

Settlement Agreement and Release

Whereas, the Black Parents Workshop ("BPW") and other plaintiffs (collectively referred to as "Plaintiffs") commenced an action in the United State District Court for the District of New Jersey against The South Orange Maplewood School District ("the District) and other defendants (collectively referred to as "Defendants"), entitled *Black Parents Workshop v. The South Orange Maplewood School District*, Case 2:18-cv-02726 ("the Action"); and

Whereas, BPW has raised concerns regarding racial access, equity and integration in the District; and

Whereas, the South Orange Maplewood Board of Education shares many of those concerns; and

Whereas, the District, prior to and during the pendency of the Action, has undertaken steps to address these concerns including but not limited to developing a comprehensive equity plan and eliminating leveling in course enrollment; and

Whereas, BPW and the District agree that additional measures are necessary to achieve satisfactory racial access, equity and integration; and

Whereas, the parties have amicably resolved their differences and desire to memorialize a settlement of the Action;

It is Now, Therefore, Agreed as follows:

1. The Action will be dismissed with prejudice on the terms set forth herein.

2. Plaintiffs acknowledge that the District has already engaged Dr. Edward Fergus ("Fergus"), a nationally renowned consultant, to assist with formulating plans to promote racial equality of educational opportunity in the District. It is agreed that Fergus will evaluate and assess the specific needs of the District regarding supplemental program to remediate the effects of tracking and leveling on African-American and other disproportionately affected groups of students.

3. Fergus shall make recommendations to the District on further improvement of a comprehensive equity plan that will detail:

a. How Black elementary and middle school students will be assisted in preparing for advanced-level study at Columbia High School

b. How current Black Columbia High School students enrolled in advanced-level courses will be supported through tutoring and enrichment, and programs that will address issues of proficiency, student trauma and effective study habits.

c. How current Black Columbia High School students not enrolled in advanced-level courses will be supported and encouraged to enroll in these courses, and what programs and services will be offered this student population.

d. How elementary schools will be integrated, specifically: the manner in which the student population will be

redistributed, the method of redistribution, the racial balance the district seeks to achieve across elementary schools, and the timeline for achieving full and complete integration.

Prior to finalization of Fergus's assessment and recommendation, designated representatives of BPW will be afforded the opportunity to meet with him to offer input for his consideration. The District will give due consideration to Fergus's assessment and recommendation, will implement the recommended programming and will commit sufficient financial resources to effectuate the identified programming; provided, that if the District has an articulable reason why a particular recommendation is not feasible or necessary it will consult with designated representatives of BPW to reach an amicable resolution. If such a resolution cannot be reached, either party may apply to the Court for a judicial determination of whether the disputed recommendation is necessary to accomplish the overall objectives identified in this Settlement Agreement. For purposes of this Settlement Agreement, Fergus's recommendations, once finalized, shall be referred to as "the Fergus Plan."

4. The District will update its written integration plan ("the Integration Plan") setting forth how integration is to be accomplished and which includes specific goals and timetables for completion.

5. The District consents to monitoring of the implementation of the Fergus Plan and the Integration Plan set forth in paragraphs three (3) and four (4) by John E. Wallace, Jr., Esq. ("Wallace"). The District shall make available to Wallace such documentation and data as are reasonably necessary at mutually agreed upon intervals to

determine achievement of the goals, and compliance with the timetables, in both Plans. Wallace shall have no self-executing authority to direct any actions by the District; however, he may make non-binding recommendations to the District regarding implementation of both Plans. Within ninety (90) days of the execution of this Agreement, the monitor will develop a monitoring plan, including proposed plans for conducting assessments, compliance reviews and audits. The plan will:

- a. clearly delineate the requirements of the Agreement to be assessed for compliance;
- b. establish a schedule for assessing each outcome measure;
- c. establish a schedule for completing a compliance review or audit of each requirement of the Agreement for the three (3) school years immediately following the execution of this Settlement Agreement;.
- d. set forth the method for communicating with the parties.

6. The monitor is not a state or local agency, or an agent thereof, and accordingly the records maintained by the monitor will not be deemed government records subject to public inspection pursuant to the Open Public Records Act. In the event the monitor receives an Open Public Records Act or other right-to-access request, the monitor will notify and confer with the Parties regarding how to respond to the request. Any reports or findings of Wallace may be evidential in any proceeding to enforce this Settlement Agreement. Wallace's engagement as monitor shall terminate at the conclusion of the third

school year following the execution of this Settlement Agreement, or sooner if Wallace certifies that the District has achieved the goals and adhered to the timetables in both Plans; provided, that Wallace's engagement may be extended should a Court, on application brought by Plaintiffs prior to expiration of the monitor's term, find the District to be in material non-compliance with the terms of this Settlement Agreement.

7. The District will provide verification from the New Jersey Department of Education ("NJDOE") that the District Amistad curriculum completely aligns with NJDOE standards at all applicable grade levels.

8. By January 31st of each year, the District will prepare a written report of course enrollments by race and gender for all courses in grades 6-8 and 9-12 for each specific school and, to the extent permitted by federal and state student data privacy laws concerning data de-identification, will publicize the report on the District website and through social media. This obligation shall remain in effect for three school years following the expiration of the monitor's term, or following the monitor's certification of compliance as set forth in paragraph six (6), whichever comes first.

9. The District will release a monthly written report of data on student suspensions (in-school or out-of-school) or expulsions by race, gender and school and, to the extent permitted by federal and state data privacy laws concerning data de-identification, will publicize the report on the District website and through social media.

This obligation shall remain in effect for three school years following the expiration of the monitor's term, or following the monitor's certification of compliance as set forth in paragraph six (6), whichever comes first.

10. The District has created the position of Assistant Superintendent of Equity and Access whose job responsibilities will include, in addition to those set forth in the original job description, overseeing and reporting progress, and reporting to the Board of Education and to the public regarding the District's progress in meeting the terms of this Settlement Agreement.

11. Within constitutional and other legal constraints, the District will enhance its efforts to identify qualified minority candidates for teaching positions in the District, and will work collaboratively with BPW to establish a relationship with Historically Black Colleges and Universities to identify candidates for employment opportunities in the District.

12. The District agrees to continue to improve implementation of the Attendance and Credit Recovery processes.

13. The District, through its insurance carrier, will pay the following amounts. The Plaintiffs agree to provide to defense counsel a letter from CMS stating the amount of any Medicare lien or that there is no lien. The Plaintiffs understand this is a material term of the settlement and settlement funds will not be paid to the Plaintiffs unless and until this information is provided to defense counsel.

a. To Plaintiff

\$10,000.00

b.	To Plaintiff		\$30,000.00
		[REDACTED]	
c.	To Plaintiff		\$30,000.00
		[REDACTED]	
d.	To Plaintiff	[REDACTED]	\$25,001.00
	and	[REDACTED] o/b/o	
		[REDACTED] minor	\$ 4,999.00
e.	To Plaintiff		\$10,000.00
		[REDACTED]	
f.	To Plaintiffs' Counsel		\$115,000.00

14. Taxes. The Defendants make no representations regarding the Federal or State tax consequences of any of the payments referred to herein and shall not be responsible for any tax liability, interest or penalty incurred by the Plaintiffs, which in any way arises out of or is related to said payment. The Plaintiffs shall pay the Federal or State taxes, if any, which are required by law to be paid by the Plaintiff with respect to this settlement.

15. Release. It is hereby understood and agreed that all Plaintiffs, including but not limited to Plaintiffs individually and on behalf of their minor children as the case may be, for and in consideration of the payment of monies, release of claims, and/or other consideration set forth herein, do hereby irrevocably and unconditionally release and forever discharge for itself, its successors, predecessors and assigns, the Defendants and their insurers, any related entities, and any and all of their predecessors, successors, assigns, agents, employees, members and representatives and each of their present and former directors, officers, members,

executives, employees, attorneys, agents, and all persons acting by, through, under or in concert with them, and all of their successors, assigns, agents and representatives, of and from all manner of actions(s), cause(s) of action, and suit(s), whether known or unknown, anticipated or unanticipated, including but not limited to, any claims, debts, sums of money, claims for compensatory education, claims for attorney's fees, interest, expenses and costs, damages, judgments, executions, claims and demands of any nature whatsoever, in law or in equity, civil or criminal, vested or contingent, which the Plaintiffs ever had, now has or may assert, for, upon or by reason of any matter, cause or thing whatsoever to the date hereof, it being the intention herein of Plaintiff to release Defendants from any and all claims of any and every nature, including attorney's fees, up to the date of this Agreement, unrestricted in any way by the nature of the claim, including, though not by way of limitations, all matters which were asserted or could have been asserted in all actions or claims identified above. This release includes, but is not limited to, any and all rights, causes of action, claims or demands of any kind through the date of this release and further includes any alleged injuries or damages suffered at any time after the date of this release by reason of the continued effects of any such acts which occurred on or before the date of this release including any claims to attorney's fees.

16. No Additional Claims. The Plaintiffs covenant and promise that they will not hereafter file or cause to be filed on their behalf any charge, complaint, legal or administrative action of any nature before any court or administrative agency to assert any

claim against the Defendants, arising out of the claims asserted in the lawsuit, except as may be necessary to enforce this agreement.

17. No Admissions. This agreement does not constitute an admission by the Defendants of any wrongful action or violation of any Federal or State Statute, policy or procedure, or common law rights, or of any other possible or claimed violation of law or rights. The Defendants specifically deny any wrongful action or conduct and are settling this case solely to avoid the cost and uncertainty of litigation.

18. Non-Disparagement. The Parties promise they will not defame or disparage each other or their employees, servants and agents.

19. No Assignment. The Plaintiffs represent that they have not assigned to any third party any claim the Plaintiffs have, may have or believes they may have against the Defendants.

20. Binding on the Parties. This agreement shall be binding upon and inure to the benefit of the Parties and any of their respective heirs, legal or personal representatives, employees, officers, directors, successors and assigns.

21. Binding Law. This agreement shall be construed in accordance with the laws of the State of New Jersey.

22. Authorization to Execute. The Parties represent that they are fully authorized to execute this agreement and that all formalities attendant to the execution of this agreement have been satisfied.

23. Voluntary Execution. The Parties acknowledge that they have carefully read and fully understand all of the terms of this

agreement, including the general release contained herein, that the Parties have had a reasonable amount of time to consider the terms of the agreement, and that they enter into this agreement voluntarily and with the advice of counsel.

24. No Third-Party Beneficiaries. This Agreement is intended to confer rights and benefits only on the Parties. Nothing in this Agreement is intended to give nor shall it give to anyone who is not a Party to this Agreement.

25. Entire Agreement. The terms and conditions contained herein constitute the entire understanding and agreement among the parties with respect to the settlement of the lawsuit. The Parties acknowledge that in executing this document, they have not relied upon any statement, promise or representation, oral or written, not set forth herein. This Agreement contains the entire agreement between the Parties as to the settlement of their disputes. No amendment, modification or addendum to this Agreement shall be effective unless in writing and dated subsequent to the date hereof and executed by the individuals and the duly authorized officers of the respective corporate Parties. The requirement for such a writing shall apply to any waiver of the requirement of a written modification pursuant to this Paragraph and this shall be deemed an essential term of the Agreement.

26. Severability. Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity and enforceability or the remaining parts, terms or provisions shall not be affected thereby and said illegal, unenforceable or invalid part,

term or provision shall be deemed not to be part of this Agreement.

27. Inadmissibility of Agreement. This Agreement has been entered into in reliance upon the provisions of Rule 408 of the New Jersey Rules of Evidence, which precludes the introduction of evidence regarding settlement negotiations in any legal proceeding. Evidence relating to the negotiation, terms, or facts of this Agreement shall not be admissible by any Party in any legal proceeding except to enforce the terms of this Agreement.

28. Captions. Any captions to paragraphs or subparagraphs of this Agreement are provided solely for the convenience of the parties. They do not constitute and shall not be construed to constitute part of this Agreement and shall not be used as an aid in the interpretation of the Agreement or the contracting intent of the Parties.

29. Counterparts. The parties may execute this Agreement in separate counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute one and the same Agreement.

30. Further Documents. The Parties agree to execute and deliver any and all further documents which may be required to effectuate this Agreement.

31. Notification of Alleged Non-Compliance The parties agree that any allegation of non-compliance with the terms of this Settlement Agreement shall be communicated specifically, promptly and in writing, to the Superintendent of Schools, with a copy to the Board of Education President and the District's General Counsel. The parties agree that this notification mechanism shall be the exclusive

means of bringing allegations of non-compliance to the District's attention, and that each of the Plaintiffs and their representatives shall refrain from communicating with individual Board of Education members or District staff other than the Superintendent concerning these matters. The District shall be afforded a reasonable opportunity to cure any alleged non-compliance before any application is made to the Court to enforce the terms of this Settlement Agreement.

Date: \_\_\_\_\_, 2020

\_\_\_\_\_

Date: \_\_\_\_\_, 2020

\_\_\_\_\_

Date: \_\_\_\_\_, 2020

\_\_\_\_\_

Date: \_\_\_\_\_, 2020

\_\_\_\_\_

Date: \_\_\_\_\_, 2020

\_\_\_\_\_ Individually  
and o/b/c \_\_\_\_\_ a  
Minor

Date: \_\_\_\_\_, 2020

THE SOUTH ORANGE MAPLEWOOD SCHOOL  
DISTRICT

By: \_\_\_\_\_  
Annemarie Maini  
Board President