

## NEGOTIATED SETTLEMENT AGREEMENT

DATE: January 30, 2009

*In the Matter Between:*

Petitioners: P.R., N.S., B.J.S.F., K.R. and a class of all students of the Palm Beach County Public Schools with emotional/behavioral disabilities, or who manifest behavioral issues, and who have been, or are being, subjected to repeated disciplinary removals totaling more than ten school days (including in-school suspensions, court referrals, out-of-school suspensions, and undocumented, illegal removals from school, *e.g.*, “cool-off removals”).

National Association for the Advancement of Colored People (NAACP), an organizational complainant

Respondent: Palm Beach County Public Schools (PBCS)

### AGREEMENT

We, the undersigned (hereinafter also “Parties”), having participated in negotiations and being satisfied that the provisions of the resolution of our dispute are fair and reasonable, hereby agree to abide by and fulfill the following:

#### POSITIVE BEHAVIOR INTERVENTIONS AND SUPPORTS (PBIS) CONSULTANT

The PBCS agrees to contract with an individual or organization (Consultant) with school-based experience and nationally recognized expertise in the development and implementation of district and school-wide PBIS programs and services.

1. The Consultant (including any staff of the Consultant that the Consultant needs to assist the implementation of PBIS in a large school district like PBCS) shall oversee the implementation of this Agreement and shall provide specific and individualized technical assistance and training in the areas set forth below. The Consultant shall incorporate those elements of the “Safe

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and Civil Schools” CHAMPS program that are congruent with the implementation of district-wide PBIS as required under paragraphs #4 and #5 of this Agreement. The Consultant (including any staff of the Consultant that the Consultant needs to assist the implementation of PBIS in a large school district like PBCS) shall oversee the implementation of this Agreement and shall provide specific and individualized technical assistance and training in the areas set forth below.

2. PBCS shall finalize this contract (Contract) for such Consultant services within forty-five (45) days of the mutual selection of a Consultant by PBCS and the Petitioners. This Contract shall run for the term of this Settlement Agreement (Agreement) as specified in Paragraph 24. Within twenty (20) days of the execution of this Agreement, the Petitioners shall provide PBCS with a list of at least three (3) Consultants whom they feel are qualified and available to provide such technical assistance and training. PBCS may contract with any of the Consultants proposed by the Petitioners, or it may, within twenty (20) days of receipt of the Petitioners’ list of available Consultants as specified herein above, provide the Petitioners with the names of other individuals or organizations with whom it would like to contract to provide these services. If the parties cannot reach a mutual agreement regarding designation of the Consultant within five working days of Petitioners’ receipt of PBCS’s list of possible Consultants, then a meeting between the parties will be conducted within seven (7) days of written notice to the other party regarding a disagreement and a Consultant will be selected at the meeting. If the parties are unable to agree upon a Consultant at this meeting, then the matter will be resolved by mandatory arbitration, the cost of which shall be borne by PBCS. At the meeting, the Parties shall mutually agree on the individual who will serve as the impartial arbitrator.
3. The Consultant shall be required to develop a plan (hereinafter “Plan”) to address all of the provisions in this Agreement within ninety (90) days of the date of execution of the Consultant’s contract.

### PBIS PLAN AND TRAINING PROTOCOL

4. Within ninety (90) days of the execution of the Consultant’s contract, the Consultant will be required to develop and begin implementation of a district-wide PBIS Plan and training protocol which shall include all schools in PBCS. The PBIS plan and training protocol shall include, but not be limited to, strategies, objectives, and timelines related to: implementation of

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district and school-wide PBIS, the development of functional behavioral assessments (FBAs), the development and implementation of effective behavior intervention plans (BIPs), and the process for conducting appropriate manifestation determination reviews (MDRs). The PBIS plan and training protocol shall also include guiding principles, student expectations, and a school-wide positive behavior support and discipline plan for students, parents or caregivers, staff and community. It is understood that the Consultant is authorized to delegate technical assistance and training responsibilities to other individuals under his or her supervision and control or colleagues in the field with similar training and experience. Such delegation costs shall be built into the Consultant's proposed contract budget.

5. The PBIS training protocol shall include all principals, assistant principals, teachers (general and special education), student support services staff, paraprofessionals, disciplinarians, other school administrators, and other educational service providers working at all schools in the district and shall also include school resource officers, bus drivers and cafeteria workers. PBCS agrees to fully implement the PBS training and implementation protocol developed by the Consultant pursuant to this agreement for the term of this agreement specified in Paragraph number 24 below.

### RELATED SERVICES

6. PBCS agrees that, within ninety (90) days of the hiring of the Consultant, the Consultant will review every student in the above-defined class who is receiving less than one (1) hour of related services per week. The Consultant shall make recommendations regarding the appropriate level of related services per week and such recommendations will be implemented by PBCS within sixty (60) days. Notice of the Consultant's recommendations for a particular student shall be provided to the student's parent(s), guardian(s), or caregiver(s). If a student's parent(s), guardian(s), or caregiver(s) objects to the recommendations either orally or in writing within 10 school days of receipt of notice, an IEP meeting will be held within 10 school days to address the objection. For purposes of this agreement, the term "related services" shall have the same meaning and scope as provided in 20 C.F.R. § 300.34 (2006). If an objection by a student's parent(s), guardian(s), or caregiver(s) to the Consultant's recommendation(s) for related services is not resolved at an IEP meeting held to address the objection, PBCS shall have no obligation to petition for a due process hearing, pursuant to the

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Individuals with Disabilities Education Act and Florida law, to override the lack of consent. In such case, the IEP Team's determination as to related services will prevail. Nothing in this paragraph shall be deemed to usurp or contradict the overriding legal requirement to make an individualized determination for related services as to each student in the class.

### LEAST RESTRICTIVE ENVIRONMENT (LRE)

7. PBCS and the Consultant shall jointly develop, and PBCS shall implement, specific strategies, objectives, and timelines for significantly increasing the above-defined class of students' access to regular education class settings. PBCS and the Consultant shall jointly develop measurable benchmarks and outcomes for determining the successful implementation of the above strategies, objectives and timelines. These strategies, objectives, and timelines will be implemented for the term of this agreement specified in Paragraph 24 and shall commence no later than the beginning of the 2009-2010 school year.

### DISCIPLINE

8. PBCS and the Consultant shall jointly develop, and PBCS shall implement, strategies, objectives, and timelines for significantly reducing the number of suspensions of students identified in the above-defined class. PBCS and the Consultant shall jointly develop measurable benchmarks and outcomes for determining the successful implementation of the above strategies, objectives and timelines. These strategies, objectives, and timelines will be implemented for the term of this agreement specified in Paragraph 24 and shall commence no later than the beginning of the 2009-2010 school year.
9. During the term of this Agreement, the Consultant shall be granted ready access to all data and tracking information relevant to the issues Petitioners have alleged in their State Complaint, which PBCS collects and maintains in the usual and ordinary course of its School District operations. The Consultant's access shall specifically include all data and tracking information in the PBCS TERMS and Educational Data Warehouse (EDW) electronic information systems relative ESE referrals, office disciplinary referrals (ODRs), removals (suspensions and expulsions), trancies, 45-day placements, and restraint incidents for students in the district. Nothing in this paragraph shall be construed or interpreted to require PBCS to develop and implement any other system, electronic or manual, to acquire and

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analyze data and tracking information that: (a) PBCS does not collect and/or maintain in the usual and ordinary course of its School District operations; or (b) would impose upon PBCS a different standard of data collection than the State of Florida requires generally of other School Districts.

10. PBCS shall, within sixty (60) days of the execution of this Settlement Agreement, disseminate to all school building administrators, including assistant principals and disciplinarians, a Superintendent's Bulletin requiring strict compliance with state and federal discipline requirements for students with disabilities, including the requirements for conducting MDRs, providing IEP services beginning with the 11<sup>th</sup> cumulative day of out-of-school removals, and the development and/or review of appropriate FBAs and BIPs. The Bulletin shall also specifically prohibit undocumented removals of students with disabilities for disciplinary reasons via "cooling off," "parent pick-up," or other undocumented methods of removals for disciplinary reasons.
11. Upon full execution of this Agreement, PBCS will make a PDF copy of the complete Agreement available to the general public through a link on its website. The Agreement's website link will also provide: (a) a non-legal, general summary of the Agreement, using commonly understood words and phraseology; (b) instructions on how and where to obtain a complete copy of the Agreement, which include a PBCS telephone number, e-mail address, and U.S. Postal Service mail address. In addition, the PBCS Director of Exceptional Students Education agrees to co-present an information session on the Agreement to the general public with a representative of the Legal Aid Society of Palm Beach County, Inc.
12. Prior to the beginning of the 2009-2010 school year, PBCS, in consultation with the Counsel for the Petitioners, shall revise the district's code of conduct, subject to the School Board's review and approval process. The district's code of conduct shall be consistent with the district's new PBIS Discipline protocol and the development and implementation of district and school-wide PBIS. The Code of Conduct shall provide that students with disabilities are not subject to expulsions and that seclusion of students is contrary to school district policy. For purposes of the foregoing sentence, seclusion shall mean "placement of a student alone in a locked room or the involuntary restriction of a student to a room or other designated area from which the student is prevented from leaving." (The foregoing definition

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may be modified by the School Board during its review and approval process.) The revised code of conduct for all students shall also include the following elements:

- a. A section detailing IDEA's disciplinary protections and procedures, including those outlined in Paragraph 10, above, for students with disabilities;
- b. Reasonable alternatives to suspension and expulsion, when applicable, including the use of equitable consequences that are consistent with the law;
- c. The use of suspension and expulsion, when applicable, only as a last resort and for the most egregious behavior;
- d. The use of multi-disciplinary teams to evaluate and recommend solutions to behavior problems;
- e. Collaboration and partnerships with after-school when appropriate; and
- f. For a student engaged in on-going misconduct, despite appropriate interventions, the requirement that a collaborative team be convened with appropriate staff and the parent or caregiver(s) to address the escalated behaviors and design and implement an effective individualized behavior support plan that may include but is not limited to:
  - i. Intensive behavioral supports and strategies;
  - ii. Adapted curriculum and instruction; and
  - iii. Communication strategies.

13. The code of conduct shall be incorporated into a "Discipline Handbook" that is easily understood by students, parents, and caretakers and disseminated to every school. Counsel for Petitioners shall be provided with a draft of the Discipline Handbook which shall include the revised School Code of Conduct and shall be afforded an opportunity to furnish comments prior to its completion and dissemination.

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14. Petitioners' counsel may request that the Consultant, in collaboration with the Exceptional Student Education Director, review the files of any member in the above-defined class for the purpose of making recommendations, if necessary, for modifying, amending, or creating an Individualized Behavior Plan. Such requests shall be made in writing to the Director and a meeting shall be convened with the consultant and the Director within 15 school days to consider such request. Unless impractical to do so, recommendations of the Consultant will be implemented by PBCS within sixty (60) calendar days. Notice of the Consultant's recommendations for a particular student shall be provided to the student's parent(s), guardian(s), or caregiver(s). If a student's parent(s), guardian(s), or caregiver(s) objects to the recommendations either orally or in writing within 10 school days of receipt of notice, an IEP meeting will be held within 10 school days to address the objection. If an objection by a student's parent(s), guardian(s), or caregiver(s) to the Consultant's recommendation(s) regarding a behavior plan is not resolved at an IEP meeting held to address the objection, PBCS shall have no obligation to petition for a due process hearing, pursuant to the Individuals with Disabilities Education Act and Florida law, to override the lack of consent. In such case, the IEP Team's determination as to related services will prevail. Nothing in this paragraph shall be deemed to usurp or contradict the overriding legal requirement to make an individualized determination for related services as to each student in the class.

### EDUCATIONAL BENEFIT

15. PBCS agrees to provide any student in the above-defined class with access to individual or small group intensive reading and math remediation opportunities during the school day if such student is determined to be more than two (2) years behind his or her chronological grade level based upon grades, standardized test scores or curriculum-based assessments, or has scored below a Level 3 on Florida Comprehensive Assessment Test in Reading, Mathematics, or both. Students shall be screened or otherwise assessed by PBCS during the 2008-2009 regular school year to determine which students qualify for reading or math remediation services. Access to individual or small group intensive reading and math remediation opportunities shall be provided to such students within 30 days of the determination that the student meets the criteria set forth in this paragraph and shall continue throughout the term of this Agreement. Notice shall be provided to the parent(s) of any students receiving reading, math or both

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reading and math remediation services. If a student's parent(s), guardian(s), or caregiver(s) object to such remediation services either orally or in writing within 10 school days of receipt of notice, an IEP meeting will be held within 10 school days to address the objection.

### TRANSITION SERVICES

16. PBCS and the Consultant shall jointly develop, and PBCS shall implement, specific strategies, objectives, and timelines for ensuring all students in the above defined class who are sixteen (16) years of age or older receive appropriate transition services including vocational education. PBCS and the Consultant shall jointly develop measurable benchmarks and outcomes for determining the successful implementation of the above strategies, objectives and timelines. These strategies, objectives, and timelines will be implemented for the term of this agreement specified in Paragraph 24 and shall commence no later than the beginning of the 2009-2010 school year.
17. PBCS and the Consultant shall jointly develop, and PBCS shall implement, a district-wide training initiative involving all middle school and high school counselors, special education coordinators, and a "lead" special education and regular education teacher at each school about vocational courses and programs available in the district and about post-secondary education opportunities, including the admission criteria for these programs and their availability to students with disabilities.
18. PBCS shall ensure that transition plans of students in the above-defined class account for and consider the students' unique strengths and interests and that there is a nexus between the transition plans and the students' IEP goals and objectives. The Consultant will be required to annually review a random sample of transition plans of students in the class to determine if the plans account for and consider the students' unique strengths and interests and also to determine if a nexus exists between the transition plans and the students' IEP goals and objectives.

### INDIVIDUAL REMEDIES

19. PBCS and counsel for Petitioner have agreed to provide B.J.S.F. with: a.) individualized tutoring in reading, using the Wilson program, and individualized tutoring in math; b.) individualized instruction in the use of assistive technology, both in text-to-speech technology and the use of word

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processing software with word prediction capabilities; c.) the addition of the related services of social work services to address the absenteeism, parent counseling and training to address the same issue; d.) monitoring, review and any necessary staff training regarding his individual behavior management plan by the Consultant.

### GENERAL SETTLEMENT PROVISIONS

20. PBCS, the Consultant, and counsel for the Petitioners shall meet at least twice a year in Palm Beach County for the purpose of reviewing PBCS' progress in implementing the Plan required under this Agreement. A third meeting shall be held annually if requested by PBCS, the Consultant, or counsel for the Petitioners.
21. The Consultant shall submit quarterly reports to the PBCS and Petitioners counsel on PBCS's progress in implementing and complying with the Plan and this Agreement's provisions.
22. PBCS shall provide counsel for Petitioners with access to all documents developed in conformance with the provisions of this Settlement Agreement, including but not limited to the PBIS Training Protocol. Nothing in this paragraph shall be construed to require PBCS to violate any federal or state privacy law, or produce any document designated as "student records" under applicable School Board Policies.
23. PBCS agrees to actively recruit teachers and other instructional personnel who meet the qualifications and standards established by the state of Florida for each service provider and to place such special education service providers in PBCS classrooms and alternative schools serving students identified in the class.
24. This Agreement shall terminate three (3) years from the date the Plan specified in Paragraph 3 is finalized, provided that PBCS has substantially complied with the Plan's and this Agreement's provisions, as determined by consensus of the Consultant, the Petitioners, and PBCS. Upon attaining substantial compliance with the Plan's and the Agreement's provisions, PBCS shall thereafter have no obligations under the Agreement. If PBCS is not in substantial compliance with the provisions of the Agreement (including the measurable benchmarks and outcomes for determining the successful implementation of the strategies, objectives, timelines listed in the

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Agreement) by the date specified herein, the Agreement shall continue until substantial compliance is determined through the dispute resolution protocol set forth in Paragraph 26 of this Agreement.

25. A single point of contact will be mutually selected by the Petitioners and PBCS to address concerns related to compliance with the terms of this agreement. The point of contact designated by PBCS shall have the authority to investigate and correct any non-compliance with respect to this Agreement. The designated point of contact for PBCS will be a designee of the Chief Academic Officer. The designated point of contact for the Petitioners will be their attorneys listed in this agreement at the Legal Aid Society of Palm Beach County, Southern Legal Counsel and the Southern Poverty Law Center. The individual selected as the single point of contact will provide written notice to the other party regarding any concern(s) related to compliance with the terms of this agreement and the receiving party shall investigate those concern(s) and shall provide a response to the other party within a five (5) day period unless it is clearly not feasible to do so due to pre-established breaks in the PBCS calendar and/or other events outside of the control of the designated contact individual.
26. If the Parties cannot agree on whether there has been compliance with the terms of this Agreement, or as to any dispute, claim, question, or disagreement arising out of or relating to this Agreement, or the breach thereof, or with the proper remedy for non-compliance, the parties shall utilize the following resolution protocol, in the order listed below in this paragraph:
  - a. Parties shall first use their best efforts to settle such disputes through good faith consultation and negotiation with each other, recognizing their mutual interests, and attempt to reach a just and equitable solution satisfactory to all Parties. This period shall be fifteen (15) calendar days, beginning from the date written notice is received identifying the dispute.
  - b. If the Parties are unable to reach a solution through good faith consultation and negotiation within fifteen (15) days, then upon written notice by either party to the other, the parties shall attempt to mediate the dispute with the assistance of a neutral third party. The neutral third party shall be provided by the Florida Department of Education or any agency thereof, or shall be an education expert

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mutually agreeable to all Parties. This period shall be thirty (30) calendar days, beginning from the date written notice is received identifying the dispute.

- c. If the Parties are unable to reach a solution through mediation within thirty (30) days, the Parties may agree to resolve the dispute by binding arbitration administered by the American Arbitration Association, in accordance with its then applicable rules and judgment. In such an event, the Florida Rules of Civil Procedure shall apply, unless the Parties mutually agree otherwise. An award rendered by arbitration may be entered in any court having competent jurisdiction thereof.
- d. If the Parties are unable to reach a solution through mediation and the Parties do not elect to resolve the dispute through binding arbitration, then either Party shall have the right to seek enforcement of the terms of the Agreement in any court of competent jurisdiction.

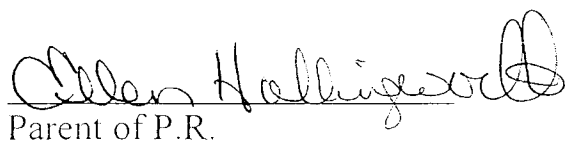
- 27. In consideration of this Agreement, and, after PBCS has executed a contract with the Consultant referenced above, the named Petitioners agree to withdraw their class administrative complaint and to waive any and all rights that each such Petitioner may have to request a special education due process hearing to address any and all issues involving PBCS that exist under this agreement.
- 28. This Agreement fully resolves the claims which are set forth in the complaint and which arose prior to the signing of this Agreement, of the students named in the Petition and identified by pseudonym: P.R., N.S., B.J.S.F. and K.R. This Settlement Agreement shall not diminish or affect the individual rights of any students receiving special education services in PBCS and who qualify under the above-defined class who are not specifically named in this Agreement.
- 29. This Agreement is entered into in good faith for the purpose of amicably resolving concerns raised by the Petitioners and in no way constitutes any admission of error, omission, or wrongdoing on the part of PBCS.
- 30. It is expressly agreed that all terms of this Agreement are contractual and not merely recitals. The parties to this Agreement intend that this document will incorporate the complete terms and conditions of their agreement.

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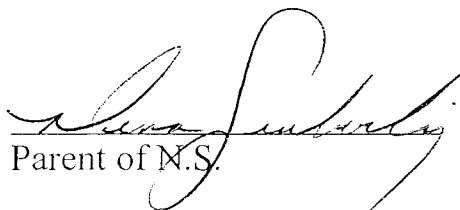
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31. The undersigned parents certify that their representatives and attorneys have reviewed all of the terms of this Settlement Agreement with them and that they fully agree with all of the terms of this Settlement Agreement.
32. The parties agree that all undersigned counsel and undersigned representatives of PBCS have the authority to enter into and execute this Settlement Agreement on behalf of their clients, including PBCS.
33. This Agreement and each of its terms is subject to approval by the School Board.
34. This Agreement is the complete and exclusive statement of the agreements and compromises reached among and between the Parties. This Agreement supersedes and merges all prior proposals, understandings, or other agreements, including, without limitation, draft agreements, oral or written statements, or terms implied by discussion or conduct, among and between the Parties relating to the subject matter of this Agreement.
35. Wherever in this Agreement any consent or approval is required, such consent or approval shall not be unreasonably withheld or delayed.
36. The section headings in this Agreement are only for the convenience of the Parties. Section headings shall not be construed as modifying and/or governing terms in the section to which the heading refers.
37. This Agreement is made in the State of Florida under the Florida Constitution and laws of Florida and shall be so construed.

Parents of Petitioners:

  
Parent of P.R.

2/3/09  
Date

  
Parent of N.S.

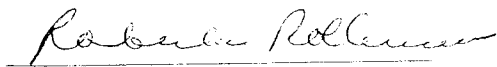
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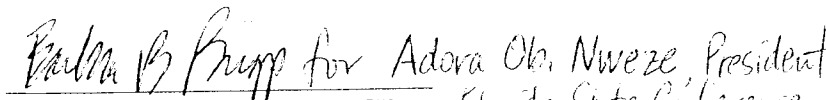
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Parent of B.J.S.F.

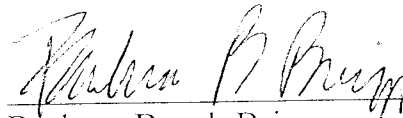
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Parent of K.R.

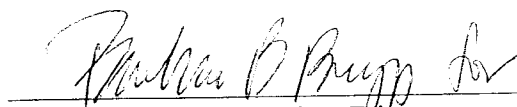
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Date

  
\_\_\_\_\_  
Representative of NAACP Florida State Conference  
NAACP (with authorization) Date 2/2/09

Counsel for Petitioners:

  
\_\_\_\_\_  
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Staff Attorney  
Legal Aid Society of Palm Beach County  
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Florida Bar No. 0978670

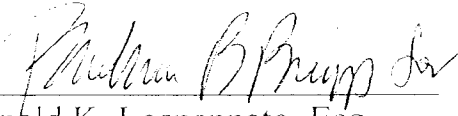
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Date

  
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1/30/09  
Date

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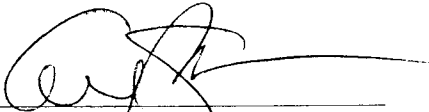
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1/30/09  
Date

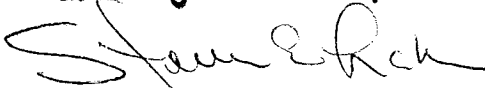
School District Official:



Arthur C. Johnson, Ph.D., Superintendent  
Palm Beach County Public Schools

2/18/09  
Date

**Reviewed and Approved  
as to Legal Sufficiency**

  
Senior Counsel, academics  
2/18/09