be completed as close to the originally scheduled date as possible, or earlier if possible. If funding shortfalls from anticipated revenue sources limited or earmarked for capital expenditures (e.g., sales taxes, capital improvement millage, COPS [Certificates of Participation], etc.) require delaying any projects that are scheduled in the Tentative Capital Outlay Budget approved by the Orange County School Board on September 8, 2009, for funding in Fiscal Years 2012-2016, any such project at a school enumerated by name above may be delayed but only if two of the other twenty school projects that are scheduled for funding during the FY 2012-16 period in that budget are also delayed, to insure that the delay affects both the named schools and others in an equitable fashion.

5. Additional Replacement/Renovation/Addition Projects. School replacement/renovation/addition projects shall be developed for the

following schools, and updated as necessary to meet the building standards articulated in paragraph 1:

- (1) Hungerford Elementary School;
- (2) Ivey Lane Elementary School;
- (3) Maxey Elementary School;
- (4) Mollie Ray Elementary School;
- (5) Richmond Heights Elementary School;
- (6) Washington Shores Elementary School; and,
- (7) Rock Lake Elementary School.

The replacement/renovation/addition projects developed through the process described in this paragraph shall be scheduled for commencement and completion as early as possible consistent with the other capital construction needs of the school system. Effective in Fiscal Year 2012 and thereafter, each time that the School Board approves the commencement of a school replacement/renovation/addition project other than those enumerated by name in either paragraph 4 or in this paragraph, it shall also approve commencement in the same year of at least one of the projects listed in this paragraph. This procedure shall continue to be used until each of the projects listed in this paragraph has been commenced.

6. School Closings. During the term of this Agreement, no school identified by name in this Agreement above shall be closed, unless:

(a) the School Board believes that severe financial exigencies (e.g., dramatic revenue shortfalls, significant reductions in operating revenues, etc.) require the closing of one or more of those schools, along with other school facilities, to accomplish a necessary reduction of operating expenditures; and,

(b) the School Board has undertaken all necessary and proper requirements of law for the closure of a school, including the adherence to any pertinent provisions of Florida Statutes, Administrative Rules as promulgated by the Florida Department of Education and any policies or procedures of the Orange County School Board; and,

(c) notice of the proposed school closing is provided to undersigned counsel for the Plaintiffs (or successor counsel, if any) by e-mail or overnight commercial service, and in writing to the Orange County Branch of the NAACP at the address included herein, at least twenty-one (21) days prior to the date of the School Board meeting at which the Board will vote to approve or disapprove the closing, to allow time for consultation and discussion between the parties to this Agreement.

A desire to reduce capital expenditures will not justify the closing of a school identified by name in this Agreement above since the Agreement also permits construction to be delayed so long as that delay affects both the named schools and others in an equitable fashion.

7. Facility Utilization. In conjunction with facilities improvements required in this Agreement, the School Board shall explore, design and take feasible steps to balance school utilization in areas where there are adjacent or nearby schools that are currently underutilized and schools that are currently operated over their permanent program capacity. In so doing, the District shall consider, as a significant factor, how balancing school utilization can also increase the level of desegregation in those areas.

8. Faculty and Administrative Recruitment Policy. The School Board shall adopt a Recruitment Policy based upon the sound educational value of employing staff (including especially, instructional professional and administrative staff) reflecting the broad diversity of backgrounds and experiences that characterize Orange County and Florida. Said Recruitment Policy shall commit the District to encourage, recruit, and seek to attract applications for all vacant positions from individuals of widely diverse backgrounds. The Recruitment Policy shall require the District to conduct ongoing recruitment activities carried out within the Human

Resources Department or a similarly identified department of the District. The activities should focus on widely disseminating information about vacancies that reflect broad geographic, gender, racial, and ethnic diversity in the applicant pools. If such activities include recruitment trips or visits by District staff to community and/or educational institutions, they should include visits to institutions and locations that, taken as a whole, reflect that broad diversity.

The parties agree that adoption and implementation of this Recruitment Policy is intended to produce a pool of applicants for vacant positions advertised by the District that is as diverse as possible and that it is not intended to require, establish, or support racial or ethnic quotas in the employment process.

9. Additional Requirements of the Superintendent. The Recruitment Policy shall also direct the Superintendent (or his or her designee):

(a) to take appropriate steps to inform all staff of the District who are involved in the employment process (and particularly school site managers who review applications for instructional staff positions, conduct interviews, and make hiring recommendations) of the Board's support for,

and commitment to, achieving diverse staffs of well-qualified employees from widely varying backgrounds, and,

(b) to direct the Department of Human Resources to provide guidance to staff involved in the employment and promotional processes concerning appropriate, educationally sound and legally valid methods to evaluate applicants that take into account a candidate's potential contribution to staff diversity at a particular school, program or location.

10. Reporting Requirements. The Recruitment Policy shall also provide that the Superintendent will designate a specific employee who shall, during the term of this Agreement, submit an annual written report directly to the Superintendent containing his or her conclusions regarding the District's progress toward increased staff diversity (including diversity in instructional, professional and administrative personnel at the school level). The Superintendent shall in turn present the findings of the annual written report to the School Board at a public meeting of the Board regarding these matters, along with any recommendations the Superintendent may have to advance the diversity goal. The designated employee's annual written report to the Superintendent shall be made publicly available to any person or organization on the District's website and through other means, upon request.

In compiling the annual written report the specified employee shall:

(a) Collect information concerning the numbers of instructional, professional, administrative, and classified personnel at each school. The information collected shall contain the gender, racial and ethnic identification of these employees. Information shall also be collected on those employees identified as twelve-month employees who work in the administrative offices of the District and staff who are in the school system's Assistant Principal and Principal pools;

(b) Gather information about the activities of the Human Resources Department pertaining to paragraph 8 herein;

(c) Provide a comparison of the diversity of the staff with previous years (including the diversity in instructional, professional, and administrative personnel at the school level) that may be reflected in the latest annual information; and,

(d) Provide the Area Superintendents of the District's Learning Communities, the Senior Director of Human Resources and any other such individuals with a copy of the written report and coordinate meetings, as necessary, to address any findings or conclusions contained in the report regarding staff diversity. The employee may also make recommendations regarding additional counseling or other supportive services to guide and

assist instructional personnel who desire to gain the experience and training that will qualify them for entrance into promotional pools.

11. Extra-Curricular Activities Policy. The School Board shall adopt an Extra Curricular Activities Policy directing the Superintendent to designate an OCPS employee who shall be responsible for insuring that adequate and complete information about athletic and non-athletic extra-curricular activities is available on a timely basis (that is, sufficiently in advance of the commencement of each school semester and school year, or of the dates when pupils engage in “tryouts” or otherwise must indicate their interest in participating) to all pupils in middle school or high school grades. The Policy shall state that the OCPS employee shall be responsible for coordinating with Area Superintendents, principals or any other administrators of high schools and middle schools to insure that complete and comprehensive lists of extracurricular clubs, organizations, athletic teams, etc., including official sponsor contact instructions and information about deadlines for expressing interest in participating, are updated on a timely basis. Such lists shall be available in a written format at each middle school and high school, clearly identified with a link or website address on the home page website of each middle school and high school, and, made available, upon request by any Parent Teacher

Organization or Parent Teacher Association at each middle school or high school. In addition, the list of available extra-curricular opportunities for students at each school shall be distributed by each high school or middle school to students and their parents at the beginning of each school year (for example, by inclusion in the Parent Guide, the Student Code of Conduct, or similar publication, receipt of which must be acknowledged by parents).

The OCPS employee designated by the Superintendent for this purpose shall, during the first semester of each school year during the term of this Agreement, review the materials available at each school and on the school's website to assure that they are accessible, accurate, and thorough. The employee shall, no later than at the conclusion of the first semester, provide to the Superintendent a written summary of the compliance by all middle and high schools in the District with the requirements of the Extra Curricular Activities Policy. This written summary shall thereafter be posted on the District's website, together with any comments or other information from the Superintendent on the subject.

At the beginning of each school year, the District shall utilize its Connect Orange automated telephone call system, or a similar program of mass communication, to notify and remind middle and high school students

and parents of the availability of complete information about extra-curricular activity opportunities at their school or on their school's home website.

12. Information Regarding Implementation. Upon reasonable notice by undersigned counsel for Plaintiffs (or successor counsel, if any) to counsel for the School Board, the School Board agrees to provide, through the Superintendent or his or her designee, relevant information to Plaintiffs regarding implementation of this Agreement, such as information regarding the type and extent of renovation/addition/replacement projects contemplated for schools identified in paragraphs 4. and 5. herein as they are developed, etc. Counsel for the parties will confer once this Agreement becomes effective, for the purpose of identifying the most efficient, effective, and least costly way in which such information can be described, requested and produced.

13. Term of Agreement. This Agreement, and any policies required herein, are subject to approval by the Orange County School Board. Once approved, this Agreement shall be executed by the parties through their counsel and Plaintiffs shall dismiss their appeal from the August 2, 2010 ruling in the *Ellis* litigation by no later than 30 days after the effective date. This Agreement shall be effective and binding from the date on which it is executed by all parties through the date on which all of the construction

projects described in paragraphs 2, 4 and 5 of the Agreement have been completed.

14. Development of Policy. The School Board shall develop and adopt such policies, as described in this Agreement, within ninety (90) days of the effective date of this Agreement.

15. Modification of Agreement. The provisions of this Agreement may be modified during the term of the Agreement by a written document executed by counsel for both the Plaintiff class and for the Orange County School Board.

16. Address for the Local Branch of the NAACP. The address for the local Branch of the NAACP for purposes of notification pursuant to paragraph 6 herein is as follows: P.O. Box 618285, Orlando, FL 32861.

Any changes to the address of the Local Branch of the NAACP shall be submitted by a representative of the local NAACP Branch to counsel for either party, at the addresses identified below.

17. Execution in Counterparts. This Agreement may be executed by the parties in counterparts.

18. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes any prior understanding or representation of any kind preceding the date of its execution. There are

no other promises, conditions, understandings, contracts or other Agreements, whether oral or written, relating to the subject matter of this Agreement.

Dated this ____ day of _____, 2010.

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