

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and STATE OF
NEW YORK *ex rel.* ANTONY MONTERO,

Plaintiffs,

v.

INNOVATIVE EDUCATIONAL PROGRAMS, LLC,

Defendant.

Civil Action No. 12-CV-094
(Block, J.)

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the United States Department of Education (collectively the “United States”), Innovative Educational Programs, LLC (“IEP” or “Defendant”), and Antony Montero (“Relator”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Innovative Educational Programs, LLC, is a New Jersey limited liability corporation that operated after-school tutoring services in New York City and various other parts of the United States and obtained payment from the United States for these services.

B. On January 9, 2012, Antony Montero filed this action in-camera pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b), and the New York State False Claims Act, New York State Fin. Law §§ 189 *et seq.* (the “Civil Action”). As alleged by Relator in the Civil Action complaint, IEP, a provider of Supplemental Educational Services (“SES”), improperly billed and obtained federal funds for after-school tutoring services that IEP never

provided to students in New York City and elsewhere throughout the United States. The United States investigated these allegations and intervened in the Civil Action on or about 3/1/2021.

C. The United States contends that it has certain civil claims against IEP for the following conduct: Between 2009 and 2012, IEP provided SES in the form of after-school tutoring services to underprivileged students attending underperforming public schools in New York City and nationwide. The New York City Department of Education (the “NYC DOE”) paid IEP \$72.80 per hour for each student that IEP tutored. This money consisted entirely of funds provided to New York State by the United States under the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, 20 U.S.C. § 6301 *et seq.* As a condition for getting paid for its tutoring services, IEP was required to certify that its attendance records were true and accurate. IEP knowingly presented or caused to be presented false or fraudulent claims for payment of federal funds for providing tutoring services to students on days when the students were absent from school. That conduct, including but not limited to any and all conduct alleged in the Civil Action, is referred to below as the “Covered Conduct.”

D. IEP denies the United States’ allegations in Paragraph C and the Relator’s allegations in the Civil Action.

E. This Settlement Agreement is neither an admission of liability by IEP nor a concession by the United States that its claims are not well founded.

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator’s reasonable expenses, attorneys’ fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. IEP shall pay to the United States One Million, One Hundred and Eighty-Five Thousand Dollars (\$1,185,000.00) (“Settlement Amount”), of which \$406,621.37 is restitution, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney for the Eastern District of New York, no later than 30 days after the Effective Date of this Agreement.
2. Conditioned upon the United States receiving the Settlement Amount from IEP and as soon as feasible after receipt, the United States shall pay One Hundred and Seventy-Seven Thousand, Seven Hundred and Fifty Dollars (\$177,750.00) to Relator by electronic funds transfer in accordance with instructions to be provided by Relator.
3. No later than 30 days after the Effective Date of this Agreement, IEP shall pay to Relator Fifteen Thousand Dollars (\$15,000) for expenses, and attorney’s fees and costs by check made payable to Antony Montero and David Abrams, and delivered to Relator’s attorney, David Abrams, P.O. Box 3353, Church Street Station, New York, New York 10008.
4. Subject to the exceptions in Paragraph 6 (concerning excluded claims) below, and conditioned upon IEP’s full payment of the Settlement Amount, the United States releases IEP together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733;

the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 below, and conditioned upon IEP's full payment of the Settlement Amount, Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases IEP together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from any civil monetary claim the relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in paragraph 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in the Agreement, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services; and

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payment described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, releases, relinquishes, and forever discharges IEP, and its current and former owners, officers, directors, agents, and employees; and the predecessors, successors, transferees and assigns of any of them, from any liability to Relator arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

9. IEP waives and shall not assert any defenses IEP may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

10. IEP fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that IEP has asserted, could have asserted, or may assert

in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

11. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of IEP, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) IEP's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment IEP makes to the United States pursuant to this Agreement and any payments that IEP makes to Relator, including costs and attorney's fees,

are unallowable costs for government contracting purposes (hereinafter referred to as "Unallowable Costs").

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by IEP, and IEP shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, IEP shall identify and repay by

adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by IEP or any of its subsidiaries or affiliates from the United States. IEP agrees that the United States, at a minimum, shall be entitled to recoup from IEP any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine IEP's books and records and to disagree with any calculations submitted by IEP or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by IEP, or the effect of any such Unallowable Costs on the amount of such payments.

12. IEP agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, IEP shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. IEP further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

13. This Agreement is intended to be for the benefit of the Parties only.

14. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1).¹

15. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Eastern District of New York. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on IEP's successors, transferees, heirs, and assigns.

22. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

23. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

¹ Relator shall promptly file a notice of discontinuance with respect to the claims brought on behalf of the State of New York upon satisfaction of the contingencies set forth in Paragraph 1 herein.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 2-23-21

SETH D. DUCHARME
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By: 

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IEP - DEFENDANT

DATED: 2-23-21

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Counsels for IEP


Antony Montero - RELATOR

DATED: 2/17/21

By: 
Antony Montero

DATED: 2/17/21

DAVID ABRAMS
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By: 
DAVID ABRAMS
Attorney for Relator
(212) 897-5821
Dnabrams@gmail.com
Counsel for Antony Montero

SO ORDERED this

___ day of _____, 2021

HONORABLE FREDERIC BLOCK
United States District Judge, Eastern District of New York