

AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____ 2002, by and between:

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

a body corporate, hereinafter referred to as the "SBBC", whose principle place of business is 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301

and

SOUTH BROWARD HOSPITAL DISTRICT/MEMORIAL HEALTH CARE SYSTEM

hereinafter referred to as the "AGENCY." whose principle place of business is 3501 Johnson Street, Hollywood, Florida 33021

WHEREAS, the SBBC must fulfill its constitutional obligation to educate children of compulsory school age; and

WHEREAS, the AGENCY serves, as patients, children who are residents of the State of Florida and who are now enrolled in, or have applied for enrollment in, educational programs under the jurisdiction of the SBBC; and

WHEREAS, the SBBC agrees to provide an educational component as part of the AGENCY's program.

WHEREAS, the AGENCY operates the JOE DIMAGGIO CHILDREN'S HOSPITAL;

NOW, THEREFORE, in consideration of the mutual covenants embodied herein, and other valuable considerations, the parties to this contract mutually agree as follows:

ARTICLE 1 - RECITALS

1.01 Recitals. All recitals set forth above are true and correct, and incorporated herein.

ARTICLE 2 - SPECIAL CONDITIONS

2.01 **Term.** This Agreement will be in effect from July 19, 2001, or the date of SBBC approval, whichever is later, and continue through the end of Summer School 2002, with adjustments to staffing and delivery systems as appropriate. Services will be provided in accordance with the approved SBBC calendar (attachment).

2.02 **Emergencies.** In the event of serious threat or harm to SBBC personnel, the Superintendent's Designee, the Administrative Principal, has the authority to suspend educational services for up to ten (10) days to allow for the SBBC and the AGENCY to address and resolve the emergency situation.

2.03 **SBBC's Designee.** The SBBC's designee for purposes of administering this Agreement will be the Superintendent of Schools who may assign a designated administrator for monitoring compliance and educational program administration.

2.04 AGENCY's Designee. The AGENCY will identify one person with whom the SBBC is to communicate on all compliance issues related to this Agreement.

2.05 The SBBC shall provide:

- a) Each instructional personnel, based on average daily attendance of credit and non credit earning students , is limited to 300 student contact minutes per school day;
- b) Staff development for teachers in current instructional and behavior management methods;
- c) Support services as determined by the SBBC;
- d) Annual evaluation of SBBC teachers and access to the professional orientation program; and
- e) Appropriate instructional software as determined by SBBC personnel.

2.06 The AGENCY shall provide:

- a) Opportunities for SBBC personnel to participate in appropriate AGENCY staff training and case conferences;
- b) The general availability of personnel to respond to security problems in the classroom, if needed;
- c) Computers, including the necessary phone/data lines, that are networked to provide the appropriate educational software determined by SBBC personnel;
- d) Medical personnel to supervise needs of students; and
- e) Classroom furniture including appropriate instructional wall coverings.

2.07 The AGENCY and the SBBC will collaborate to:

- a) Develop an appropriate schedule within the framework of the teacher contract.
- b) Establish regularly scheduled meetings to facilitate communication and proactive problem solving.

2.08 Reimbursement. The AGENCY agrees to reimburse the SBBC on a pro-rata basis for one teacher's salary, including fringe benefits when student attendance fails to generate an average of fifteen (15) unweighted FTE, excluding summer school, for both survey periods (October and February). The deficit will be calculated based on the difference between the revenue (revenue=unweighted FTEs x state weight x 80% of based student allocation) generated from the program less the standard teacher's salary. Shortfall reimbursements from the AGENCY will be made by May 30th of each year to the SBBC.

2.09 Supervision. Supervision and control of students shall be the sole responsibility of the AGENCY. However, the AGENCY shall inform the SBBC when a student is involved in a serious incident or is injured as defined by the SBBC.

2.10 Code of Conduct. The SBBC shall provide the Code of Student Conduct which shall be signed by the parent(s)/guardian(s) and the student as part of the intake process. The Code of Student Conduct shall be enforced by the AGENCY.

2.11 Immunization. The AGENCY agrees that students who participate in the educational program must comply with the State of Florida immunization requirements.

2.12 Fee Collection. Any fees collected by the AGENCY will not be collected as a condition of student enrollment in the educational program.

2.13 AGENCY Incident Procedures. The AGENCY shall provide the SBBC its written procedures regarding critical incidents – bomb threats, fire and other such incidence(s) that could put students and/or teachers in jeopardy of bodily injury and/or cause bodily injury within 30 days of the contract being signed by both parties.

2.14 AGENCY Intake Procedures. The AGENCY shall provide the SBBC its written procedures governing intake, evaluation, and completion of required medical/educational forms for potential placement in Hospital/Homebound.

2.15 Student Meals. The AGENCY shall provide access to meals for students in the program.

2.16 Transition. All students' effective transition, both short and long-term, to the home, community, school and/or the work environment shall be a joint responsibility of the AGENCY and SBBC personnel.

2.17 Discharge. The AGENCY shall inform the SBBC of a student's potential discharge from the AGENCY as soon as possible. The AGENCY shall include in a patient follow-up survey regarding satisfaction with the SBBC's educational program.

2.18 Curriculum. The responsibility for administration of the instructional program rests with the SBBC and will be conducted in accordance with SBBC policies and rules, which include, but is not limited to, scheduling and staffing patterns.

2.19 Materials and Supplies. Except for computers agreed to be provided by the AGENCY, the SBBC shall furnish those teaching materials and supplies necessary to provide the appropriate curriculum and instructional program for the students.

2.20 Supplemental Efforts. Any informational and/or promotional materials which the AGENCY prepares regarding the program shall indicate that the SBBC is providing the educational component to the program.

2.21 Facilities/Furniture/Safety Requirements. The facilities will be provided and maintained by the AGENCY at the Joe DiMaggio Children's Hospital at 3501 Johnson Street, Hollywood, Florida. The AGENCY will comply with the facility safety requirements embodied in the State Uniform Building Code for Public Educational Facilities and the Florida Department of Education's State Requirements for Educational Facilities (SREF), especially those pertaining to fire safety, storage of hazardous materials, exit marking, lighting, ventilation, evacuation, and occupancy loads. Permanent student classrooms must provide a minimum of twenty-five usable square feet per pupil, with appropriate student seating and storage areas. The AGENCY will provide classroom furniture for student and teacher use. Instructional personnel must be provided adequate space for desk, file cabinets, instructional materials, and secured storage of SBBC -owned equipment and confidential documents, such as student tests and records.

2.22 Testing and Staffing room. The AGENCY will make available a quiet, private room for SBBC sponsored psychological evaluations, ESE staffings, and parent conferences.

2.23 Telephone Services. The AGENCY shall provide a dedicated telephone line, at no cost to the SBBC, for a SBBC provided telephone facsimile machine for SBBC use only. SBBC personnel shall be afforded unlimited private access to a telephone for official school-related business. In addition, the AGENCY shall provide telephone lines, at no cost to the SBBC, for instructional telecommunications purposes at mutually agreed upon locations.

2.24 Damaged Property. The AGENCY assumes responsibility for any damage to, or loss of SBBC property, which occurs after the close of the school day. The AGENCY will be billed by the SBBC for repair or replacement costs. The AGENCY will make such remuneration within thirty days of billing.

2.25 Health Certificates. The AGENCY shall maintain current sanitation and health certificates and submit to annual fire inspections for all buildings as part of its educational program.

2.26 Building Maintenance. The AGENCY shall maintain buildings used to service educational programming to students in a state of good repair and submit to SBBC inspections upon request.

2.27 Transportation. Only SBBC approved vehicles may be used to transport students during the school day for school sponsored activities.

2.29 Student Performance. Student performance will be evaluated annually by the SBBC.

2.30 Grievance Procedure. In the event that a dispute arises under this Agreement, the parties agree to the following dispute resolution measures:

- Step 1 is resolution of the dispute at the School Principal level;
- Step 2 is resolution of the dispute at the Area Superintendent level;
- Step 3 is resolution of the dispute by the Superintendent of Schools.

2.31 Indemnification. Each party agrees to be fully responsible for its acts of negligence, or its agent's acts of negligence when acting within the scope of their employment and agrees to be liable for any damages resulting from said negligence.

ARTICLE 3 – GENERAL CONDITIONS

3.01 No Waiver of Sovereign Immunity. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity or limitation of liability by any agency to which sovereign immunity or limitation of liability may be applicable.

3.02 No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

3.03 Non-Discrimination. The Parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.

3.04 Termination. This Agreement may be canceled by either party during the term hereof upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.

3.05 Records. Each Party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each Party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees of non-compliance with that law.

3.06 Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the Parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.07 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.08 Preparation of Agreement. The Parties acknowledge that they have sought and obtained whatever competent advise and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.09 Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

3.10 Compliance with Laws. Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.11 Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

3.12 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.13 Assignment. Neither this Agreement or any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party.

3.14 Force Majeure. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.15 Place of Performance. All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.16 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not effect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.

3.17 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To School Board: Franklin L. Till, Jr.
Superintendent of Schools
The School Board of Broward County, Florida
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

With a Copy to: James Notter
North Central Area Superintendent
School Board of Broward County, Florida
600 Southeast Third Avenue, Fifth Floor
Fort Lauderdale, Florida 33301

To Hospital: Frank V. Sacco, CEO
Joe DiMaggio Children's Hospital
Memorial Health Care Systems/
South Broward Hospital District
3501 Johnson Street
Hollywood, Florida 33021

With A Copy to:

Nina Tucker, Administrator
Joe DiMaggio Children's Hospital
3501 Johnson Street
Hollywood, Florida 33021

3.18 Captions. The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.19 Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals.

(CORPORATE SEAL)

THE SCHOOL BOARD OF BROWARD
COUNTY, FLORIDA

BY _____
PAUL D. EICHNER, ESQ., Chairperson

ATTEST:

FRANKLIN L. TILL, JR.
Superintendent of Schools

Approved as to form:

EDWARD MARKO
School Board Attorney

THE SOUTH BROWARD HOSPITAL DISTRICT

Agency Name

(CORPORATE SEAL)

The South Broward Hospital District

Name of Corporation/Agency

ATTEST:

BY: _____

Name and Title

_____, Secretary

-or-

Witness

Witness

The following Notarization is Required for Every Agreement Without Regard to Whether the Agency Chose to Use a Secretary's Attestation or Two (2) Witnesses.

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20_____ by _____ of

Name of Person

on behalf of the Corporation/Agency.

Agency

He/She is personally known to me or produced _____

Type of Identification

As identification and did/did not first take an oath.

My Commission Expires:

Signature - Notary Public

(SEAL)

Printed Name of Notary

Notary's Commission Number