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NEW JERSEY DEPARTMENT OF
EDUCATION
OFFICE OF ADMINISTRATIVE LAW

v.

Brick Township Board of Education,
Respondent

And

Brick Township Board of Education,
Petitioner

v.

OAL DOCKET NO. EDS 09322-19
AGENCY DKT. NO.: 2019-30095

OAL DKT. NO.: EDS 04333-20
AGENCY DKT. NO.: 2020-31442

Civil Action

**SETTLEMENT
AGREEMENT/RELEASE**

WHEREAS, [redacted], whose date of birth is January 30, 2009 is currently eleven (11) years of age and will be a 6th grade student for the 2020-2021 school year; and

WHEREAS, [redacted] was previously classified as eligible for special education and related services under N.J.A.C. 6A:14-3.5(c)6; and

WHEREAS, for the student's 4th grade school year (2018-2019) [redacted] attended the accredited Laurel School located in Princeton, New Jersey by way of a Settlement Agreement between the parties; and

WHEREAS, on or about May 31, 2019, the Respondent Board offered [redacted] an individualized education program ("IEP") for educational programming and placement to be

provided in the District's Emma Havens Young Elementary School for her 5th grade year (2019-2020); and

WHEREAS, on or about June 11, 2019, parents' counsel challenged the May 31, 2019 IEP and filed a due process petition invoking the "stay put" provision for continued attendance at Laurel School; and

WHEREAS, the June 11, 2019 petition was transmitted to the New Jersey Office of Administrative Law and assigned to The Honorable Richard M. Wilson, ALJ for disposition; and

WHEREAS, on July 18, 2019, a conference call occurred among ALJ Wilson and counsel for both parties; and

WHEREAS, as a result of that conference call, a discovery period was extended to September 10, 2019; and

WHEREAS, on September 10, 2019, another conference call occurred among ALJ Wilson and counsel for both parties; and

WHEREAS, as a result of the September 10, 2019 conference call, despite the District's ongoing objections, a hearing date was not scheduled on the dispute until May 5, 2020; and

WHEREAS continued to attend Laurel School for the 2019-2020 school year; and

WHEREAS, in the Winter of 2020, in accordance with applicable special education regulations was reevaluated by the District to determine her continued eligibility to receive special education and related services; and

WHEREAS, on or about March 2, 2020, a reevaluation/eligibility determination meeting was held in the District; and

WHEREAS, as a result of that same meeting, a determination was made by the District that was no longer considered a student with a disability and no longer eligible to receive special education and related services; and

WHEREAS, on March 3, 2020, the District provided parents with its written determination that was no longer considered a student with a disability and no longer eligible to receive special education and related services; and

WHEREAS, subsequent to March 3, 2020, the parents sought multiple independent evaluations on behalf ; and

WHEREAS, on or about March 20, 2020, the District filed a due process petition against the parents denying the same requests for independent evaluations; and

WHEREAS, as result of the COVID-19 pandemic, the May 5, 2020 scheduled due process hearing was adjourned, and to date, no due process hearing has ever been scheduled since the filing of parents' June 11, 2019 petition; and

WHEREAS, on or about July 28, 2020, ALJ Wilson consolidated the parents' June 11, 2019 petition for stay put and the District's March 20, 2020 petition denying parental requests for independent evaluations; and

WHEREAS, on August 18, 2020, Petitioner provided the District with a letter indicating [redacted] to be unilaterally placed at the Laurel School for the 2020-2021 school year; and

WHEREAS, on or about August 25, 2020 by way of response to the parental notification of their unilateral placement of [redacted] at the Laurel School for 2020-2021, the District, through its Director of Special Services, sent a letter to the parents and the Laurel School informing them the District was not responsible for tuition or transportation for the student's 2020-2021 school year at the Laurel School due to the parents' decision to unilaterally place the student there; and

WHEREAS, based upon these new developments in the litigation, on or about September 1, 2020, counsel for both parties discussed terms and conditions for a potential resolution of the entire litigation; and

WHEREAS, the parties desire to settle any and all outstanding claims, controversies, demands, actions, or causes of action set forth in the petitions regarding [redacted] 2019-2020 and 2020-2021 school years;

WHEREAS, the parties deems it in their best interests to set forth in a formal written agreement 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 agreed by and between the parties as follows:

1. No later than November 15, 2020, the District will remit payment directly to the Laurel School for any outstanding 2019-2020 tuition payments associated with [redacted]'s attendance during that school year pursuant to the student's stay put placement. Such outstanding tuition payments for 2019-2020 are \$39,500.00.
2. Effective March 3, 2020 [redacted] is declassified student. Such declassification was based upon the determinations made by the District's IEP team at the March 2, 2020 reevaluation/eligibility determination meeting. Written notification and reasons for such declassification was provided by the District to the parents by way of March 3, 2020 letter entitled "Reevaluation Eligibility Determination—Declassified."
3. [redacted] will attend the Laurel School for the 2020-2021 school year as a declassified student. The District is not responsible to monitor her attendance at Laurel School during any part of 2020-2021. Nor is the District responsible for the provision of any educational services to [redacted] during her attendance at Laurel School for 2020-2021. As a declassified

student at the Laurel School for 2020-2021, is not and shall not be entitled to any special education and/or related services by way of an IEP. Should cease to attend Laurel School for any reason during 2020-2021, she shall return to the District as a declassified student to receive all her educational services, and the District shall not be bound in any way to continue to pay for her educational programming at another out-of-district school, or any other school selected by the parents. Should new circumstances arise when the student is in attendance in the District, the parents have the right to request a referral for possible eligibility and, if applicable, special education services.

4. The District shall be responsible for tuition costs to the Laurel School for 2020-2021 in the amount of \$42,000.00 paid at the rate of \$4,200.00 per month for 10 months (September 2020 through and including June 2021). Upon receiving the appropriate monthly invoice, the District shall make monthly payments directly to the Laurel School in the course of its regular bill paying practices.
5. By no later than October 1, 2020, transportation services will be provided for to attend Laurel School. In the interim parent has the option to either drive the Laurel School or choose the virtual instruction provided by the Laurel School until transportation commences. Such option shall be exercised by the parent no later than Monday, September 14, 2020 at 12:00 P.M. The parent is bound by the option exercised on September 14, 2020 from September 15, 2020 to the commencement of transportation services no later than October 1, 2020. If the parent exercises the option to transport to school, the parent shall only be reimbursed for driving the student to the school in the morning and driving the student home from school in the afternoon. The parent shall be reimbursed at the District's per mileage reimbursement rate as established by the State of New Jersey. The reimbursement rate to the parent for transporting to school from September 15, 2020 until commencement of transportation services no later than October 1, 2020, shall not exceed \$420.00 and will be paid on or before December 15, 2020. The \$420.00 not to exceed figure is calculated as follows:
 - Maximum number of days of school attendance from September 15, 2020 to September 30, 2020: 15
 - Miles from parent home to Laurel School for morning drop off: 50
 - Miles from Laurel School to parent home in afternoon: 50
 - Total reimbursement for miles on a school day: 100
 - State rate for reimbursement: .35 per mile
 - Reimbursement per diem: $100 \times .35 = \$35.00 \times 15$ maximum number of days: \$420.00
6. Should any dispute arise during 20-2021 school year regarding s 2021-2022 educational programming due to the student's declassification and status as a general

education student, the District is not legally responsible in any way whatsoever to be automatically bound to continue programming at the Laurel School or be responsible for payment of attendance at the Laurel School or any other out-of-district placement selected by the Petitioners for 2021-2022 under any application of the stay-put provision. Furthermore, based upon declassification, the student is not automatically entitled to any special education and/or related services by way of an IEP at the Laurel School for the 2021-2022 school year.

7. For the 2021-2022 school year, [redacted] will attend Middle School in the District and such attendance shall be as a general education student. Should new circumstances arise when the student is in attendance in the District, the parents have the right to request a referral for possible eligibility and, if applicable, special education services.
8. Costs and Fees: Each party shall bear its own costs, expenses, attorney's fees and any other costs pursuant to 20 U.S.C. Section 1415, or any other federal or state statute, with the exception of a one-time lump sum payment of \$5,000.00 payable to Petitioner's counsel as reimbursement to the parents to offset and avoid the uncertainties and expenses associated with continuation of the litigation. It is further agreed that neither party shall be considered a "prevailing party" for any purposes. Any and all other costs and expenses, of whatsoever nature, incurred by Petitioners regarding the filing of the due process petition against the Board or any private educational expenses associated with this matter not specifically addressed herein, are and shall remain the sole responsibility of the Petitioners. The foregoing shall constitute the full and complete settlement regarding any and all claims of whatever nature the Petitioners have or may have had against the Board through the date on which the Board approves the Settlement Agreement reached by the parties in this matter. *by Dec 15, 2020 parents*
9. The Board has no obligation to provide any compensatory educational or related services to [redacted] for the 2018-2019, 2019-2020, or 2020-2021 school years or for any and all prior school years.
10. The parties hereby mutually release, acquit, and forever discharge each other, their current and former members, officers, 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 or in any way related to the claims raised in the Petition for Due Process, docketed before the Department of Education as Agency Ref. No.: 2019-30095 and Office of Administrative Law as EDS-09322-19, including but not limited to: any and all such claims and demands directly or indirectly arising from or in any way connected with the Board's obligation to provide [redacted] with educational services for the 2018-2019, 2019-2020, or 2020-2021 school years.
11. The parties hereby acknowledge and agree that they further expressly waive and assume the risk of any and all claims or damages which exist prior to the date of this Agreement, other than claims related to the provision of special education and related services for which either party does not know of or suspect to exist, whether through ignorance, oversight, error,

negligence, or otherwise and which, if known, would materially affect their decision to enter into this Settlement Agreement and General Release.

12. 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 or unsuspected, disclosed or undisclosed.
13. The parties covenant not to sue, initiate, or continue any legal or administrative proceedings or appeals with regard to any and all claims released herein, provided, however, that this shall not preclude any claims regarding a breach of this Agreement.
14. This Agreement is not and shall not in any way be construed as an admission by the parties or any of its officers, members, agents, attorneys, employees or representatives of the commission of any acts or wrongdoing whatsoever against by any individual or entity, or that the Board, or any of its officers, members, agents, employees, or representatives violated any federal or state constitutional prohibitions or any federal, state, or local law, statute, ordinance, regulation, or public policy of the State of New Jersey. Instead, this Agreement constitutes the good faith settlement of all matters, and the Board specifically disclaims any liability to or any other person or entity, on the part of itself, its offices, members, agents, employees, or representatives. The parties have entered into this Agreement for the sole purpose of resolving claims, both asserted and unasserted, in order to avoid the burden, expense, delay, and uncertainties of litigation.
15. The terms of this Agreement and the Agreement itself shall be held in strictest confidence by all parties and shall not be publicized or disclosed in any manner whatsoever, except that (a) either party may disclose this Agreement in confidence to their attorneys, accountants, auditors, tax preparers, and financial advisors (b) the Board may disclose this Agreement as necessary to fulfill its obligation under the Open Public Records Act, as well as other standard or legally required reporting or disclosure requirements (c) the parties may disclose this Agreement insofar as much disclosure may be necessary to enforce its terms or as otherwise required by law.
16. This Settlement Agreement shall be governed by the laws of the State of New Jersey.
17. This Settlement Agreement represents the entire Agreement between the parties and will not be modified in whole or in part except by a mutual subsequent written and signed Agreement.
18. It is acknowledged that this Settlement Agreement has been entered into freely, willingly, and voluntarily, without duress or coercion, and with the opportunity to consult with counsel of each party's choosing and option. The Petitioner did consult with Michael Inzelbuch, Esq. of the Law Offices of Michael I. Inzelbuch, and Respondent did consult with Paul Kalac, Esq., of The Weiner Law Group, LLP

19. The parties acknowledge that they were represented by competent counsel, and the parties acknowledge that they are satisfied with the representation of their counsel. It is further acknowledged that they understood the contents of the Settlement Agreement.
20. This Settlement Agreement is subject to approval by the Brick Township Board of Education. Upon full execution and approval by the Board, the herein Settlement Agreement shall be submitted to the New Jersey Office of Administrative Law's Atlantic City vicinage for approval and incorporation into a Final Decision and Order by ALJ Wilson. This Settlement Agreement shall be recommended for approval at the September 24, 2020 Board meeting
21. The Agreement may be executed in counterparts and each counterpart shall have the same force and effect as an original and shall constitute and effective, binding agreement on the part of each of the undersigned.
22. In consideration of all the terms and conditions identified in this Settlement Agreement and Release, Petitioner hereby withdraws the June 11, 2020 due process petition seeking stay put with prejudice. Petitioner Board withdraws the March 20, 2020 due process petition seeking denial of independent evaluations

THE PARTIES HERETO SET THEIR HANDS TO THIS AGREEMENT AS FOLLOWS:
ON BEHALF OF



, Parent

Date:  _____

Date:  09/09/2020

ON BEHALF OF THE BRICK TOWNSHIP BOARD OF EDUCATION

, Board President

Date: _____

, Business Administrator/Board Secretary

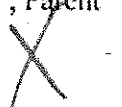
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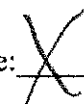
THE PARTIES HERETO SET THEIR HANDS TO THIS AGREEMENT AS FOLLOWS:
ON BEHALF OF



, Parent



, Parent

Date:  _____

Date:  9/9/2020 _____

ON BEHALF OF THE BRICK TOWNSHIP BOARD OF EDUCATION

, Board President

Date: _____

, Business Administrator/Board Secretary

Date: _____