

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
CASE NO. 8:64-CV-98-T-23B

LEON W. BRADLEY, JR, et al.,

Plaintiffs,

vs.

PINELLAS COUNTY SCHOOL BOARD,
et al.,

Defendants.

**AMENDED STIPULATION FOR UNITARY STATUS IN THE AREAS
OF EXTRACURRICULAR ACTIVITIES, FACULTY ASSIGNMENT,
STUDENT ASSIGNMENT, RELATIVE QUALITY OF EDUCATION
AND MANDATORY INJUNCTION**

On December 17, 1999, the parties approved and executed a Stipulation for Unitary Status in the Areas of Extracurricular Activities, Faculty Assignment, Student Assignment, Relative Quality of Education and Mandatory Injunction. On February 1, 2000, the Court entered an order preliminarily approving the proposed settlement concerning the achievement of unitary status, scheduled a fairness hearing and ordered notification of the class and public. On February 28, 2000, the Court conducted the fairness hearing, at which time the Court received exhibits, heard testimony from Leon Russell on behalf of the plaintiffs and from J. Howard Hinesley, Superintendent of Schools, on behalf of the defendants and entertained comments about the proposed settlement from the representative of the City of St. Petersburg as well as 17 individual parents or citizens and an attorney representing several of these individuals and others who sought "charter school" status for the Marcus Garvey Academy.

During the fairness hearing, the Court requested that defendants' counsel file with the Court a statement of the neutral principles that the School Board has approved that would guide the Board in considering charter school applications and charters in the future. The Court further clarified what the Court was expecting in a letter dated March 13, 2000, to the School Board Attorney with copies to all other counsel.

On March 14, 2000, the School Board adopted a set of five neutral principles that it has applied in the past and intended to apply to any applications received prior to the December 17, 1999, stipulation and a set of seven neutral principles that it intended to apply in the future to charter applications and charters. At its following meeting, the School Board voted to delete one of the principles that was redundant of another principle.

After receipt of defendants' report on the neutral principles, a status hearing was held on March 22, 2000, at which the Court further inquired about the issue of the impact of charter schools on the School Board's ability and willingness to comply with the Stipulation and Court Order. Following that status conference, the Court entered an order dated April 5, 2000, again expressing the Court's concern about the impact of charter schools on the willingness and ability of the School Board to comply with the Stipulation and Court Order. The Court indicated that before it could justify approval of the Stipulation that

... an evidentiary, legal, or other demonstration is necessary of the means, whether by policy or otherwise, by which the School Board intends to achieve and maintain compliance with the proposed settlement agreement and by which that compliance will be reasonably guaranteed for the term of the agreement.

The Court also offered to schedule a prompt hearing to receive evidence or other submissions in writing or orally concerning the charter school issue. The

Court also suggested "at least one set of items" that may satisfy the demands of the record. Those items suggested certain actions that the parties could take with respect to the charter school issue.

The School Board requested the hearing offered by the Court and the Court scheduled the hearing for April 28, 2000. Prior to that hearing, the School Board voted to authorize its negotiating team to negotiate with the plaintiffs' representatives to include in an amended stipulation the "set of items" suggested by the Court. At the hearing on April 28, 2000, the Court heard the testimony of the School Board's designated representative, as well as the testimony of each individual School Board Member.

At the conclusion of the hearing, the Court reminded the parties that the mediation order was still in effect should the parties need to utilize it. On April 29, 2000, the mediator requested that the parties meet in mediation sessions and scheduled sessions for May 2 and 3, 2000. As a result of those sessions and further negotiations, the parties have agreed to amendments to the August 30, 1999, Amended Order and Subsection C of the December 17, 1999, Stipulation in the manner set forth below.

I

**Amendment to Section D. of the August 30, 1999,
"Amended Order Granting Unitary Status in the Areas
of Facilities and Resources, Transportation, and
Administrative Staff Assignment"**

Section D begins at page 10 of the August 30, 1999 Amended Order. At page 19, the Amended Order (and the rule thereby required to be adopted) shall be amended by the addition of the following new paragraphs before the subheading "Reports, Recommendations, and Comments from DMAC":

Charter Schools

DMAC shall also review applications for charter schools and amendments, if any, to applications for charter schools; and it may (in accordance with the provisions of Subsection C. ("Charter Schools") of the Student Assignment section of the December 17, 1999 "Stipulation for Unitary Status in the Areas of Extracurricular Activities, Faculty Assignment, Student Assignment, Relative Quality of Education, and Mandatory Injunction," as amended) provide comments to the School Board concerning whether the potential impact of the proposed charter may materially or noticeably impair the School Board's ability to carry out its obligations under this Amended Order or under the December 17, 1999 Stipulation, as amended.

In addition, DMAC shall review each proposed charter, each proposed amendment to a charter, and each proposed renewal of a charter prior to consideration by the School Board for final approval and may, in accordance with the provisions of Subsection C. ("Charter Schools") of the Student Assignment section of the December 17, 1999 Stipulation, as amended, provide comments concerning whether the potential impact of the proposed charter, the proposed amendment to a charter or proposed renewal of a charter may materially or noticeably impair the School Board's ability to carry out its obligations under this Amended Order or the December 17, 1999 Stipulation, as amended.

**Amendment to Subsection C. ("Charter Schools") of the
December 17, 1999 Stipulation for Unitary Status in the Areas
of Extracurricular Activities, Faculty Assignment, Student Assignment,
Relative Quality of Education, and Mandatory Injunction**

This subsection, beginning at page 18, shall be amended to read as follows (in its entirety):

Charter Schools

The limitations and restrictions of this section shall not apply to charter schools that enroll exclusively students who are identified as disabled in accordance with the Individuals With Disabilities Education Act, PL 105-17, or students who are eligible for dropout prevention entitlement programs.¹ Provided, however, nothing shall prevent the creation of charter schools that serve other dropout prevention needs so long as they are consistent with the terms of the Amended Order of August 30, 1999, and this stipulation as amended, including the limitations and restrictions of this section. The parties agree that except as limited in accordance with subsections 2.(b)(iii) through 2.(b)(vii) below, students shall be enrolled in charter schools by choice and not through assignment by the school district.

Notwithstanding any of the provisions of this Amended Stipulation, the parties may agree in writing to approve a charter school that will serve specific, identified dropout prevention needs that the school district is able to demonstrate

¹Dropout prevention entitlement programs as used in this sentence in the text include only charter school programs that contract with the Department of Juvenile Justice under Section 230.23161, Florida Statutes (1999) and charter school teenage parent programs under Section 230.23166, Florida Statutes (1999).

that it is unable to meet even though the student enrollment may exceed the maximum student enrollment as determined by subsection 2. (b)(vi) below.

1. Charter Applications

The obligation of the School Board to construct new student stations and to implement choice as required by the court order may not be fulfilled by the creation of charter schools within the district. The School Board may accept and approve or disapprove charter school applications in accordance with state law, provided, however, that any charter that is granted will comply in all respects with the provisions of the court order. Any application or amendment to an application that does not comply with the provisions of the court order will be denied.

2. Standards to be Applied to Charter School Applications and Charters

(a) Until such time as the choice plan without ratios is implemented in the 2007-2008 school year, the following standards shall be applied by the School Board in deciding whether to approve an application for a charter, whether to approve an amendment (if any amendments are permitted) to an application for a charter, whether to approve an application for renewal of a charter or for amendment of a charter, and deciding what provisions shall be included within a charter or amendment to a charter:

(i) Each charter school will comply with the provisions of court orders in this action that are applicable to Pinellas County public schools, including the August 30, 1999 Amended Order and this Stipulation, as amended.

(ii) Each charter school will comply with the applicable provisions of Florida law.

(iii) Each charter school will offer an educationally sound academic program.

(iv) Each charter school will be fiscally sound.

(v) Each charter school will be established at a specified location with a student enrollment of a specified size so as to assure that its approval and operation will not require changes in the five-year construction plan, taking into account the first sentence of the first paragraph in section 1 ("Charter Applications") above, provided, however, that nothing herein shall prevent the School Board from addressing capacity in the next five-year construction plan which may increase available stations for charter schools. This shall not relieve the School Board of responsibility for new construction specified under the Amended Order dated August 30, 1999. Any changes in the five-year construction plan shall be consistent with the Amended Order of August 30, 1999, and the Stipulation of December 17, 1999, as amended by this Amended Stipulation. Any claim that such changes are not in compliance shall be resolved in the ADR process.

(vi) Each charter school will be established at a specified location with a student enrollment of a specified size so as to assure that its approval and operation will not materially or noticeably impair the School Board's ability to comply with the parties' agreement as reflected in the August 30, 1999 Amended Order and this Stipulation, as amended.

(b) The parties agree that these standards shall be effectuated in the process of charter school application approval and charter drafting as follows:

(i) by requiring that applicants for charter schools explain in their applications how they will meet the standards;

(ii) by including language in each charter that commits the organization operating the charter school to compliance with the standards as a mandatory condition for retention of its charter;

(iii) by including language in each charter that requires the organization operating the charter school to admit black and non-black applicants as required by Florida law subject to the limitation that the school's total enrollment must be within the racial ratio limitations established by this amended Stipulation for public schools at similar grade levels (and, during the period of controlled choice, within the same choice area);

(iv) by including language in each charter that requires the organization operating the charter school, prior to the period of controlled choice starting in the 2003-2004 school year, to admit applicants as required by Florida law subject to the limitation that an applicant may not be admitted if his or her withdrawal from the public school to which he or she would otherwise be assigned by the school district [the "sending school"] would (based upon the school district's projected enrollments of black and non-black students at each school for the school year for which admissions are to be made) cause the sending school to fall outside the racial ratio limitations established for the sending school by this Stipulation, as amended;²

² The parties agree that each applicant who is not admitted because of this requirement may be retained on a waiting list, and that after the ten-day enrollment count at the commencement of the school year has been completed, may be offered admission to the charter school if his or her admission will not cause the charter school to fall outside the racial ratio requirements applicable

(v) by including language in each charter that requires the organization operating the charter school each year, after it has made preliminary admissions decisions in accordance with the provisions of Florida law and the other provisions of this agreement.

1. to transmit to the school district (prior to any notification to applicants and in accordance with a time schedule to be established by the school district) rank-ordered lists of black and non-black applicants to the charter school whom the charter school wishes to accept for admission, so that the school district may determine whether admission of any one or more of such applicants (taking into account the admissions decisions of other charter schools) would be inconsistent with the limitation provided in subparagraph (iv) above; and
2. thereafter to make its final admission decisions, and notify applicants of those decisions, in a manner consistent with the determination by the school district described in 1. above, thus admitting only applicants whose acceptance the school district has determined will not result in a violation of the limitation provided in subparagraph (iv) above;

(vi) by including language in each charter that limits the student enrollment at the charter school to a specified number of students calculated as follows:

1. determine the total number of student stations³ within the relevant choice area for that level of school (not including the number for that proposed charter school)

to it and also will not cause the sending school to fall outside the racial ratio requirements applicable to the sending school.

³ This refers to program capacity. The number of student stations will be calculated in the same manner utilized by the district in preparing the program capacity document using the annual FISH report except that the maximum student enrollment of any existing charter schools shall be included. The new student stations required by the Amended Order of August 30, 1999 and those approved in the current five-year facilities work plan will also be included.

2. determine the expected student enrollment at that level of school within the relevant choice area;⁴
3. multiply the number determined in 2 by 125 percent;
4. subtract the number determined in 1 from the number determined by 3;
5. multiply the difference determined in 4 (use 0 if it is a negative number) by the district utilization factor⁵ for that level of school.

The product determined in 5 will be the maximum student enrollment for the charter school until after controlled choice unless the charter application is for fewer students, in which event the maximum will be the number of students requested in the approved application.

Once a maximum is calculated it cannot be reduced except as provided in footnote 3. Each year the district shall recalculate the maximum and will increase (but not decrease) the maximum student enrollment as appropriate. Once a student is admitted to a charter school, he or she is entitled to remain there until the student elects to leave, moves on to the next level school, receives a disciplinary reassignment, is expelled or the school ceases operation.

⁴ For the purposes of applying this provision prior to the October 24, 2000, determination by the School Board with respect to the number of choice areas and the choice plan, calculations of existing student stations, and expected student enrollments shall be based upon the proposed three-area choice plan that has been recommended by the Superintendent to the School Board as one alternative configuration for the choice plan. The School Board shall include language in each charter granted, amended or renewed prior to the October 24, 2000, decision about the choice plan that requires the organization operating the charter school to agree that the total student enrollment it may have may be modified by the School Board after that decision should a different configuration be adopted by the School Board.

⁵ The district utilization factor is 1.0 for elementary schools, .85 for middle schools, and .90 for high schools.

(vii) by including language in each charter for an existing public school that seeks to convert to charter status providing that until such time as the choice plan without ratios is implemented in the 2007-2008 school year, if the charter enrollment process for any school year does not result in utilizing a proportion of the conversion charter school's maximum enrollment (as calculated above) that is at least equal to the lowest proportion of utilized capacity for that level of school in the relevant choice area in the school year before the conversion, then the conversion charter school will be subject to a special student choice process for all public schools for that school year in order to bring its enrollment up to that lowest proportion of utilized capacity in the relevant choice area.

Until such time as the choice plan without ratios is implemented in the 2007-2008 school year, no public school shall be approved for conversion to charter school status unless it demonstrates the support of 75% of the teachers and 75% of the parents of the existing students enrolled at the school according to procedures established by rules of the State Board.

(viii) by including language in each charter that, notwithstanding any provision of Florida law providing a different procedure, requires the organization operating the charter school to submit to the School Board an application to amend its charter (that shall be subject to the procedures for consideration and approval set forth below) before the school may:

1. increase the number of students it will admit (beyond that number set forth in the charter);
2. change the location, or add one or more additional locations at which it will operate (other than that set forth in the charter); or

3. materially alter its curriculum or course offerings (from that set forth in the charter).

(c) These standards will be applied by the School Board in considering approval of any application and in formulating the provisions to be included within any charters after December 17, 1999, as well as to any renewals of charters after that date.

(d) Until such time as the choice plan without ratios is implemented in the 2007-2008 school year, the standards set forth above shall not be revoked, modified or altered through supplementation in any respect without prior submission to, and the written concurrence of, Plaintiffs' counsel and approval by the Court. Any application by the School Board, during the time period specified above, of standards other than those set forth above or modified with the written concurrence of the Plaintiffs' counsel and the approval of the Court, shall constitute grounds upon which Plaintiffs' counsel may invoke the ADR process.

3. Procedure for Considering Charter School Applications

Until the implementation of the choice plan without ratios in the 2007-2008 school year, upon receipt of any application to establish and operate a charter school in Pinellas County, or upon receipt of any amendment to such an application, the School Board will immediately provide a copy of same to Plaintiffs' counsel and separately to DMAC for review. In order to provide a meaningful opportunity for such review, the Board will provide copies of such application or amendment to an application to Plaintiffs' counsel and DMAC at least 40 days prior

to the School Board's scheduled consideration of final approval or disapproval of such application or amendment.

DMAC will provide the School Board with its comments, if any, concerning whether the potential impact of the proposed charter may materially or noticeably impair the School Board's ability to carry out its obligations under the August 30, 1999 Amended Order or under this Stipulation, as amended, no later than seven days prior to the School Board's scheduled consideration of final approval or disapproval of such application or amended application. Similarly, Plaintiffs' counsel will notify the School Board in writing, no later than seven days prior to the School Board's scheduled consideration of final approval or disapproval of the application or amended application, about any aspects of the application or amendment that Plaintiffs' counsel contends fail to comply with the August 30, 1999 Amended Order or this Stipulation, as amended (including specifically the standards that the School Board is required, by the terms of this amended Stipulation, to apply in determining whether to approve a charter application, amendment to an application, charter or amendment to a charter). If the proposed charter application or amendment to a charter application is uncontested by Plaintiffs' counsel, the School Board may take such action as it deems appropriate.

Until such time as the choice plan without ratios is implemented if the School Board approves a charter application or an amendment to a charter application notwithstanding the objection of Plaintiffs' counsel made in accordance with the preceding paragraph, the Alternative Dispute Resolution Procedures of the court order will be initiated to resolve the dispute. Pending the outcome of that

ADR process, any time limits otherwise applicable under state law will be tolled; in addition, during the pendency of ADR proceedings, the School Board may undertake the negotiation of charter provisions with the applicant but shall not take final action to grant a charter until the ADR process has been completed. The School Board's ultimate action with respect to both the charter application or amendment to the charter application and the charter will be consistent with the outcome of the ADR process.

4. Procedures for Granting Charters

Until such time as the choice plan without ratios is implemented in the 2007-2008 school year, the School Board will provide a copy of any proposed charter, proposed amendment to a charter, or proposed renewal of a charter to Plaintiffs' counsel, and separately to DMAC, for review at least 40 days prior to the School Board's scheduled consideration of final approval or disapproval of such charter, amendment to a charter or proposed renewal of a charter.

DMAC will provide the School Board with its comments, if any, concerning whether the potential impact of the proposed charter, proposed amendment to a charter, or proposed renewal of a charter may materially or noticeably impair the School Board's ability to carry out its obligations under the August 30, 1999, Amended Order or under this Stipulation, as amended, no later than seven days prior to the School Board's scheduled consideration of final approval or disapproval of such charter, amendment to a charter, or proposed renewal of a charter. Similarly, Plaintiffs' counsel will notify the School Board in writing, no later than seven days prior to the School Board's scheduled

consideration of final approval or disapproval of the charter or amendment to a charter, about any aspects of the charter or amendment to a charter that Plaintiffs' counsel contends fail to comply with the August 30, 1999, Amended Order or this Stipulation, as amended (including specifically the standards that the School Board is required, by the terms of this Stipulation, as amended, to apply in determining whether to approve a charter application, amendment to a charter application, charter, amendment to a charter, or proposed renewal of a charter). A copy of DMAC's comments, if any, and of the objections, if any, of Plaintiffs' counsel, shall be provided to the charter applicant.

The applicant may agree to amend the proposed charter (or amendment to the charter) to overcome the objections. Any such amendment will be provided to both DMAC and Plaintiffs' counsel within seven days of receipt. DMAC will provide the School Board with its comments, if any, within 30 days of receiving the applicant's amendment, and Plaintiffs' counsel will similarly notify the School Board in writing within 30 days as to whether the amendment, if any, is acceptable or whether the proposed charter (or amendment to a charter) remains contested. Statutory time limits under state law provisions shall be tolled to the extent necessary to comply with this agreement. If the proposed charter or amendment to a charter is uncontested by Plaintiffs' counsel, the School Board may take such action as it deems appropriate.

If the proposed charter or amendment to a charter remains contested, the Alternative Dispute Resolution Procedures of the court order shall be initiated to resolve the dispute, and any action concerning approval of the charter, charter

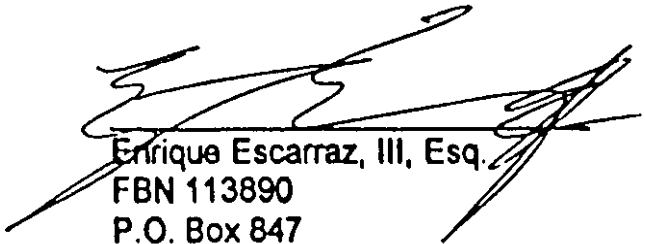
amendment or renewal shall be consistent with the outcome of the ADR process. Notwithstanding any provision contained in statutes or guidelines concerned with the approval of a charter, the School Board will take no action to approve the charter, amendment to a charter, or renewal until the outcome of the Alternative Dispute Resolution Process for disputes under the court order, and any time limits for approval under state law will be tolled.

5. Effect of ADR resolution

A finding under the ADR that the charter application (or amendment), or the proposed charter (or amendment or renewal) violates any aspect of the Court Order (including the August 30 Amended Order and this amended Stipulation) shall be conclusively presumed to be good cause to reject a charter application or amendment or proposed charter or amendment.


The parties shall stipulate that a charter school applicant or charter holder whose charter application (or amendment) or charter (or amendment) is involved in the ADR process shall be a participant in the ADR process for the sole and limited purpose of resolving any disputes related to the application (or amendment) or charter (or amendment).

Respectfully submitted, this 28th day of June, 2000.


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THE SCHOOL BOARD OF
PINELLAS COUNTY, FLORIDA


Max R. Gessner, Ph.D.
Chairman

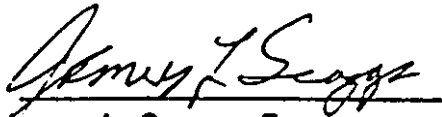

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Superintendent

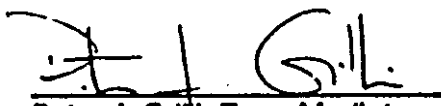

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