

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (hereinafter referred to as the "Agreement") is entered into by and between [REDACTED], individually and on behalf of [REDACTED], a disabled minor (hereinafter collectively referred to as "RESPONDENTS"), and BRICK TOWNSHIP SCHOOL DISTRICT BOARD OF EDUCATION (hereinafter referred to as "PETITIONER"), as of the date of the execution of this Agreement by all parties hereto, and in accordance with the terms and conditions set forth below.

RECITALS

#15326

WHEREAS, [REDACTED] is a child with a disability, eligible for special education and related services under the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq. ("IDEA") and protection under Section 504 of the Rehabilitation Act, 29 U.S.C. §794 ("§504"); the Americans with Disabilities Act, 42 U.S.C. §12101 et seq. ("ADA"); New Jersey's Special Education Law, N.J.S.A. 18A:46-1 et seq.; and the New Jersey Law Against Discrimination, N.J.S.A. §10:5-1 et seq. ("NJLAD");

WHEREAS, [REDACTED] is a student in PETITIONER's school district;

WHEREAS, PETITIONER is a Local Educational Agency ("LEA") as that term is defined by 20 USC §1401(19) and 34 CFR §300.28 and as such receives federal funding and thereby responsible for ensuring compliance with all mandates arising under the numerous federal statutes for providing special education to the school age students residing within its district;

WHEREAS, a dispute has arisen between PETITIONER and RESPONDENTS and as to whether PETITIONER is required to fund an Independent Educational Evaluation ("IEE") of a Functional Behavioral Assessment ("FBA");

WHEREAS, both RESPONDENTS and PETITIONER make no admissions regarding whether such allegations are true and well-founded;

WHEREAS, PETITIONER commenced litigation against RESPONDENTS via a Due Process Hearing Request through the New Jersey Department of Education ("NJDOE") in an action entitled *Brick Twp. Sch. Dist. BOE v. [REDACTED], [REDACTED], [REDACTED], [REDACTED], OAL Dkt. No. EDS*

██████████ (hereinafter referred to as the "Due Process Case") seeking to deny the IEE for a FBA;

WHEREAS, **RESPONDENTS** and **PETITIONER** now desire to compromise, settle and adjust fully and finally all disputes which now exist between them with respect to the claims set forth in the Due Process Case, on the terms hereinafter set forth; and

WHEREAS, **RESPONDENTS** and **PETITIONER**, by and through their representatives and counsel, participated in a Prehearing / Settlement Conference conducted by the OAL on **February 1, 2022** and therein discussed the terms of an agreement to resolve this matter with the Administrative Law Judge on such date.

COVENANTS

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants set forth below, **RESPONDENTS** and **PETITIONER** (hereinafter collectively referred to as "the parties") mutually agree, as follows:

PETITIONER shall fund a FBA IEE by a Board Certified Behavior Analyst ("BCBA") chosen by **RESPONDENTS** in accordance with **PETITIONER's** Board policy on IEEs (attached hereto and incorporated herein as if set forth in full). **PETITIONER** shall take all necessary steps to contract with and ensure payment of the provider selected by **RESPONDENTS**. Both **PETITIONER** and **RESPONDENTS**, as well as their respective counsel, shall be provided with a copy of the final report resulting from the FBA IEE. Thereafter, **PETITIONER** shall convene another Individualized Educational Program ("IEP") meeting with **RESPONDENTS** in attendance to determine how and/or whether to incorporate and/or implement the findings and recommendations of the IEE in a Behavioral Intervention Plan ("BIP"), to the extent a BIP is determined educationally necessary and appropriate.

The FBA IEE shall be completed within sixty (60) days of the date of this Agreement as entered by an Order of an Administrative Law Judge. The IEP meeting shall be convened within thirty (30) days of completion and submission of the report.

Continuing Obligation to Provide FAPE. No provision of this Agreement may be construed to relieve **PETITIONER** of its federal and/or state obligation to

provide [REDACTED] with a Free Appropriate Public Education ("FAPE"), which may include special education and/or related services.

Dismissal. Upon execution of an Order approving this Agreement by an ALJ, the Due Process case shall be dismissed with prejudice.

Claims Released by RESPONDENTS. In consideration of satisfaction of the Settlement Terms set forth in this Agreement and completion of all of the terms of this Agreement, **RESPONDENTS**, each of them, on behalf of themselves and their respective legal representatives, predecessors, successors, heirs, executors, assigns, agents, and attorneys, and each of them hereby fully release and forever discharge **PETITIONER**, and its predecessors, successors, heirs, executors, assigns, agents, past and present officers, directors, employees, shareholders, trustees, representatives and attorneys, of and from any and all claims, actions, causes of action, rights, liabilities, obligations and demands of every kind and nature, known and unknown, for any and all claims arising from or relating to the Due Process Case, except for attorney's fees and costs.

Claims Released by PETITIONER. In consideration of satisfaction of the Settlement Terms set forth in this Agreement and completion of all of the terms of this Agreement, **PETITIONER**, on behalf of itself, and its predecessors, successors, heirs, executors, assigns, agents, past and present officers, directors, employees, shareholders, trustees, representatives and attorneys, hereby fully releases and forever discharges **RESPONDENTS**, each of them, on behalf of themselves and their respective legal representatives, predecessors, successors, heirs, executors, assigns, agents, and attorneys, of and from any and all claims, actions, causes of action, rights, liabilities, obligations and demands of every kind and nature, known and unknown, for any and all claims arising from or relating to the Due Process Case, except for attorney's fees and costs.

Releases Do Not Affect Future Disputes. The releases set forth above do not apply to any disputes that may arise by reason of acts or omissions occurring after the date the request for a due process hearing was filed. It is understood that no aspect of this Agreement shall release any Party from liability for any post-Agreement new wrongful acts or omissions, including independent torts, unrelated to the provisions of this Agreement.

No Admission of Liability. Nothing contained herein shall be construed to be an admission of any kind by any signatory hereto. Specifically, and without limitation, nothing contained herein constitutes an admission of liability, fault, or

wrongdoing of any kind by **PETITIONER**, **RESPONDENTS**, and/or their respective representatives and attorneys.

Non-Confidentiality of This Agreement. Because this Agreement represents a government record as defined in N.J.S. §47:1A-1.1 and involves a public agency, **PETITIONER**, as defined in N.J.S. §47:1A-1.1 and because the source of portions or all of the payments required under this Agreement is public funding, this Agreement is subject to disclosure under the New Jersey Open Public Records Act, N.J.S. §47:1A-1 *et seq.* ("OPRA") and therefore cannot be confidential. It may only be redacted to the extent necessary to be in compliance with N.J.S. §47:1A-5.

No Assignment or Transfer. The parties to this Agreement each represent and warrant that they have not and will not in any manner assign, transfer, convey or sell, or purport to assign, transfer, convey or sell to any entity or person any cause of action, chose in action, or part thereof, arising out of or connected with the matters released herein, and that they are the only persons or entities entitled to recover for damages under such claims, causes of action, actions, and rights. The parties to this Agreement each also represent and warrant that no subrogation of any such causes of action, chose in action, or part thereof, has taken place. The parties to this Agreement each further represent and warrant that they will not in any way voluntarily assist any other person or entity in the establishment of any claim, cause of action, action, or right against the other parties to this Agreement.

No Construction Against Any Party. This Agreement prevails over prior communications regarding the matters contained herein between the signatories hereto or their representatives. This Agreement has been reviewed by counsel for the signatories hereto, and shall not be construed against any signatory, each signatory expressly waiving the doctrine of *contra proferentem*.

Application of Agreement Only to the Parties. This Agreement is intended to confer rights and benefits only on the signatories hereto as described in this Agreement, and is not intended to confer any right or benefit upon any other person or entity unless otherwise expressly stated herein. No person or entity other than the signatories hereto shall have any legally enforceable right under this Agreement unless otherwise expressly stated herein. All rights of action for any breach of this Agreement are hereby reserved to the signatories herein.

Authority to Execute. Each of the parties hereto represents and warrants:

- a. That each is a resident of the State of New Jersey and under the jurisdiction of the laws of this State and of the United States;
- b. That a duly authorized representative has read the entirety of this Agreement and knows and understands the contents hereof, that the terms hereof are contractual and binding and not by way of recital, and that he/she has signed this Agreement of their own free acts;
- c. That each has voluntarily entered into and executed this Agreement, is of competent and sound mind and not under the influence of any substance or affliction affecting one's judgment, and has executed the Agreement without duress or undue influence being imposed upon any Party;
- d. This Settlement Agreement is subject to approval by the Brick Township Board of Education;
- e. That the making and performance of this Agreement will not violate any provision of law or of their respective articles of existence or bylaws; and
- d. That in making this Agreement, each has been provided the opportunity and/or has obtained the advice of legal counsel.

Binding Agreement. Each of the terms of this Agreement is binding upon each signatory hereto, and their respective predecessors, successors, parents, subsidiaries, affiliated companies, transferees, assigns, representatives, principals, agents, officers, directors, and employees.

Full Cooperation in Consummating the Agreement. Each Party to this Agreement shall cooperate fully in the execution and completion of any and all other documents and actions necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

Section Headings. Section headings in this Agreement are provided solely for the convenience of the Parties and shall not be construed as affecting the rights or obligations of any Party hereto.

Interpretation. The language and terms of this Agreement are to be understood in their ordinary sense (except where a specific definition is otherwise provided) and are not to be interpreted in a technical manner so as to unfairly deprive any Party of substantive rights. Whenever the context may so require, the masculine gender shall be deemed to refer to and include the feminine and/or neuter, the singular to refer to and include the plural, and vice versa.

Entire Agreement. This Agreement is an integrated Agreement and contains the entire Agreement regarding the matters herein between the signatories hereto, and no representations, warranties, or promises have been made or relied on by any signatory hereto other than as set forth herein.

Modification by Writing Only. This Agreement may only be modified in writing signed by all of the Parties hereto.

No Third Party Beneficiaries. This Agreement is not for the benefit of any third party that is not referenced herein or otherwise expressly identified in this Agreement and shall not be deemed to give any right or remedy to any such third party.

Severability of Terms. If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that determination shall not invalidate or render unenforceable any other provision of this Agreement.

Counterparts. The parties to this Agreement hereby agree that this Agreement may be executed in counterparts, and that all such counterparts shall constitute one instrument binding on the signatories in accordance therewith, notwithstanding that all signatories are not signatories to the original or the same counterpart. Copies or facsimiles of signatures submitted from a reliable source or representative of a Party shall be considered the equivalent of original signatures.

Effective Date. This Agreement shall be deemed fully executed and effective when it has been signed by all of the Parties.

SIGNATURES

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement and Release on the dates shown below:



Signature 

Dated: 2/9/22

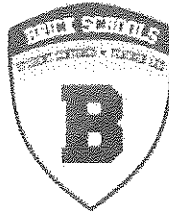
**BRICK TOWNSHIP SCHOOL
DISTRICT BOARD OF
EDUCATION**

Signature

Printed Name

Title

Dated: _____



Book Policy Manual
Section Series 6000 Instruction
Title Independent Educational Evaluation, Regulation
Code 6171.5R
Status Active
Adopted June 26, 2014
Last Revised April 6, 2017

BRICK TOWNSHIP BOARD OF EDUCATION
Regulation

	Monitored
	Mandated
	Other Reasons

INDEPENDENT EDUCATIONAL EVALUATION

Criteria for an Independent Educational Evaluation:

- A. An independent evaluators must be certified by the New Jersey Department of Education or possess license, certification and/or academic degree from an accredited educational institution, organization or agency appropriate to their profession that are recognized within the state;
- B. Independent evaluators must meet the qualifications and training requirements to administer, score and interpret the evaluation instrument(s) utilized during the IEE, as specified by the test publisher;
- C. Parents must provide written consent for the evaluation, and give their written consent for an exchange of information between the district and independent evaluator(s), including the release to the district of the evaluation report and results of all assessment data collected by the independent evaluator(s);
- D. The independent evaluator(s) shall use only the most current version of each assessment instrument utilized for the IEE;
- E. The independent evaluator(s) shall review the student record, including the results of evaluations conducted by the district;
- F. The district may require the IEE include classroom observations and interviews with school staff, if appropriate;
- G. The independent evaluator(s) shall provide a written report of findings to the parent(s) and district. That report shall contain:

1. Student and parent/guardian information (names, contact information, date of birth, school grade);
2. Dates when evaluation activities were conducted;
3. The evaluations administered;
4. The scores, along with subtest scores, of the tests administered;
5. A discussion and interpretation of test results;
6. A diagnosis of the student's condition, as appropriate; and
7. Recommendations, based on evaluation data, for the district's evaluation team to consider.

H. Payment for the IEE shall occur only after the district has received the final written report of findings from the evaluator(s);

I. Upon request, the independent evaluator(s) shall be available in person or electronically (i.e. telephone conference call, interactive video, etc.) to discuss results of the IEE with the district team.

Consideration of the Results of an Independent Educational Evaluation

The district will consider the findings and recommendations provided by an IEE completed in accordance with these procedures. However, the district continues to be responsible for making decisions regarding your child's eligibility and need for special education services, and when the student is eligible and needs special education, for determining placement and services to be provided.

Location Limitations for Evaluators

Evaluators will be located within the (must define the geographical area within district, county surrounding area or state). Evaluators outside of this area will be approved only on an exceptional basis, providing parents/guardians can demonstrate the unique circumstances that necessitate using an evaluator outside the specified area in order to obtain an appropriate evaluation. If a qualified evaluator is available within the above physical boundaries, such request may be denied. Any expenses beyond that directly related to preparation of the evaluation (i.e., food, lodging, transportation, etc.) shall not be covered in the cost of the independent evaluation when a qualified evaluator exists within the geographical area.

Audiological Assessment (Including Central Auditory processing):	\$400.00
Psychological Assessments:	\$600.00
Educational Assessment:	\$600.00
Social Histories:	\$600.00
Speech and Language Assessment:	\$600.00
Neurological Assessment:	\$600.00
Psychiatric Assessment:	\$600.00
Occupational Assessment:	\$500.00
Physical Therapy Assessment:	\$500.00
Assistive Technology Assessment:	\$900.00
Neuro-psychological Assessment:	\$2,500.00

No abbreviated scales for isolated sub test may be used at the primary assessment unless agreed upon by the district, assessor and parent.