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**Attorney(s) for Respondents, Brick Township School
District Board of Education**

Petitioners, vs. Brick Township School District Board of Education, Respondent.	SETTLEMENT AGREEMENT AND RELEASE OAL DKT No. EDS 08880-21
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This Settlement Agreement and Release is made and entered into on this _____ day of January, 2022 by and between _____, individually and on behalf of their minor child _____ (hereinafter referred to as the “Parents”), residing at _____, and the Brick Township Public Schools (hereinafter referred to as the “Board” or “District”) located at 101 Hendrickson Avenue, Brick, New Jersey 08724.

WHEREAS, _____ was born or _____ and has been categorized with mild intellectual disability and diagnosed with Down Syndrome and apraxia and related medical needs; and

WHEREAS _____ eligible for special education and related services pursuant to the Individuals with Disabilities Education Act, 20 U.S.C., Section 1400 *et seq.*, N.J.S.A. 18A:46-1 *et seq.*, and N.J.A.C. 6A:14-1.1, *et seq.*; and

WHEREAS, the Board is the local education agency (“LEA”) responsible for providing C.M. a free and appropriate public education (“FAPE”) in the least restrictive environment (“LRE”); and

WHEREAS, on or about September 23, 2021, the Parents brought an action for emergent relief against the Board concerning their claims of issues involving a break in delivery of services and issues concerning placement pending the outcome of the due process proceedings relating to the implementation of _____, individualized education program (“IEP”) for the 2021-2022 schooling year; and

WHEREAS, also on or about September 23, 2021, the Parents brought the current underlying due process petition against the Board seeking various forms of relief from March 15, 2020 to the present, including, but not limited to seeking compensatory educational services, restructuring staffing who are responsible for the delivery/implementation of educational services, and various other costs associated with the student's educational services in the District from March 15, 2020 to the present; and

WHEREAS, the September 23, 2021 application for emergent relief was assigned to The Honorable Mary Ann Bogan, ALJ, and that case was docketed as . . . Brick Twp. BOE, OAL Docket No.: EDS 08016-21; and

WHEREAS, the parties amicably resolved the emergent relief application via a Settlement Agreement and Release that was approved by the Board at its December 16, 2021 regular, monthly meeting; and

WHEREAS, that fully-executed, Board-approved Settlement Agreement and Release (and accompanying certified Resolution attesting to the same by the Board's Business Administrator), was sent on December 22, 2021 to ALJ Bogan by way of letter from Paul C. Kalac, Esq., special education counsel for the Board. Same letter from Mr. Kalac requested ALJ Bogan to convert the Settlement Agreement and Release into a final Decision Approving Settlement; and

WHEREAS, that Settlement Agreement and Release covered the time periods relative to the emergent relief request, which was September 10, 2021 to October 22, 2021; and

WHEREAS, the underlying due process petition seeking all other relief from March 15, 2020 to present, was assigned to The Honorable Tama B. Hughes, ALJ on or about November 17, 2021; and

WHEREAS, both the parents and the Board participated in a prehearing conference call November 17, 2021, a Settlement Conference on November 30, 2021, and conference calls on December 6, 2021 and December 10, 2021; and

WHEREAS, during the course of all these communications with the Court, counsel continued to apprise the Court that good faith negotiations were occurring between the parties, and a resolution was anticipated; and

WHEREAS, counsel and ALJ Hughes participated in a final status conference call on January 6, 2022; and

WHEREAS, as a result of that January 6, 2022 conference call, and all previous good faith negotiations, a global resolution of the dispute was reached between the parties; and

NOW, THEREFORE, in consideration of mutual promises, covenants, and other good and valuable consideration set forth herein, the parties agree as follows:

1) From March 15, 2020 to August 15, 2022, is owed a total of 90 hours of compensatory educational services. Note: The District previously delivered certain hours of compensatory services during the 2020-2021 schooling year, but the total remaining hours covering the March 15, 2020 to August 15, 2021 time period is 90 hours.

2) The 90 hours are divided into two (2) distinct time periods: 1.) Those services to be provided before June 30, 2022 (Forty-four (44) hours) and 2.) Those services to be provided during the Extended School Year (“ESY”) of 2022 which is scheduled to be conducted for twenty-three (23) school days in July and August of 2022 (Forty-six (46) hours).

3) The services to be provided before June 30, 2022: In lieu of providing the forty-four (44) hours of compensatory services, the parties agreed the Board would compensate the Parents the sum of \$80.00 per hour for those forty-four (44) hours. The calculation of \$80.00 per hour X forty-four (44) hours is \$3,520.00. The Parents specifically waived receiving the provision of those forty-four (44) hours on behalf of in exchange for receiving the payment of \$3,520.00.

4) The services to be provided during the ESY 2022: The District’s ESY 2022 will operate for twenty-three (23) school days. Each school day will be four (4) hours long. However, at the end of each and every one of the twenty-three (23) school days, two (2) additional hours of compensatory educational services will be available to be delivered to The total of the compensatory hours for ESY 2022 is twenty-three (23) school days X 2 hours per day for a total of forty-six (46) hours.

If parents do not make available for all or portions of the forty-six (46) hours to which he is lawfully entitled to receive, the student will lose those services. As such, the parents can “use the services or lose the services”, subject to the following caveat: If the services cannot be delivered to due to the District’s inability to do so due to staffing shortages, lack of transportation, disagreement with the need for the services, unwillingness to provide access to operative IEP placement for any reason that has not been judicially sanctioned, closures due to COVID-19 pandemic or any other reasons for school closure, then the “use it or lose it” provision is inapplicable. Those services missed due to the District’s inability to deliver them, will still be due and owing to in the following school year (2022-2023).

5) The District will reimburse the Parents’ legal fees in the amount of \$7,500.00. The payment of legal fees is predicated on a global resolution of the litigation, and, as such, all further litigation on the dispute ceases without the need for a plenary hearing to be conducted by the New Jersey Office of Administrative Law.

6) This Settlement Agreement and Release is made without any admission, liability, responsibility, or wrongdoing by the District and shall not be construed as an admission by the District that it did not, at all times relevant hereto, properly perform its duties and obligations regarding the provision to _____ of a FAPE in the LRE from March 15, 2020 to present in accordance with applicable State and Federal special education law.

7) In consideration of the above, the Parents, individually and on behalf of _____ hereby fully and completely release the District, its Board, attorneys, employees, Directors, administrations, and agents through the date this Agreement is signed from any and all claims against the District under any law, regulation, or legal theory, including, without limitation, Section 504 of the Rehabilitation Act, the Federal Individuals with Disabilities Education Act, 20 U.S.C. 1400, et seq., N.J.A.C. 6A:14-1.1, et seq., N.J.S.A. 18A:46-1.1, et seq., the New Jersey Law Against Discrimination (“NJ LAD”), N.J.S.A. 10:5-1, et seq., the Americans with Disabilities Act (“ADA”), or any federal or state administrative regulation, or any other claims which have been or could have been asserted by the Parents on behalf of _____ in any forum, for compensatory education (except for the 90 hours identified above) or damages arising out of, or connected with the provision of a FAPE in the LRE by the District from March 15, 2020 to the full-execution and Board approval of this Settlement Agreement and Release. This includes attorneys’ fees and costs (except for Paragraph 5 above), other professional fees, and any other costs associated with this matter. Nothing in this Release shall prevent the parties from bringing an action to enforce any term or provision of this Settlement Agreement and Release.

8) The parties acknowledge that they have read and understand the terms of this Settlement Agreement and Release, that they have had the opportunity to have the Settlement Agreement and Release reviewed by counsel of their choosing, and that they are satisfied with the advice of their respective counsel, and that they are entering into this Settlement Agreement and Release knowingly, freely, voluntarily, without coercion or duress and not under the influence of anything or anyone.

9) The parties agree that neither party is considered a “prevailing party” as that term is defined under applicable special education law, and neither party is entitled to expenses, attorney’s fees (except for Paragraph 5 above), professional fees, or any costs, pursuant to 20 U.S.C. Section 1415 or any other federal or state statute solely by virtue of this Settlement Agreement and Release.

10) This Settlement Agreement and Release shall be deemed to have been entered into and shall be construed and enforced in accordance with the laws of the State of New Jersey as applied to contracts made and to be performed entirely within New Jersey.

11) If, during the term of this Settlement Agreement and Release, a specific clause of the Settlement Agreement and Release is determined to be illegal or in

violation of any Federal or State law, the remainder of the Settlement Agreement and Release shall not be affected by such a ruling and shall remain in full force and effect.

12) The Parents agree and acknowledge that this Settlement Agreement and Release is subject to approval by the Board during its next regularly scheduled meeting following the execution of the document. If approved by the Board at its next, regularly scheduled Board meeting, all reimbursements shall be paid to the parents in the normal course of the Board's bill paying practices.

The parties hereby acknowledge their agreement to the terms as set forth above by signing below.

IN WITNESS WHEREOF, the parties have hereunto set their hands and signatures on the date and year set forth below.

Stephanie Wohlrab, Board President
Brick Township Public Schools

Date:

James Edwards, Business Administrator/Board Secretary
Brick Township Public Schools

Date:

Date:

Date: