

ADDENDUM #1

SETTLEMENT AGREEMENT AND GENERAL RELEASE

THIS ADDENDUM to the April 9, 2020, Settlement Agreement and Release (the "Agreement") is entered into by and between [redacted] individually and on behalf of their [redacted] collectively referred to as "Petitioners", on one side, and the Brick Township Board of Education (the "Board"), on the other side.

WITNESSETH

WHEREAS, Petitioners and the Board are parties to an Agreement approved by the Board on April 9, 2020, resolving the Petition for Due Process docketed before the Department of Education as Agency Ref. No.: 2020-31099 and the Office of Administrative Law as EDS-00338-2020S; and

WHEREAS, [redacted] currently resides in a group home facility operated under the auspices of Elwyn, New Jersey and, at the time the Agreement was entered, attended the Bancroft Neurohealth School; and

WHEREAS, [redacted] special education and related services for the 2019/2020 school year were set forth in an Individualized Education Program ("IEP") extending from October 23, 2019, through June 30, 2020; and

WHEREAS, [redacted] IEP provides that he will receive transportation services to and from school, with the assistance of a bus attendant; and

WHEREAS, in accordance with the terms of the Agreement, the Board specifically agreed to make a lump-sum payment to Petitioners in the amount of thirty-six thousand, five-hundred nineteen dollars (\$36,519.00), as contribution towards Petitioners' procurement of private transportation for L.M. for the period extending from January 1, 2020 through June 30, 2020; and

WHEREAS, in response to the COVID-19 outbreak, on March 9, 2020, Governor Philip Murphy entered Executive Order No. 102 declaring a Public Health Emergency and State of Emergency; and

WHEREAS, subsequently on March 16, 2020, Governor Murphy entered Executive Order No. 104, which closed all public and private school premises to students; thereby necessitating that all schools deliver instructional services through a virtual platform; and

WHEREAS, the entrance of Executive Order Nos. 102 and 104, and the move to on-line learning could not have been reasonably contemplated by the parties at the time the Agreement was reached and materially impacts the facts upon which the Agreement was premised; and

WHEREAS, the parties deem it in their best interests to amend the parties' Agreement and set forth in a formal written Addendum to that Agreement (the "Addendum") their respective rights, duties and obligations; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and other good and valuable consideration set forth herein, it is hereby agreed by and between the parties hereto as follows:

- A. Paragraph A of the Agreement is hereby amended to state that in lieu of providing transportation services to the Board agrees to pay Petitioners the total sum of sixteen thousand, one-hundred and twenty-one dollars (\$16,121.00) to Petitioners as contribution towards Petitioners' procurement of private transportation for or the period extending from January 1, 2020 through March 17, 2020. The sums set forth in this agreement, equate to three hundred twenty-nine dollars (\$329.00) per day for forty-nine (49) school days. All sums due and owing under this Agreement shall be paid to Petitioners within thirty (30) days of the Board's approval of the Addendum, utilizing the Board's standard voucher system.
- B. Paragraph B of the Agreement is hereby amended to state that Petitioners understand and agree that in exchange for said reimbursement reflected herein, the Petitioners were solely responsible for providing with transportation services to/from Bancroft from January 1, 2020, through March 17, 2020, and that the Board was not involved, nor required to be involved in the selection of a transportation provider and otherwise be responsible for providing with transportation services during the operative period of Addendum.
- C. Paragraph D of the Agreement is hereby amended to state that Petitioners expressly understand and agree that the Board's Agreement to contribute towards Petitioners' attainment of private transportation services as services set forth in this Addendum in no way whatsoever reflects that the Board agrees or acknowledges that it failed to arrange and/or provide appropriate transportation services for through March 17, 2020 of the 2019/2020 school year. Rather, this Addendum is made for the sole purpose of addressing the material change in circumstances resulting from the entrance of Executive Order Nos. 102 and 104, and the impact on the provision of special education and related services to for the remainder of the 2019/2020 school year.
- D. Paragraph F of the Agreement is hereby amended to state:
 - 1. The parties hereby mutually release, acquit and forever discharge each other, their current and former members, officers, directors, agents, servants, employees, successors, attorneys, assigns and affiliates, of and from any and all claims, liabilities, demands, causes of action, damages, indemnities and obligations of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of the claims specifically raised in the Petition for Due Process, docketed before the Department of Education as Agency Ref. No.:

2020-31099 and the Office of Administrative Law as EDS-00338-2020S, including, but not limited to: any and all such claims and demands directly or indirectly arising from the Board's obligation to provide with transportation services through March 17, 2020 of the 2019/2020 school year, pursuant to federal and state special educational laws including, but not limited to, the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*; N.J.S.A. 18A:46-1, *et seq.*; and N.J.A.C. 6A:14-1.1, *et seq.*

2. The parties expressly understand and agree that nothing shall be deemed to preclude Petitioners from asserting any claim for compensatory special education and related services that may have as a direct result of the closure of public and private school premises to students as mandated under Executive Order No. 104, and that Petitioners do not waive any claims that they may have against the Board regarding the provision of special education and related services to from March 18, 2020 through June 30, 2020.
- E. Paragraph G is hereby amended to state that Petitioners agree to indemnify and hold harmless the Board, their current and former members, officers, directors, agents, servants, employees, successors, attorneys, assigns and affiliates, of and from any and all claims, liabilities, demands, causes of action, costs, expenses, attorneys' fees, damages, indemnities and obligations of every kind and nature, in law, equity, or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, initiated by within two years of execution of this Addendum, arising out of the claims set forth in the Petition for Due Process docketed before the Department of Education as Agency Ref. No.: 2020-31099 and the Office of Administrative Law as EDS-00338-2020S, through March 17, 2020, pursuant to federal and state special educational laws including, but not limited to, the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et seq.*; N.J.S.A. 18A:46-1, *et seq.*; and N.J.A.C. 6A:14-1.1, *et seq.*
- F. **NO CONTEST OF ADDENDUM.** Petitioners and the Board hereby agree that they shall not contest the terms, conditions, and/or promises set forth in this Addendum before any tribunal, court, or administrative body. The parties further agree and understand that all of the terms and conditions set forth in the Agreement are binding and applicable to this Addendum and incorporated herein as if set forth at length herein. All terms and conditions set forth in the April 9, 2020 Agreement shall remain in full force and effect unless expressly modified herein.

IN WITNESS WHEREOF, the parties have duly authorized and caused this Agreement to be executed as follows:

**BRICK TOWNSHIP BOARD
OF EDUCATION**

By: _____
Stephanie Wohlrab, Board President

Date: _____

Witnessed:

By: _____
James W. Edwards, Jr., C.P.A.
Business Administrator/Board Secretary

Date: _____

By: _____

Date: 7-2-20

By: _____

Date: 7/2/2020