

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

A.M, by and through his next friend, Jeanette Murry; on behalf of himself and all other persons similarly situated,

Plaintiff,

v.

Case No.3:11cv344-TSL-MTP

JACKSON PUBLIC SCHOOLS BOARD OF TRUSTEES, in its official capacity, et al.,

Defendants.

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT,
CERTIFICATION OF SETTLEMENT CLASS AND TO SET A DATE FOR A
FAIRNESS HEARING**

Pursuant to Federal Rule of Civil Procedure 23(e), the Parties move the Court to issue an Order approving the attached Settlement Agreement and certifying the class for settlement and monitoring purposes, and retaining jurisdiction of the Settlement Agreement for enforcement purposes. In support of this Motion, the Parties state the following:

- 1) On June 8, 2011, Plaintiff filed this civil rights action against the Jackson Public Schools (“JPS”) Board of Trustees; Dr. Jayne Sargent, Interim Superintendent for JPS; Glenn Davis, Director of Security for JPS; Marie Harris, Principal of Capital City Alternative School (CCAS); Bobby Walden, Vice Principal of CCAS; Stacey Greenwood, a School Safety Officer at CCAS; and Franklin McKee, a School Safety Officer at CCAS, hereinafter collectively referred to as “the District” or “Defendants.” Plaintiff sought certification of a class of all students who currently attend, or will in the future attend CCAS; and declaratory and injunctive relief to end Defendants’ practice of handcuffing students to fixed objects at CCAS.

- 2) On September 26, 2011, the Court issued an Initial Case Management Order (ECF No. 26) ordering the Parties to conduct limited discovery for the purposes of class certification only. The Parties each conducted three, two-hour depositions, and exchanged numerous documents over the course of sixty (60) days.
- 3) The Settlement Agreement was not reached lightly and results from five negotiation sessions between the Parties, two of which occurred before Judge Parker. The Settlement Agreement requires Defendants to end the practice of handcuffing children to fixed objects and to undertake a series of reforms to improve the climate at CCAS and ensure greater transparency in school discipline procedures at CCAS. *See* Settlement Agreement, attached as Exhibit A. The Settlement Agreement is the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, and does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible relief.
- 4) The Settlement Agreement will spare the parties and the court from extensive litigation, and best serves the interests of the putative class.
- 5) The class affected by the Settlement Agreement is comprised of all students who currently attend and/or will attend CCAS in the future. Plaintiff's counsel has agreed to draft a written notice to current class members to explain the terms of the agreement, provide them with an opportunity to advise Plaintiff's counsel of any objections, and advise current class members of the date of any fairness hearing scheduled by the Court so that class members may have the opportunity to offer testimony on the fairness of the Settlement Agreement. The Parties agree that the notice to current class members shall

specifically state that this lawsuit and the Settlement Agreement address, settle and resolve only claims for injunctive and declaratory relief.

- 6) It is the intent of the Parties that this Honorable Court will not dismiss this matter but will retain jurisdiction for purposes of enforcing the Settlement Agreement, and the Parties respectfully request that an Order from this Court reflect the same.
- 7) It is also the intent of the Parties that this Settlement Agreement settles only claims for declaratory and injunctive relief and that the Settlement Agreement will not preclude any class member from bringing an individual damages claim against Defendants. The Parties respectfully request that an Order from this Court reflect the same.
- 8) For these reasons, the Parties respectfully request that the Court set this matter for a fairness hearing. Pending approval of this Settlement Agreement at the fairness hearing, the Parties respectfully request that the Court enter an Order 1) certifying the proposed settlement class; 2) granting approval of the settlement agreement; and 3) retaining jurisdiction for enforcement purposes.

Date: April 12, 2012

Respectfully submitted,

/s/ Vanessa J. Carroll

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I, Vanessa Carroll, Attorney for the Plaintiff, do hereby certify that I electronically filed the foregoing document and all accompanying exhibits with the Clerk of the Court using the ECF system, which sent electronic notification to the following:

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SO CERTIFIED, this 12th day of April, 2012,

/s/Vanessa J. Carroll
VANESSA J. CARROLL

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

A.M, by and through his next friend, Jeanette
Murry; on behalf of himself and all other persons
similarly situated,

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JACKSON PUBLIC SCHOOLS BOARD OF
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Defendants.

SETTLEMENT AGREEMENT

1. On June 8, 2011, Plaintiff filed suit against the Jackson Public Schools (JPS) Board of Trustees; Dr. Jayne Sargent, Interim Superintendent for JPS; Glenn Davis, Director of Security for JPS; Marie Harris, Principal of Capital City Alternative School (CCAS); Bobby Walden, Vice Principal of CCAS; Stacey Greenwood, a School Safety Officer at CCAS; and Franklin McKee, a School Safety Officer at CCAS, hereinafter collectively referred to as "the District" or "Defendants." Plaintiff sought certification of a class of all students who currently attend, or will in the future attend CCAS; and declaratory and injunctive relief to end Defendants' practice of handcuffing students to fixed objects at CCAS.
2. Without any admission on behalf of either, Plaintiff and Defendants agree that it is in the best interests of all parties to resolve this matter amicably without further litigation and cost to the taxpayers of Jackson, Mississippi.
3. This Agreement shall govern the operation of the Capital City Alternative School and/or any other alternative educational program operated by JPS pursuant to Miss. Code Ann. § 37-13-92.
4. This Agreement shall inure to the benefit of the proposed class of all students who currently attend and/or will attend CCAS in the future; and shall be binding upon the legal representatives and any successors of Defendants. The Parties stipulate to class certification for the purpose of settlement only, and agree to file with the Court a joint petition for class certification as part of their motion for approval

of this Settlement Agreement. Plaintiff's counsel shall bear the cost and burden of providing adequate notice of the Settlement Agreement to the settlement class.

5. For the purpose of this Agreement, the following definitions shall apply throughout:
 - a. The term "*fixed object*" refers to a railing, pole, chair, desk, bench, or other piece of furniture, whether or not such object is secured to the ground in some form or fashion.
 - b. The term "*handcuffing*" refers to placing a handcuff(s) around the wrist(s) and/or ankle(s) of an individual.
 - c. The term "*fixed restraint(s)*" refers to securing an individual to a fixed object with handcuffs, shackles, and/or any other device.

Specific Agreements

6. Defendants shall immediately issue a written directive to all employees of the Jackson Public School District barring the use of fixed restraints by all JPS employees on any JPS student.

7. Defendants shall immediately issue a written directive to all employees of the Jackson Public School District barring the use of handcuffs on all students under the age of 13 years old; and barring the use of handcuffs as punishment and/or for noncriminal conduct.

8. Without making any admission as to liability, Defendants shall revise the District's Student Restraint Policy to comply with federal law and best practices. Counsel for Plaintiff will retain experts in law enforcement and children's mental health to review the draft policy. Defendants shall work with the expert consultants retained by Plaintiff's counsel and consider the advice and opinions of Plaintiff's experts in revising the District's restraint policy. The new policy shall require proper documentation of all instances in which handcuffs or other restraints are used on students. Defendants shall complete revision of the Student Restraint Policy and present it for Board approval within 60 days of execution of this agreement.

9. Defendants shall write a letter to Marie Harris and Bobby Walden to specifically advise them that JPS has banned the use of fixed restraints and that future use of fixed restraints will result in immediate termination of employment with JPS. A copy of this letter and a copy of the District's new Student

Restraint Policy will be placed in the personnel files of Marie Harris and Bobby Walden. Defendants shall require Marie Harris and Bobby Walden to receive 15 hours of additional training on behavior management, trauma-informed communication, verbal de-escalation, and the safe use of restraints. Defendants shall comply with the terms of this paragraph within 60 days of execution of this Agreement.

10. Defendants shall conduct a school climate assessment of CCAS within 60 days of execution of this Agreement. In cooperation with the Monitor designated pursuant paragraph 17 *infra*, Defendants shall select a nationally-recognized school climate assessment instrument and designate sufficient District personnel to conduct the school climate assessment. The assessment shall include student, parent, and teacher satisfaction surveys. The Monitor will review the data collected through the school climate assessment and draft a report based on this assessment that discusses the findings of the assessment and identifies positive and negative factors affecting the school climate at CCAS. Defendants shall collaborate with the Monitor to develop policies and procedures to improve the school climate at CCAS.

11. Defendants shall collaborate with Plaintiff's expert to select a Social Emotional Learning (SEL) curriculum to be implemented at CCAS. The purpose of the SEL curriculum shall be to focus on serving the academic, social, emotional and behavioral needs of students affected by trauma; and to help CCAS students develop appropriate social skills and emotional regulation. Defendants shall consult with the Mississippi Department of Education's Assistant Superintendent of Alternative Schools to obtain guidance on how to integrate the SEL curriculum into the State curriculum. Defendants shall comply with the terms of this paragraph within 60 days of execution of this Agreement.

12. Defendants shall ensure that within 60 days of the execution of this Agreement all individuals employed at CCAS, including bus drivers, administration, and custodial and cafeteria staff will receive the complete training from Crisis Prevention Institute (CPI) on behavior management, verbal de-escalation, effective communication, crisis management, and the safe use of restraints.

13. Defendants shall ensure that within 60 days of execution of this Agreement all individuals employed at CCAS will receive training from Catholic Charities on effective communication strategies for children affected by trauma.

14. Defendants' PBIS consultant, Edwin Wilson, shall conduct a focused review of the implementation of PBIS at CCAS which shall include a review of all discipline data collected at CCAS since the District began implementing PBIS at CCAS, an on-site inspection of CCAS, and interviews with CCAS staff and students. Mr. Wilson shall write a report summarizing his findings and assessing the quality of PBIS at CCAS, and shall include recommendations for further reducing arrests of CCAS students, expulsions, in-school and out-of-school suspensions, and office referrals. Mr. Wilson shall arrange for the provision of additional PBIS training to CCAS staff if deemed necessary for full implementation of PBIS with fidelity at CCAS. Defendants shall comply with the steps outlined in this paragraph within 60 days of execution of this Agreement. Mr. Wilson shall continue to monitor PBIS implementation at CCAS and provide the Parties with a progress report every semester.

15. Defendants shall collaborate with the Monitor to create CCAS-sponsored extracurricular activities that are meaningful and accessible to all students placed at CCAS for any length of time.

16. In collaboration with the Monitor, Defendants shall create a Capital City Site Council comprised of parents of JPS students, JPS students, JPS Director of Social Work, a mental health professional, a representative from a child advocacy organization, JPS security personnel, and CCAS faculty to oversee the reforms outlined in this Agreement. The Monitor shall be responsible for identifying the students, parents, mental health professional, and child advocacy representative. Defendants shall be responsible for appointing the remaining members of the Site Council. CCAS students and their parents shall be notified in writing of the creation of this Site Council, the Site Council shall be described in the CCAS student handbook, and Defendants shall create a procedure for students and their parents to present comments and concerns to the Site Council. CCAS students and their parents shall be advised of the procedure to convey concerns to the Board. The Board will meet monthly to examine concerns, evaluate progress, oversee and guide the work of the monitor and consultants, and serve as a new level of accountability and transparency for practices at CCAS. Defendants shall comply with the contents of this paragraph within 60 days of execution of this Agreement.

Monitoring and Enforcement

17. Defendants shall contract with an Independent Monitor who will be responsible for overseeing and documenting Defendants' compliance with the terms of this Agreement and for providing and/or arranging technical assistance and training necessary to obtain Defendants' compliance with the terms of this Agreement. The Independent Monitor must have substantial experience in working with children with significant behavioral and mental health needs and providing appropriate educational and related services to this population. The Parties will attempt to mutually select an Independent Monitor who meets these criteria. If the Parties cannot reach an agreement regarding an Independent Monitor, both parties shall file with the Court the names of three (3) potential monitors and an overview of their qualifications. Magistrate Judge Michael Parker will select the Independent Monitor. The parties shall file their proposed monitors with the Court within ten (10) days of filing this Settlement Agreement with the Court. The cost for the Monitor's fees and expenses shall be borne by the Defendant. Defendants shall execute a contract with the agreed-upon Monitor within 30 days of selection of the Monitor.

18. The Independent Monitor shall have full and complete access to CCAS's premises and records as needed to track compliance with this Agreement. This shall include the ability to interview CCAS staff and students. Defendants agree to cooperate fully with the Monitor to ensure the Monitor has the ability to carry out the responsibilities set forth in this Agreement.

19. On a monthly basis, Defendants shall provide the Independent Monitor with school discipline data from CCAS to track the frequency of in-school and out-of-school suspensions, expulsions, arrests of students from CCAS property, and the use of restraints at CCAS.

20. The Monitor shall file with the Court and provide the parties with reports describing the Defendants' steps to implement this Settlement Agreement and evaluate the extent to which the Defendant has complied with each substantive provision of this Agreement. Such reports shall be issued quarterly, unless the parties agree otherwise. The reports shall be provided to the parties in draft form for comment at least two (2) weeks prior to their submission to the Court. These reports shall be written with

due regard for the privacy interests of individual youth and staff and the interest of the Defendants in protecting against disclosure of non-public information.

21. Defendants shall facilitate the Monitor's ability to fulfill the responsibilities described in this Agreed Order. The Monitor may consult experts or consultants retained by either party. All parties shall receive copies of all draft reports from experts to the Monitor prior to the issuance of any Monitor's report, and shall have the option of being present at briefings from such experts to the Monitor and Defendants. The Monitor may initiate and receive ex parte communications with the parties and their respective experts and consultants.

22. All non-public information obtained by the Monitor shall be kept confidential.

23. Neither party, nor any employee or agent of either party, shall have any supervisory authority over the Monitor's activities, reports, findings or recommendations.

24. The Monitor's oversight of this Agreement shall terminate after two years if Defendants' have obtained substantial compliance with the terms of this Agreement and if during this two year period Defendants have fully refrained from the use of fixed restraints on all students and the use of handcuffs on students under the age of 13 years; and if the incidence of student arrests from CCAS has not increased over this two year period.

25. The Court shall retain jurisdiction over this Agreement for enforcement purposes to ensure that the Parties fulfill their respective obligations under this Agreement. In the event that any matter related to this Agreement is brought to the Court, the Court may require briefing and any remedy within the Court's jurisdiction shall be available.

26. In the event that the Plaintiff determines the Defendant is non-compliant with any terms of this Agreement, Plaintiffs will seek to meet and confer with Defendants and resolve issues of non-compliance informally before seeking court intervention.

Miscellaneous Provisions

27. This lawsuit and this Settlement Agreement address, settle and resolve only claims for injunctive and declaratory relief. The notice to the settlement class will contain this same language.

28. Each party agrees to bear their own costs and attorneys' fees. However, in the event of a breach of the Settlement Agreement neither party is prohibited from seeking an award of costs and/or attorneys' fees incurred as part of their enforcement action and/or for any part of their original representation or defense of this case. Neither side waives the right to object to any future award of costs and/or attorneys' fees.

EXECUTED this 3rd day of April, 2012, by:



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